POLL TAX

HEARINGS

BEFORE THE

COMMITTEE ON RULES AND ADMINISTRATION
UNITED STATES SENATE

EIGHTIETH CONGRESS

SECOND SESSION

ON

H. R. 29

AN ACT MAKING UNLAWFUL THE REQUIREMENT FOR THE PAYMENT OF A POLL TAX AS A PREREQUISITE TO VOTING IN A PRIMARY OR OTHER ELECTION FOR NATIONAL OFFICERS

MARCH 22, 23, 24, AND 25, 1948

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POLL TAX

MONDAY, MARCH 22, 1948

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The committee met, pursuant to call, at 10 a. m., in room 104B, Senate Office Building, Senator C. Wayland Brooks (chairman) presiding.

Present: Senators Brooks (chairman) and Stennis.

The CHAIRMAN. I think we had better call the committee to order.

For the sake of the record, we will include H. R. 29, which is the subject under consideration here.

(H. R. 29 is as follows:)

[H. R. 29, 80th Cong., 1st sess.]

AN ACT Making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national officers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the requirement that a poll tax be paid as a prerequisite to voting or registering to vote at primaries or other elections for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, is not and shall not be deemed a qualification of voters or electors voting or registering to vote at primaries or other elections for said officers, within the meaning of the Constitution, but is and shall be deemed an interference with the manner of holding primaries and other elections for said national officers and a tax upon the right or privilege of voting for said national officers.

SEC. 2. It shall be unlawful for any State, municipality, or other government or governmental subdivision to prevent any person from voting or registering to vote in any primary or other election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, on the ground that such person has not paid a poll tax, and any such requirement shall be invalid and void insofar as it purports to disqualify any person otherwise qualified to vote in such primary or other election. No State, municipality, or other government or governmental subdivision shall levy a poll tax or any other tax on the right or privilege of voting in such primary or other election, and any such tax shall be invalid and void insofar as it purports to disqualify any person otherwise qualified from voting at such primary or other election.

SEC. 3. It shall be unlawful for any State, municipality, or other governmental subdivision to interfere with the manner of selecting persons for national office by requiring the payment of a poll tax as a prerequisite for voting or registering to vote in any primary or other election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Repesentatives, and any such requirement shall be invalid and void.

SEC. 4. It shall be unlawful for any person, whether or not acting under the cover of authority of the laws of any State or subdivision thereof, to require the payment of a poll tax as a prerequisite for voting or registering to vote in any primary or other election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives.

Passed the House of Representatives July 21, 1947.

Attest: JOHN ANDREWS, *Clerk.*

The CHAIRMAN. In the way of history, this is the bill that was passed by the House. It was received by the Senate and referred to this committee. It was referred to a subcommittee and was voted out unanimously favorably by the subcommittee.

Subsequent to that time, Senator Stennis, who is a member of this committee, submitted on behalf of 21 Senators and 7 governors, or their attorneys general, a request for hearing.

This matter was submitted to the whole committee, and on March 10 they ordered hearings held on this subject. It was agreed at that time that there should be no more than 2 days' hearing on either side.

Because the request was made upon behalf of the opposition and in light of the fact that the bill had been unanimously reported by the subcommittee, we have asked Senator Stennis to present his witnesses in opposition.

The first witness, I understand, is the Honorable A. A. Carmichael, attorney general of Alabama.

Mr. Carmichael, will you proceed now and give your testimony?

STATEMENT OF A. A. CARMICHAEL, ATTORNEY GENERAL STATE OF ALABAMA

Mr. CARMICHAEL. Mr. Chairman and gentlemen of the committee I have prepared a short statement which speaks for itself. My understanding of the procedure is that if any questions are desired on the statement, it is not incumbent upon the witness to make any further statement. Is that correct, sir?

The CHAIRMAN. If you would like to read your statement for the record, we will be glad to have it, and that may provoke questions.

Mr. CARMICHAEL. I will be glad to, sir.

I shall make no attempt at profundity in this statement. I do not profess to be a profound constitutional lawyer. In my reference to the Constitution I shall speak as an everyday practicing attorney who is not the author of any textbooks on the Constitution of the United States, but who, nevertheless, has some definite ideas about what the pertinent provisions of the Constitution mean. Whether I shall be able to bring to this committee any new or fresh points of view is doufbtful. It appears that the subject has been thoroughly exhausted and any attempt to avoid repetition will probably be fruitless.

I wish to state at the outset that I shall not discuss the merits or demerits of a poll tax as such. Suffice it to say that a goodly number of the States have seen fit to dispense with the poll tax as a qualification for voting. The payment of a small amount, $1.50, is one of the qualifications for voting in the State of Alabama, and irrespective of the merits or demerits of such a law, when and if this poll tax is removed, it should be done in the manner provided by law.

In my judgment, the only way this qualification for voting can be removed is by the legislatures of the States. I would say to the proponents of the anti-poll-tax bill that there is a perfectly constitutional way in which to remove the poll tax as a qualification for voting: An amendment to the Constitution of the United States.

The Federal Constitution provides that the powers not delegated to the United States nor prohibited by it to the States are reserved to the States respectively or to the people.

It is certain that this matter was gone into most carefully by the framers of our Constitution in the Convention of 1787, and at that Convention some of the members desired a uniform qualification for voters prescribed in the Constitution, some wanted to place in the Congress the power to prescribe qualifications, and still another group wanted the qualifications for voters prescribed by the several States for their own people.

These three suggested plans were debated thoroughly, much more thoroughly perhaps than the records show, and finally the Convention decided that it was best to provide a plan under which such qualifications for voting prescribed by each State would be accepted and this plan was placed in the Constitution in its present form, section 2 of article I, which provides that the qualifications of those voting for Members of the National House of Representatives should be the same as those prescribed by the States for those voting for the members of the houses of representatives of the several States.

Later on, the Constitution was amended, providing for the election of United States Senators by direct vote of the people and this same qualification-of-voters clause was used. There has been much said about whether this provision was a power reserved to the States or whether it was a power granted to the Federal Government.

Perhaps the sensible view is that it was neither. The Government was being was formed and it was merely a part of the formation of the Government. The States knew what they wanted, they knew what they already had and it may be said that they were a bit uneasy about this entire matter—this new Government being formed. The States therefore had functioned in the matter of qualifications of voters about as they pleased. With certain limitations, they decided to continue to function, as regards qualifications of voters, as they pleased.

The States agreed to restrict themselves to the extent that they provided that they would not be allowed to provide qualifications for those voting for Congressmen different from those provided for those voting for their houses of representatives—or the most numerous branch of their State legislatures. So, we see that the matter was threshed out pretty carefully and a solution reached. The Convention simply decided that the matter of the qualification of those who voted for Congressmen and those who voted for membership in the State houses of representatives must be the same.

It is my view that the Congress does not have the power to enact the proposed legislation. It is worthy of mention that those who insist that the Congress does have such power declare that the poll-tax requirement is not a qualification for voting. They say the poll-tax requirement is interference with the manner of conducting such elections.

It seems to me that the proponents thus admit that the Congress has no power to enact legislation governing qualifications of voters. The Constitution does provide that the time, place, and manner of electing Senators and Representatives, provided by the States, may be altered by the Congress.

But, it appears perfectly clear that "times," "places," and "manner" have nothing to do with qualifications. Power was given the Congress in the matters of times, places, and manner but no such power over voting qualifications was given. The makers or framers of our

Constitution accepted voting qualifications which were in force in the several States and did not give the Congress any power to change or alter them. The Congress should not attempt to say that a qualification for voters is not a qualification.

A good many thoughtful people all over the land believe that the poll tax as a qualification for voting is outmoded and should be discarded, but as distasteful as it may be to some people, an attempt by the Congress to abolish such a tax, even in the election of Federal officials, would, in my humble judgment be clearly in violation of the Federal Constitution and far beyond the powers of the Congress.

If this reform is needed, and a good many people believe it is, it should be done regularly, by constitutional amendment. It must be admitted that if the Congress has power to abolish the poll tax it also has the power to impose additional qualifications or to make these qualifications more narrow.

It cannot be denied that when the Constitution was adopted, all the Original States had property or tax qualifications. It is clear that those who framed the Constitution thought the tax and property qualifications obtaining in the States were perfectly constitutional. Has the element of time made such voting qualifications unconstitutional?

The answer seems to be that times have changed, but the answer to that is that while times have changed the Constitution of the United States has not changed in this regard. It is just as it was when adopted. The Constitution, of course, may be changed, but it remains the same until changed.

The people of the country decided that it was time to change the method of electing United States Senators and they changed the Constitution. If our Constitution as regards qualifications for voting needs modernizing, let's do it. But let's don't attempt to do by an act of the Congress what should be done by constitutional amendment.

We have changed the Constitution in the past and we can change it again. We have decided in this country that the sex qualification for voting has no place in a modern system of government and we changed the Constitution. All the States had sex qualifications when the Constitution was adopted. The Congress did not attempt to change this sex qualification by an act of the Congress.

Congress, in amending the Constitution, allowing women to vote, recognized, of course, that the Constitution gives to the States the power to fix qualifications for voters and that the only legal way to give the women the right to vote was to change the Constitution. The Congress recognized, in proposing the Fifteenth amendment, that the right to prescribe qualifications for voting is in the States—hence the Constitution was changed in order that no person would be denied the right to vote on account of race, color, or previous condition of servitude.

The States, before these amendments could legally have prescribed racial and sex qualifications for voting. The States may legally fix poll-tax qualifications until another change is made in the Constitution. As has been well said, the only way to modernize the Constitution is to change it by amendment.

It is important that we heed the words of those Members of the United States Senate who drafted the Fourteenth amendment. It

has been contended all along that the poll-tax laws offended the privileges and immunities section of the Fourteenth amendment.

It is most significant to note that practically all (one exception as I understand) of the members of the Committee of the United States Senate who drafted the fourteenth amendment recognized that the power to regulate suffrage was in the States. The fourteenth amendment was adopted in 1868. It is certain that the framers of the fourteenth amendment had no intention of removing from the States their power over suffrage.

We have the statement of a most distinguished constitutional lawyer about the period between 1788 and 1865. The quotation is from that great constitutional lawyer, Charles Warren, of Washington, D. C.:

So far as I have been able to ascertain, from 1788 down to 1865, there is no statement of any court in any book, in any legislative debate, or by any statesmen that Congress had any such power to regulate suffrage in the States.

That is all of the statement, Mr. Chairman.

The CHAIRMAN. Mr. Stennis.

Senator STENNIS. Colonel Carmichael, you, of course, remember when the amendment was passed giving the women the right to vote in woman suffrage?

Mr. CARMICHAEL. Yes, sir.

Senator STENNIS. Did you hear it seriously contended by anyone at that time that the Congress had the power to confer the right on women to vote without a constitutional amendment being first passed?

Mr. CARMICHAEL. I did not hear that argument advanced at that time; no, sir. I think it was admitted that it had to be done by constitutional amendment.

Senator STENNIS And you were a practicing attorney at that time?

Mr. CARMICHAEL. Yes, sir.

Senator STENNIS. I want to ask this: How do you use the money that is paid in in Alabama for poll tax?

Mr. CARMICHAEL. It goes to the educational fund, Senator Stennis, for all people in the State.

Senator STENNIS. Used exclusively for that purpose?

Mr. CARMICHAEL. Exclusively; yes, sir.

Senator STENNIS. How much is your poll tax per year?

Mr. CARMICHAEL. $1.50 a year.

Senator STENNIS. That is all, Mr. Chairman, that I have to ask him.

The CHAIRMAN. All right; thank you.

Senator STENNIS. You made a mighty fine statement there, terse and to the point.

The CHAIRMAN. Now, Senator Stennis, who is next?

Senator STENNIS. We have Judge George Ethridge from Mississippi, Mr. Chairman. Judge, will you take this seat, please.

STATEMENT OF JUDGE GEORGE H. ETHRIDGE

Judge ETHRIDGE. I have written a kind of brief on the constitutional aspect of the case, but before taking that up I would like to say that in my judgment the poll tax is a proper tax and especially for States that have not a great deal of property-tax rights. In Mississippi the poll tax now is a very small part of the total tax levied by the State and its agencies; but the State throughout its history, at least at intervals, had poll taxes upon its citizens dating from a very early date.

Of course, there were periods in which they may not have had a poll tax, but only brief periods. I have never traced it through the various laws of the States prior to the Civil War, but even in the slavery days they had a poll tax upon slaves which the owner of the slaves had to pay in addition to the property value that was assessed.

The CHAIRMAN. Judge, may I interrupt to ask this question? In those days when they had the poll tax imposed on owners of slaves, that had no reference to voting at that time, did it?

Judge ETHRIDGE. It had nothing in the world to do with voting.

The CHAIRMAN. It was just an additional method of taxing?

Judge ETHRIDGE. Yes; just a method of taxing. It was not coupled with voting. Throughout the history of the State the tax has been levied as a tax for revenue purposes, mostly for common school purposes.

In 1890 in the constitution of that year in section 243—this was amended in 1922 after the women were agitating the movement, and the State adopted it prior to the adoption of the amendment, as I recall; but originally a poll tax was levied on all male persons of $2 to be used in the common schools, and for no other purpose. It says:

It is hereby imposed upon every inhabitant of the State—

then male but now male and female—

between the ages of 21 and 60 years, except persons who are deaf and dumb or blind or who are maimed by loss of hand or foot; said tax a lien only upon taxable property. The board of supervisors of any county may for the purpose of common schools in that county increase the poll tax in said county, but in no case shall the entire poll tax exceed in any one year $3 on each poll. No criminal proceedings shall be allowed to enforce the collection of the poll tax.

It will be noted that it is not a tax on the right to vote because a large class of people can vote who are not subject to poll tax because they are over 60 years of age or afflicted so as to be handicapped in their earning of a living.

This is a part of the common school. This is in the franchise chapter and it provides for the assessment of the poll tax, and a person is subject to the tax from the first of the taxable year, whether he is a voter or not, whether he has been in the State a sufficient length of time to vote.

Now, I will call attention to the provisions under the school chapter of the constitution:

There shall be a county school fund which shall consist of the poll tax to be retained in the counties where the same is collected, and the State common school fund to be taken from the general fund of the State treasury.

There are two funds. The poll tax is to be collected and retained in the county and does not go into the State as such, but it is there for the schools of that county only.

The CHAIRMAN. Is that still your law?

Judge ETHRIDGE. Yes, sir. It then provides—

which taken together shall be sufficient to maintain the common schools for a term of 4 months in each scholastic year—the school term has been increased by statute, and the funds have been largely increased to come from the State treasury for the schools—but any county or separate school district may levy an additional tax to maintain schools for a longer time than the 4 months. The State common school funds shall be distributed among the several counties, and the separate school districts, in proportion to the number of educable children in each, to be determined by data to be collected through the office of the State superintendent of education in the manner to be prescribed by law.

Now, the system there is on a county unit basis. We have a county superintendent of education. These funds collected by the poll tax in that county are retained and don't go into the common State educational fund. They remain for the county or district, and it is to be supplemented by an appropriation from the State treasury to educate people. It cannot be used for any other purposes.

