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## Constitutional Law: Poll Taxes

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an offer, and the surviving spouse has the privilege of accepting the offer or, in lieu thereof, to take under the laws of succession.<sup>20</sup>

It can thus be concluded from the principal case, and from the decisions mentioned and cited therein, that the heirs of a surviving spouse cannot elect for a deceased surviving spouse, do not apply unless the election is to take under the will. Therefore, whenever a surviving spouse dies before making an election to take under a will which gives less in value than the statutory share to the surviving spouse, it is the duty of the court to decree the statutory share to the surviving spouse's estate. The cases holding that the heirs of a surviving spouse cannot make an election do not apply. All that is necessary is for the court to be advised by some interested party whether the legacy or devise to the surviving spouse would be less in value than the surviving spouse would receive under the law of succession. If such fact is determined to be true it is the duty of the court to decree the statutory share to the surviving spouse's estate. This is because the surviving spouse already has the statutory share and no election is necessary or acceptance required to receive what one already has. Under our statute the election of the surviving spouse is the acceptance of the offer to take less than the statutory share.

However, if by chance the proceedings go to final judgment in the County Court, this judgment not being appealed from, and without the question of election being called to the court's attention, the judgment has the finality of any other judgment. This would be true even though the surviving spouse actually received less in value than the statute provides.<sup>21</sup>

*Timothy J. Crowley*

#### CONSTITUTIONAL LAW: POLL TAXES

On August 3, 1965, President Lyndon B. Johnson ordered the Attorney General of the United States to file suits in states that required the payment of a poll tax as a prerequisite to voting either in federal or state elections.<sup>1</sup> The purpose of this litigation was to test the validity of a poll tax as a voting requirement. President Johnson's action was hastened by a decision of the Supreme Court of the United States on April 27, 1965, in *Harman v. Forssenius*,<sup>2</sup> which originated in the courts of Virginia.

This was the first time the Supreme Court had to construe the twenty-fourth amendment to the United States Constitution, which provides that

<sup>20</sup> OKLA. STAT. tit. 84 § 213 (1961).

<sup>21</sup> *Oberlander v. Eddington*, 391 P.2d 889 (Okla. 1964).

<sup>1</sup> N. Y. Times, Aug. 4, 1965, p. 1, col. 2.

<sup>2</sup> 380 U.S. 528 (1965).

the right of citizens to vote in federal elections ". . . shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." More specifically, the *Harman* case dealt with the constitutionality of a Virginia statute which required a voter in federal elections either to pay a poll tax, or to file a witnessed or notarized certificate of residence.<sup>3</sup> A federal district court in Virginia previously had held this same statute is being violative of the seventeenth amendment to the United States Constitution.<sup>4</sup> The Supreme Court, in the *Harman* case, affirmed the decision of the federal district court, and held the Virginia statute repugnant to the twenty-fourth amendment of the federal constitution.

The Court, in its opinion, made it clear that the twenty-fourth amendment abolished the poll tax in any way, shape, or form, as it applied to federal elections while pointing out that proposals to end poll taxes as applied to both state and federal elections had been introduced in every Congress since 1939.<sup>5</sup> Substantial weight also was accorded findings of congressional hearings, committee reports, and debates, which strongly indicate a desire that poll taxes be eliminated for economic, social and constitutional reasons. By delving into this type of information the propriety and necessity of looking beyond strict case law in rendering decisions of sociological and legal importance was demonstrated once again.

Virginia argued that the federal constitution vested the power to create voter qualifications in federal elections with the states. While admitting that numerous decisions had so held,<sup>6</sup> Chief Justice Warren went one step further, in citing cases which pointed out that state qualifications may not contravene a valid constitutional provision of the federal government and that the right of citizens to participate in congressional elections is a right derived from the United States Constitution, not from the states.<sup>7</sup> In *Smith v. Allwright*,<sup>8</sup> it was said, "Constitutional rights would be of little value if they could be thus indirectly denied."<sup>9</sup> The Justices appeared to follow this reasoning in announcing that the twenty-fourth amendment ". . . nullifies sophisticated as well as simple-minded modes . . ."<sup>10</sup> of impairing guaranteed rights of citizens.

