

1949

# The Constitutionality of National Anti-Poll Tax Bills

Janice E. Christensen

Follow this and additional works at: <https://scholarship.law.umn.edu/mlr>



Part of the [Law Commons](#)

---

## Recommended Citation

Christensen, Janice E., "The Constitutionality of National Anti-Poll Tax Bills" (1949). *Minnesota Law Review*. 1583.  
<https://scholarship.law.umn.edu/mlr/1583>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact [lenzx009@umn.edu](mailto:lenzx009@umn.edu).

# MINNESOTA LAW REVIEW

*Journal of the State Bar Association*

VOLUME 33

FEBRUARY, 1949

No. 3

## THE CONSTITUTIONALITY OF NATIONAL ANTI-POLL TAX BILLS

JANICE E. CHRISTENSEN\*

VITAL constitutional issues are posed by the anti-poll tax bills debated in Congress during the past decade. These bills seek to abolish the requirement now prevailing in seven southern states that a poll tax<sup>1</sup> of one to two dollars be paid before voting in national elections.<sup>2</sup> In providing for the abolition of the poll tax requirement for voting, the bills raise the broad constitutional issue of the relative powers of the nation and states in national elections under our federal system. The issue is raised primarily because the bills propose to broaden national control of voting qualifications and requirements hitherto largely within the province of the states. That unprecedented national control is envisaged is indicated by

---

\*Instructor in Government, University of Texas. Author of *The Constitutionality of Proposed National Legislation to Abolish the Poll Tax as a Requirement for Voting in National Elections*. (Thesis on file in University of Minnesota Library, 1946.)

1. The poll tax (also "capitation" or "head" tax) is a uniform, direct, and personal tax levied upon the person, head, or poll as the object of taxation. See Shoup, *Poll Tax*, 12 Encyc. Soc. Sci. 227 (1933), Dewey, *The Poll Tax* 2 Cyc. American Government 732 (1914), Lutz, *Public Finance* 454 (2d ed. 1930); Cooley, *The Law of Taxation* 18 (1879).

2. (a) Alabama, Arkansas, Mississippi, South Carolina, Tennessee, Texas, and Virginia require payment of a poll tax of one to two dollars before voting in national and other elections with the exception of primaries in South Carolina. In three states the tax is cumulative. In Alabama a tax of \$36.00 may be required of an intending voter inasmuch as the tax is cumulative for the entire period of liability; in Mississippi, a tax of \$6.00 may be required at the end of two years; and in Virginia, one of \$5.01 may be required at the end of three years. Library of Congress, *Legislative Reference Service, Bulletin No. 15, The Poll Tax as a Prerequisite to Voting, Outline of Legal Provisions* 1-16 (1942).

(b) The constitutional and statutory provisions making payment of the poll tax a requirement for voting are cited in Kallenbach, *Constitutional Aspects of Federal Anti-Poll Tax Legislation*, 45 Mich. L. Rev. 717 (1947).

the fact that the bills, if passed, would for the first time<sup>3</sup> abolish by Congressional action alone a voting requirement established as a voting qualification in state constitutions. In the past, amendment of the national Constitution rather than statutory action by Congress has been employed when the national government has sought to remove qualifications prescribed in state constitutions.

#### LEGISLATIVE HISTORY

The first anti-poll tax bill was introduced on August 5, 1939, during the first session of the seventy-sixth Congress by Representative Lee S. Geyer, Democrat, of California, at the request of the Southern Conference for Human Welfare.<sup>4</sup> Although hearings were held on the bill before a special subcommittee of the House Judiciary Committee, the bill died in committee.<sup>5</sup>

Geyer's anti-poll tax bill, H.R. 7534, "A Bill to Amend an Act to Prevent Pernicious Political Activities," was a proposed amendment to the First Hatch Act.<sup>6</sup> As this might suggest, the bill was based entirely on the assumption that the poll tax requirement resulted in fraudulent political practices at the polls. In the bill it was stated that "frequently such taxes are paid for the voters by other persons as an inducement for voting for certain candidates." "Existing legislation prohibiting the making of expenditures to induce persons to vote for certain candidates has failed to prevent this practice." Congress must, therefore, abolish the poll tax requirement "in order to insure the honesty" of elections for national officers, *i.e.*, President, Vice President, or electors for President or Vice President, Senator, or member of the House of Representatives of the United States. Inasmuch as Congressional

3. Congress has passed legislation suspending the poll tax requirement for voting and the requirement of presence at the polls for members of the armed forces "at time of war." See Act of Sept. 16, 1942, 56 Stat. 753 (1942), as amended, 58 Stat. 136 (1944), 50 U. S. C. 302 (1946). But this action would not appear to be identical with abolishing outright a requirement prescribed as a voting qualification in state constitutions as is the intention of the anti-poll tax bills.

4. 84 Cong. Rec. 11229 (1939). The Southern Conference of Human Welfare describes itself as "an organization of representative southerners interested in improving the social, educational, agricultural, and industrial conditions in the South." American Council on Public Affairs and Southern Conference for Human Welfare, *The Poll Tax* 2 (1940).

The Southern Conference for Human Welfare was responsible for beginning in 1938 agitation for national action to eliminate the poll tax requirement in the poll tax states. Foreman, *Georgia Kills the Poll Tax*, 112 New Republic 291 (February 26, 1945).

5. The proceedings of the Hearings were not published.

6. H.R. 7534, 76th Cong., 1st Sess. (1939) "A Bill to Amend an Act to prevent pernicious political activities."

power over primaries had been denied by court interpretation,<sup>7</sup> the bills did not attempt to abolish the poll tax requirement in primaries.

Geyer introduced the same bill in the seventy-seventh Congress in 1941.<sup>8</sup> The bill, now H.R. 1024, was passed by the House of Representatives on October 12, 1942, by a vote of 252-84.<sup>9</sup> In the Senate, this bill was completely amended by the substitution of S. 1280, the anti-poll tax bill introduced by Senator Claude Pepper, Democrat, of Florida, in the same seventy-seventh Congress.<sup>10</sup> Pepper's bill was recommended to pass by the Senate Judiciary Committee,<sup>11</sup> but filibustering tactics of the southern Senators and failure to invoke cloture prevented the bill from coming to a vote on the floor of the Senate.<sup>12</sup>

The Pepper bill<sup>13</sup> differed in important respects from the Geyer bills. It was not an amendment to the Hatch Act, although it did state that fraudulent practices resulted from the poll tax requirement for voting. But the Pepper bill was based principally on the contention that the poll tax requirement "is not and shall not be deemed a qualification of voters or electors within the meaning of section 2 of article I of the Constitution." The poll tax requirement, read the preamble to the bill, bears "no reasonable relation to the intelligence, ability, character, wealth, community-consciousness or other qualification of voters." Rather, the requirement is an interference with the manner of holding elections, and a tax

7. *Newberry v. United States*, 256 U. S. 232 (1921), *overruled in United States v. Classic*, 313 U. S. 299 (1941).

8. 87 Cong. Rec. 18 (1941).

9. 88 Cong. Rec. 8174 (1942).

10. 87 Cong. Rec. 2698 (1941).

11. 88 Cong. Rec. 8656 (1942).

12. *Id.* at 9065-72.

13. The preamble of the Pepper bill read in part as follows. "Whereas the [poll tax] requirements . . . have deprived many citizens of the right and privilege of voting as guaranteed to them under the Constitution, and have been detrimental to the integrity of the ballot in that frequently such taxes have been paid for the voters by other persons as an inducement for voting for certain candidates, and Whereas these requirements have no relation to the intelligence, ability, character, wealth, community-consciousness or other qualifications of voters; and Whereas such requirements do deprive many citizens of the right and privilege of voting for national officers, and cause, induce, and abet practices and methods in respect to the holding of primaries and elections detrimental to the proper selection of persons for national offices. . ." Section 1 of the bill provided that the poll tax requirement is not a qualification but an interference with the manner of holding elections and a tax on the right to vote. Sections 2, 3, and 4 provided that it was unlawful for any State or other government subdivision or any person to require poll tax payment before voting in national elections or primaries preceding those elections. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. pt. 1, 1-2. (1942).

upon the right to vote. Also, it denies to many citizens the right and privilege of voting in national elections, including primaries, a right and privilege guaranteed to them by the Constitution.

In 1943 in the seventy-eighth Congress<sup>14</sup> and in 1945 in the seventy-ninth Congress<sup>15</sup> the most important anti-poll tax bill, H.R. 7, was introduced by Representative Vito Marcantonio, American Labor Party, of New York. This bill was passed by the House of Representatives, May 25, 1943,<sup>16</sup> and again on June 12, 1945,<sup>17</sup> but it died in the Senate in both Congresses.<sup>18</sup>

H.R. 7 was identical with the four sections of the Pepper bill proper, but it did not contain the preamble to the Pepper bill.<sup>19</sup> The absence of the preamble to the Pepper bill is of some consequence. It meant that, unlike the Pepper bill, H.R. 7 did not specifically mention corrupt practices, although they might be implied from the phrase, "an interference with the manner of holding elections." Also, unlike the Pepper bill, H.R. 7 made no specific reference to the dissimilarity between the poll tax requirement and enumerated qualifications of voters. Furthermore, H.R. 7 did not emphasize in the same way as S. 1280 the deprivation of the citizen's natural right to vote. However, like the Pepper bill, H.R. 7 was grounded on the assumption that the poll tax requirement is not a qualification for voting but an interference with the manner of holding elections and a tax on the right to vote.

In the first session of the eightieth Congress in 1947, H.R. 7, although introduced again by Marcantonio,<sup>20</sup> was replaced by H.R. 29, the anti-poll tax bill introduced by George Bender, Republican, of Ohio,<sup>21</sup> as the anti-poll tax bill singled out for passage by the House of Representatives. H.R. 29, identical with H.R. 7, passed the House, July 12, 1947,<sup>22</sup> but the Senate for the fourth time failed to pass the anti-poll tax bill sent to it from the House.

It is of interest that in Congress agitation for anti-poll tax

---

14. 89 Cong. Rec. 18 (1943)

15. 91 Cong. Rec. 18 (1945).

16. 89 Cong. Rec. 4889 (1943)

17. 91 Cong. Rec. 6003 (1945)

18. 90 Cong. Rec. 4470 (1944), 92 Cong. Rec. 10536-37 (1946). In both Congresses, the Senate Judiciary Committee recommended the bill to pass. 89 Cong. Rec. 9436 (1943), 91 Cong. Rec. 9616 (1945).

19. H.R. 7, 78th Cong., 1st Sess. (1943). "An Act Making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in primary or other election for national officers."

20. 93 Cong. Rec. 40 (1947).

21. *Id.* at 9718. In this Congress as in preceding Congresses since 1941, other anti-poll tax bills, similar to or identical with H.R. 7, were introduced by members of Congress other than Marcantonio, Pepper, or Geyer.