The CHAIRMAN. May I interrupt to ask how you enforce the collection of your poll tax?

Judge ETHRIDGE. The poll tax is only a lien on property that is taxable. There is a lot of property not taxable and even the head of the family has a lot of nontaxables, consisting of practically a year's support, what was intended to be a year's support; and if it can't be paid out of taxable property that the property owner has, it goes by default. There can be no criminal prosecution or any other proceedings, and if a man can't pay it there is no way to coerce him to pay it, and it is to be devoted entirely to education, being distributed not with any racial discriminations or racial proportions or anything of that kind, but the poll tax becomes a county fund available for the education of all people, whatever their race or condition may be.

The CHAIRMAN. Do I understand you there that while you don't distribute it according to race or creed or any other qualification, do you have a pretty general standard of education that it applies to generally?

Judge ETHRIDGE. We have a curriculum that applies to everybody who has the ability to take it. It is graded. We have schools separate but the same as to curriculum, the same age, the same conditions as far as the law is concerned, and the Mississippi law pays teachers in schools not only grades—they grade them in first, second, and third grade teachers, according to the standard of education they are able to take, but they have the teaching ability, and the requirements of the school are under the county superintendent and the county school board.

The county school board consists of a member from each supervisory district, there being five such districts in the county. They have the control of the location, establishment, et cetera, of the schools by districts; and every acre in the county must be attached to a school district, and every child must be afforded the opportunity to secure an education.

We have had for a number of years a compulsory school law in certain ages where students must attend not less than 4 months. Schools run differently in different counties, according to the ability of the counties to use funds in addition to funds provided by the poll tax and by the State treasury appropriations.

For instance, any county, if it desires, can levy a local levy to aid the schools, and they can do that by statute in school districts. They can levy a tax to carry on the schools, and that is largely dependent upon the wishes of the people in the local counties and in the local districts.

Now, I want to say this with reference to the poll tax. The utmost that can be levied in any year is $3, which would be, if levied to $3, 25 cents a month, not a day, 25 cents a month. That is certainly no burden. If you have a $2 poll tax, which is the most common in the State where the county has not levied other assessments, it would be a little less than 17 cents a month.

Now, he pays the poll tax. He is required in the class of taxables to pay the poll tax if he votes, but many people vote under other sections of the constitution. However, if he cannot vote, he still has to pay the poll tax.

You take, for instance, section 241 of the Mississippi constitution. It first requires that every inhabitant of the State, except idiots, insane persons, and Indians not taxed, who is a citizen of the United States, 21 years old and upwards, and has resided in this State for 2 years and 1 year in the election precinct or the incorporated city or town in which he hopes to vote, and who is duly registered, as provided in this article, and who has never been convicted of bribery, theft, arson, obtaining of goods under false pretense, perjury, forgery, embezzlement, or bigamy, and who has paid on or before the 1st day of February that which he is legally required to pay, and which he has had an opportunity of paying according to law for the preceding 2 years, and who shall produce to the officers holding elections satisfactory evidence that he has paid said tax is declared to be a qualified elector; but any minister of the gospel in charge of an organized church shall be entitled to vote after 6 months residence in the election district or other election district if otherwise qualified.

That is an exception in favor of ministers because of the nature of their being transferred from place to place by the religious organizations. Now, any person who is convicted of these crimes is still taxable for the poll tax. He can't vote, but it goes to the educational purposes, and that is the main purpose, because it says it cannot be used for any other purpose.

If he comes into the State and is not entitled to vote because of the 2 years, if he is in the State when the time comes to levy the tax—it is now the 1st of January in each year and used to be the 1st of February—he is subject to the poll tax and has to pay it.

To get to the brief, it has been upheld in Oregon on nonresidents.

The CHAIRMAN. This bill doesn't interfere with your poll tax in any way, except it eliminates the poll tax as a prerequisite for voting or registering to vote at primaries or other elections for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives. Is that true?

Judge ETHRIDGE. That is correct. It doesn't do that, but the reasonable requirement that a man shall be interested, that he be a resident at that time for a certain time and pay certain taxes—there were a large number of people in 1890 in both races that were illiterate, were poor, the State had been practically denuded of its financial and property status by the long war that had existed, and it was a struggle to educate the people.

Prior to the Civil War there was an effort to get a common school available for all children throughout the State, but it wasn't enacted until 1844, and was left optional with the counties. My recollection is that only 14 of approximately 60 to 65 counties ever had a school system.

That was due to the philosophy that has run through peoples' minds in every country through many years that every man should educate his own children, that I shouldn't pay to educate another person's children.

These poor people had a larger number of educable children to be educated, and the bulk of them didn't have any appreciable property,

very many, notwithstanding property values were cheap. They didn't own farms, didn't own much, and it was deemed fair and is fair in my judgment for a man to contribute something, to be identified with the educational system of his country and with the political institutions of his country.

So long as the tax is not unreasonable in extent or abusive, it ought in my judgment to be retained because a man feels more pride if he contributes to the school than having the school system educate his own children without his being a part of it, and there is general sentiment among the wealthy or people of better financial standing, the sentiment has been that they are willing to pay the taxes, including the poll tax, and the man without any children ordinarily will pay the tax.

The CHAIRMAN. Judge, isn't that a completely accepted theory in America now? We are even going so far as to consider Federal aid now to education; so that we have already done it, and probably in this session of Congress there will be other legislation introduced to increase the Federal aid to education, carrying out the very theory you are talking about. That theory isn't involved in this bill.

Judge ETHRIDGE. It is involved to this extent: That I think every man ought to contribute something to the education of the youth of the country, if it is nothing but a head tax of $2. A man can earn enough in 1 hour now to pay the tax for 3 or 4 years.

The CHAIRMAN. I agree with your theory. I am trying to address myself to the purpose of this bill now, which does not change the theory that people should contribute to the education of the children of the Nation. I think that is an accepted fact. The question is whether it should be required to pay a poll tax as a prerequisite for voting or registering to vote at primaries or other elections for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives.

Judge ETHRIDGE. That would get into the legal phase of the option of the Constitutional Convention that created the Constitution of the United States. Prior to the adoption of the Constitution of 1790, after the Revolutionary War, every State had its own institutions and its own government and had practically plenary authority. The powers given under the Articles of Confederation weren't given until 1781 and then no method of enforcement, and that was characterized almost as a rope of sand. It did not have very much governmental force.

Senator STENNIS. If you pardon me for interrupting, I want to say that we will run into the question of time. Before you leave the stand, we want the benefit, if I may ask for it, of your idea as to article 1, section 2, of the Constitution here, Judge. Are you coming to that now?

Judge ETHRIDGE. Yes. Now, this section 2 of the Constitution itself fixes the qualification of voters, and it is wholly separate from section 4. It says:

> 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 qualification requisite for electors of the most numerous branch of the State legislature.

That the Convention solemnly adopted, and that hasn't been amended. The theory was that in order to form the Union, as one of the things that had to be dealt with in order to get it, one of the things was that the people of each State should have the right to have their

voters who voted for the most numerous branch of the legislature vote also for the Members of Congress, and there was no exception in that condition there provided for.

In other words, the Constitution says who are qualified electors, and this bill is in the face, in my judgment, of this provision of the Constitution.

The States varied in the qualification for electors, sometimes for different State offices and county offices and various things, but they had the election of the members of the lower house of the legislature, the most numerous branch of the legislature, people who qualified for that, and that was generally of more interest back in that time than the other officers elected because they were the lawmakers, and they had qualified electors, and it varied in the different States; but whatever might be in one State the vote for Congress had to be the same regardless of whether another State followed suit or differed in its qualification for qualified electors to vote for Congress.

When the Constitution names who are qualified voters, then the legislature is powerless to add to it or take from it. That is fenced out, and the reasoning back of it was that it was highly important, if not absolutely necessary, to have that requirement because people were creating the Government and they didn't know what it was going to do in the way of national legislation.

Different groups of State, roughly classified seven Northern States and five Southern States, and their habits and institutions and laws were very much different, and the qualification for electors was different.

Many of the officers weren't elected by popular vote, so it is named in the Constitution, and Congress has no power to change the Constitution by an enactment creating a different standard nor to prohibit what the Constitution has accepted as qualified electors.

That section hasn't been amended. It has been discussed in various cases, but when you come down to section 4, we have powers to do particular things, which has been pointed out, I think, in a number of arguments, at least in the press, and that is dealing with the time, place, and manner of election. That is in section 4. I will get to it in a second here. This is what it says:

> 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 alter such a regulation, except the places of choosing Senators.

Now, what are they given power to do there? It is named. It isn't to regulate elections generally, but the times of elections, places of elections, and manner of holding elections.

They could be elected by the state at large, and it was done for a number of years. They could be elected by general election, by which they would be chosen, or at a particular place or particular day, and Congress could say they could have the power in regard to the manner of holding elections, at a particular place, held by particular persons, and under particular supervision, and that has no reference to the qualifications. That is dealt with separately. The two things are entirely separate.

Congress, for instance, has prescribed the date of the election, and it shall be by districts instead of from the State at large, having some exceptions in case the census comes along and the apportionment is

changed, and the extra person assigned to a State could be elected from the State at large.

They had that question involving the power of creating districts in one case from my State, and the legislature created congressional districts and combined two districts into one without apportionment according to the population of the district as one compared to the other.

That was brought up here and the Court held that the Federal Government had fixed the subject matter of elections, and it should be by districts and the legislature had the power to create the districts, and the suit went out the window because the courts had nothing to do with it. It was a legislative question.

Now, these were in the beginning, and in the beginning there was a great deal of opposition in the various State conventions to the Constitution. One of the ablest was in the State of Virginia, which at that time was a leading State in wealth and population and education, perhaps, in which the question was closely divided as between groups and factions, led by the ablest men of that period of time.

One only has to read the assaults made by Patrick Henry upon the Constitution for not conforming, as he thought, to the rights—and he was an original States right man, I think one of the ablest, and he spoke many times—in fact, I thought he spoke oftener and left less to his associates than was required in politics—but it was interesting to read his ideas and then read what has happened since the Constitution was framed.

In order to pass Virginia and several other States they had to promise to get a bill of rights attached to that Constitution. It didn't have any. The individual's rights weren't secure against the Government. It was due to those different situations, the larger States and the smaller States and the grouping of economic and social interest that existed to a certain extent. All those were powerful influences shaping the adoption. There was that provision that it should be adopted as among the States ratifying it and not adopted by those not ratifying. Provided nine States ratified it, it became effective and left the others out. In fact, it did leave some States out who afterward came in.

Now, in that situation among those 10 amendments was article 10 which expressly reserved to the States all powers not delegated to the Federal Government nor prohibited to the States by the Constitution. There it stands, no amendment to it, and the Civil War amendment doesn't destroy that, in my judgment.

The Congress was given power by the thirteenth amendment to carry its prohibition against any part of the territory having any slaves. It was a prohibition which the Federal Government couldn't authorize and the State Governments couldn't authorize.

But when it came to the fourteenth, discussing the power of the States to make laws that discriminated, it was the States and the laws by the States that were the object of that amendment. In other words, they couldn't frame a law for one class of people in the way of crime unless it brought every party in that class or in that orbit into the law and give them equal protection of the law in due process of law, of course, was a right to be heard and challenge any State law.

In other words, if the State should enact a law that the sheriff or constable could go out and arrest a man because he was a farmer and

not include others in that power of arrest, and a person was arrested under that, he could challenge that. He was denied protection. The law went down under the assaults of the citizens.

It never was contemplated that Congress could control the States in their local government machinery so long as government was a republican form of government.

Now, if I may, I would like to call attention to two or three cases that we have in mind as to this power residing in Congress to change the qualifications of members of the House and Senate and Presidential Electors.

In *Minor* v. *Happersatt*, which is cited, it was held that the voters did not derive their powers from the Federal Constitution. In that case a woman who was otherwise qualified, wanted to register and vote in one of the States—I believe it was in Missouri, perhaps—and she litigated her rights about it. She claimed she could not be discriminated against; she was a citizen of the United States. And the Court rejected that and said she derived that right to vote—it was controlled by the States, subject only to the amendments on race, color and previous condition of servitude, and perhaps one other phase.

In *Pirtle* v. *Brown*, a Tennessee case, decided by the circuit court of appeals in 118 Fed. (2d) 218, and also reported in 139 ALR with a case note, it was again held that the voter derived his right to vote from the States; the right of qualification of the voters resided in the States.

The United States Supreme Court refused a writ of certiorari to review that case, thereby approving that case.

In *Breedlove* v. *Suttles* in the State of Georgia, that went to the United States Supreme Court, it was again declared that the right to vote was not a Federal right, but was a State right, and resided with the States.

Now, if the bill should pass, it would create a good deal of confusion, something which somebody at any time could carry to the United States Supreme Court for review, but in the meantime the great mass of citizens would not know where they were. They would not know where their rights were, and it would be extremely hazardous to guess, at the extent of the citizen who would have to litigate it—it could not be taken up except by litigation.

These cases—there is a case note in 82 L. Ed. of the United States Supreme Court in the Breedlove case, and a footnote to the Pirtle case in 139 ALR, cited in the brief; there are very elaborate case notes there, discussing the subject.

I think it is very important to note that in the early days a man was not admitted until he was identified by the State in which he lived sufficiently to manifest an interest and to understand its institutions, in measure, a least, and the principle of having the voter to be a taxpayer as a condition of voting, a condition of that kind is perfectly reasonable and it tends to encourage people to share the burdens of government, instead of to shun the burden of government and especially in Mississippi where it can only be used for educational purposes, not levied, except by the legislature, where it has no power to divert that poll-tax fund from the educational funds of the State.

Every man ought to be willing to assume some of the burdens. Therefore, I think the poll tax as a system, is a righteous system. I do not mean that they could not get along without it—nothing of that

kind—but a man who has got no interest in the government enough to pay 25 cens or 18 cents a month for the privilege of voting is just unpatriotic—it is just like unpatriotism.

As far as I am concerned I would like to see a system based on intelligence, character, and patriotism—those three things—and a citizen could not be a patriotic citizen in anything like the full sense of the word without contributing to the support of the government which gives him protection, and especially where it is educating his children free of charge.

Senator STENNIS. Before your time is up, Judge, if I may interrupt, Mr. Chairman, I wan to ask you a question or two and get your legal opinion on it.

If we grant the Congress now can enter this field of the qualifications for electors, if they can enter at all, they can prescribe what is not a qualification, and then they could prescribe what is a qualification, could they not?

Judge ETHRIDGE. Absolutely.

Senator STENNIS. And if we get into the affirmative side of that matter, do you think that they could say that a man who was a member of a labor union could not vote?

Judge ETHRIDGE. They would have a right to classify in that regard under the decisions that now exist—they classify them and not only prohibit any qualification the State might set up, but put up their own standard and could elect that, Senator, may I remind you, on such a basis that they could practically control the national legislation.

The CHAIRMAN. Do you mind if I interrupt here and ask this question?

Senator STENNIS. No.

The CHAIRMAN. Do you make no distinction between the elimination of a prerequisite and the imposing of prerequisites because a man might belong to a labor union? You do not mean to give that impression, do you, Judge?