Virginia's contention that the poll tax or its alternative enabled the state to avoid the complicated task of annual registration was not accepted. A previous decision which held that remote administrative benefits to a

<sup>3</sup> VA. CODE ANN. § 24-17.2 (Supp. 1966).

<sup>4</sup> *Forssenius v. Harman*, 235 F. Supp. 66 (E.D. Va. 1964).

<sup>5</sup> H. R. REP. No. 1821, 87th Cong., 2d Sess. 2 (1962).

<sup>6</sup> *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959); *Pope v. Williams*, 193 U. S. 621 (1903).

<sup>7</sup> *Carrington v. Rash*, 380 U.S. 89 (1965); *United States v. Classic*, 313 U.S. 299 (1941).

<sup>8</sup> 321 U.S. 649 (1944).

<sup>9</sup> *Id.* at 664.

<sup>10</sup> *Gomillion v. Lightfoot*, 364 U.S. 339, 342 (1960); *Lane v. Wilson*, 307 U.S. 268, 275 (1939).

state would not justify depriving a citizen of his constitutional rights was reaffirmed.<sup>11</sup> Stressing the fact that states which do not have a poll tax have not been confronted with any great administrative problems in seeing that only bona-fide citizens are allowed to vote, Chief Justice Warren appeared to be hinting at the proposition that no matter how burdensome state election procedure may be without the poll tax, this problem would not be grounds for upholding the tax.

Leaving the administrative, judicial, and constitutional realms of reasoning, the Court turned to the premise that expansion of the right of suffrage in this country should continue unmolested. Looking at past legislative records of Virginia, it was concluded that the main objective of the poll tax was a desire to prevent Negroes from voting. Apparently influencing the Court on this matter was a speech, cited by Chief Justice Warren, presented by Carter Glass at the 1902 Virginia Constitutional Convention:

Discrimination! Why that is precisely what we propose; that, exactly, is what this Convention was elected for—to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate.<sup>12</sup>

In defending the basic rights of suffrage of all citizens, black and white, the Court referred to a 1964 case which said, "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."<sup>13</sup>

The twenty-fourth amendment to the United States Constitution became effective on February 4, 1964.<sup>14</sup> Before that date, Virginia by statute and by constitution had established fairly common requirements for voting in state and federal elections. One of the requirements was to pay state poll taxes of \$1.50 annually to a state officer at least six months before an election.<sup>15</sup> The statute also provided for permanent registration. Once registered, the electors could vote in future elections simply by paying the poll tax. Thus, there was a strict poll tax requirement placed upon any voter in Virginia who wished to exercise his right to vote. Sensing the ratification of the twenty-fourth amendment, the Governor of Virginia, in 1963, called a special session of the Virginia General Assembly. The purpose of this session was to make provisions to allow persons to vote in federal elections without the payment of a poll tax. The poll tax as an

<sup>11</sup> *Oyama v. California*, 332 U.S. 633 (1948).

<sup>12</sup> *Harman v. Forssenius*, *supra* note 2, at 543.

<sup>13</sup> *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

<sup>14</sup> 25 Fed. Reg. 1716 (1964).

<sup>15</sup> VA. CODE ANN. §§ 24-17, 24-67 (1950); VA. CONST. art. 2, § 18.

absolute prerequisite to voting in federal elections was abolished. In its place a provision was inserted requiring the voter to file a certificate of residence in each election year, or, at his option, to pay the poll tax.<sup>16</sup> In striking down the Virginia statute, the Court emphasized that the requirement of either paying the tax or filing the residence certificate had the effect of imposing a material requirement only upon those voters who refused to surrender their constitutional right to vote without first paying a poll tax. With this decision, it appears that it will be futile for the remaining poll tax states to attempt to change or modify their poll tax requirement in order to avoid the sanctions of the twenty-fourth amendment.