22. 93 Cong. Rec. 9718 (1947)

bills was accompanied by counter-proposals and other measures related to the poll tax requirement. Resolutions for amendments to abolish tax and property qualifications were introduced in several Congresses.<sup>23</sup> The resolution introduced by Senator O'Mahoney, Democrat, of Wyoming, is typical. It was as follows.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State by reason of failure to pay any tax or on account of any property qualification.

Section 2. The Congress shall have power to enforce this article with the appropriate legislation.<sup>24</sup>

Another proposal was to reduce the representation from the southern states in proportion to the number of voters prevented from voting on account of the poll tax requirement.<sup>25</sup> This proposal was based on section 2 of the Fourteenth Amendment.<sup>26</sup> Nothing, however, came of it.

In addition to the proposals mentioned, the Soldier Vote Bill, Public Law 712, passed September 16, 1942, contained a provision suspending the poll tax requirement for members of the armed forces during the war.<sup>27</sup> When this act was amended in 1944, the poll tax exemption clause was retained.<sup>28</sup>

#### THE STATES' POWER OVER QUALIFICATION OF VOTERS

During the years of Congressional preoccupation with the anti-poll tax bills, the principal subject of dispute was the constitutionality of the bills. Although opposition in Congress to

23. 88 Cong. Rec. 7748 (1942), 93 Cong. Rec. 348 (1947), N. Y. Times, May 18, 1944, p. 6, col. 5, N. Y. Times, May 30, 1944, p. 12, col. 7

24. 88 Cong. Rec. 7748 (1942).

25. N. Y. Times, November 3, 1943, p. 1, col. 1.

26. U. S. Const. Amend. XIV, § 2 reads as follows:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

27. The provision was as follows "Section 2. No person in military service at time of war shall be required, as a condition of voting in any election for President, Vice President, or for Senator or Member of the House of Representatives, to pay a poll tax or other tax or make any other payment to any State or political subdivision thereof." 56 Stat. 753 (1942), as amended, 58 Stat. 136 (1944), 50 U. S. C. § 302 (1946).

28. 50 U. S. C. § 302 (1946).

abolishing the poll tax requirement was not entirely, if mainly, motivated by undue concern about constitutional questions, the question of constitutionality does remain a major and legitimate objection to the proposed anti-poll tax legislation.

The question of the constitutionality of the national anti-poll tax bills arises largely because the states possess such broad powers over voting qualifications in national elections. The poll tax requirement for voting, it is argued or assumed, falls within the scope of these powers, the national government may not encroach upon them by undertaking the action contemplated by the anti-poll tax bills.

It is generally recognized that the states do enjoy rather extensive authority over voting qualifications in national elections. In the past this authority has been exercised subject to few limitations.<sup>29</sup> The Fifteenth<sup>30</sup> and Nineteenth Amendments,<sup>31</sup> prohibiting qualifications of race and sex, respectively, have been the principal limitations.

The major sources of state authority over voting qualifications in the Constitution are the two provisions defining the electors of Representatives and Senators section 2 of article I and the Seventeenth Amendment. Section 2 of article I is as follows

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for electors of the most numerous Branch of the State Legislature.<sup>32</sup> The qualifications clause of the Seventeenth Amendment is the same with respect to elections of Senators.<sup>33</sup> By these provisions the qualifications which the states prescribe for electors of the most numerous branch of the state legislatures are accepted as those of electors of Representatives and Senators. This means that, in effect, the states are determining the qualifications that will apply in elections for Representatives and Senators.

---

29. *United States v. Reese*, 92 U. S. 218 (1875).

30. U. S. Const. Amend. XV, which reads in part "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

31. U. S. Const. Amend. XIX, which reads in part "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

32. U. S. Const. Art. I, § 2.

33. U. S. Const. Amend. XVII, which reads in part. "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years, and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

In exact terms of constitutional law, however, the states do not prescribe the qualifications of the electors of Representatives and Senators. This principle was clearly delineated in *Ex parte Yarbrough*:

The states, in prescribing the qualifications of voters for the most numerous branch of their own state legislatures, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualifications for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says that the same persons shall vote for members of Congress in that state. It adopts the qualifications thus furnished as the qualifications of its own electors for members of Congress. . .<sup>34</sup>

Despite this principle, the practical operation of the Constitution in leaving to the states the determination of qualifications that are adopted by the Constitution as those of electors of Representatives and Senators is generally conceded as justifying the statement that the states have broad authority over voting qualifications in national elections.

The framers of the Constitution intended to leave to the states authority over qualifications by section 2 of article I. As Hamilton pointed out in the *Federalist*, this constitutional provision conformed to the "standard," meaning voting qualifications, established or to be established by the states.<sup>35</sup> Consequently, it left to the states the power to establish the qualifications that were to be adopted by the Constitution as national qualifications. This solution of the qualifications problem was the most acceptable of alternatives proposed at the Constitutional Convention.<sup>36</sup>

Decisions of the Supreme Court<sup>37</sup> and standard legal references<sup>38</sup> admit the great powers of the states over voting qualifications granted by section 2 of article I and the Seventeenth Amendment. This is true even though the Supreme Court has recently

34. 110 U. S. 651, 663 (1884).

35. The *Federalist*, No. 52 (Hamilton).

36. It was found unsatisfactory to reduce all the qualifications in elections for Representatives to one uniform standard, thereby creating a distinct national electorate. It was also found unsatisfactory to give Congress power to establish and regulate voting qualifications. See 5 Elliott, *Debates on the Adoption of the Federal Constitution* 385-88 (1866).

37. *E.g.*, *Minor v. Happersett*, 21 Wall. 162 (U.S. 1874), *United States v. Reese*, 92 U. S. 218 (1875); *United States v. Cruikshank*, 92 U. S. 542 (1875); *Pope v. Williams*, 193 U. S. 621 (1904); *Breedlove v. Suttles*, 302 U. S. 277 (1937); *United States v. Classic*, 313 U. S. 299 (1941).

38. *E.g.*, 2 Cooley, *A Treatise on the Constitutional Limitations* 1360 (8th ed. 1927); McCrary, *Treatise on the American Law of Elections* 43-45 (2d ed. 1880), 1 Story, *Commentaries on the Constitution of the United States* 405 (3d ed. 1858), 2 Willoughby, *The Constitutional Law of the United States* 626-33 (2d ed. 1929).



reemphasized the principle that the right to vote for Representatives (and Senators) is a right stemming from section 2 of article I (and the Seventeenth Amendment) of the Constitution, one that is guaranteed and protected by that instrument.<sup>39</sup> For it is the right of *qualified* voters to cast their ballots for Representatives and Senators that is a national right protected by the Constitution.<sup>40</sup> As Willoughby, relying upon *Ex parte Yarbrough* to some extent, says

A distinction is to be made between the right to vote for a Representative to Congress and the conditions upon which that right is granted the right to vote is conditioned upon and determined by state law But the right itself, as thus determined, is a federal right. That is to say, the right springs from the provision of the federal Constitution that Representatives shall be elected by those who have the right in each State to vote for the members of the most numerous branch of the state legislature. *The Constitution thus gives the right but accepts, as its own, the qualifications which the States severally see fit to establish with reference to the election of the most numerous branch of their several state legislatures.* <sup>41</sup> (Italics supplied.)

In other words, the Constitution confers and protects the right to vote for members of Congress only upon those qualified by the states to vote for members of the most numerous branch of the state legislatures.

Two provisions of the Constitution other than section 2 of article I and the Seventeenth Amendment indirectly leave to the states powers over voting qualifications. The first is section 1 of article II which grants to the states the right to choose the manner of appointing Presidential electors. If elections are designated as the manner of appointing electors, the states have authority to determine what shall be the qualifications of voters in these elections.<sup>42</sup> The second provision is the second section of the Fourteenth Amendment. "This section of the amendment clearly recognizes the right of a state to adopt suffrage qualifications which

39. *United States v. Classic*, 313 U. S. 299 (1941), basing the decision in part upon *Ex parte Yarbrough*, 110 U. S. 651 (1884). Other cases emphasizing this principle include *United States v. Moseley*, 238 U. S. 383 (1915), and *Wiley v. Sinkler*, 179 U. S. 62 (1900).

40. See *United States v. Classic*, 313 U. S. 299, 307, 310, 314 (1941). For example at 307 the court says, "The questions for decision are whether the right of *qualified* voters to vote in the Louisiana primary and to have their ballots counted is a right secured by the Constitution" (Italics supplied.) *Wiley v. Sinkler*, 179 U. S. 62, 64 (1900).

41. Willoughby, *The Constitutional Law of the United States* 540-41 (1910). See *Wiley v. Sinkler*, *supra* at 64.

42. McCrary, *op. cit. supra* note 38, at 43.

exclude certain of its adult male citizens from voting."<sup>43</sup> By this section the state is penalized for denying the right to vote to male citizens of twenty-one years of age for reasons other than participation in rebellion or other crime, but the right to deny the suffrage, meaning ordinarily the right to establish qualifications restricting the right to vote, is legally sanctioned.

The poll tax requirement, it is argued by those opposed to the anti-poll tax bills, clearly falls within the scope of the state powers to determine voting qualifications in national elections. The states have prescribed the poll tax requirement as a qualification for voting in their state constitutions.<sup>44</sup> It is required of voters in elections for members of the most numerous branch of the state legislatures. It becomes automatically a qualification for voting in elections for Representatives and Senators by virtue of section 2 of article I and the Seventeenth Amendment. The national government is, constitutionally, compelled to accept the poll tax requirement as one of the qualifications for voting in elections for Representatives and Senators. It must, not only because if it did not, it would clearly be invading the province of state powers, but also because if it did not, there would be two sets of qualifications, one in elections for members of the larger branch of the state legislatures and one in elections for Representatives and Senators. The Constitution manifestly intended the qualifications in state and national elections to be the same.

With respect to Presidential elections, the states have even greater authority to prescribe the poll tax requirement. The national government has no alternative but to accept it in these elections as well as in Congressional elections.

If it is desirable to abolish the poll tax requirement for voting in national elections, the proper way to do it is by constitutional amendment. This was the course found necessary in the past when the national government wanted to abolish qualifications of race and sex adopted by the states. It is just as necessary today.

#### THE POLL TAX REQUIREMENT AS A VOTING QUALIFICATION

To sustain the constitutionality of the anti-poll tax bills in the face of the broad powers of the states over voting qualifications in national elections, the usual approach of defenders of the bills is to

43. Mathews, *The American Constitutional System* 363 (2d ed. 1940).

44. In almost all the constitutions of the Poll tax states, the poll tax requirement is found in the section on qualifications. See *New York Constitutional Convention Commission, Constitutions of the States and the United States* (1938), 59 (Texas), 373 (South Carolina), 885 (Mississippi), 1580 (Virginia); 101 (Arkansas).

argue that the poll tax requirement is not a qualification for voting within the meaning of the Constitution. This argument was the basis of the most important anti-poll tax bills, S. 1280, H.R. 7, and H.R. 29

This approach implies a recognition of the powers of the states over voting qualifications, and is an attempt to evade their jurisdiction. It assumes, however, that the state powers are not so absolute that the national government cannot question a requirement prescribed as a qualification by the states. The powers of the states are not so absolute, it is assumed, that the national government must accept whatever requirements the states see fit to impose upon voters in national elections.