Judge ETHRIDGE. I think if it was left to Congress to say, being a national body as far as the State and the people are concerned, it could change and make any classification that it deemed reasonable, and the court might support it, and anything which would be supported—and anything would be supported by the court ordinarily that had a reasonable relation to the government, proper government.

The CHAIRMAN. Well, you have not heard—at least I have not, except from you that if you had your way you would impose not a poll tax but an intelligence test, also to the prerequisites of voting. This is no attempt to impose them. It is an attempt to eliminate them for everyone, not impose them on a special group, because they belong to a labor union or because of their color or creed or their nationality or their particular type or form of patriotism. It is an attempt to generally eliminate for all people one thing, poll taxes, as a prerequisite for voting.

Certainly, you admit a distinction between that and any idea that the Congress would impose on any special group a prerequisite, do you not?

Judge ETHRIDGE. The question, as I understand, which you are driving at, if the power alone is involved that is different from the power to create. Now, if they can prohibit conditions through Con-

gress that have a binding effect on the States and the people of the States, then they have jurisdiction over the subject, and that is my understanding of the contention that Congress, while it was supposed to be fair and would operate in a liberal manner, that it nevertheless would have power to control the subject matter, and that would be important.

The CHAIRMAN. I disagree with the Judge; but go ahead.

Senator STENNIS. I just wanted to bring that point up about the negative, and then the affirmative proposition on the qualifications; and I used the labor union there just by illustration. The same thing would apply to a farmers' union; it would apply as far as the Government is concerned.

Judge ETHRIDGE. No State, National Government, under the conditions now prevailing would enact a law of that type, of course. But I am talking about the constitutional power. If they got the power to prescribe the qualifications for voters, then there is no limit to that power except the possibility of the Supreme Court checking it.

I would like to file this.

The CHAIRMAN. We will be very glad to have you do that and make it a part of the record and a part of your statement.

(The brief referred to is as follows:)

BRIEF IN OPPOSITION TO HOUSE RESOLUTION 29, THE ANTI-POLL TAX BILL, EIGHTIETH CONGRESS, PENDING BEFORE THE SENATE OF THE UNITED STATES ON BEHALF OF THE STATE OF MISSISSIPPI, BY THE ATTORNEY GENERAL OF MISSISSIPPI

House Resolution No. 29, is entitled "An act making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national officers." The general purport of this act is an attempt on the part of the Congress or certain Members of the Congress to set aside State laws which require the payment of a poll tax in order to vote for "President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, is not and shall not be deemed a qualification of voters or electors voting or registering to vote at primaries or other elections for said officers, within the meaning of the Constitution, but is and shall be deemed an interference with the manner of holding primaries and other elections for said national officers and a tax upon the right or privilege of voting for said national officers." In other words, the Congress is asked to pass this law which would render null and void the provision of any State in its laws or in any municipality in its ordinances from prescribing such qualification as the payment of a poll tax to be a condition of the right to vote. In my opinion, this is an unconstitutional bill and should not be passed or enforced if passed because the Constitution of the United States provides in section 2 of article 1 that: "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." The Constitution therefore itself fixed the qualification for voters in congressional, senatorial, and presidential elections. The election of Senators being substantially the same as that for Members of the House of Representatives as contained in the seventeenth amendment to the Constitution which provides: "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for 6 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 legislatures," etc. So, as to Representatives in Congress and United States Senators, the Constitution itself fixes the qualifications of those who vote for members of the State legislature in the most numerous branch of the same.

In order to understand the meaning and purport of these provisions of the Constitution, we must consider the situations and conditions of the country at the time the original Federal Constitution was framed and ratified by the people of the States. At the time the Federal Constitution was adoped originally most

of the States had two houses of their legislature and the qualifications of electors for the most numerous branch of the legislature or in the States where there was only one house of the legislature, the qualifications for electors of the Members of Congress which, at that time, was the only direct participation the voters had in selecting Federal officers were fixed by State law and these qualifications for voting for the members of the most numerous branch of the State legislature were different in many of the States. Also, in many of the States, different qualifications were required to enable voters to vote for different State officers. Generally speaking some property qualification was required and other requirements made by the State laws existed in some States that did not exist in some of the other States. In other words, the qualifications for voting were frequently different in different States and the object of section 2 of article 1 was to adopt whatever qualifications were required in any State in electing their representatives in the most numerous branch. It was not, at that time, deemed within the power of the Federal Government to prescribe the qualifications for Members of the House of Representatives of the United States. It is quite probable that the Constitution could not have been adopted without having in the voters of each State who voted for members of the most numerous branch of the State legislature to vote for the Members of Congress. In the original 13 States there were many differences in their customs, ideas and ideals, not only in the political field but also in their social, economic, religious and legal institutions of various kinds. The different States were settled originally by people who came here for the sake of having the right to live under laws that were agreeable and practical when considered in connection with their ideas and habits and forms of government and the laws deemed necessary to give those people laws suitable to their needs and wants. These people came at different times from different places for different purposes. Their habits, laws, religion, customs, and political ideals differed in many respects from those of other colonies. The settlement of the northwest part of our country was largely made up of immigrants from the eastern sections of the United States. Thus we see that at the time the original Constitution was adopted there were many States who had different conditions, ideas and beliefs. The value of local government according to their own standards was highly prized.

Section 2 of article 1 is not subject, in my opinion, rightfully to the powers given to Congress. When the constitution was framed and submitted to the States for ratification it was generally understood, and also urged in the ratifying conventions, that the Federal Government possessed no power under the Constitution to enact any laws except those expressly granted and those that were by implication necessary and proper to give effect to the granted powers, and it was not understood at that time that any powers would be given except those expressly granted with the necessary and proper laws to give effect and force to the granted powers. In the Virginia convention, and other conventions also, the Constitution was carefully examined, and many fears were expressed of encroachment of the National Government upon the powers and rights of the States. In the Virginia convention there were radical differences of opinion among many of the most eminent men of the State including Patrick Henry, Judge Wythe, Edmond Pendleton, Edmond Randolph, James Madison, George Mayson, Dr. Grayson, John Marshall, and many others. Patrick Henry, who also feared too much power in any government or officer and who was the greatest orator of his time and one of the most sagacious of statesmen, pointed out the danger of implied powers and especially the absence of any Bill of Rights in the original Federal Constitution to safeguard the people of the State from the aggressions and usurpations of one government against the other and feared the consolidation in the course of time of all powers of government under the control of the National Government which would be stronger and less intimately connected with the people and might develop tyrannical powers over the people at large. To quiet those fears and to make sure that the people's rights would be safeguarded the first 10 amendments to the Constitution were proposed.

It was provided in amendment No. 9 that the enumeration of rights should not be considered to deny or disparage others retained by the people, thus retaining some rights even against the Government itself in the people which could not be denied them. In article X, the tenth amendment, it was provided that the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people. This amendment was intended to make a supreme law binding on the National Government that the Government should have no powers not delegated to it by the Constitution. By the three great divisions of power, to wit, the legislative,

the executive and the judicial, and the Constitution providing for a supreme court, and providing that the officers of both the National and State Governments should take an oath to support and maintain the Constitution, both the National and State Governments were restrained from usurping powers that did not belong to them in their respective spheres of operation. It cannot be said that there is anything in the original Constitution or in any of the ten Amendments, constituting the bill of rights, which conferred any power on Congress to say who should be entitled to vote for the national elective officers other than those who vote for State members of the most numerous branch of the State legislature. When the Constitution enumerates who shall be entitled to vote as section 2 of the above mentioned article (article 1) does, it is not within the power of Congress to add other restrictions or to control by legislation who shall vote for the representatives and senators in Congress. This has been expressly decided, which decisions will be referred to hereafter.

The Supreme Court has held that the Civil War amendments were prohibitions of power and not grants of power. No grant of power to Congress can be enacted by the Congress that would deprive the States of the rights to determine who shall vote, or what qualifications for voters may be as to those who vote for members of the State legislature. It is as much the duty of the Federal Government to maintain States' rights as it is to maintain Federal rights. The preservation of the States and the maintenance of State governments are as much within the design of the Constitution as the preservation of the Union and the maintenance of the National Government (*Texas* v. *White*, 7 Wall. (74 U. S.) 709, 19 L. Ed. 227). The force of the construction of the Constitution herein contended for is demonstrated, I think, by section 4 of article 1, which provides: "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." It will be noted that the next part of this particular section giving the Congress at any time by law the power to make or alter such regulations refers to the times, places and manner of holding elections and does not refer to the qualifications of electors. The qualifications of electors is fixed by section 2 of article 1 to the Constitution itself, and the qualifications named by the Constitution cannot be added to by construction. It would be a most dangerous thing to give the Congress power to prescribe qualifications of who should vote for members of the Congress. If Congress had the power to name these qualifications its powers could not be limited by any State authority or by the Supreme Court itself. Any Congress, under such power, could provide regulations and qualifications by which it could be perpetuated, for no person however learned could qualify and vote unless he came within the prescribed qualifications. There is no method by which we can foretell what qualifications Congress might, if it had the power, make for electing itself and its successors in office.

It is my understanding that the proponents of H. R. No. 29 claim the right to supersede State laws is predicated upon the Fourteenth amendment to the Constitution of the United States. This amendment to the Constitution is not a grant of authority to the United States Government to enact general codes of laws upon any subject but is a prohibition on the States, and the only power that Congress has under that amendment as heretofore decided is to prohibit State laws from being enacted that would deny the rights given to all citizens by the Fourteenth amendment. It is not a grant of power to enact its own laws upon these subjects. The only grant of power to Congress is that Congress shall have power to enforce this article by appropriate legislation and the United States Court has held repeatedly that these provisions, being limitations on the State, are not grants of authority to the National Government or to Congress. I do not deem it necessary to set out a list of cases sustaining this point. In the great *Civil Rights Case* (109 U. S. 3-62, 27 L. Ed. 835), the Court went fully into the discussion of the Fourteenth amendment, and expressly so decided in that case. On page 839 of the Law Edition report of that case, the Court said:

"Has Congress constitutional power to make such a law? Of course, no one will contend that the power to pass it was contained in the Constitution before the adoption of the last three amendments. The power is sought, first, in the Fourteenth amendment, and the views and arguments of distinguished Senators, advanced whilst the law was under consideration, claiming authority to pass it by virtue of that amendment, are the principal arguments adduced in favor of the power. We have carefully considered those arguments, as was due to the eminent ability of those who put them forward, and have felt, in all its

force, the weight of authority which always invests a law that Congress deems itself competent to pass. But the responsibility of an independent judgment is now thrown upon this Court; and we are bound to exercise it according to the best lights we have.

"The first section of the fourteenth amendment, which is the one relied on, after declaring who shall be citizens of the United States, and of the several States, is prohibitory upon the States. It declares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation but to provide modes of relief against State legislation or State action, of the kind referred to.

It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the fourteenth amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must, necessarily, be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect. A quite full discussion of this aspect of the amendment may be found in *U. S.* v. *Cruikshank* (92 U. S. 542 (XXIII, 588)); *Va.* v. *Rives* (100 U. S. 313 (XXV, 667)); and *Ex parte* v. (100 U. S. 339 (XXV, 676))."

On page 840 in the same case, the court said:

"If this legislation is appropriate for enforcing the prohibitions of the amendment, it is difficult to see where it is to stop. Why may not Congress with equal show of authority enact a code of laws for the enforcement and vindication of all rights of life, liberty, and property? If it is supposable that the States may deprive persons of life, liberty, and property without due process of law, and the amendment itself does not suppose this, why should not Congress proceed at once to prescribe due process of law for the protection of every one of these fundamental rights, in every possible case, as well as to prescribed equal privileges in inns, public conveyances, and theaters? The truth is, that the implication of a power to legislate in this manner is based upon the assumption that if the States are forbidden to legislate or act in a particular way on a particular subject, and power is conferred upon Congress to enforce the prohibition, this gives Congress power to legislate generally upon that subject, and not merely power to provide modes of redress against such State legislation or action. The assumption is certainly unsound. It is repugnent to the tenth amendment of the Constitution which declares that power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

On page 841 the court further said:

"In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property, or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full

force, and may presumably be vindicated by resort to the laws of the State for redress. An individual cannot deprive a man of his right to vote, to hold property, to buy and to sell, to sue in the courts or to be a witness or a juror; he may, by force or fraud, interfere with the enjoyment of the right in a particular case; he may commit an assault against the person, or commit murder, or use ruffian violence at the polls, or slander the good name of a fellow citizen; but, unless protected in these wrongful acts by some shield of State law or State authority, he cannot destroy or injure the right; he will only render himself amenable to satisfaction or punishment; and amenable therefore to the laws of the State where the wrongful acts are committed. Hence, in all those cases where the Constitution seeks to protect the rights of the citizen against discriminative and unjust laws of the State by prohibiting such laws, it is not individual offenses, but abrogation and denial of rights, which it denounces, and for which it clothes the Congress with power to provide a remedy. This abrogation and denial of rights, for which the States alone were or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied. And the remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for, the evil or wrong actually committed rests upon some State law or State authority for its excuse and perpetration."

This decision was rendered at the October term, 1883, and was in force when the poll tax section of the Mississippi Constitution (section 241) was enacted. As the original section was written in 1890, it required the payment of all taxes of voters to vote, said taxes including all taxes which must have been paid for the two preceding years on or before February 1 of the year in which a person offers to vote. In 1935 an amendment was adopted amending section 241 so as to require the payment of all poll taxes.

The property or other than poll taxes need not be paid in order to vote in the election. This amendment was wholly favorable to the poor people of the State. Section 241 of the Mississippi Constitution reads now as follows:

"Every inhabitant of this State, except idiots, insane persons, and Indians not taxed, who is a citizen of the United States, 21 years old and upward, who has resided in this State for 2 years, and 1 year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered, as provided in this article, and who has never been convicted of bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement, or bigamy and who has paid on or before the 1st day of February of the year in which he shall offer to vote, all poll taxes which may have been legally required of him, and which he has had an opportunity of paying according to law, for the two preceding years, and who shall produce the officers holding the election satisfactory evidence that he has paid such taxes, is declared to be a qualified elector; but any minister of the gospel in charge of an organized church shall be entitled to vote after 6 months' residence in the election district, if otherwise qualified."

Under section 243 of the Mississippi Constitution, a uniform poll tax of $2 to be used in aid of common schools and for no other purpose is hereby imposed upon all except an exempted class. The exemption being in favor of persons who are deaf, dumb, blind, or who are maimed by loss of hand or foot. The section in full reads as follows:

"A uniform poll tax of $2, to be used in aid of common schools, and for no other purpose, is hereby imposed on every inhabitant of this State, male or female, between the ages of 21 and 60 years, except persons who are deaf and dumb, blind, or who are maimed by loss of hand or foot; said tax to be a lien only upon taxable property. The board of supervisors of any county may, for the purpose of aiding the common schools in that county, increase the poll tax in said county but in no case shall the entire poll tax exceed in any one year $3 on each poll. No criminal proceedings shall be allowed to enforce the collection of the poll tax."