In analyzing the reasoning behind the decision in the *Harman* case, it is extremely important to emphasize that the question was not whether a state had the power to abolish completely the poll tax and require federal voters to file the annual certificate of residence. Rather, the point was whether Virginia could ". . . constitutionally confront the federal voter with a requirement that he *either* pay the customary poll taxes as required for state elections *or* file a certificate of residence."<sup>17</sup> Thus, it appears evident that it was predominately the either—or requirement of the Virginia statute which led the Court in holding the act unconstitutional to state:

The requirement imposed upon those who reject the poll tax method of qualifying would not be saved even if it could be said that it is no more onerous or even somewhat less onerous than the poll tax. For federal elections, the poll tax is abolished absolutely as a prerequisite to voting, and no equivalent or milder substitute may be imposed.<sup>18</sup>

Recent discussions of the poll tax center around its use as a voting prerequisite in the Southern states. Since 1920, the poll tax has been abolished by state action in North Carolina, Louisiana, Florida, Georgia, South Carolina and Tennessee.<sup>19</sup> Today only Mississippi requires the payment of a poll tax as a qualification for voting, and this applies to state and local elections only. Many states, including Oklahoma,<sup>20</sup> have provisions for a poll tax which have either never been used or have been repealed. The poll tax does not represent a great economic deprivation to anyone, since it is generally only between one and two dollars per year. Why then, in light of these facts, was the existing law changed with reference to poll taxes? Evaluating the decision in the *Harman* case, it seems that constitutional law is continuing the trend of insuring the individual that his basic rights are upheld. Previously, the power of a state to impose a reasonable poll tax as a condition of voting in a federal elec-

<sup>16</sup> VA. CODE ANN. § 24-17.2 (Supp. 1964).

<sup>17</sup> *Harman v. Forssenius*, *supra* note 2, at 538. (Emphasis by court.)

<sup>18</sup> *Id.* at 542.

<sup>19</sup> ENCYCLOPEDIA BRITANICA, vol. 18, 173, (1959).

<sup>20</sup> OKLA. CONST. art. 10, § 18.

tion generally was upheld.<sup>21</sup> It should be noted, however, that cases holding a poll tax valid generally arose under the fourteenth or nineteenth amendments which did not specifically ban such a tax, as does the twenty-fourth amendment. Typical of these past decisions is *Breedlove v. Scuttles*,<sup>22</sup> decided by the United States Supreme Court in 1937. The defendant, a tax collector, refused to register Breedlove, who was qualified to vote in all respects except that he had not paid the required poll tax. Justice Butler, speaking for the majority, held that the privilege of voting was derived from the states, and that to make a poll tax a "... prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment."<sup>23</sup>

With the ratification of the twenty-fourth amendment, plus the decision in the *Harman* case, the poll tax as a requirement to vote in federal elections has been eliminated. Thus, it seems clear that the law as it exists today will not allow the poll tax or any type of substitute as a requirement for voting in a federal election. Since the twenty-fourth amendment was silent as to the use of the tax in state and local elections, the question naturally arose as to whether the payment of a poll tax as a prerequisite to voting in non-federal elections would be tolerated. Three recent decisions have answered the question in the negative. On February 9, 1966, a United States District Court in Texas held the Texas poll tax unconstitutional under the fourteenth amendment insofar as it required the payment of a poll tax as a prerequisite to voting in federal, state, and local elections.<sup>24</sup> Three weeks later, on March 3, 1966, the Alabama poll tax was also invalidated by a federal court on the premise that the tax was an attempt to subvert the fifteenth amendment of the United States Constitution.<sup>25</sup> Finally, on March 24, 1966, the Supreme Court of the United States struck down Virginia's poll tax requirement, holding that a state violates the equal protection clause of the fourteenth amendment whenever it requires the payment of such a tax as a condition to voting in state or local elections.<sup>26</sup> This ruling presumably will make further action against the Mississippi poll tax unnecessary since the Supreme Court has made it obvious that the poll tax as a voting prerequisite has no place in our society as it exists today.

*William E. Douglass*

<sup>21</sup> *Breedlove v. Scuttles*, 302 U.S. 277 (1937); *Williams v. Mississippi*, 170 U.S. 213 (1898).

<sup>22</sup> *Breedlove v. Scuttles*, *supra* note 21.

<sup>23</sup> *Id.* at 283.

<sup>24</sup> *United States v. Texas*, 34 U.S.L.WEEK 2441 (U.S. Feb. 22, 1966).

<sup>25</sup> *United States v. Alabama*, 34 U.S.L.WEEK 2491 (U.S. March 15, 1966).

<sup>26</sup> *Harper v. Virginia State Board of Elections*, 86 S.Ct 1079 (1966).