This assumption is permissible because the powers of the states over voting qualifications are not absolute, but are limited by other parts of the Constitution. These limitations are not confined to the Fifteenth and Nineteenth Amendments. The Supreme Court in *Breedlove v. Suttles* indicated this by referring to limitations placed upon the states by the two suffrage amendments and "other provisions of the Constitution."<sup>45</sup> And the Court in *United States v. Classic* mentioned specifically section 4 of article I and the necessary and proper clause as providing limitations on state power to regulate the right to vote.<sup>46</sup> Also, in *Minor v. Happersett* Chief Justice Waite intimated that Congressional action might interfere with qualifications prescribed by the states.<sup>47</sup>

Standard legal references also admit restrictions other than the suffrage amendments upon the power of the states over voting qualifications in national elections.<sup>48</sup> Two such restrictions are the

---

45. 302 U. S. 277, 283 (1937)

46. 313 U. S. 299, 315 (1941). The Court said. " while in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the states, *see* *Minor v. Happersett*, 21 Wall. 162, 170, *United States v. Reese*, 92 U. S. 214, 217-18, *McPherson v. Blacker*, 146 U. S. 1, 38-39; *Breedlove v. Suttles*, 302 U. S. 277, 283, this statement is true only in the sense that the states are authorized by the Constitution to legislate on the subject as provided by Sec. 2 of Art. 1, to the extent that Congress has not restricted state action by the exercise of its powers to regulate elections under 4 and its more general power under Article I, 8, clause 18 of the Constitution to 'make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'"

47. 21 Wall. 162, 171 (U.S. 1875). As cited by Kallenbach, *op. cit. supra* note 2, at 725, the Court said. "It is not necessary to inquire whether this power of supervision [over Congressional elections] thus given to Congress is sufficient to authorize any interference with the State laws prescribing the qualifications of voters, for no such interference has ever been attempted. The power of the State in this particular is certainly supreme *until Congress acts.*" (Italics supplied.)

48. See I Willoughby, *op. cit. supra* note 41, at 539; Rottschaefer, *American Constitutional Law* 753 (1939).

equal protection of the laws clause of the Fourteenth Amendment<sup>49</sup> and the republican form of government clause of article IV<sup>50</sup>

In an effort to show that the poll tax requirement is not a qualification for voting, supporters of the anti-poll tax bills, referring to dictionaries<sup>51</sup> and court decisions,<sup>52</sup> define qualification as an endowment or acquirement relating to the fitness or capacity of the person for a particular pursuit or profession. Applying this definition to voting qualifications, it is argued that a voting qualification must bear a reasonable relation to capacity to participate in public affairs. It must be a test of such capacity or fitness. The standard voting qualifications in the states today, like age, citizenship, and residence, are tests of capacity to participate in public affairs. Age tests a certain maturity of judgment, citizenship, a certain interest in and stake in the community; and residence, a knowledge of local affairs and a stake in the community.

Conversely, the poll tax requirement is not a test of fitness or capacity to participate in public affairs, and, therefore, it is not a qualification for voting. It "neither adds to nor detracts from the ability of a voter to cast an intelligent vote in any election."<sup>53</sup> It is a "perfectly arbitrary and meaningless pretended qualification" identical in principle with the requirement that only persons with red hair or one hundred years of age may vote.<sup>54</sup>

The fact that some voters are exempted from paying the poll tax before voting is suggestive of the failure of the poll tax requirement as a test of political capacity. For these voters are exempted from the poll tax for reasons other than capacity to participate in public affairs. For example, persons over forty-five

49. U. S. Const. Amend. XIV, § 1. It reads in part: "No State shall deny to any person within its jurisdiction the equal protection of the laws."

50. U. S. Const. Art. IV, § 4. It reads in part: "The United States shall guarantee to every State in this Union a Republican Form of Government."

51. Webster defines a qualification as "any natural endowment or acquirement which fits a person for a place, office, or employment."

52. (a) The Supreme Court in *Cummings v. Missouri*, 4 Wall. 277, 319 (U.S. 1867) said that "qualifications relate to the fitness or capacity of the party for a particular pursuit or profession." See *Smith v. Texas*, 233 U. S. 630 (1914).

(b) In *Commonwealth ex rel. Dummit v. O'Connell*, 298 Ky. 44, 181 S. W. 2d 691 (1944), the Kentucky Court of Appeals said that "we are inclined to the belief that qualifications as used in section 2 of article I of the federal Constitution means natural endowments or requirements which fit a person for a place, office, or employment, or as an elector."

53. (a) 78 Cong. Rec. 8141 (1942).

(b) "The most shiftless of men may pay the tax because he found a five dollar bill on the street. The worthiest citizen may prefer to feed his family. . . ." National Committee to Abolish the Poll Tax, H.R. 7, the Anti-Poll Tax Bill is Constitutional 1.

54. Sen. Rep. No. 625, 79th Cong., 1st Sess. 2 (1945).

years of age in Alabama, over fifty in Tennessee, and over sixty in Mississippi, South Carolina, and Texas are exempted from the poll tax.<sup>55</sup> Others are exempted on account of military service or physical disability.<sup>56</sup> If the poll tax requirement were a proper test of political capacity, it would seem that all voters ought to be subject to it.

It is argued that the poll tax requirement is not a proper test of political capacity because some southerners are incapable of paying the tax. Incomes in many southern states are low, and many sharecroppers and tenant farmers receive no money income at all, their income is advanced in food or supplies.<sup>57</sup> When there are several in the family of voting age or when the poll tax is cumulative, the obstacles to voting become insurmountable. Yet, these people who cannot afford to pay the poll tax do not lack political capacity, it is argued. They are found capable of sharing the obligations and burdens of citizenship, such as military service, are they not also capable of participating in the electoral function?

Not altogether consistent with the preceding argument is the contention that the poll tax requirement bears little relationship to wealth, if that is a proper test of political capacity today. Unlike earlier tax-paying and property qualifications which were intended to be indices of wealth and a stake in the community, the poll tax requirement is assessed on almost everyone in the electorate, but only those who pay it are permitted to vote.<sup>58</sup> A distinction is made, in other words, between those who are *assessed* for the poll tax and those who have *paid* it. Merely paying the tax is no assurance of wealth or of political consciousness. Also, if it is desirable that a person be a taxpayer in order to vote, there is little reason to single out payers of the poll tax. Every economically independent person pays at least a "hidden" tax today.<sup>59</sup>

Furthermore, historical evidence shows that the poll tax requirement was not imposed to provide a test of fitness to participate in public affairs, but to prevent arbitrarily large groups, Negroes and poor whites, from voting.<sup>60</sup> During the period of constitutional

---

55. Library of Congress, *op. cit. supra* note 2.

56. *Ibid.*

57. 86 Cong. Rec. A2414 (1940), Hearings before the Subcommittee on Elections of the Committee on House Administration on H.R. 29, H.R. 7, H.R. 66, H.R. 225, H.R. 230, H.R. 668, H.R. 1435, and H.R. 4040, 80th Cong., 1st Sess. 126 (1947).

58. Kallenbach, *op. cit. supra* note 2, at 728.

59. *Ibid.*

60. See Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess., pt. 1, 253-54 (1942), Porter, A History of the Suffrage in the United States, c. 8, Sait, American Parties and Elections

revision in the South from 1889 to 1908, the poll tax requirement was adopted as one legal device to maintain white supremacy in the South.<sup>61</sup> Also; there is evidence that the requirement was introduced to disfranchise the poor whites as well as the Negro.<sup>62</sup> It is significant that the period of constitutional revision coincided generally with the Populist movement. Fear of the poor white farmers who were politically active in the movement may have been a reason for the poll tax requirement and other measures designed to take advantage of economic shortcomings. It is true, for example, that the white counties in which the Populist party had been the strongest in Alabama and other states protested most vigorously the imposition of the poll tax requirement.<sup>63</sup> Showing clearly that the poll tax requirement was not imposed to test political capacity is the fact that some states relaxed or abandoned measures of enforcing payment of the poll tax because too many people paid the tax and could vote.<sup>64</sup> Also, the requirement that the poll tax be paid considerably in advance of the election discloses the intention of making it inconvenient to pay the poll tax;<sup>65</sup> this inconvenience prevents people from voting.

The argument that the poll tax requirement is not a qualification for voting is challenged by those opposed to the anti-poll tax legislation. They attack, first of all, the definition of qualification produced by supporters of the anti-poll tax bills. The dictionary definition does not, it is asserted, denote a test of fitness. It refers only to "what qualities are included or possessed without any implications of particularly appropriate qualities or particular fit-

---

46-57 (rev. ed. 1939), McCulloch, Suffrage and Its Problems 77-108 (1929), Jones, *Alabama Constitutional Convention of 1901 and Poll Taxes*, 4 Alabama Lawyer, 3-22 (1943); Lewinson, Race, Class and Party 79-97 (1932), 86 Cong. Rec. A4124, A6875 (1940), 84 Cong. Rec. A4124 (1939).

61. The President of the Alabama constitutional convention pointed out that the poll tax was one device adopted to maintain white supremacy in every one of the southern states in which conventions had been called to disfranchise the Negro. Hearings before a Subcommittee of the Committee on Judiciary, 77th Cong., 2d Sess. 253-54 (1942), citing Journal of Alabama Constitutional Convention of 1901, 13.

62. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess., pt. 1, 315 (1942), Hearings before the Subcommittee on Elections of the Committee on House Administration on H.R. 29, H.R. 7, H.R. 66, H.R. 225, H.R. 230, H.R. 668, H.R. 1435, and H.R. 4040, 80th Cong., 1st Sess. 7 (1947), 97 Cong. Rec. A4124 (1939), 86 Cong. Rec. A4124, A6875 (1940).

63. Lewinson, *op. cit. supra* note 60, c. 4, 5.

64. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 254-55 (1942).