It will be noted from this section that persons who are over 60 years of age are not subject to the poll tax and may vote without payment thereof as well as those expressly exempt. Therefore, the poll tax payment is not an absolute requirement for voting. It will be noted from this section also that the said poll tax is only a lien upon taxable property as much property is exempt from taxation by the statutes of the State which have full power to make exemptions. It will be noted from the section that "No criminal proceedings shall be allowed to enforce the collection of the poll tax." Under the Constitution of Mississippi of 1868, known as the reconstruction constitution promulgated largely by Negroes and people who had come to the State after the

Civil War as we believe to use the State government for personal ends and to manipulate the Negroes' votes in aid of their plans, and under the statutes of the State during that period, poll tax could be enforced by criminal prosecution. When the Civil War ended a large majority of the population of the State was Negroes who had been born and reared in slavery, a most evil system, in which they were not permitted to vote or to acquire sufficient learning to enable them to vote, and they could not, without the permission of their master, meet even for religious worship or for any other purpose. These Negroes being thus ignorant were enfranchised by the reconstruction authorities and the constitution of 1869 provided, among other things, that no educational or property qualification should be required either to vote or serve on juries. The provision in the constitution now is more favorable to the Negro mass and to the poor whites than it was during the period prior to 1890 and the end of the Civil War. The payment of poll tax as part of the taxing power of this State has existed in practically all of the States and especially prior to 1890 and has been a part of the system of raising revenue for State and local purposes. During the days of slavery poll taxes were often imposed on slaves of the male gender above 21 years of age, and also the poll tax was imposed on all male whites over 21 years of age and under 60 years, making some allowance for age in relieving them from such payment. Under section 243 of the constitution, the board of supervisors of any county may for the purpose of aiding the common schools in that county increase the poll tax in said county but in no case shall the entire poll tax exceed in any one year, $3 on each poll. This extra tax has seldom been imposed in addition to the regular $2 poll tax. It will, therefore, be seen that the highest poll tax that can be imposed or collected is $5. This cannot be imposed more than once in each 12 months, which would be for 12 months, 25 cents per month. This tax would, therefore, not be a burden on any person who has any earning capacity and it goes for the purpose of educating the people and cannot be used for any other purpose. It cannot be said, therefore, that it is an imposition of an undue burden. Every person should certainly be willing to contribute that much in aid of education in his country. Generally speaking, Negroes have larger families to be educated than whites. They secure employment or work for themselves and make reasonable wages or earnings. Originally, they had practically no property of their own but through the years they have acquired property and many of them are engaged in lucrative business or employment. Every white person within the classes taxed must pay the tax and there is no discrimination in favor of any class of persons. It applies to all alike. The constitutional and statutory provisions embraced in the "Franchise" chapter of the constitution and in the "Registration and elections" chapter under general laws and the primary system of nominating officers in Mississippi, so far as the laws themselves are concerned, have been adjudged to be constitutional in the case of *Gibson* v. *Mississippi* (162 U. S. 565, L. Ed. 1075). This case was decided at the October term, 1895, by the Supreme Court of the United States.

The litigation arose by challenging the statutes and constitution of the State of Mississippi. In the recent case of *Patton* v. *Mississippi*, involving the rights of Patton in the selection of a jury (92 L. Ed. Advance) counsel for Patton conceded in his argument and brief that the statutes of this State were not subject to challenge under the decisions of the Gibson case and the case of *Williams* v. *Mississippi* (170 U. S. 213, 42 L. Ed. 1012, 18 S. Ct. 583). In other words, these decisions sustain our constitution as not infringing the Fourteenth and Fifteenth amendments to the Constitution of the United States. Furthermore, the poll tax imposed by the State as a condition of the right to vote has been upheld by the Supreme Court of the United States and by the Circuit Court of Appeals, Sixth Circuit. The right of the States to prescribe the qualifications of voters is not derived from the Federal Government, but is a power reserved to the states, *Minor* v. *Happersatt* (88 U. S. 162, 22 L. Ed. 627); *Pope* v. *Williams* (193 U. S. 621, 48 L. Ed. 817).

In *Pirtle* v. *Brown* (118 Fed. Rep. (2d) 218), it was held that suffrage is a political right which the people of a State may appropriately condition through its fundamental law or legislature in conformity thereto. It was further held by the circuit court of appeals in that case that the Tennessee statute providing for the payment of annual poll tax for school purposes by every inhabitant between the ages of 21 and 60 years, except persons who are deaf, dumb, blind, or incapable of labor and earning a livelihood does not levy or assess a poll tax upon voters as a class. It was also held in this case that to make a payment of poll tax a prerequisite to voting is not to deny any privilege of immunity protected

by the Fourteenth amendment. The privilege of voting is not derived from the United States but is conferred by the States and, except as restrained by the Fifteenth and Nineteenth amendments and other provisions of the Federal Constitution, may condition suffrage as it deems appropriate. This case was sought to be reviewed by certiorari to the Supreme Court of the United States, but certiorari was denied. (See 86 L. Ed. 409, wherein the Supreme Court of the United States approved the decision of the circuit court of appeals in holding that a poll tax levied or imposed as a condition of voting did not violate the Constitution of the United States. There is a long case note to this decision as published in 139 A. L. R. beginning at p. 561 thereof, and the decision of the circuit court of appeals beginning at p. 557 of that report.) In the case of *Breedlove* v. *Suttles* (302 U. S. 277–284, 82 L. Ed. 256), it was held that a State statute providing for the collection of the poll tax of $1 to be a prerequisite to the right to register and vote in any election does not violate the equal protection clause and the privileges and immunities clause of the Fourteenth amendment, because it applied only to persons between the ages of 21 and 60 years. It was also held in that case that the privileges of voting is not derived from the United States Government but is conferred by the States and, save as are restrained by the Fifteenth and Nineteenth amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate. This case was decided by the Supreme Court of the United States at the October term, 1937, and is an interesting decision holding that the Fourteenth amendment does not prohibit the States from putting conditions on the right to vote. On page 256 (82 L. Ed.) of this case (about the middle of column 1) it is stated:

"To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the fourteenth amendment. Privilege of voting is not derived from the United States but is conferred by the State and, save as restrained by the fifteenth and nineteenth amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate (*Minor* v. *Happersett*, 21 Wall. 162, 170 et. seq., 22 L. ed. 627; *Ex parte, Yarbrough*, 110 U. S. 651, 664, 21 L. ed. 274, 4 S. Ct. 152; *McPherson* v. *Blacker*, 146 U. S. 1, 37, 38, 36, L. ed. 869, 878, 13 S. Ct. 3; *Guinn* v. *United States*, 238 U. S. 347, 362, 59 L. ed. 1340, 1346, 35 S. Ct. 926, L. R. A. 1916A, 1124)." (See also *Breedlove* v. *Suttles* 302, 58 S. Ct. 205, 82 L. Ed. 252.) The right of the States to impose a poll tax is secured by the tenth amendment reserving to the States full power not granted to the United States nor prohibited to the States. It was common in State taxation when the Constitution was adopted.

I submit furthermore that all the rights of self-government known as local government dealing with conditions in one State that may not exist in another should be preserved to the people and not be infringed upon by the National Congress merely because of a difference of opinion in the different States of the Union. The capacity of the people for self-government has been amply proven by the history of the people since the formation of the Government, and the people of each locality should have the right to meet its peculiar situations as the people of that State or Territory may deem most wise and prudent. We know that in a country as large as ours there are many differences in the habits, social conditions, economic conditions, and many other conditions in one part of the country from those of the other parts of the country. In some sections, conditions demand different limitations and laws from those of another State and section.

When our Government is carefully studied with its many divisions of power in different departments of the Government, and fully understood, it is the most wonderful and safest Government ever devised by the minds of men. To scramble these powers so as to vest in the hands of one Government all of the powers of Government to be exercised and administered by mere men, the rights and liberties of the people will be crushed and lost, for no man is perfect, and in periods of pressure from organized groups will result in unwise laws and in unfaithful administration. In Mississippi we have had a stable and peaceable government in which the counties of the State have fairly and intelligently dealt with the various problems that come to our people. Our State laws are designed to promote the common welfare of the people. There may be defects of administration due to the imperfections of the human race, but the true and only effective remedy is by public education and discussion in its many forums of discussion such as the school, the press, the radio, the legislative bodies (State and county) and to understand and be willing to yield somewhat some of the minor questions that arise to perplex and vex the minds of the people

affected. In order to have good government those who elect the people who are to make laws, execute laws, and interpret laws must be selected by intelligent people so as to secure intelligent and patriotic government. Governments must be financed and States should be allowed to levy and collect taxes upon such subjects and conditions as their local needs may require. Absentee government has seldom been good government. One reason for this is that in case of foreign rulers and distant law makers they do not fully comprehend the conditions and needs of the particular localities affected. Experience shows that unless local government is maintained, good, patriotic, effective government is crippled or destroyed. Every congressman as well as every State officer should be willing and anxious to preserve the rights of local government in the various States. He should also understand and be diligent to maintain the constitutional divisions of power between the National Government and the States. Every withdrawal of the rights of local self government will produce unlooked for evils and maladjustments. Each of the governments should be diligent in governing and in understanding the needs of both the State and the Nation and observe them through separation in the field of government. I confidently submit that the Congress has no power to abolish the poll tax in such States as see proper to levy it. Each State should have the right to prescribe by constitution and statute the qualifications of voters who vote in any election, State or national. Their will should not be overridden because some people in other sections of the Union have different ideas from the local people about the right to vote and the character and qualifications of the Members sent to Congress.

Respectfully submitted.

GREEK L. RICE
Attorney General.
By GEO. H. ETHERIDGE,
Assistant Attorney General.

STATEMENT OF HON. JOHN J. SPARKMAN, UNITED STATES SENATOR FROM THE STATE OF ALABAMA

Senator SPARKMAN. Thank you, Mr. Chairman, I am sitting as a member of the Conference Committee on Rent Control, and we are working rather diligently on that. I appreciate your allowing me to come in at this time.

Mr. Chairman, I am very much interested in this legislation and very much concerned about it. May I say here that I hold no particular brief for the poll tax as such, but I do have a strong belief that these are matters which under the intent of the Constitution and in the interest of good government must be handled by the individual States and the people in those States rather than by the Federal Government.

In other words, I want to say just as strongly as I can that I believe that Federal legislation to repeal the poll tax in the individual States is unconstitutional. I don't suppose I need to cite section 2 of article 1 of the Constitution because I am sure that it has been constantly before you and also the fact that when the amendment to the Constitution was passed to elect Senators, the same language was carried forward in that amendment. So if it was given to the States under section 2 of article 1 of the original Constitution to determine what qualifications should be set up to enable a person to vote for Representatives—if that provision at that time left it to the States, we cannot say that we have outgrown that because just in recent years we repeated exactly the same provision.

It says very clearly that the electors for the election of Members of the House of Representatives in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature; and I am sure that no one would contend that it is not

a power resting within the individual State to determine who should vote for the Members of the most numerous branch of its legislature.

I think the founding fathers certainly intended, and we even in recent years have carried forward that intention, that the power to fix these qualifications should lodge within the States.

As a matter of fact, Mr. Chairman, I should like to point to the fact that apparently at the Republican National Convention in 1944 that same principle was recognized because it wrote into its platform a plank saying that it proposed to offer to the people of the United States the opportunity to vote on a constitutional amendment to remove the poll tax.

Now, reading that plank in the Republican platform, I can see no other belief than that the people who wrote that platform and the Republicans in that convention representing the great Republican Party of the United States recognized the principle that it was a power that belonged to the States and that it could not vest in the Federal Government until the Constitution was amended to give the Federal Government that power.

Mr. Chairman, I may be naive in this statement, but I do want to say that it has caused me considerable wonder from time to time, why there is so much concern over the payment of a poll tax as a prerequisite for voting in seven States of the Union and yet no particular concern that I have ever known of requirements in various States for certain property prerequisites.

It has always seemed to me that the application of a property test might very well be much more severe than the collection of $1.25 or $1.50 a year as a poll tax. I believe it is frequently said that the poll tax in Alabama is maybe the heaviest of any, and it is $1.50 a year cumulative from 21 to 45.

We exempt veterans of all wars, everybody above 45 is exempt, members of the National Guard are exempt, blind people and people suffering from certain disability where it would be a hardship to pay it are exempt; but the sum of $1.50 a year from the remaining limited group is required.

There are some States, I believe, that require some kind of a property test, but, as I say, must be more oppressive than the payment of $1.50 a year for the period of 24 years. There are some States that set a rather high literacy test, where a person must demonstrate his ability not only to read and write but to explain certain things. I have never seen any particular disturbance over that.

I am not saying—and I want it clearly understood that I am not saying—that the Federal Government has a right to interfere with those. I don't think it does. However, why the concern over the poll tax, which is centered only in seven States of the Union?

Mr. Chairman, just this word and I am through. I think that all of us need be concerned about the maintenance of the system of government that our forefathers set up. They set up here a dual system of government, a republic made up of a federation of sovereign States. There was a system of two spheres of government set up, the Federal, the State. A certain sphere was set off in which the Federal Government was to be absolutely supreme, another one was set off in which the State Government was to be supreme. There was an overlapping

of the two spheres in which both governments were to operate with concurrent authority.

I believe in that dual system of government. I believe it is the best way to get good government. It is the best way to keep government close to the people by keeping powers lodged in these sovereign States.

As I see it, this legislation and this type of legislation seeks to break down that dual system of government and if carried to its full purpose, eventually would erase State lines and give us one strong federalized central government. I just don't believe that we want it, and I don't believe the people of America want that kind of government.

I urge you most strongly, Mr. Chairman, not because Alabama happens to have the poll tax—I am arguing because of the principle of government that is involved—that we not start imposing upon our people this kind of legislation that must in the end break down the system of government that we have.

When Alabama wants to do away with its poll tax, I shall be pleased. When every other State wants to do away with its poll tax, I shall be pleased, but I think it will be a sad day in this country when the Federal Government breaks down the Constitution and says to the respective States, "You can no longer control your internal affairs."

Thank you very much.

Senator STENNIS. Let me put one question to the Senator here, if I may.

Suppose the Congress should pass this antipoll tax bill striking down the poll tax provisions as a prerequisite for voting. Do you think the States then could still have their State laws setting up that as a qualification for voting for State offices?

Senator SPARKMAN. Well, in my opinion, so far as the legal problem is involved, they could. But practically I don't think it would work.

Senator STENNIS. From a legal standpoint you think they could?

Senator SPARKMAN. Yes.

Senator STENNIS. Just imagine such a case in Alabama where it was the Federal law for Federal elections as provided in this bill, and for State elections as provided in the present Alabama law. Now, with that in mind, read section 2 of article 1 again and see what we would be leading to. Just read it out loud.

Senator SPARKMAN. Section 1 of article 1 reads 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.

Senator STENNIS. We have Alabama operating under two systems in that case; is that right?

Senator SPARKMAN. Of course. That is true. You understand, I believe that any law that Congress would pass removing the poll tax would run absolutely head-on with this provision of the Constitution, and I believe it would be clearly unconstitutional; and yet, as I see it legally and theoretically, Alabama could still control its own State elections. We would have a system that wouldn't be practical.

By the way, I should like to offer this suggestion. People are not going to have things forced on them that they don't want. People

in Alabama and people in Illinois and people in every other State are going to continue to control their elections and their internal affairs. Of course, we all know that under the system that prevails in Alabama we have a one-party system there, and it is a primary election in the springtime that counts.

Now, there is nothing in the law that requires Alabama to hold a primary election. There are other ways of selecting candidates. The people of Alabama can still find ways to control their affairs regardless of what Congress may try to do in conflict with the Federal Constitution. I do think that it would create a chaotic condition.

The CHAIRMAN. Perhaps the most chaotic would be to remove the poll tax completely. That would remedy it, wouldn't it?

Senator SPARKMAN. If Alabama removed it completely?

The CHAIRMAN. If we removed it so far as a prerequisite of voting or registering to vote at primaries or other elections for President, Vice President, electors for President or Vice President or for Senator or Member of the House of Representatives. Then the chaotic condition would exist if you continued to insist on having a poll tax as a prerequisite for State officers. If you removed it, all the chaos would be gone, wouldn't it?

Senator SPARKMAN. Your question is an "iffy" question. I can't believe that you would believe or you would hold that the Federal Government would have any right to tell Alabama or Illinois or any other State how it should control its own election of its own officers.

The CHAIRMAN. I didn't even intimate that.

Senator SPARKMAN. But the argument I am making is that the effect of your proposal would be to do that very thing.

The CHAIRMAN. No. You said you would have a chaotic condition if this bill passed removing the poll tax as a prerequisite for voting for Federal offices. Now, I say that chaos could be eliminated very quickly by removing the poll tax completely in your State so far as the election of State officers is concerned. That isn't an "iffy" question. That is a simple question.

Senator SPARKMAN. If any State would remove the poll tax, of course, it would change it; but I do not concede for 1 minute that this Congress has the right to force that State to remove its poll tax.

The CHAIRMAN. Nor does the chairman of this committee for 1 minute assume we have.

Senator STENNIS. That is what I wanted to bring out, that no one contends that the Congress has the right to force the State of Alabama to change its election law as to the election of State officers; but, as a practical matter, we would be driving them to do that very thing, and if they didn't do it, we would have two sets of qualifications set up in Alabama when the Constitution of the United States says it shall only be one. That is my point.

Senator SPARKMAN. I think you are right.

The CHAIRMAN. Thank you, Senator.

The CHAIRMAN. Now, Senator Stennis?

Senator STENNIS. Congressman John Bell Williams of Mississippi is here. He has a brief statement, Senator.

The CHAIRMAN. We will be very glad to hear him.

STATEMENT OF HON. JOHN BELL WILLIAMS, MEMBER OF THE HOUSE OF REPRESENTATIVES FROM THE SEVENTH CONGRESSIONAL DISTRICT OF MISSISSIPPI

Mr. WILLIAMS. Senator and gentlemen of the committee, you have just listened to a very able and learned jurist from the State of Mississippi who has given you, I am sure, the unconstitutional aspects of this bill, and I know that there is very little that I might add, along those lines. I am sure that you have gotten about all that you could on this bill's unconstitutionality.

I concur, of course, with the Judge. I come from a poll tax State, Mississippi, one of the seven States which still retain the poll tax as a prerequisite to voting.

Mississippi has been accused of using intimidation against certain races in order to prevent their exercising their democratic prerogative of voting. To this I will say that those who make those charges are either uninformed, they have not observed the true conditions in Mississippi, or they make those statements for political or personal reasons. They are either uninformed or the statements are malicious falsehoods.

As a means of keeping people away from the polls, I do not feel that the poll tax has any effect. It is only $2 in the State of Mississippi. We have been accused of maintaining this poll tax for the purpose of keeping Negroes from voting.

May I call to your attention the fact that we have 100,000 Negroes in the State of Mississippi over the age of 60 years, for which a poll tax is not required. In other words, they are exempt from the payment of a poll tax.

We have another 25,000 or 30,000 Negro veterans who are exempt from the payment of poll taxes for a couple of years after they got out of the service.

We have another 10,000 or 15,000 Negroes who are turning the age of 21. They are exempt from the payment of a poll tax. I dare say that there are 150,000 or 200,000 Negroes in the State of Mississippi who, under our laws, do not have to pay a poll tax.

Now, you certainly cannot attribute the poll tax to their not voting. Frankly, I have observed this thing down there. I have lived in Mississippi ever since I was born. To be perfectly frank with you, I do not believe that the average Mississippi Negro is interested enough in politics to vote.

Gentlemen, I know you are pushed for time. I do not care to make too lengthy a statement. I would like, if you please, to extend my remarks in the record at this point.

The CHAIRMAN. We will be glad to have you do that. I hope you will keep them within reason, and then we will be glad to have your remarks.

Mr. WILLIAMS. I certainly will. I appreciate you gentlemen letting me come before you.

The CHAIRMAN. All right, thank you, Congressman.

Senator STENNIS. Mr. Chairman, we have Mr. Jesse F. Orton, attorney from the State of New York, who is down here at the special invitation of Senator Russell, and in which I join him.

Mr. Chairman, if we are not able to complete Mr. Orton today, why, I would like to have him tomorrow.

The CHAIRMAN. Yes. We will be glad to have his testimony.

Mr. Orton, would you care to come up here?

STATEMENT OF JESSE F. ORTON, MEMBER OF THE NEW YORK BAR

Mr. ORTON. Mr. Chairman, I do have a couple of pages ready at this time which I can probably give before your time expires.

The CHAIRMAN. Thank you, sir.

Mr. ORTON. I have some other material which I did not have ready, but I did not really expect to be called the first day. I will say that I have mimeographed copies of these two pages, so that they can be available to others, the press and others, if they care for them.

I might say by way of introduction that I appear purely as a citizen of the United States and of the State of New York, being moved to consider this question because I think it is the proper function of a citizen; and I became interested in the question about 5 years ago, on noticing in the newspapers a notice of this bill or the bill then before the Congress. I had had something to do with constitutional law before that in other lines, and I at once said to myself, "They cannot do this to our Constitution."

So, I began studying the question. It was not so much to learn the stated law as found in the Constitution and the decision of the courts as it was to follow the paths of the people who were trying to explain and advocate the passage of this bill. I found that a very tedious process from that time to this.

I attended the hearings on the bill in October 1943 before the Senate Judiciary Committee, and I did not take part, but I listened to everything and not long after that I prepared, and there was published, a brief of which I have copies here, and that brief was quite widely circulated, about 20,000 copies I think, to all Members of Congress at that time, and it has received the approval, I may say, of the very highest judicial and legal authorities.

There were some points in it, in the case, in the question that were not treated in that brief so that 2 years later, I prepared a second brief which has been treated in much the same way, which I have here.

I have taken the liberty in that brief—in fact, one of the urges to prepare it was that I wanted to call things by their right names, and when there has been a false statement of fact in the hearings or elsewhere, I have not in that brief hesitated to say so.

When there was been a misrepresentation of a decision of the court, I have tried to do the same thing. I propose, of course, to conduct my testimony here in a perfectly parliamentary way, but those who want to get the real facts, as I conceive them to be, will get them from the briefs.

I will read these two pages. I may not be confined to them entirely.

If the Congress attempts through action by the Senate—the bill having passed the House—to make a law out of the so-called antipoll tax bill, it will disobey one of the plainest and most important commands in the Federal Constitution.

That command in section 2 of article I—you are all familiar with that; we had it this morning, and I may say that in referring to this later, I will simply call it section 2, and the later section which has been also mentioned here—I will call it section 4—both in the first article—but we do not get beyond the first article here—that command concerning the qualifications of persons voting for Congressmen, has been repeated verbatim in the Seventeenth amendment concerning

qualifications of persons voting for Senators. That has been covered here also.

When it said—"The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature"—it is an imperative statement—"shall have." That is why I call it a command.

This provision in the Constitution did not enable or permit any State to prescribe the qualifications of persons voting in these Federal elections.

I found a great deal of misunderstanding on that point, on both sides of the question. People speak of the people of a State fixing qualifications to vote for Congressmen or Senators, and it is all a misnomer. There is no such thing, and the Supreme Court of the United States has definitely said so. That is, the people of a State have no power to say what the qualifications are for voting for Senators or Congressmen, and they never have attempted to do so. No people in any State have the power. All they have the power to do is to fix the qualifications to be used within their own State and for the election of State officers.

The Constitution says "The most numerous branch of the State legislature." That was called for by a distinction which New York and other States made at that time requiring higher qualifications, you might call them higher, to vote for Senators than for assemblymen. But that was all abolished soon after the Government started, and we can say now that the vote is for the legislature.

Each State was obliged, of course, by the necessities of the case to make these laws fixing State qualifications. This State exercised this power and performed this duty ever since its independence was declared in 1776.

Before the Constitution went into effect, there was obviously nothing to limit the power of the State in fixing those qualifications. It was a sovereign state. Now that same condition has been kept on after the Constitution began. It could not possibly be altered, except by some affirmative provision in the Constitution. You cannot take away the powers that resided in the State without some foundation for it. And there has been absolutely nothing, with the exception of the Fifteenth and Nineteenth amendments to limit the discretionary power of the State in fixing those qualifications.

We have the authority on that point from as eminent a jurist as the late Thomas M. Cooley—whom we all know about, of course—writing in 1880 on the constitutional law, stated point blank that the discretion of the State was at that time limited only by the Fifteenth amendment. Of course, the Nineteenth amendment was not yet heard of at that time.

Now, I come to the decision of the Supreme Court, and the nub of that decision was that the State, having fixed its qualifications for its own use in electing its legislature, it was the Constitution itself that took over from that point on, and nothing else, but the Constitution. The State had done its work, and it was finished. It did not do and could not do anything more.

The Constitution came in at that point, and said—well, we will see what the Supreme Court said about it—it is in the case of *Ex parte Yarbrough*, a leading case, a very leading case on this subject, in 110 U. S. 651. That was the case in which certain inspectors of elections

were criminally prosecuted for the use of fraud in conducting a Federal election, and the Court said:

> The States in—

I think I was mistaken—that was the case where the people were prosecuted for beating up certain voters who intended to vote, and prevented their voting in that way.

The CHAIRMAN. Do you mean the people who beat them up were qualified or the voters were qualified?

Mr. ORTON. It came soon after reconstruction, and they were prosecuted for manhandling Negroes who intended to vote.

The CHAIRMAN. I see.

Mr. ORTON. The Court said—the question arose as to whether the power to vote came from the State or from the Nation—the Court said:

> The States, in prescribing the qualifications of voters for the most numerous branch of their own legislature, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualifications for voters for those eonomine.

The Court used the Latin phrase there, by that name.

> They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for Members of Congress.

That quotation from that case has not been quoted very often by the people who are back of this bill. I discovered it quoted once when they quoted pretty near the whole opinion, but I do not think they observed in advance what that paragraph said.

This power of each State to prescribe the qualifications of its citizens voting in State elections was in no way limited by the original Constitution, which contained not a word on the subject, and it has not been limited by any amendment except the Fifteenth, forbidding discrimination "on account of race, color," and the Nineteenth on account of sex.

Then follows the statement, which I have mentioned already, from Judge Cooley. Moreover, when the Constitution was made, tax-payment was in common use among the States as a qualification, including poll tax payment, which was in actual use in three States—New Hampshire, Massachusetts, and Virginia—and by unanimous vote, the Federal Convention put in the Constitution this command that each State should make use of its own local qualifications which were then in force or which it might adopt in the future in electing its representatives in Congress.

A definite and imperative rule was thus established in the Constitution fixing the method of determining in each State the qualifications of persons voting for Congressmen, and later for Senators.

This antipoll tax bill, therefore, interferes with the operation of that rule. It requires each State to abstain from use of a certain qualification, tax-payment, and it is broader than poll tax—it says tax payment—in electing its Congressmen and Senators, although that qualification was then or might later be required by such State of its citizens voting for members of its legislature. It is, therefore, unconstitutional, and beyond the power of Congress.

This bill is as clearly and hopelessly unconstitutional as a bill would be, which attempted to regulate marriage and divorce, for example, a power that is not granted by the Constitution or to pass an ex post facto law, a power which was expressly denied by the Constitution.

In this case the Congress was not given any power to prescribe qualifications or to deal with them in any way. On the contrary, it was confronted with a definite rule prescribing what State qualifications made for State use should be used in the Federal elections. The denial of power in Congress is just as plain and complete as it would be if the Constitution had said—that is quoting from me—

The Congress shall not pass any law concerning the qualifications of persons voting for representatives in Congress.

Now, if you had that in the Constitution we would not be here. There would be no question about it. But what I say is this, that the provisions in the Constitution are just as imperative, just as definite and particular as this suggested provision would be.

If the qualifications prescribed by a State for its own use should be unlawful because of violations of the fifteenth or nineteenth amendments, they would be obviously also unlawful for use in a Federal election. In that case they would not be in existence, so they could not be copied for the Federal election. But the converse of the statement is a general rule or principle of the greatest importance. We may express it this way: If a State qualification is lawful for use in State elections, the Constitution, through section 2, makes it lawful and obligatory for the Federal election.

That is, in other words, stated in a little different way, as a general rule it is the same truth which I had spoken of before, and you can put it this way: Lawful in State, lawful for the United States, and I believe that formula is absolutely correct, and, as I say, obligatory.

This is not a matter of State rights. Those things usually have two sides on which plausible arguments can be advanced on either side. But I want to close with a statement which I do not have here, but I believe to be correct—I have studied this question quite steadily, and have studied this question quite intensively for the past 5 years.

I want to say that I have not discovered, and I do not think there exists, a single plausible argument for the existence of this power in Congress. I make the reservation, of course, that the argument must be honest, and not a tricky argument.

With that, Mr. Chairman, I assume you wish to adjourn.

The CHAIRMAN. Well, Senator Stennis, do you have any more that you want him to testify to?

Senator STENNIS. Mr. Chairman, Mr. Orton is going to be with us during the entire hearing. He is intensely interested in this subject.

The CHAIRMAN. I can see that he is.

Senator STENNIS. He has a great deal on it. I was interrupted here. I handed your brief in on the subject.

Mr. ORTON. I would like to introduce my brief now instead of at the end of my testimony.

The CHAIRMAN. Do the two documents constitute your brief?

Mr. ORTON. The two constitute my brief.

The CHAIRMAN. Would you like to have those made a part of the record?

Mr. ORTON. For the consideration by the committee.

The CHAIRMAN. Very well, we will be glad to have them made a part of the record.

Mr. ORTON. Thank you very much.

The CHAIRMAN. Thank you very much for your testimony.

(The documents referred to are as follows:)

DEBUNKING THE POLL-TAX ASSAULT

(A brief on the antipoll tax bill by *Jesse F. Orton*, member of the New York Bar, Jackson Heights, N. Y.)

Attorney Orton has long been a student of constitutional law and of history and political science. He is a graduate of the University of Michigan in arts and law and possesses an A. M. degree from Cornell University. On its merits, Mr. Orton is personally opposed to limitation of suffrage on the basis of poll-tax payment. In this article he expresses his views on the legal and constitutional aspects of the question.