65. In Mississippi, Alabama, and Texas, the voter must pay the poll tax by February 1 of each year; and in Arkansas, by October 1. In Virginia, it must be paid six months before elections; in Tennessee, sixty days, and in South Carolina thirty days. Library of Congress, *op. cit. supra* note 2.

ness."<sup>66</sup> It is argued, also, that a voting qualification does not necessarily mean a test of capacity. Rather, voting qualifications have been and are whatever rules and regulations or conditions defining who may vote that the people of the states have seen fit to impose in their state constitutions.<sup>67</sup> Even if the state constitutions should require the possession of green eyes or red hair as qualifications for voting, such requirements would be valid qualifications.<sup>68</sup> Sex and race requirements were not tests of capacity, yet these were considered voting qualifications and were abolished only by constitutional amendment.<sup>69</sup> The only test of a qualification in national elections is whether or not it is identical with that of electors of the most numerous branch of the state legislature, as Davie suggested in the Constitutional Convention.<sup>70</sup>

It is also argued that even if the definition of voting qualification as a test of capacity be accepted, the poll tax requirement meets that definition. The poll tax requirement is a proper test of political capacity because it tests the citizen's interest in and concern for the well-being of the community. It tests the citizen's concern for public education for which the poll tax is levied.<sup>71</sup> It also tests his interest in protecting his ballot, as indicated by the federal court in *Pirtle v. Brown*.<sup>72</sup> It keeps out those unworthy voters who have no interest in public affairs, those who are too inert to pay the very small fee required.<sup>73</sup>

It is argued, furthermore, that the poll tax requirement in particular and the tax-paying qualifications in general have been accepted as valid qualifications in American experience, and, today, are accepted as such by the courts and other legal authorities.

The poll tax requirement was a qualification for voting in New Hampshire when the Constitution was adopted.<sup>74</sup> General tax paying qualifications existed in other states.<sup>75</sup> The framers of the Constitution undoubtedly knew about these requirements, yet,

---

66. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 407 (1942)

67. *Id.* at 98, 373.

68. 88 Cong. Rec. 8093 (1942).

69. *Id.* at 9011.

70. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, pt. 1, 77th Cong., 2d Sess. 372 (1942), citing 4 Elliott, *op. cit. supra* note 36, at 58.

71. Looney, *Constitutionality of Anti-Poll Tax Measures*, 7 Tex. Bar J. 91 (1944), Hearings before the Committee on Rules and Administration, on H.R. 29, 80th Cong., 2d Sess. 13 (1948)

72. 118 F. 2d 218, 221 (C.C.A. 6th 1941)

73. Looney, *op. cit. supra* note 71.

74. McCulloch, *op. cit. supra* note 60.

75. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 251 (1942)

nothing was said in the Constitutional Convention to indicate their rejection of such requirements as qualifications within the power of the states to prescribe.<sup>76</sup>

Numerous state court decisions have sustained the poll tax requirement as a qualification for voting.<sup>77</sup> Furthermore, and of particular significance, two federal court decisions have also upheld the constitutionality of the poll tax requirement. *Breedlove v. Suttles*<sup>78</sup> and *Pirtle v. Brown*.<sup>79</sup>

The foregoing arguments supporting the position that the poll tax requirement is a voting qualification within the powers of the states to prescribe are formidable. They succeed in exposing weaknesses in the case presented by defenders of the anti-poll tax bills, but they do not succeed in destroying that case.

The definition of qualification relied upon by those opposing the anti-poll tax bills is incomplete because it ignores the indispensable element of fitness or capacity incorporated in the usual dictionary definition of qualification. Also, it is not true that voting qualifications are whatever rules and regulations the states see fit to impose upon voters. As already indicated, the states do not have absolute powers over voting qualifications, but are limited by constitutional provisions other than those associated immediately with qualifications. If the regulations imposed by the states violate other provisions of the Constitution, it would appear evident that those regulations could be suppressed by Congress as not constituting proper qualifications for voting. Furthermore, it is not true that the framers of the Constitution ignored tests of fitness in their deliberations upon voting qualifications. Numerous statements of the members of the Convention controvert that view. For example, Colonel Mason displayed concern about fitness or capacity for voting when he declared that "attachment to, and permanent common interest with, the society," were proper standards in establishing qualifications.<sup>80</sup> And Ellsworth presumed a test of fitness when he argued for tax-paying qualifications on the basis that those "who bear a full share of the public burdens . . . [ought to be] allowed a voice . . . [in their imposition]."<sup>81</sup> Finally, it is not true that qualifications in the past, such as sex and race, were wholly unreasonable as tests of fitness. There might be some justi-

---

76. *Ibid.*

77. *Id.* at 369, citing Note, 130 A. L. R. 572.

78. 302 U. S. 277 (1937).

79. 118 F. 2d 218 (C.C.A. 6th 1941).

80. 5 Elliott, *op. cit. supra* note 36, at 387.

81. *Id.* at 386.



fication for qualifications of race and sex earlier in American history when neither women nor Negroes were as a rule politically conscious or independent agents.<sup>82</sup>

The view that the poll tax requirement is a test of fitness to vote is also not successful. The arguments presented to show that it is not such a test survive despite the barrage of criticism against them. For example, it can hardly be maintained that the poll tax requirement was imposed to test community consciousness or interest in public education in the face of evidence that enforcement measures were abandoned because the poll tax was generally paid.

That the federal courts and other courts have sustained the poll tax requirement is also not conclusive. The courts did not examine the contention that the requirement was not a qualification for voting nor did they consider Congressional findings to that effect.

Finally, the existence of the poll tax requirement at the time of the adoption of the Constitution does not materially weaken the case for anti-poll tax legislation. The conditions surrounding the suffrage at the time of the Constitutional convention and later in American history bear upon the reasonableness of the poll tax requirement as a test of fitness. Whatever justification there might have been for the poll tax requirement earlier in American history does not necessarily extend to the present day. This is especially true with respect to the poll tax requirement because, although originally imposed to liberalize suffrage requirements, it later became a restrictive suffrage measure. During the late eighteenth and early nineteenth centuries the poll tax requirement was designed to extend the suffrage.<sup>83</sup> It was easier to meet than general tax-paying or property qualifications. It represented a transition to a rationale which placed greater emphasis upon the qualities of the voter himself rather than property or taxes. In the late nineteenth century, as already indicated, the poll tax requirement served a directly contrary purpose, that of restricting the suffrage. It represented an arbitrary test of a citizen's stake in the community, and its purpose was to disfranchise large numbers of people. It was unhistorical in not recognizing the qualities of the voter himself as adequate tests of capacity in an age which did recognize them.

---

82. According to Porter, the Fifteenth Amendment was in some respects an artificial attempt to remove a qualification that was still justified. *Op cit. supra* note 60, at 150, 191.

83. Porter, *op. cit. supra* note 60, c. 2, Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 251 (1942)

### THE "TRUE" NATURE OF THE POLL TAX REQUIREMENT

After disposing of the argument that the poll tax requirement is a qualification for voting, supporters of the proposed anti-poll tax legislation seek to determine the true nature of the requirement in order to discover positive bases in the Constitution that will permit Congress to abolish the requirement. Two of their arguments concerning this problem particularly merit examination because they are incorporated in the recent anti-poll tax bills. These are that the poll tax requirement is an interference with the manner of holding elections and that it is a tax on a national function. If the poll tax requirement is an interference with the manner of holding elections, Congress has authority to abolish it on the basis of section 4 of article I, the "times, places, and manner" clause.<sup>84</sup> If it is a tax on a national function, Congress has authority to abolish it on the basis of a long line of court decisions beginning with *McCulloch v. Maryland*<sup>85</sup> which involve the necessary and proper clause<sup>86</sup> and the supreme law of the land clause.<sup>87</sup>

#### *Poll Tax as an Interference with Manner of Holding Elections*

To uphold the contention that the poll tax requirement is an interference with the manner of holding elections, three lines of attack are launched. The first of these is that the poll tax requirement is essentially a regulation of voting. It is a regulation because it is not a qualification for voting. It is imposed upon qualified voters—that is, voters who meet all the voting qualifications but the poll tax requirement which is not a qualification—as a condition precedent to their voting.<sup>88</sup> In *Breedlove v. Suttles*, the Supreme Court, without taking cognizance of the qualification argument; treated the poll tax requirement as a regulation—a tax—

84. U. S. Const. Art. I, § 4. It reads in part as follows: "The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by Law make or alter such Regulations, except as to the Places of Chusing Senators."

85. 4 Wheat. 316 (U.S. 1819).

86. U. S. Const. Art. I, § 8, clause 18. It reads: "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

87. U. S. Const. Art. VI, which reads in part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

88. Boudin, *State Poll Taxes and the Federal Constitution*, 28 Va. L. Rev. 17 (1941).

enforcing regulation.<sup>89</sup> And there is some judicial precedent that a "qualification" for voting may actually be concerned with the manner or methods of voting. In *Dummit v. O'Connell* the Kentucky Court of Appeals decided that the requirement of presence at the polls which was prescribed in the Kentucky constitution as a "qualification" for voting was actually a "method by which an otherwise qualified elector may cast his ballot in Congressional elections," and could be abrogated by Congressional authority derived from section 4 of article I.<sup>90</sup>

Congress, it is argued, has abundant authority by section 4 of article I to abolish the poll tax requirement as a regulation of elections. In the past extensive regulations have been made by Congress in pursuance of authority granted by this section. For example in *United States v. Gradwell* the Court said

Congress by them [the acts of Congress enacted under section 4 of article I] committed to Federal officers a very full participation in the process of the election of Congressmen, from the registration of voters to the final certifying of the results and control thus established over such elections was comprehensive and complete.<sup>91</sup>

Far-reaching regulations are possible. In *Smiley v. Holm*, Chief Justice Hughes said

The subject matter is the "times, places, and manner of holding elections for Senators and Representatives." It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections.<sup>92</sup>

The regulation contemplated by the poll tax legislation is similar to that undertaken in the past, it is argued. In fact, it is even argued, national statutes enacted under authority of section 4 and, also, the necessary and proper clause, of article I "have undertaken to regulate and supervise elections far more minutely than does H.R. 7"<sup>93</sup> The Enforcement Act of 1870 and the Soldier Vote Act of 1942 are cited as examples of this along with other less pertinent acts. The Enforcement Act, among other things, authorized national supervisors to challenge voters and to check the registration of voters.<sup>94</sup> This resulted in power to determine whether or not an intending voter had the requisite qualifications and involved the question of who may vote. The Soldier Vote

---

89. 302 U. S. 277, 278 (1937).

90. 298 Ky. 44, 52-3, 181 S. W. 2d 691, 696 (1944).

91. 243 U. S. 476, 483 (1916)

92. 285 U. S. 355, 366 (1932)

93. Crockett, *Constitutionality of Federal Anti-Poll Tax Legislation*, 2 Nat. Bar J. 49 (1944).

94. 16 Stat. 140 (1870).

Act suspending the poll tax requirement for members of the armed forces "at time of war" has already been mentioned. It is significant that the act also removed the requirement of presence at the polls for members of the armed forces "at time of war."