[From the Congressional Record]

"The Constitution of the United States was written and adopted with the thought in mind that politicians in power might invade the rights of the States and of their citizens, because politicians have always schemed to get around the Constitution in order to obtain more power than it gave them. The Constitution therefore limits the power of Congress."

Senator E. H. MOORE, *Oklahoma.*

(A brief on the anti-poll-tax bill by Jesse F. Orton, Jackson Heights, N. Y., member of the New York Bar)

In any fair discussion of the poll-tax controversy, the fact is clear that the makers of the Constitution accepted, and understood that they were offering to the States, a document that guaranteed absolute protection of the power of the States to control suffrage in the election of Representatives in the National Congress.

They understood it perfectly as an expedient, bargaining guaranty without which ratification would be extremely doubtful.

And the makers of the Constitution acted with entire knowledge of the vital importance of suffrage under the new government. Madison said:

"The right of suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the legislature," referring of course to the Congress (5 Elliot's Debates 387).

No delegate spoke in favor of giving the power to Congress. Col. George Mason (Virginia) said:

"A power to alter the qualifications would be a dangerous power in the hands of the legislature" (Congress) (Ib. 386).

Two other solutions were possible: (1) a uniform rule fixing qualifications of persons voting for Representatives, and (2) qualifications to be fixed by the States in their constitutions or by law.

Madison and many others preferred a definite statement of qualifications in the Constitution. He expressed the opinion that "the freeholders of the country (landowners) would be the safest depositories of republican liberty" (Ib. 387). But since ratification was necessary, the practical question with him was, What sort of reception would such a change meet with in the States? (Ib.)

STATES HAD QUALIFICATIONS

Every State then had, for State purposes, qualifications based on property or tax payment, or both; and a uniform rule would have caused many changes. Most of the delegates agreed with Madison, that the necessity of ratification should turn the scale in favor of allowing State law to control the qualifications of persons voting for Representatives in each State. This course was recommended by the committee of detail on August 6, 1787 (John Rutledge, South Carolina; Edmund Randolph, Virginia; Nathaniel Gorham, Massachusetts; Oliver Ellsworth, Connecticut; and James Wilson, Pennsylvania); but only with this restriction, that in each State the qualifications in electing Representatives should be identical with those used in electing the larger branch of the State legislature, as follows:

"The qualifications of the electors shall be the same, from time to time, as those of the electors, in the several States, of the most numerous branch of their own legislature" (Ib. 377).

DEFEAT UNIFORM RULE

This was to prevent arbitrary or unreasonable action. The State had to treat the United States as well as it treated itself. This provision was approved unanimously; but a long debate was caused by Gouvernour Morris (Pennsylvania), who favored a uniform rule in the Constitution, which he thought should limit the franchise to freeholders. His proposal was finally defeated, seven States to one, and the committe plan adopted without a dissenting voice (Ib. 389). As later revised by the committee of style and arrangement William S. Johnson, Connecticut; Alexander Hamilton, New York; Gouverneur Morris, Pennsylvania; Jones Madison, Virginia; and Rufus King, Massachusetts; the provision appeared in section 2, article 1, as follows:

"* * * and the electors (of Representatives) in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

This sentence, the only one on "qualifications," was obviously a material representation and also a solemn pledge, that each ratifying State would be permitted, as in fact it was commanded, to use in electing its Representatives the same qualifications it used in electing the larger branch of its legislature. The Constitution contained nothing and now contains nothing, restricting the State's discretion in fixing qualifications, except the fifteenth and nineteenth amendments and section 2 of the fourteenth amendment.

A DEFINITE PLEDGE

This provision in section 2 of article I was definitely understood by each State as such a pledge and absolute assurance. Every State ratified the Constitution upon that express condition, many times repeated during the period of ratification. The pledge was irrevocable, except by amendment approved by three-fourths of the States. It was also considered a wise provision for the Nation. The United States has never dishonored that pledge. ~~To dishonor it now would be an act of perfidy.~~

Few historical facts are more conclusively established than the fact that this pledge was made for the express and avowed purpose of obtaining the consent of the States to the adoption of the Constitution. It was repeated and emphasized in The Federalist, written chiefly by Madison and Hamilton, and in other writings and oral statements for the sole purpose of securing ratification. In the ratifying conventions it was used to satisfy any "doubting Thomas" that the States were absolutely protected in their power to control the suffrage in the election of Representatives.

Without this assurance, consent would have been refused by many of the States. With it, ratification was obtained in Massachusetts, New York, and Virginia by a vote of less than 53 percent of members present and voting.

In section 4, after providing: "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof," it was provided that "the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators." This grant of power to set at naught the election laws passed by the States in obedience to this command in section 4, met with more violent and angry protests probably than any other provision in the Constitution.

Section 4 undoubtedly lost many votes of delegates who otherwise would have voted for ratification. If Congress had been given similar power to set at naught the action of the States with respect to qualifications, there is little doubt that nine Sates would not have ratified and the proposed Union would not have been formed.

QUALIFICATIONS ARE DEFINED

The obvious purpose of section 2 is to deal with the matter of suffrage completely and absolutely. It does this in the simplest and clearest language the "Committee of Syle" could select: "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." The "qualifications requisite" were fixed in the State constitution or in the State laws and had been since 1776. The power to fix them remained in the State before as well as after the Tenth Amendment. Action by the State would be

invalid only if a qualification fixed for State purposes were forbidden by the Federal Constitution to be used for State purposes. The State could fix them only for State purposes. It was the Federal Constitution that made them applicable to a national purpose.

Section 4 dealt just as completely with "times, places and manner," giving power of regulation to the States but allowing Congress to "make or alter such regulations." Does section 4 by any possibility give Congress power to interfere with qualifications fixed by the State for electing members of its legislature? Does it give Congress power to disobey the command of the Constitution that in electing Representatives the electors shall have the qualifications then required of persons voting in a State election for one branch of the legislature? An affirmative answer to either of these questions is absolutely impossible.

Power to regulate "times" or "places" gives Congress no power over "qualifications." What about "manner"? If section 2 were not in the Constitution, the words "manner of holding elections" would not mean that Congress has power with respect to qualifications. Manner (method) refers to ballots, secret voting, registration, primaries, and many other matters found in State election laws. If section 2 were out, the State would have, under the Tenth Amendment, power to fix qualifications of the electors of its Representatives. But section 2 is in the Constitution, and after the subject of qualifications is conclusively disposed of in that section, no later section can possibly disturb that disposition without at least referring to the subject of section 2.

LEGAL AND SENSIBLE VIEW

Every lawyer who is really a lawyer, knows this is true by every conceivable rule of construction, and every intelligent layman knows it is true by every conceivable rule of common sense. And even if it were not true, the pledge given to the States could not be avoided without incurring the odium which attaches to a perfidious repudiation of representations and promises.

In the Federal Convention, James Wilson (Pennsylvania) said (as reported by Madison):

"It would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the State legislature, and to be excluded from a vote for those in the National Legislature." (5 Ell. Deb. 385.)

Oliver Ellsworth (Connecticut) said:

"The right of suffrage was a tender point, and strongly guarded by most of the State constitutions. The people would not readily subscribe to the National Constitution, if it should subject them to be disfranchised." (Ib.)

Col. George Mason (Virginia) said:

"A power to alter the qualifications would be a dangerous power in the hands of the legislature" (Congress) (Ib. 386).

Pierce Butler (South Carolina) said:

"There is no right of which the people are more jealous than that of suffrage." (Ib.)

Nathaniel Gorham (Massachusetts) said:

"We must consult their (the people's) rooted prejudices, if we expect their concurrence in our propositions." (Ib. 389.)

I shall now refer to the Federalist (Sesquicentennial edition). In No. 57, ascribed to "Hamilton or Madison," the author says:

"Who are to be the electors of the Federal Representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right, in every State, of electing the corresponding branch of the legislature of the State." (p. 371.)

NOT COMPLETELY QUOTED

At a public hearing before the Senate Judiciary Committee, Mr. Lee Pressman, general counsel of the Congress of Industrial Organizations, appearing for the proponents, quoted the paragraph that I have quoted above from No. 57, entire, with the exception of the last sentence:

"They are to be the same who exercise the right, in every State, of electing the corresponding branch of the Legislature of the State."

That sentence, for some reason, he omitted (pp. 38, 49, printed record of hearings, Oct. 25, 26, 1943). At page 49 Mr. Pressman said:

"It would have been so simple for Mr. Madison to have answered his question in the terms of Senator O'Mahoney, 'those whom the States decide to be the electors,' but he did not. He did not do any such thing because Mr. Madison was thinking of far more important problems than merely this very narrow interpretation of the specific provision of the Constitution."

It will be interesting to compare the words the author is said to have refrained from using, "those whom the States decide to be the electors," with the omitted sentence, which he did use.

Answering the objection that unfit Representatives will be chosen, the author says (p. 374):

"Were the objection to be read by one who had not seen the mode prescribed by the Constitution for the choice of Representatives, he could suppose nothing less than that some unreasonable qualification of property was annexed to the right of suffrage; or that the right of eligibility was limited to persons of particular families or fortunes; or at least that the mode prescribed by the State constitutions was, in some respect or other, very grossly departed from. We have seen how far such a supposition would err, as to the first two points. Nor would it, in fact, be less erroneous as to the last."

DEFINED AND ESTABLISHED

In No. 52 of the Federalist, ascribed to Hamilton or Madison, the author says (pp. 341–342):

"The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments, that branch of the Federal Government which ought to be dependent on the people alone."

* * * * * * *

"The provision made by the convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State, because it is conformable to the standard already established, or which may be established, by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the Federal Constitution."

In No. 60 Hamilton, speaking of the danger that the "wealthy and well born" would be favored in regulations by Congress, said (p. 394):

"The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulation of the *times*, the *places*, the *manner* of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature" (Congress). [Italics his.]

ANSWERED BY STATESMEN

Similar statements were made in the ratifying conventions. In the Massachusetts convention there was a "doubting Thomas," Dr. John Taylor from the Town of Douglass, who feared that section 4 might give Congress power to prescribe a property qualification for voters in the sum of £100. He inquired of Rufus King, whether this could not be done to keep Members of Congress in office. Mr. King was one of the more distinguished statesmen of that period, a leading member of the Federal Convention. Answering, he said:

"The idea of the honorable gentleman from Douglass transcends my understanding; for the power of control given by this section extends to the *manner* of election, not the *qualifications* of the electors." (2 Ell. Deb. 49, 51). [Italics his.]

In the Pennsylvania convention James Wilson, a leader in the Federal Convention, said:

"In order to know who are qualified to be electors of the House of Representatives, we are to inquire who are qualified to be electors of the legislature of each State. If there be no legislature in the States, there can be no electors of them: if there be no such electors, there is no criterion to know who are qualified to elect members of the House of Representatives. By this short, plain deduction, the existence of State legislatures is proved to be essential to the existence of the General Government" (Ib. 438–439).

This negatives any idea that Congress could under section 4 deal with qualifications.

With respect to section 4, Mr. Wilson says:

"If the Congress had it not in their power to make regulations, what might be the consequences? Some States might make no regulations at all on the subject. And shall the existence of the House of Representatives, the immediate representation of the people in Congress, depend upon the will and pleasure of the State governments? * * * We find, on examining this paragraph (sec. 4), that it contains nothing more than the maxims of self-preservation" (Ib. 440–41).

In the Virginia convention, Wilson Nicholas, one of the delegates, said:

"If, therefore, by the proposed plan, it is left uncertain in whom the right of suffrage is to rest, or if it has placed that right in improper hands, I shall admit that it is a radical defect; but in this plan there is a fixed rule for determining the qualifications of electors, and that rule the most judicious that could possibly have been devised, because it refers to a criterion which cannot be changed. A qualification that gives a right to elect representatives for the State legislatures, gives also, by this Constitution, a right to choose Representatives for the General Government" (3 Ell. Debs. 8).

The Virginia debates do not show any dissent.

A NORTH CAROLINA VIEW

In the North Carolina convention a delegate, John Steele, referring to Representatives, said:

"Who are to vote for them? Every man who has a right to vote for a representative to our legislature will ever have a right to vote for a Representative to the General Government. Does it not expressly provide that the electors in each State shall have the qualifications requisite for the most numerous branch of the State legislature? Can they, without a most manifest violation of the Constitution, alter the qualifications of the electors? The power over the manner of elections does not include that of saying who shall vote. The Constitution expressly says that the qualifications which entitle a man to vote for a State representative. It is, then, clearly and indubitably fixed and determined *who* shall be the electors; and the power over the manner only enables them to determine *how* these electors shall elect—whether by ballot, or by vote, or by any other way" (4 Ell. Deb. 71). [Italics his.]

Mr. Steele stated the only possible interpretation of sections 2 and 4. His view is confirmed by William R. Davie, who had been a member of the Federal Convention (Ib. 59–62).

We have no report (in Elliot's Debates) of any debate in the ratifying conventions of Rhode Island, New Jersey, Delaware, and Georgia; and the reports in New Hampshire, Connecticut, and Maryland are mere fragments, with nothing on suffrage. In South Carolina and New York, the reported debates contain nothing on section 2, dealing with qualifications, nor any discussion of section 4 in relation to that subject.

Our conclusions are thus confirmed by numerous authoritative statements made before ratification of the Constitution. They are confirmed by a long line of jurists and statesmen since ratification, including Justice Story, Chancellor Kent, Judge Cooley, and many others. They are confirmed also by a long series of judicial decisions by the Supreme Court and other Federal courts and there has been no decision to the contrary.

NAILING ANOTHER FALSE PREMISE

The proponents claim that the decision in *United States* v. *Classic* (313 U. S. 299), is a decision to the contrary. It is obviously not such a decision. The meaning of a statement which they quote from the opinion of the Court is obscure, but it was not a part of or necessary to the decision, and could have no status higher than that of obiter dictum. In fact it does not attain that dignity.

The new point decided is that a congressional primary is legally a part of the election, so that an offense committed by inspectors at the primary, by falsely counting and certifying ballots cast therein, is punishable as it would have been if committed at the election. The Court also formally decides, following many of its previous decisions, that the right to vote at an election for Representative is a right secured to voters, qualified under State law, by the Federal Constitution. Justice Stone, now Chief Justice, writing the opinion of the Court, says:

"While, in a loose sense, the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the States (citing cases), this statement is true only in the sense that the States are authorized by the Constitution, to legislate on the subject as provided by section 2 of article 1, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article 1, section 8, clause 18 of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers'" (313 U. S. 315).

If the Justice had said that Congress did have power under section 4 to restrict State action on qualifications under section 2, the statement would have been an obiter dictum, for it was not required or relevant for decision of any issue in the case. It would also have been incorrect, as stated above, under all rules of construction as well as under common rules of morality and fair dealing and the judgment of the highest authorities on the Constitution. As it is, there is no more than an implication that Congress might have such power—very likely the result of inadvertence; for not one of the cases cited after the statement gives any support to an assertion of such power.

THREE INESCAPABLE BARRIERS

By way of summary, certain things are now plain and incontrovertible:

1. Without an amendment of the Constitution, it is impossible to deprive the States of their right to use tax-payment as a qualification for voting in national elections without first depriving them of the right to use it in State elections. The command of the Constitution in section 2 of article I will remain imperative; the qualifications used for the State purpose must be also used for the purpose of electing Representatives.

2. The States were assured in many different ways that if they ratified the Constitution, they would have the right and it would be their duty, to use in electing Representatives the same qualifications used by them in electing the larger branch of their legislatures. These assurances, given by the Federal Convention, itself, by many of its individual members, in the Federalist, in the ratifying conventions, and otherwise, were either right or they were wrong. If they were right, any attempt to deprive the States of that privilege or to release them from that duty, is legally impossible and absurd. If they were wrong, then ratification was obtained from the States by false representations, and the pledge given to the States was a delusion and a snare. But the moral aspect of the matter is plain. To take away the security on which the States relied in giving their ratification, would, without a Constitutional amendment, be a perfidious act on the part of the United States or Congress.

3. Without the giving of such assurances as were given, the Constitution could not and would not have been ratified by all the States, probably not by as many as the nine States necessary to bring it into operation.

"STRAW MEN" ARGUMENTS

The proponents contend also that poll-tax payment is not a "real" qualification in the sense in which that word is used in section 2. In their memorandum signed by one practicing lawyer and nine professors, they say (p. 10) that such payment has "no reasonable relation to a citizen's qualification to vote."

At the public hearing before the Senate Judiciary Committee, October 26, 1943, Mr. Pressman, for the proponents, suggested that the requirement of poll-tax payment was no more a "real" qualification than a rule allowing "only redheads" to vote. (Record, p. 45.) And in the report of that committee to the Senate, the majority appear to accept the suggestion; for it is said (pp. 1–2) that no one can claim that section 2 "would give a legislature the right to say that no one should be entitled to vote unless, for instance, he had red hair, or had attained the age of 100 years * * *" And then it is said (p. 2) that

poll-tax payment "has nothing whatever to do with the qualifications of the voter."

Of one thing I am quite sure, that no rational and intelligent person, whether counsel for proponents or Members of the Senate, ever put poll-tax payment in the same class with the possession of "red hair," or blue eyes, or being "100 years" old, without knowing, subconsciously at least, that he was being positively silly. It is safe to say that no legislative body in the world (and there have been some freak legislatures) ever passed a law making any of those things a qualification for voting. No one but a fool, or possibly a knave, would propose such a thing.

PLENTY OF PRECEDENTS

And yet in the past century or two many intelligent, honest and patriotic citizens in civilized nations have thought that a more satisfactory electorate was obtained by requiring voters to have some pecuniary stake in the Government and to contribute at least a small annual sum to its support. Many good citizens still think so, even in this country, North as well as South. I have talked with some of them. That is the only basis on which any proper requirement can be made, the obtaining of a fairly satisfactory electorate. For certainly many young persons would be excellent voters long before they are 21, and many newcomers would be good voters long before they have lived in the State or locality for the periods required, and many citizens would be satisfactory voters who have little education.

The 55 delegates in the Federal Convention were not fools, but they found every State with property or tax-payment qualifications or both; three States (N. H., Mass., and Va.) requiring payment of a poll tax; and by unanimous vote they put in the Constitution their consent that each State should make use of its qualifications then in force, or such as it might adopt in the future, whenever it had occasion to choose its Representatives in the Congress of the Union. They modified this consent only with the command that the State should use, for that purpose, the identical qualifications which it used in electing the larger branch of its own legislature. In course of the following century most, if not all of the States, adopted manhood suffrage, repealing the property and tax requirements. Whether they acted wisely or unwisely, is plainly a matter of judgment.

A word used in a command of the Constitution does not change its meaning with the lapse of time. In many cases the courts have inquired what meaning a word had in 1787–88 and have held that it should continue to have that meaning. In *Minor* v. *Happersett* (21 Wall. 162; 1874), in which a woman claimed the right to vote as a "citizen of the United States" in defiance of the laws of her State denying the suffrage to women, Chief Justice Waite announced (p. 178) the unanimous opinion of the Court that the Federal Constitution, including the fourteenth amendment, "does not confer the right of suffrage upon anyone"; and the Court found the State suffrage qualifications of 1787 very persuasive.

It has been asserted that the meaning of the word "commerce" has changed since 1787; but in fact the word still has the same meaning, although the ways of carrying on commerce have multiplied. If railroads, telegraph, and other now existing methods had then been known, they would have been included under the term "commerce."

QUALIFICATION WELL ESTABLISHED

Most if not all of the progressive nations outside of our own furnish conclusive evidence that free and democratic nations have considered qualifications based on ownership of property, or on payment of certain rentals, or on payment of taxes, to be reasonable and proper qualifications for the electoral franchise. In an article entitled "Vote and Voting" in the Encyclopedia Britannica (11th ed., vol. 28, 1911), describing "modern' 'suffrage systems, the writer mentions such qualifications as age, periods of residence, and ability to read and write, and then says (p. 216):

"But the most universal qualification of all is some outward visible sign of a substantial interest in the State. * * * This tangible sign of interest in the State may take the form of possession of property, however small in amount, or the payment of some amount of direct taxation."

Of Great Britain, it is said:

"In the United Kingdom possession of freehold or leasehold property of a certain value, or occupation of premises of a certain annual value, gives a vote."

A vote is also given to "the occupier of lodgings of the yearly value unfurnished of not less than £10."

NO REAL COMPARISON

The Encyclopedia Britannica (11th and 14th eds.) shows that in Great Britain (title "Parliament") these qualifications were repealed when the suffrage was extended to women, in 1918; that something similar happened in Holland in 1917, where formerly payment of "one or more direct taxes ranging from a minimum of one guilder" had been required; and that in Norway, in 1907, new tax-payment qualifications were made applicable to women only; and no further change is noted.

In Belgium in 1894 property and other qualifications were repealed and one vote was given to each male citizen at age 25. At 35, if married or widower with a child, he was given another vote upon payment of five francs of direct taxes. In the Britannica it is said that this system "has proved a success"; but in 1919 "unlimited universal suffrage from the age of 21 was introduced at the demand of the Socialist Party."

Can the qualifications now or recently in force in these countries, be put in the same class with the possession of "red hair"? A poll tax of one or two dollars per year is much less exclusive.

It has been very common, in local communities of the United States, to require voters to be owners of property or taxpayers in order to vote on proposals to spend money for public purposes.

The eminent English philosopher and political economist, John Stuart Mill, who was commonly known as the philosophical radical and liberal thinker, wrote a book published in 1861 entitled "Considerations on Representative Government," in which he stated his views on qualifications of voters. He favored a requirement of ability to read and write and to do a problem in "the rule of three." And although the people paid indirect taxes in buying tea, coffee, and sugar, Mill considered that sort of tax insufficient to qualify a person to vote, since it was "hardly felt." He recommended a direct tax in the form of a capitation (poll tax) levied on every grown person (p. 177).

In the most recent edition of the Britannica (14th, 1941, vol. 19), the author of the article on "representation" says that Mill's discussion of the subject "proceeds on high grounds which are still worth careful consideration."

It was unkind of this English radical and profound philosopher to have, as his preferred tax for qualification purposes, a poll tax. But will any rational person maintain that a "qualification" which seemed proper and highly desirable to John Stuart Mill "has nothing whatever to do with the qualifications of the voter?"

In the Encyclopedia Americana (1941, vol. 27, p. 467, United States), it is said:

"In the Philippines the voter must take an oath of allegiance to the United States and qualify either *as a taxpayer* or under an educational test." [Italics mine.]

It is true, then, that in our Pacific islands, under the jurisdiction of Congress, a tax-payment qualification exists now, or did before the war, being required of persons having little education. We are supposed to have conferred a very good system of government upon the Philippine people. Did we give them a phony qualification for voting?

It should now be evident that a qualification requiring payment of a poll tax in order to vote in State elections, is within the discretion of the people of a State in making their Constitution, or of the legislature in making the laws. I say: "in order to vote in State elections," because that is the only purpose for which a State can make qualifications. It cannot fix the qualifications for a Federal election, of Representatives or Senators. The Federal Constitution fixes those qualifications by its order (in sec. 2) that they shall be identical with the qualifications fixed by the State for election of one branch of its legislature.

A CONTRADICTORY ARGUMENT

Although the proponents maintain that poll tax payment is not a "real" or proper qualification for voting, they do not deny that a State has power to require it of persons voting in State elections. They distinguish the Breedlove case (302 U. S. 277) upholding poll tax payment as a qualification, on the ground that in that case a State election as well as a Federal election was involved. (See

statement of Mr. Pressman, October, 1943, record, p. 43 and Mr. Perry's statement, p. 67.) They think Congress has power to deal with Federal qualifications, although as a result they become not identical with those lawfully fixed by the State for election of its legislature. This, of course, cannot be done; the Constitution in section 2 forbids it.

Having shown that Congress has no power to regulate qualifications of voters, and that poll tax payment is a "real" and lawful qualification, I might logically bring this brief to an end at this point. But some of the arguments presented to the Senate committee appear to call for comment, and, especially, the character of some of the methods employed by certain lawyers and nonlawyers addressing the committee, requires attention.

MORE LOOSE CONSTRUCTION

We have already seen (p. 7, above) how Mr. Pressman, quoting a paragraph from the Federalist, omitted the final and most decisive sentence. As a lawyer, he must have known how serious a matter it is to suppress the unfavorable part.

I notice a similar transgression on the part of one of proponents' chief supporters, Mr. Irving Brant, whom they describe in their main brief as "an outstanding student of the Constitution, who is also a political philosopher." (P. 4 of pamphlet, The Case for the Constitutionality, filed by Mr. Padway October 25, at p. 18 of Record. Mr. Brant's statement at pp. 15–27 of pamphlet.) Mr. Brant and Mr. Pressman assume that Madison wrote No. 57 of the Federalist, but that number usually is ascribed to "Hamilton or Madison." At page 19 Mr. Brant says:

"* * * both in the phraseology employed and in the choice of alternatives, the purpose of Section 2 was revealed, and the purpose was to establish a broadly democratic base for Federal elections. Madison described the result to the people of America in No. 57 of the Federalist:

"'Who are to be the electors of the Federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. *The electors are to be the great body of the people of the United States*'." [Italics Mr. Brant's.]

Like Mr. Pressman, he omits the last sentence: "They are to be the same who exercise the right, in every State, of electing the corresponding branch of the legislature of the State." In that sentence the author made it plain that he considered the "electors of the most numerous branch" actually to constitute "the great body of the people," and he recognized this rule in section 2 as the final answer to his question, "Who are to be the electors?"

Mr. Brant refers to the fact that the delegates chose "the most numerous" rather than "the least numerous branch." The latter would have given to "the electors" of the Senate the privilege of voting for Representatives. In only two States (New York and North Carolina) did this make any difference in 1787. (Francis N. Thorpe, Constitutional History of American People, I, 93–97; hearing November 2, 1943, 101–103.)

CORRECTING THE RECORD

But when he speaks of the "phraseology" of section 2 as assuring a "broadly democratic base" for the future, he is making the section say something it does not say and does not mean. It left the States free either to restrict or to extend the right of suffrage, a power which they have freely used. The Constitution contains no "declared purpose" with respect to suffrage. In No. 52 of the Federalist (Hamilton or Madison), the author says that section 2 "must be satisfactory to every State, because it is conformable to the standard already established, or *which may be established*, by the State itself." [Italics mine.] If Mr. Brant had not omitted and suppressed that last sentence, his readers might have been able to appraise more correctly what he says about the "purpose of the framers of the Constitution." Two more statements may be quoted as typical:

"The recorded debate shows that the purpose and expected result was to citizens should be allowed to vote." (p. 18).

"No man in that convention believed that in writing article I, section 2, they were simply leaving it to the discretion of the States whether few or many citizens should be allowed to vote." (p. 19).

As already provided, the debate shows nothing of that character (pp. 3, 6–7), and these are ridiculous assertions. They are also irrelevant. When a power is granted or, as in this case, is left unlimited by restrictions, no "expectation"

or "belief" as to the manner in which the power will be exercised, can have any effect upon its existence.

MR. BRANT'S PHILOSOPHY

Mr. Brant, not being a lawyer, evidently takes the liberty of stating the law just as he would like to have it. Specific language or positive commands in the Constitution mean nothing to him. He maintains that it is the "true substance and purpose" of any such provision, as a part of the Constitution considered as "an organic whole," which determines the effect it shall have. If "an affirmative clause" has been put in the Constitution, he asserts "the power and duty" of the Federal government (Congress) to determine the sense in which it shall be given effect. (See p. 17.) Since many "clauses" require Congress to do or to refrain from doing certain things, it is easy to see one of the practical results of his philosophy.

OTHER PHILOSOPHERS

Many of the proponents and their counsel have much in common with Mr. Brant. Since section 2 stands in their way, they proceed with one accord to attack and destroy it. Because they like Section 4, they magnify and build it up. They make section 2 mean, and actually to say, just the opposite of what it does say in the plainest of words. For example, on July 30, 1942, Mr. Theodore M. Barry, a lawyer of Cincinnati, addressed the subcommittee (record, p. 344) and spoke of—

> a superior power on the part of Congress to correct any abuses which would violate and interfere with *the broad democratic principle of universal suffrage, which is provided in Article I, Section 2, wherein the people without limitations are given the right to elect their Representatives in Congress.* [Italics mine.]

How any sane and intelligent person can read section 2 and then make these assertions, is hard to understand. Section 2 neither says nor means anything in regard to "universal suffrage," and it places very strict "limitations" upon the persons who may participate in the election of Representatives. It makes membership in that group depend on membership in the State group entitled to elect the larger branch of the State legislature. To assert that it says anything else, is to misrepresent one of the clearest and most explicit sentences in the Constitution.

LAWYER AND PROFESSOR SPEAKS

But perhaps first prize for ridiculous and picayunish arguments should go to Mr. James T. Morrison, who, proponents say, "has long been professor of constitutional law in Tulane University" (p. 4 of pamphlet. His statement follows Mr. Brant's, pp. 28–42). As already stated (pp. 3–4), the draft of section 2 reported by the Committee of Detail, was:

"The qualifications of the electors shall be the same, from time to time, as those of the electors, in the several States, of the most numerous branch of their own Legislatures."

Its form, after revision by the Committee of Style and Arrangement:

"The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

Obviously, the meaning is precisely the same, but the "style" was improved by the change of wording and the brevity. The difference in meaning, if any, is no more than that between "tweedledum and tweedledee." Yet Mr. Morrison considers (pp. 29–31) the omission of the words, "shall be the same, from time to time," to be "highly significant." He is suspicious of an undisclosed "compromise," adopted to placate Gouverneur Morris, who had, in arguing for his proposed substitute, objected to the committee's proposal on the ground that "it makes the qualifications of the National Legislature depend on the will of the States, which he thought not proper."