The most recent Senate report on the anti-poll tax bills, the report of the Committee on Administration and Rules, emphasizes that the Soldier Vote Act provides the necessary precedent for Congressional action upon the anti-poll tax bills.<sup>95</sup> But the particular source of constitutional authority for this action is left in doubt. And those opposed to the anti-poll tax bills seize upon the question of the proper source of authority in the debates. The general war powers of Congress are frequently cited by them as the proper constitutional source of the Soldier Vote Act, rather than the "times, places, and manner" clause.<sup>96</sup>

The second line of attack based on the "times, places, and manner" clause made by defenders of the anti-poll tax bills is the corrupt practices approach. It is argued that the poll tax requirement is an interference with the manner of holding elections because it leads to pernicious political activities which corrupt national elections. This argument was the basis of the Geyer bills. There is abundant evidence that corrupt practices do result when the poll tax requirement is imposed.<sup>97</sup> Vote buying appears prevalent in the poll tax states today. The political machine, individual candidates, landlord, employer, or officers of certain organizations buy blocks of poll tax receipts, and issue them to voters who are instructed to vote the "right" way.

Congress clearly has authority by section 4 of article I to act against fraud and corruption, and has done so in the past.<sup>98</sup> Proponents of the anti-poll tax bills rely upon the broad statements in *Ex parte Yarbrough*, *Ex parte Siebold*, and *United States v. Classic* to demonstrate that these powers are broad enough to embrace the abolition of the poll tax requirement. In the first case mentioned, the Court stated that Congress can by statute protect "the election itself from corruption and fraud."<sup>99</sup> In the second

95. Sen. Rep. No. 1225, 80th Cong., 2d Sess. 3 (1948).

96. *Id.* at 10; 89 Cong. Rec. 9782 (1943).

97. See 86 Cong. Rec. 9364, A2091, A5403 (1940), 87 Cong. Rec. A3692 (1941), American Council on Public Affairs and Southern Conference for Human Welfare, *op. cit. supra* note 4, at 40; Strong, *The Poll Tax—The Case of Texas*, 38 Am. Pol. Sci. Rev. 693-709 (1944); National Committee to Abolish the Poll Tax, *op. cit. supra* note 53, at 11-12; Lewinson, *op. cit. supra* note 60, at 178; N. Y. Times, April 14, 1940, p. 2, col. 4.

98. Rottschaefer, *op. cit. supra* note 48, at 153-54, citing *Ex parte Siebold*, 100 U. S. 371 (1880) and *Ex parte Coy*, 127 U. S. 731 (1888).

99. 110 U. S. 651, 661 (1884).

case, the Court argued that the "due and fair election" of Representatives was of "vital importance" to the United States, and could be enforced by section 4 of article I.<sup>100</sup> And in the last case, Justice Douglas in his dissent wrote that the "Constitution should be read to give Congress an expansive, implied power to put beyond the pale, acts which in their direct or indirect effect impair the integrity of Congressional elections."<sup>101</sup> The poll tax requirement, it is claimed, can be abolished to protect the election itself from fraud, to insure the due and fair election of Representatives and Senators, and to eliminate the source of corruption impairing the integrity of Congressional elections.

The third line of attack upon the poll tax requirement as an interference with the manner of holding elections is not so clearly related to the "times, places, and manner" clause as the preceding two. This attack is that Congress may abolish the poll tax requirement on the basis of section 4 of article I because the requirement is a restriction or burden on the right to vote in national elections. Qualified voters (those who have not paid their poll tax, but have met legitimate qualifications for voting) are imposed upon because they must pay the burdensome, prohibitory, or inconvenient tax before they may vote.

It is asserted that Congress has power by section 4 of article I to protect the right to vote and to legislate regarding it. James Madison in the Virginia Ratifying Convention of 1788 viewed section 4 as supplying protection of the right to vote. In speaking of the section in general, he said "Should the people of any State, by any means, be deprived of the right of suffrage, it was judged proper that it be remedied by the General Government."<sup>102</sup> Also, in the recent *United States v. Classic* decision, the Court in refuting the claim that the right to vote is derived exclusively from the states, indicated that this right may be regulated by the powers of Congress granted in the "times, places, and manner" clause and the necessary and proper clause.<sup>103</sup> Since the poll tax requirement denies the vote to many and burdens and inconveniences it for others, it follows that Congress may abolish it on authority of section 4 of article I.

Those opposed to the anti-poll tax bills vigorously deny all the

---

100. 100 U. S. 371, 388 (1879)

101. 313 U. S. 299, 330 (1941)

102. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 529 (1942), citing 3 Elliott's Debates, *op. cit. supra* note 36, at 367

103. 313 U. S. 299, 323 (1941)

contentions advanced to prove that the poll tax requirement is an interference with the manner of holding elections and within Congressional powers derived from section 4 of article I. They argue that the poll tax requirement is a qualification for voting and that Congress has no authority whatsoever to prescribe or regulate qualifications for voting by the "times, places, and manner" clause.<sup>104</sup> It is self-evident, they declare, that the manner of holding elections refers only to the mechanics, the mode, and the how of the election, and not to the question of who shall vote or what qualifications voters shall possess.<sup>105</sup> Furthermore, "there is not a single decision of the United States courts that even intimates that 'manner' of conducting an election includes the qualifications of electors."<sup>106</sup> That the power to regulate elections does not extend to qualifications of voters was repeatedly emphasized in the conventions ratifying the Constitution;<sup>107</sup> in the *Federalist*,<sup>108</sup> and in court decisions.<sup>109</sup>

With respect to the pernicious practices argument, the remedy proposed—that is, removing the corruption by abolishing the poll tax requirement—is generally attacked rather than contesting the existence of foul play at the polls.<sup>110</sup> This assumes that the poll tax requirement and the fraud or corruption it may produce are two separate elements. The poll tax requirement is either a voting qualification or tax within the power of the states to impose and beyond the bounds of national power. The fraud or corruption produced may be eliminated by Congressional action based on the "times, places, and manner" clause. In other words, the proper remedy for pernicious political activities is a Congressional statute making unlawful the vote-buying and other fraudulent practices resulting from the poll tax requirement. Or Congress could simply provide for the effective enforcement by national means of the existing state statutes which declare such activities unlawful.<sup>111</sup> This species of action rather than abolishing a voting qualification

104. Looney, *op. cit. supra* note 71, at 88-89; 91 Cong. Rec. 6083, 6090 (1945), 88 Cong. Rec. A3881 (1942), Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 412 (1942), Hearings before the Committee on Rules and Administration on H.R. 29, 80th Cong., 2d Sess. 159 (1948).

105. Looney, *op. cit. supra* note 71.

106. Hearings before the Committee on Rules and Administration on H.R. 29, 80th Cong., 2d Sess. 159 (1948).

107. 2 Elliot, *op. cit. supra* note 36, 51, 4 Elliot 61, 71, 5 Elliot 386.

108. The *Federalist*, No. 60.

109. *Ex parte Siebold*, 100 U. S. 371, 397 (1880).

110. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 379, 414 (1942); 88 Cong. Rec. 8148 (1942).

111. For these provisions see Library of Congress, *op. cit. supra* note 2.

is the proper course to follow and describes the course Congress has followed in the past.<sup>112</sup>

These objections to the argument that the poll tax requirement is an interference with the manner of holding elections and within Congressional powers derived from section 4 of article I are not conclusive. Generally speaking, they may be disputed because they hinge upon the assertion that the poll tax requirement is a qualification for voting. If the poll tax requirement is not a qualification for voting, the objection that the "times, places, and manner" clause does not embrace the power to regulate qualifications is beside the point. A qualification is not being disturbed. A reasonably effective case has already been described to show that the poll tax requirement is not a proper qualification for voting. Also, the powers of Congress to regulate elections as interpreted by the courts may very well prove broad enough to embrace the poll tax requirement as a regulation of voting, as a source of corruption in elections, or as an unjustified interference with the national right to vote.

#### *Poll Tax as a Tax upon a National Function*

The second leading argument concerning the true nature of the poll tax requirement is that the requirement is a tax upon a national function—the right of qualified voters to vote for United States Representatives and Senators. To defend this position it is alleged that the poll tax requirement is a tax measure rather than a voting qualification.<sup>113</sup> Reference is made to both the federal poll tax cases, *Breedlove v. Suttles*<sup>114</sup> and *Pirtle v. Brown*,<sup>115</sup> in which the requirement was treated as a tax measure. For example, in the *Breedlove* case, the Court, in stating that the poll tax requirement did not discriminate on account of sex in violation of the Nineteenth Amendment, said that such a construction "would make the amendment a limitation on the power to tax."<sup>116</sup>

That the poll tax requirement is not a qualification for voting has already been sufficiently examined. It is argued next that the right to vote for Representatives and Senators is a function of the national government which may not be taxed by the states by employing a tax measure such as the poll tax requirement for voting. In the words of the Senate Judiciary Committee, the poll

---

112. *United States v. Gale*, 109 U. S. 565 (1883), *Smiley v. Holm*, 285 U. S. 355 (1932), *United States v. Gradewell*, 243 U. S. 476 (1916)

113. *Boudin, op. cit. supra* note 88, at 17-18.

114. 302 U. S. 277, 284 (1937)

115. 118 F. 2d 218, 220 (C.C.A. 6th 1941).

116. 302 U. S. 277, 284 (1937)

tax requirement is "in effect taxing a Federal function. The most sacred and highest of all Federal functions is the right to vote. It is not within the province of a State, or its legislature, to fix a fee or tax which a voter must pay in order to vote."<sup>117</sup> The right to vote referred to in this quotation is the right of qualified voters to vote for Representatives and Senators. That right is one protected by and granted by the national Constitution, it is a national right. It is also a national function. Voting is regarded as a function of government by contemporary political scientists.<sup>118</sup>

It is a familiar and well-established principle of constitutional law that the states may not without the consent of Congress tax a national function or the means by which the national government performs its functions.<sup>119</sup> In fact, the tax need but touch upon the means by which the national government performs its functions to be declared unconstitutional by the courts or to be abolished by Congress.<sup>120</sup> This point is relevant to the poll tax question. The poll tax does not tax voting directly. Not all voters have to pay it; its payment as a prerequisite to voting is regarded as a means of collecting the poll tax. But the poll tax requirement bears upon the function of voting. It is a burden, impediment, or nuisance required of the majority of voters, and it results in reducing the size of the electorate. It is also argued that "there is a certain field in which the constitutionality of a state tax touching a federal function depends upon Congressional action."<sup>121</sup> In some instances the states may tax indirectly a national function or franchise unless Congress declares that such taxation would be detrimental to the exercise of the function or franchise. Applying this principle to the poll tax question, it may be argued that Congress has authority

---

117. Sen. Rep. No. 625, 79th Cong., 1st Sess. 7 (1945).

118. Shepard, *Suffrage*, 14 Encyc. Soc. Sci. 449 (1933). He says. "The theory of the suffrage generally accepted by contemporary political scientists is that voting is a function of government. The voter does not exercise a natural right when he casts his ballot, but performs a public governmental office. The electorate is not identical with the people, the sovereign authority in the state and the ultimate source of law; it is an organ of government, established, organized and determined by the law, which can moreover limit, expand or totally abolish it. The problem of who shall vote becomes, under this theory, one of mere political expediency, similar to the problem of the composition and organization of the legislature or the courts."

119. Field, *A Selection of Cases and Authorities on Constitutional Law* 77-96 (1930); Rottschaefer, *op. cit. supra* note 48, at 96-110; 2 Cooley, *op. cit. supra* note 38, 981. Recent cases reveal a more liberal attitude of the court toward intergovernmental taxation, but the stated principle remains.

120. Boudin, *op. cit. supra* note 88, at 20, relying upon *Weston v. Charleston*, 2 Pet. 449 (U.S. 1842) and *Bank Tax cases*, 2 Wall. 200 (U.S. 1864).

121. *Id.* at 21.



to pass the poll tax legislation upon its decision that the poll tax requirement undesirably taxes a national function.

This contention that the poll tax requirement is a tax upon a national function is difficult to maintain, however, in the face of federal court decisions on the matter. In the *Pirtle* case, the court directly addressed itself to the inquiry whether "the state has levied a poll tax upon the exercise of the elective franchise," and concluded that it did not.<sup>122</sup> The court expressed itself as follows

[The Tennessee acts] do not levy or assess a poll tax on voters as a class. Voters are nowhere referred to. It is of course true that a large number of voters would be liable for the tax but it is just as true that a large number, such as those over fifty years of age, would not. Upon the other hand a large class of inhabitants ineligible to vote at all, such as aliens, persons convicted of infamous crimes, persons who have not lived in the state and county for the requisite period of time, and all persons who do not choose to vote, are still liable for the tax<sup>123</sup>

In the *Breedlove* case the poll tax requirement was declared to be an effective, reasonable, and traditional method of collecting the poll tax, a necessary concomitant of the power to levy the tax. Abolishing the tax would infringe upon the taxing powers of the states.<sup>124</sup> The citation of *Magnano Company v. Hamilton*<sup>125</sup> in the *Breedlove* decision is indicative of the reasoning in the *Breedlove* case. The implication is that the court will not inquire into the motive for imposing the poll tax requirement, on its face the requirement is a means adopted to the end of effectively enforcing payment of the tax.

These federal court cases need not, however, be regarded as a bar to all further litigation or discussion of the poll tax issue. In both cases, the courts were treating the right to vote as a state matter rather than as a national right.<sup>126</sup> It is conceivable that recognition of the fact that the poll tax requirement impinges upon a national right to vote would alter future court action, especially if Congress were to make a finding to that effect. Also, it may be argued that it is not necessary to apply the test of class identity to determine whether or not the right to vote is taxed even though such a test may be applied to determine whether or not a voting requirement is a voting qualification. The right to vote need not be treated collectively to be a national function. The right of a

122. 118 F. 2d 218, 220 (C.C.A. 6th 1941)

123. *Ibid.*

124. 302 U. S. 277, 278, 282-84 (1937).

125. 292 U. S. 40 (1934)

126. 302 U. S. 277 283 (1937), 118 F. 2d 218, 220 (C.C.A. 6th 1941)

majority of voters is burdened by the collection of the poll tax. Their exercise of a national function is taxed. Also, the effect of the poll tax requirement in reducing the size of the electorate would seem proof enough that the right to vote is affected by the poll tax requirement.

In pursuit of the true nature of the poll tax requirement those in favor of the anti-poll tax bills do not stop with the arguments embraced in the bills themselves. Several other contentions are advanced. Among these three are worthy of some attention. (1) the poll tax requirement is an abridgment or denial of a privilege or immunity of national citizenship; (2) the poll tax requirement is a subversion of the republican form of government in the states, and (3) the poll tax requirement is an abridgment or denial of the right of the Negro to vote. Proof of any of these contentions would furnish Congress with authority to abolish the poll tax requirement. If the first is sustained, Congress may act on the basis of the Fourteenth Amendment;<sup>127</sup> if the second is sustained, Congress may act on the basis of section 4 of article IV, if the third is sustained, Congress may act on the basis of the Fifteenth Amendment or the equal protection of the laws clause of the Fourteenth Amendment.

#### *Poll Tax as Abridgment of a Privilege of National Citizenship*

The poll tax requirement is regarded as an abridgment or denial of a privilege or immunity of national citizenship because it abridges or denies the right to vote for United States Representatives and Senators. The courts have recognized that the right to vote for Representatives and Senators—that is, the right of voters qualified by the states to vote for members of the most numerous branch of the state legislatures—is among the privileges or immunities of national citizenship.<sup>128</sup> That this right of qualified voters (those who have met legitimate qualifications but not the poll tax requirement) to vote is being denied or abridged has been touched upon already. There is other pertinent evidence.

With respect to this evidence suffice it to say that the poll tax requirement is apparently succeeding in keeping people from voting as the framers of the southern constitutions intended that it

127 U. S. Const. Amend. XIV §§ 1, 5. Section 1 of the Amendment reads in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States", and section 5 reads: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

128. Rottschaefer, *op. cit. supra* note 48, at 447, citing *Ex parte Yarbrough*, Field, *op. cit. supra* note 119, at 652.

should. Although, to be sure, it is difficult to ascertain the weight to be assigned to every factor in non-voting in the southern poll tax states, broad trends in voting statistics suggest that the poll tax requirement is a large factor in non-voting. For example, in the poll tax states fewer people vote than in the northern or other southern states with the exception of one or two former poll tax states.<sup>129</sup> Fewer people vote in the poll tax states than in nearby southern states having similar social, political, and economic conditions.<sup>130</sup> Also, voting participation increased after the poll tax requirement was removed in southern states.<sup>131</sup> Furthermore, the number of voters was significantly decreased after the poll tax requirement was imposed.<sup>132</sup>

In opposing this privilege and immunities argument, reliance is again placed upon the decisions of the federal courts in the poll tax cases. In *Breelove v. Suttles* the Supreme Court said specifically "To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment."<sup>133</sup> The lower federal court in *Pirtle v. Brown* emphatically endorsed that statement.<sup>134</sup> These decisions were based in large part upon the supposition that the right to vote is not one of the privileges or immunities of national citizenship.<sup>135</sup> And other evidence such as the intention of framers of the Fourteenth Amendment is cited by those opposed to the anti-poll tax bills to emphasize this point.<sup>136</sup>

The assertion that the right to vote is not one of the privileges or immunities of national citizenship is grounded on a misconception

---

129. For example, in the 1940 Congressional elections, the eight poll tax states (including Georgia which had the requirement at this time) and Louisiana occupied the lowest positions in the list of states arranged in order of the number of people voting in comparison with the total population of each state. At the top of the list was Indiana with 51.39 per cent of her population voting. At the end of the list were Texas with 15.89 per cent; Tennessee, 14.31 per cent; Louisiana, 13.56 per cent, Virginia, 11.82 per cent, Arkansas, 10.72 per cent; Alabama, 9.52 per cent, Georgia, 8.69 per cent, Mississippi, 6.7 per cent; and South Carolina, 5.25 per cent. 87 Cong. Rec. A1119 (1941). See 88 Cong. Rec. 8771 (1942), 86 Cong. Rec. A6962, Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 286-88 (1942), Hearings before the Committee on Rules and Administration on H.R. 29, 80th Cong., 2d Sess. 329-31 (1948)

130. 88 Cong. Rec. A116 (1942)

131. 86 Cong. Rec. 9048 (1940), quoting from research of Eleanor Bontecou, American Association of University Women.

132. *Ibid.*

133. 302 U. S. 277, 283 (1937).

134. 118 F. 2d 218, 220 (C.C.A. 6th 1941).

135. *Id.* at 221, 302 U. S. 277, 283 (1937).

136. See *Minor v. Happersett*, 21 Wall. 162, 170-71 (U.S. 1874), McCrary, *op. cit. supra* note 39, at 3, Sen. Rep. No. 530, 78th Cong., 1st Sess. 25-27 (1943), 90 Cong. Rec. 4180 ff. (1944)

tion of the content and meaning of the national right to vote. It is apparently assumed that the right to vote, defended as a privilege of national citizenship, is a kind of natural right, a right conferred upon all citizens of the United States, or a right that can be regulated extensively by the national government. But it is the right to vote for Representatives and Senators of those persons qualified by the states to vote for the most numerous branch of the state legislatures that is a privilege of national citizenship. And it is this right, declare those in favor of anti-poll tax bills, that is abridged or denied by the states. Voters are qualified to vote without meeting the poll tax requirement. Their right to vote is impinged upon by the poll tax requirement.

It is important to add that reliance upon the privileges and immunities clause of the Fourteenth Amendment for Congressional authority to abolish the poll tax requirement is not necessary. Congressional authority can be derived from the necessary and proper clause, among other clauses, to protect the right to vote.<sup>137</sup> In fact, the necessary and proper clause provides a more complete authority for Congressional action. While the Fourteenth Amendment empowers Congress to prevent states from abridging or denying the right to vote, the necessary and proper clause empowers Congress to prevent private individuals from abridging or denying that right.<sup>138</sup>

#### *Poll Tax as Subversion of Republican Form of Government*

A frequently encountered argument concerning the nature of the poll tax requirement is the interesting one that the requirement subverts the republican form of government in the poll tax states because it abridges or denies the right to vote to a large segment of the voting population and results in reducing the size of the electorates in the poll tax states.

The Senate Judiciary Committee declared that the right to vote is an essential element of a republican form of government.

The most sacred right in our republican form of government is the right to vote. It is fundamental that that right should not be denied unless there are valid constitutional reasons therefor. It must be exercised freely by free men. If it is not, then we do not have a republican form of government.<sup>139</sup>

---

137. *United States v. Classic*, 313 U. S. 299, 320 (1941). At 299 the Court said that the right of the people to choose Representatives to Congress was "secured against the action of individuals as well as the states." The decision repeatedly emphasized the necessary and proper clause as a source of Congressional authority to protect the right to vote.

138. *Ibid.*

139. Sen. Rep. No. 625, 79th Cong., 1st Sess. 51 (1945).

And referring to the poll tax states, the Committee continued

Can we have a republican form of government in any State if, within that State, a large portion and perhaps a majority of the citizens residing therein are denied the right to participate in governmental affairs because they are poor? We submit that this would be the result if under section 2, article I, of the Constitution, the proposed law is held unconstitutional<sup>140</sup>

Of especial significance in the dispute about the republican form of government clause as it applies to the poll tax question is the fact that Congress and the President rather than the courts are the final determiners of the proper description or definition of a republican form of government. Beginning with *Luther v. Borden*,<sup>141</sup> the courts have consistently held that questions arising under the republican form of government clause, including the question of what constitutes a republican form of government, are "political" questions for the political departments of the government, Congress and the President, to decide.<sup>142</sup> The courts will not review "political" questions. It follows that Congress may act to guarantee the republican form of government in a state when it decides that the state is no longer a republic according to whatever criteria Congress may employ. If Congress determines that the poll tax requirement results in a subversion of the republican form of government in the poll tax states, it may abolish the requirement. Its action will be upheld because the courts will not review it.

In refutation of the republican form of government argument, those opposed to the anti-poll tax bills claim that the poll tax states do have republican forms of government. Some members of the Senate Judiciary considered this self-evident,<sup>143</sup> but arguments other than appeal to self-evident truth have been broached.

It is said that the poll tax states are republics according to the standard employed by the Supreme Court in *Minor v. Happersett*.<sup>144</sup> That standard was the similarity of a state government to state governments at the time of adoption of the Constitution. This standard is obviously met by the poll tax states today. In terms of voting qualifications, the states at the time of adoption of the Constitution imposed general tax-paying qualifications and the poll tax requirement. Many people were excluded from voting at

140. *Ibid.*

141. 7 How. 1 (U.S. 1849)

142. See *Coleman v. Miller*, 307 U. S. 433, 455 (1939), *Rottschaefer, op. cit. supra* note 48 at 120; Field, *The Doctrine of Political Questions in the Federal Court*, 8 Minn. L. Rev. 485-513 (1924).

143. Sen. Rep. No. 625, 79th Cong., 1st Sess. 14 (1945)

144. 21 Wall. 162, 175-76 (U.S. 1874)

the polls. Therefore, the imposition of the poll tax requirement and the exclusion of people from the polls in the poll tax states is not subverting the republican forms of government in these states.

Defenders of the anti-poll tax legislation, it is declared, remain unconvinced by their own arguments about the republican form of government. Assuming that the poll tax requirement does deny a republican form of government, the anti-poll tax bills will not result in guaranteeing that form of government. The bills apply only to national elections, not to state elections. The states will still suffer from non-republican forms of government if the poll tax requirement operates to disfranchise persons in state elections.<sup>145</sup> Furthermore, there is nothing specifically stated in the anti-poll tax bills to indicate that Congress is assuming its obligation to act under section 4 of article IV

The contention that the poll tax requirement is a subversion of the republican form of government in the poll tax states would not be particularly impressive if it were not for the fact that courts have regarded the republican form of government question to be a "political" one. Although the courts have issued scattered remarks about the elements of a republican form of government, such as the one in *Minor v. Happersett*, they were not considering a Congressional decision about the republican character of a state government; it is such a decision that has been declared to be a "political" question. And while the anti-poll tax bills do not refer directly to the republican form of government, the Senate Judiciary Committee does in its report. This is adequate evidence of the intention of Congress to act by authority of section 4 of article IV

*Poll Tax as Denial of Right to Vote in Violation of  
15th Amendment*

That the poll tax requirement abridges or denies the right to vote on account of race, color, or previous condition of servitude is the third argument about the true nature of the poll tax requirement not found in the anti-poll tax bills. Although none of the bills or majority reports of the Senate Judiciary Committee and other committees having jurisdiction of the anti-poll tax bills contain the argument,<sup>146</sup> it deserves consideration in view of its prevalence elsewhere.<sup>147</sup>

---

145. Sen. Rep. No. 625, 79th Cong., 1st Sess. 14 (1945).

146. *Id.* at 3. This Committee points out that the poll tax requirement was introduced to deprive the Negro of the right to vote, but adds that it was necessary to prohibit the white voter as well.

147. The argument is found in the following sources among others Hearings before a Subcommittee of the Committee on Judiciary on S. 1280,

Evidence that the poll tax requirement does discriminate against the Negro is not lacking. The requirement was adopted in most of the southern poll tax states as one legal means of disfranchising the Negro. After the requirement was adopted, it is estimated that the Negro vote dropped 80 per cent.<sup>148</sup> Today the participation of the Negro in elections in the poll tax states is not impressive<sup>149</sup> There is but little doubt that the poll tax requirement is partly responsible for this. The poll tax requirement strikes at poverty and carelessness, and there is the possibility of direct discrimination against the Negro in the administration of the poll tax laws. The poll tax lists are kept by color in Alabama, Arkansas, and Virginia.<sup>150</sup> When it is necessary to show a receipt in order to vote, the Negro rather than the white is more likely to be asked to do so.<sup>151</sup>

This argument concerning discrimination against the Negro is not, however, pressed by the framers and supporters of the anti-poll tax bills for a number of reasons. One of these is that, granting the intention of disfranchising the Negro by the poll tax requirement, there was also the intention of disfranchising the "poor whites." In any event, the result of the measure was to exclude both Negroes and whites from the polls. Today more whites than Negroes are barred from the polls or do not vote in the poll tax states.<sup>152</sup> Also, the Negro vote did not show an increase or it actually decreased after the poll tax requirement was abolished in Louisiana, Florida, and North Carolina.<sup>153</sup>

Another reason for not emphasizing the denial of the Negro vote in the poll tax dispute is that the constitutional provisions and statutes providing for the poll tax requirement do not on their face discriminate against the Negro. The groups which need not

---

77th Cong., 2d Sess. 186-87 (1942), Hearings before the Subcommittee on Elections of the Committee on House Administration on H.R. 29, 80th Cong., 1st Sess. 87-89 (1947), Looney, *op. cit. supra* note 70, at 70, 89; Crockett, *op. cit. supra* note 93, at 57-58.

148. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 312 (1942)

149. *Id.* at 313, Jackson, *Race and Suffrage in the South Since 1940*, 3 New South 3 (June-July, 1948)

150. Notes and Comments, 28 *Corn. L. Q.* 107 (1942)

151. Porter, *op. cit. supra* note 60, at 209; Lewinson, *op. cit. supra* note 60, at 144.

152. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 312-13 (1942) It has been estimated that 4,700,000 whites were kept from voting in the 1940 elections in the poll tax states in comparison with 2,400,000 Negroes.

153. 88 Cong. Rec. 9048 (1942), American Council on Public Affairs and the Southern Conference for Human Welfare, *op. cit. supra* note 4, at 7, N. Y. Times, May 30, 1943, § IV, p. 7, col. 6.

pay the poll tax in order to vote are exempted on a reasonable basis, as the Supreme Court in *Breedlove v. Suttles* decided.<sup>154</sup> This factor is important because the courts in the past have been reluctant to declare unconstitutional those measures which did not on their face discriminate against the Negro. For example, in *Williams v. Mississippi*<sup>155</sup> the Supreme Court upheld a literacy clause of the Mississippi Constitution even though abuse in the administration of the clause was possible and more Negroes than whites might be prevented from voting.

#### *Minor Contentions*

To complete the investigation of the "true" nature of the poll tax requirement two minor arguments may be mentioned briefly. The first is that the poll tax requirement constitutes a threat to the existence of the national government because it leads to corruption in national elections and because it results in reducing the size of the electorate. Preventing people from voting is a threat to the representative and elective institutions of the national government, Congress and the President. These institutions fail to represent the great body of people of the United States. Also these institutions represent the poll tax states out of proportion to the number of voters in these states to the disadvantage of the non-poll tax states.<sup>156</sup>

The national government has inherent powers as a sovereign government to meet threats to its existence.<sup>157</sup> Hamilton in the *Federalist* referred to a self-preservation power of the national government,<sup>158</sup> and the Supreme Court in *Burroughs v. United States* emphasized the "self-protection" power of the national government to prevent impairment or destruction of the departments or institutions of the national government from fraud or corruption.<sup>159</sup>

The second minor argument occasionally employed to defend the anti-poll tax bills is that the poll tax requirement discriminates against the poor, and is, therefore, a violation of the equal protection clause of the Fourteenth Amendment. This discrimination against those of small economic means violates the equal protection

154. 302 U. S. 277, 281-82 (1937).

155. 170 U. S. 213 (1898).

156. Poll tax Representatives, Senators and Presidential electors are elected by fewer people than in other states. National Committee to Abolish the Poll Tax, *What the Poll Tax Means*.

157. Crockett, *op. cit. supra* note 93, at 63.

158. The *Federalist*, No. 49 (Hamilton).

159. 290 U. S. 534, 544 (1934).



clause because the discrimination is not reasonably adapted to the purpose of the statute imposing the poll tax.<sup>160</sup> It is a principle of constitutional law developed from the equal protection of the laws clause that the distinctions or the discriminations drawn by the statute must be reasonably adapted to the purpose of the statute.<sup>161</sup> The ostensible purpose of the statutes providing for the poll tax requirement for voting is to collect revenue. The poll tax laws have been sustained on such a basis. But the disfranchisement of the poor as a result of discrimination is not reasonably adapted to the purpose of the statutes. The effect of the disfranchisement is to reduce the revenue from the poll taxes.

THE PROBLEM OF ABOLISHING THE POLL TAX REQUIREMENT  
IN PRESIDENTIAL ELECTIONS

All the preceding arguments about the "true" nature of the poll tax requirement leave untouched an important and special problem in the anti-poll tax dispute—the problem of abolishing the poll tax requirement in "elections for President, Vice President, electors for President or Vice President." The constitutional powers of Congress in Presidential elections are more limited than those in Congressional and Senatorial elections. The arguments concerning the nature of the poll tax requirement and the related bases for Congressional action do not necessarily apply to elections for Presidential electors. Separate examination of the question whether or not Congress has power to abolish the poll tax requirement in Presidential elections is, therefore, in order.

Those who maintain that Congress cannot abolish the poll tax requirement in these elections emphasize that by section 1 of article II the state legislatures have complete or exclusive powers over the manner or mode of appointing Presidential electors.<sup>162</sup> Congress has only one power expressly given with respect to the appointment of electors, that of determining the time of choosing electors.<sup>163</sup> Constitutional authorities<sup>164</sup> and Supreme Court decisions like

160. Notes and Comments, 28 *Corn. L. Q.* 108 (1942).

161. *Id.* at 108-109, citing Dowling, *Cases on Constitutional Law* 1084 (1941).

162. 88 *Cong. Rec.* 8146-49 (1942), 90 *Cong. Rec.* 4428-29 (1944). U. S. Const. Art. II, § 1, which reads in part "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress."

163. U. S. Const. Art. II, § 1, clause 2. "The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their votes which Day shall be the same throughout the United States."

164. Rottschaefter, *op. cit. supra* note 48, at 401, 2 Willoughby, *op. cit. supra* note 41, at 1126-27.

*McPherson v. Blacker*<sup>165</sup> and *In re Green*<sup>166</sup> uphold this extreme view. For example, in *McPherson v. Blacker*, the Supreme Court said.

In short, the appointment and mode of appointment of electors belong exclusively to the States under the Constitution of the United States. They are, as remarked by Mr. Justice Gray in *Re Green* (134 U.S. 377 . . .), "no more officers or agents of the United States than are members of the state legislatures, when acting as electors of federal senators, or the people of the states when acting as electors of representatives in Congress." Congress is empowered to determine the time of choosing the electors and the day on which they are to give their votes, which is required to be the same day throughout the United States, but otherwise the power and jurisdiction of the State is exclusive, with the exception of the provisions as to the number of electors and the ineligibility of certain persons, so framed that Congressional and federal influence might be excluded.<sup>167</sup>

Since the states possess absolute powers over the manner of appointing electors, it is argued that Congress may not interfere with the elections for electors when elections are designated as the manner of appointing electors.<sup>168</sup> Congress has no power to abolish or regulate qualifications or voting requirements in these elections. Moreover, in support of such a conclusion is the fact that the provisions in the Constitution pertaining to qualifications refer only to elections for Senators and Representatives. Insofar as these provisions limit the action of the states or provide any power to Congress, they do not correspondingly limit or provide power in Presidential elections. Congress may not, therefore, abolish the poll tax requirement in Presidential elections.

It also follows from the absolute powers premise that Congress has no power to regulate the manner or method of holding the elections for Presidential electors, and no power to prevent pernicious political activities in these elections. Bolstering this conclusion is the fact that section 4 of article I grants to Congress power only to regulate the "time, places, and manner" of holding elections for Representatives and Senators.<sup>169</sup>

Furthermore, it follows from the exclusive powers premise that voters have no constitutional right to vote for Presidential

---

165. 146 U. S. 1 (1892).

166. 134 U. S. 377 (1890).

167. 146 U. S. 1, 35 (1892).

168. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 360 (1942), 90 Cong. Rec. 4248 (1944), Sen. Rep. No. 1225 on H.R. 29, 80th Cong., 2d Sess. 10 (1948).

169. 78 Cong. Rec. 8146 (1942), Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 396 (1942).

electors. The states need not even designate popular elections as the manner of appointing electors, voters need not have an opportunity to exercise the franchise in the appointment of electors.<sup>170</sup> The right to vote which is a national function, a privilege or immunity of national citizenship, and a right protected by the necessary and proper clause is the right of voters qualified by the states (to vote for the most numerous branch of the state legislature) to vote for Representatives and Senators. Even though the poll tax requirement abridges or denies the right to vote, Congress has no power to abolish it in elections for Presidential electors.

In answering such arguments as those above, it must be emphasized that the powers of Congress over Presidential elections are not limited to the determination of the time of choosing electors. In *Burroughs v. United States*, in which the Court sustained a provision of the Federal Corrupt Practices Act of 1925 regulating the spending of money to influence the election of President or Vice President in two or more states,<sup>171</sup> the Supreme Court specifically denied that Congressional power was so limited.<sup>172</sup> The Court stated that Congressional power in these elections is broad enough to protect the office of President from impairment or destruction. The Court expressed itself as follows

While presidential electors are not officers or agents of the federal government (In re Green, 234 U.S. 377, 379 ), they exercise federal functions under, and discharge duties in virtue of authority conferred by, the Constitution of the United States. The president is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self-protection. Congress undoubtedly possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption.<sup>173</sup>

Not only has the Supreme Court indicated that Congress has power to prevent corruption in Presidential elections and to protect in general the office of President from impairment or destruc-

---

170. Appointment of electors by the state legislature was the practice followed in early American history. Rottschaefer, *op. cit. supra* note 48, at 401.

171. Mathews, *op. cit. supra* note 43, at 132-33.

172. 290 U. S. 534, 544 (1934). The Court said "So narrow a view of the powers of Congress in respect of the matter is without warrant"

173. *Ibid.*

tion, it has also indicated that the right to vote for Presidential electors, once granted by the states, is a national right.<sup>174</sup> Oliver P. Field, citing *Ex parte Yarbrough*, says that there is a national "right to exercise freely the privilege of voting for members of Congress and Presidential electors."<sup>175</sup>

The preceding cases provide a basis for concluding that the powers of Congress over elections of Presidential electors are broad enough to abolish the poll tax requirement. The poll tax requirement is a source of corruption in elections at which state officers, Representatives, Senators, and Presidential electors are chosen.<sup>176</sup> Congress may choose appropriate means to remove corruption.<sup>177</sup> Abolishing the poll tax requirement is a means of removing corruption in the choice of Presidential electors.

Congressional power to protect the executive department from impairment or destruction might prove broad enough to prevent the impairment or destruction of the representative character of the office of President. The poll tax requirement as a threat to representative institutions on account of its preventing people from voting may be removed for this reason.

Congressional power to prevent abridgment or denial of a privilege or immunity of national citizenship includes the power to prevent infringement upon the free exercise of voting for Presidential electors. The free exercise of the franchise is infringed upon by the poll tax requirement which is a burden, restriction, or positive prohibition on voting for Presidential electors.

It is possible that Congress could act on the basis of the republican form of government clause. Since elections are designated as the mode of selecting Presidential electors, the disfranchisement resulting from the poll tax requirement in Presidential elections would constitute another manifestation of the absence of a republican form of government in the poll tax states.

Finally, further constitutional justification for the abolition of the poll tax requirement in Presidential elections might be derived from the fact that these elections cannot violate other

174. Field, *op. cit. supra* note 119, at 652.

175. *Ibid.*

176. When Presidential electors are chosen at the same elections at which Representatives and Senators are chosen, the powers of Congress over Congressional elections would probably operate in practice to include jurisdiction over the election of Presidential electors.

177. "The power of Congress to protect the election of President and Vice President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress." *Burroughs v. United States*, 290 U. S. 534, 547 (1934).

parts of the Constitution.<sup>178</sup> Although the states are free to choose the manner of selecting the Presidential electors, such elections must conform to the Constitution. For example, it would be unconstitutional for the states to discriminate on account of race or sex in popular elections for Presidential electors.<sup>179</sup> It is possible, therefore, to consider the poll tax requirement within the general powers of Congress to protect qualified voters, to protect the right to vote from arbitrary "qualifications" hindering or restricting the voter.<sup>180</sup>

#### CONCLUSION

The constitutionality of the national anti-poll tax bills does not depend entirely on the merits of the arguments brought for or against the bills. There are other factors which bear on the constitutionality question and may determine what disposition the courts will make of the legislation if it is presented to them.

The reasonable doubt doctrine is one of these factors. The courts have said that they will declare unconstitutional only that legislation which violates the Constitution beyond a reasonable doubt.<sup>181</sup> If there is a possibility of construing the legislation as constitutional, the courts say they will choose that construction. As expressed by Justice Holmes "the rule is settled that as between two possible interpretations of a statute, by one which would be unconstitutional and the other valid, our plain duty is to adopt that which will save the Act."<sup>182</sup> The arguments in favor of the constitutionality of the anti-poll tax bills and the fact that prominent constitutional lawyers<sup>183</sup> have defended the bills indicate at the very least that an interpretation upholding the legislation is possible. It is not inconceivable, therefore, that the anti-poll tax bills would be upheld by the courts on the basis of the reasonable doubt doctrine.

The "political" question doctrine is also relevant to the consti-

178. National Committee to Abolish the Poll Tax, *H.R. 7, the Anti-Poll Tax Bill is Constitutional*, 4.

179. *Ibid.*

180. *Ibid.*

181. "The courts are practically unanimous in saying that laws shall not be declared invalid unless the conflict with the Constitution is clear beyond a reasonable doubt." Dodd, *Constitutional Law* 36 (3d ed. 1942)

182. *Blodgett v. Holden*, 275 U. S. 142, 148 (1927).

183. Among leading constitutional lawyers supporting the constitutionality of the anti-poll tax bills are the authors of *H.R. 7, the Anti-Poll Tax Bill is Constitutional*, a pamphlet published by the National Committee to Abolish the Poll Tax. They are: George Gordon Battle, Walton Hamilton, Myres McDougal, Leon Greene, Robert K. Wettach, M. T. Van Hecke, Lloyd K. Garrison, Charles Bun, Walter Gelhorn and Edwin Borchard.

tutionality of the anti-poll tax bills. The courts have resorted to this doctrine recently and in the past in accepting certain Congressional findings as conclusive upon them and not subject to judicial review.<sup>184</sup> There is a possibility that the Supreme Court would accept a Congressional finding to the effect that the poll tax requirement is not a qualification for voting, that the poll tax states no longer enjoy republican forms of government, or that the poll tax requirement does keep qualified voters from exercising their national right to vote.<sup>185</sup> If so, the anti-poll tax legislation would most likely be sustained.

Furthermore, if the anti-poll tax bills are ever enacted into law, the present Supreme Court is apt to adopt some approach which will permit it to sustain the legislation. The Court may be described as "nationalistic." Very few Congressional statutes have been held unconstitutional since 1936 even though Congress has expanded into fields hitherto forbidden it.<sup>186</sup> Of particular importance as suggestive of the temper of the Supreme Court with regard to elections are *United States v. Classic* and *Smith v. Allwright*<sup>187</sup> which overruled *Newberry v. United States*<sup>188</sup> and *Grovey v. Townsend*<sup>189</sup> respectively. These decisions, in declaring primaries to be elections within the meaning of the Constitution, in protecting the right to vote at primaries, and in declaring "white primaries" unconstitutional, indicate the concern of the Court in protecting the right to vote and in adapting the Constitution to modern suffrage conditions and problems. The decisions also would authorize Congress to abolish the poll tax requirement in primaries if it may be abolished in general elections.

It is true that the Supreme Court in 1937 in the *Breedlove* case failed to find the poll tax requirement in Georgia in violation of the national Constitution, and refused to review the *Pirtle* case upholding the poll tax requirement in Tennessee in 1941.<sup>190</sup> But

184. Kallenbach, *op. cit. supra* note 2, at 727, refers to this doctrine as a possible basis for sustaining the anti-poll tax bills. See notes 141, 142 *supra*.

185. Kallenbach, *op. cit. supra* note 2, at 727. See text *supra* p. 244.

186. Kallenbach, *op. cit. supra* note 2, at 727, describes the Supreme Court since 1937 as a precedent breaking body. In *Smith v. Allwright*, 321 U. S. 649, 665 (1944), the majority opinion cited fourteen cases decided by the Supreme Court since 1937 in which previous decisions had been overruled.

187. 321 U. S. 649 (1944).

188. 236 U. S. 232 (1921).

189. 294 U. S. 45 (1935).

190. 314 U. S. 621 (1941). It was said that the Supreme Court had to refuse certiorari because there was not even a statement of fact or even a record to be placed before the Court. Hearings before a Subcommittee of the Committee on Judiciary on S. 1280, 77th Cong., 2d Sess. 393 (1942).

the Court did not hear the key argument against the poll tax requirement, that it is not a qualification for voting. Neither did the Court have before it a Congressional finding to the effect that the poll tax requirement is not a qualification for voting or national legislation on the subject in general.

It can be reasonably concluded, therefore, on the basis of the arguments raised in favor of the constitutionality of the proposed anti-poll tax legislation, and the other factors just described, that the national anti-poll tax bills are constitutional.