Mr. Morrison does not point out any real change in meaning, but hints darkly of lurking doubts and fears in the minds of the delegates and finally puts his charge of delegate duplicity into the assertion (p. 31) that "the founding fathers did not intend (by sec. 2) to surrender completely to the states the fundamental democratic power of determining the qualification of voters." In other words, the fathers definitely said one thing and meant another. Assuming they were

hypocrites, though we know they were not, they were of course bound by what they said and wrote and asked the States to ratify, not by what they meant or thought. Of course Gouverneur Morris did not have to be placated. When he objected to section 2, he was talking for his own plan; and when that plan was defeated, seven to one, he joined in adopting the committee's provision, which was approved unanimously, nem. con. (5 Ell. Deb. 389).

SPIKING AN ABSURDITY

In support of his claim that the fathers did not mean what they represented that they meant, Mr. Morrison cites (pp. 29–30) the Convention's refusal to adopt the proposal that Representatives "should be elected in such manner as the legislature of each State should direct," a proposal very different from section 2, yet rejected only by 6 States to 4. At page 31 he says:

"* * * the determination of the qualifications of voters is a power unquestionably exercised by the Government of the United States in article I, section 2 of the Constitution itself. The very exercise of the power by the Constitution proves conclusively that it is one 'vested by this Constitution in the Government of the United States.'"

This statement makes no sense. A constitution does not "exercise" powers. When section 2 was proposed and was being ratified as a part of the Constitution, there was no Government. On final ratification and formation of the Government under the Constitution, that Government found section 2 in force and was bound by it. It left the power to fix qualifications of electors of State officers in the possession of the States, where it had been since 1776. It adopted, for electors of Representatives in each State, the qualifications which the State had fixed, or might fix in the future, for electors of one branch of its Legislature. It commanded the State to use these qualifications in electing its Representatives in Congress. That was a limitation, not a grant of power. Section 2 did not grant any power to anyone. It left the States with the power they had, except for this limitation.

I cannot give space for many examples of this character. But I must refer to Mr. Morrison's statement (pp. 231–232), where he quotes several paragraphs from No. 59 of the Federalist, in which Hamilton was defending Section 4, the quotation ending as follows:

"Nothing can be more evident than that an exclusive power of regulating elections for the National Government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say that a neglect or omission of this kind would not be likely to take place. The constitutional possibility of the thing, without an equivalent for the risk, is an unanswerable objection. Nor has any satisfactory reason been yet assigned for incurring that risk." (hearing of July 30, 1942.)

Of course Mr. Morrison knew that Hamilton was writing about regulations under section 4, dealing with "times, places and manner of holding elections," and said not a word concerning qualifications; that he merely argued the necessity for power in Congress to provide for elections of Senators and Representatives, in case the States failed in that duty, and said nothing about Section 4 giving Congress power to deal with qualifications, and implied nothing. Yet Mr. Morrison adds in a footnote the following comment:

"It is true that in the following number (Federalist No. 60), Hamilton expressly states that prescribing qualifications of electors 'forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulation of the times, the places and manner of elections.' But this assertion is so completely at variance with the above quoted statement, that it can be considered only as dictated by the political exigencies of the moment." (*For Hamilton's statement, see p. 8*). [Italics mine.]

It is perfectly obvious that there was no variance whatever, between Hamilton's statement in No. 60 and his previous statement in No. 59. Seldom has there been a more unfair and indefensible assertion than this footnote impugning the integrity of a man whose concern for integrity and honor amounted almost to a fault. And what he said in No. 60 was also said by Rufus King in the Massachusetts Convention, by James Wilson in the Pennsylvania Convention, and by William R. Davie in the North Carolina Convention and confirmed by statements of Wilson Nicholas in the Virginia convention and John Steele in the North Carolina convention (pp. 8–10).

BASED ON SURMISE

And what does he offer as proof? Only his own surmise. Calling attention to the violent objections made to section 4, and to Hamilton's statement in No. 59 in regard to regulations under that section, he says (p. 231):

"Certainly such a hue and cry was not raised over whether the Federal Government had the power to open the polls at 7 in the morning rather than at 8, or the power to declare that elections should be held on the first Tuesday after the second Monday of November, or the 31st of May, or even whether the election should be held in the precincts, counties or special districts, or where not; and certainly Hamilton himself was not thinking purely in the terms of such mechanical devices when he declared the importance of the provisions to be as follows":

Then follows the quotation from No. 59, beginning as follows:

"I am greatly mistaken, notwithstanding, if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition, that *every government ought to contain in itself the means of its own preservation.*" [Italics Mr. Morrisons'.]

The only reason given by Hamilton, or probably by anyone, for thinking the preservation of the Federal Government might depend upon its power under section 4, was that, if it were lacking, any State might interfere with the operations of the Government by failing to provide for election of its Representatives, and a combination of several States to refrain from electing Representatives or Senators or Presidential electors, might "annihilate it" (Quotation, p. 20). This danger seemed more real and disturbing on account of the conduct of Rhode Island in refusing to send Representatives to the Congress of the Confederation. There is no intimation anywhere that power to regulate the "manner of holding elections" was needed in order to enable Congress to interfere with qualifications, governed by section 2.

WHAT HAMILTON MEANT

But in this quotation it appears that Hamilton referred to "an election law," which Congress might enact under section 4. What Mr. Morrison contemptuously mentions as "mechanical devices," was a complete election law regulating everything pertaining to elections of Representatives, and of Senators since 1913, except the qualifications of voters. The election law of the State of New York is now a book of more than 300 pages. Congress has not exercised this effective power to regulate the entire process of election, including primaries. It was what Hamilton was writing about, as of 1788, not the "mechanical" items mentioned by Mr. Morrison.

Guilty of inexcusable misrepresentation in his effort to build up section 4, and having failed, Mr. Morrison does no better in his attempt to destroy section 2. First, he holds up the bogy of Colonial religious qualifications, 1631 to 1664 in Massachusetts, and of religious persecutions and exclusion from political rights in various Colonies. At page 32 he says:

"Certainly it cannot be suggested that the Founding Fathers meant to perpetuate such a theocratic system, or to make it possible for it to gain a foothold or to endure as a result of individual State action."

The fathers were well informed and knew that religious qualifications had long been on the way out, and were then out with the exception of South Carolina, where recognition of God and future rewards and punishments was required. (Francis N. Thorne, citation above.) They had no fears on this subject; it was not mentioned. Continuing, page 32:

"Indeed, the convention was already split on the question of property qualifications by pressure from the rising 'mechanics' and 'merchant' class, who were opposed to the property qualification. The record of the convention makes it clear that it was in order not to disturb the delicate balance achieved in the several states between the proprietary and 'mechanics' classes that the compromise incorporated in article I, section 2, was hit upon and adopted."

There is hardly a single correct statement in this paragraph. No proof is offered from the convention record or otherwise. There was no "pressure;" the convention was secret body, to which outside "classes" had no access. There was no "split," only a brief difference of opinion, soon resolved by overwhelming defeat of one proposal and unanimous adoption of the other.

TO GAIN RATIFICATION

The reason for the adoption of section 2 was that it would please the States and help to obtain ratification, and also that the delegates were willing to trust

the States, with this restriction, that they should treat the Federal Government just as they treated themselves in the matter of qualifications of voters. All of this I have already proved from the record and otherwise. Continuing (32-33):

"It represents an acceptance for the time being only, of the status quo; it does not even suggest that the adjustment made shall be permanent; indeed, it was purposely designed to permit of change; and certainly it does not even imply that only the individual States can change it."

The answer to these quibbling statements may be found by anyone who will read section 2. They call for no further answer.

All of the Founding Fathers who spoke of the possibility of Congress having power to prescribe qualifications, were strongly opposed to it. And those who wrote in the Federalist, or spoke in the State conventions, thought the provision in section 2 was the best that could have been chosen by the Federal convention.

The "points" made for the proponents and the persons making them are so numerous that it is impossible to cover all of them. With respect to persons, I have for the most part given attention to the arguments and methods of those whom proponents appear to consider most important. But some misleading points still remain.

"PURITY OF BALLOT"

"Purity of the ballot" is one of the slogans of this movement to "abolish poll taxes," especially emphasized by Mr. Morrison (pp. 35-37). If there is fraud and corruption in connection with Federal elections, Congress should do something about it if the regulations by the States cannot be made effective. But proponents are demanding action in a field in which Congress has no jurisdiction and are neglecting the field in which it has complete jurisdiction. The chief way in which corruption is alleged to be caused by the poll tax, is the payment, by unscrupulous persons, of the taxes levied upon the poor, for the purpose of controlling their votes. This and perhaps other evil practices are of the sort commonly dealt with by enforcement of wise election laws, and Congress has full power to regulate "times, places, and manner" of holding Federal elections by enacting a complete election law or such part as may be necessary.

PROPONENTS' AMMUNITION LOW

In Mr. Pressman's statement (October 26, 1943, p. 35) he says there are many specific instances in which State laws are passed and held valid until Congress, having general jurisdiction of the subject, makes a law covering the same ground and the State law ceases to be valid. He cites as an example the State laws making "safety regulations affecting railroads" in interstate commerce, which became ineffective when Congress passed a general law. But every lawyer should know that such an argument is improper with respect to the qualifications of voters, for the obvious reason that the Constitution gave Congress no jurisdiction over qualifications, as it did give Congress complete jurisdiction to regulate interstate commerce.

There is an argument which has been used by several persons, especially by Mr. Benjamin Algase, a New York lawyer representing the National Lawyers' Guild, and which is so inept as to excite wonder as to the reason for its use. The process of voting for Senators and Representatives is dignified with the high-sounding name "Federal function," and it is alleged that a poll tax is a tax on that Federal function, and therefore unconstitutional. If that is true, then, of course, every qualification for voting, based on payment of any sort of tax, in Federal elections from 1787 to the present time, was unconstitutional. It is not strange that no one thought of this before?

But Mr. Algase and some others actually cite as a precedent *McCulloch* v. *Maryland* (4 Wheaton 316), in which it appeared that the Federal Government was using the Bank of the United States as a financial instrumentality; and that the State of Maryland imposed a tax upon the business done by a branch of that bank located in Baltimore. When we compare that with the simple act of people voting for a Congressman, it will be plain that Marshall's decision has no more to do with our controversy than Taney's in the Dred Scott case (hearing October 13, 1942, p. 515).

But, of course, no State ever has made or can make tax payment a qualification for voting in a Federal election. It prescribes that and other qualifications solely for its citizens voting for members of its own legislature. It is the Federal Constitution which makes that and other State qualifications applicable to the election of Representatives, and later of Senators. So the State, by fixing qualifications, does not and cannot tax the right to vote in a Federal election.

THE ANTI-POLL-TAX BILL—TRICKY AND DECEPTIVE METHODS AND IMPROPER ARGUMENTS DISCLOSED

By Jesse F. Orton, member of the New York Bar

The anti-poll-tax bill, already passed by the House and now pending in the Senate, provides that the requirement that a poll tax be paid as a prerequisite to voting at primaries or other elections for Federal officers "is not and shall not be deemed a qualification" within the meaning of the Constitution.

It is desirable that not only the Congress but the general public know what is behind the persistent effort to force this measure into law, and what sort of methods are being used to secure its enactment. Many sincere persons have been led to favor the proposal because of representation that Congress does actually have power to enact such a law, and because of the deceptive and misleading arguments used by certain proponents of the bill most active in its behalf.

The fact is—and there is no room for doubt—that what the bill is intended to accomplish is not within the power of Congress. Probably no proposal for legislation of this character had ever been made, or even thought of, until the present campaign was launched to abolish the poll-tax qualification for voting. The Senate has before it a five-page "memorandum," part of the main brief for the bill, submitted by its proponents. That "memorandum" reveals an argument so shallow and irrelevant as to suggest that it was written by persons either incompetent or unacquainted with the subject. The authors are not disclosed, but from the record of the hearings (pp. 350–354) it seems clear that none of the signers (a New York lawyer and nine law professors) had any part in its composition. It has been answered in my earlier brief published in March 1944.

None of the 10 signers appeared at committee hearings on the bill. The real leading counsel for proponents of the measure and for its introducer, Senator Pepper, were Mr. James J. Morrison, who was allowed 15 pages in the main brief; Mr. Irving Brant, allowed 13 pages, and Mr. Lee Pressman, who filed a separate brief and made the principal argument, October 26, 1943. Messrs. Brant and Morrison appeared at hearings as early as July 30, 1942, and Mr. Brant appeared September 23, 1942, for further testimony and argument.

These three leading counsel *have abused the confidence of the well-meaning sponsors and supporters of the bill,* who have thus been *misled and deceived by the use of improper methods, by untruthful statements concerning matters of fact, and by a tricky and deceptive manner of argument.* To a disclosure of these *methods* and a substitution of truthful and correct statement for the false and deceptive, this supplemental document is largely devoted. But first it is necessary to give the factual background of this effort to force through Congress a new and unprecedented species of legislation, which, if successful, will be *a dangerous sabotaging of the Constitution,* with obvious evil consequences and no doubt many not now foreseen.

The only section of the original Constitution in which the vital subject of suffrage, or qualifications of voters, was mentioned, was section 2 of article I:

"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.*" [Italics mine here and throughout this document unless otherwise stated.]

No mention of the subject is made in the first thirteen amendments, or in any of the others except the *fourteenth, fifteenth, seventeenth,* and *nineteenth.* The *seventeenth* makes the rule in section 2 applicable to the election of Senators by the people after its adoption in 1913. The other three—*fourteenth, fifteenth,* and *nineteenth*—impose certain limitations of the power of the States to fix qualifications of electors of members of the legislature and other State officers, forbidding discrimination on account of "race, color, or previous condition of servitude," or of "sex," and providing (in the *fourteenth*) for a decrease of representation in Congress in case a State denies the right of suffrage on grounds other than crime, a provision never enforced and perhaps not enforceable.

It will be noted that under section 2, and the identical provision in the seventeenth amendment, *the States have never had any power to prescribe qualifications of persons voting in Federal elections for Representatives or Senators. The Federal Constitution does that* by adopting the qualifications fixed by the State *for State use* in electing members of its legislature.

When a provision in the Constitution is definite, specific, and imperative, as in section 2, there is obviously no way of changing it *but by an amendment which*

is itself definite and specific. Any contention that the rule in section 2 can be changed by statute or by an amendment not specifically referring to "qualifications" is ridiculous.

Besides section 2 concerning qualifications, there was a section dealing with Federal elections with respect to other matters, section 4, adopted *1 day later than section 2:*

"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 choosing Senators."

This section also was very important, requiring each State to pass an "election law" fixing "times, places, and manner" for election of Senators (by the legislature) and of Representatives (by the people), but reserving to Congress power to change such regulations or make new ones, with the exception stated.

Mr. Pressman and Mr. Morrison are lawyers, and a current legal directory gives the birth year of the former as 1906, and of the latter, 1910. Mr. Pressman practiced law in the city of New York and since 1936 has been general counsel for the Congress of Industrial Organizations (CIO). Mr. Morrison is in the practice of law at New Orleans and formerly was a professor of law in Tulane University of Louisiana. Mr. Pressman is, and Mr. Morrison has been, a member of the national executive board of the *National Lawyers Guild*, which has filed a brief in support of the bill. Mr. Brant is not a lawyer but is described by proponents as a "political philosopher." His birth year is 1885 and he has had extensive experience as editor and editorial writer for newspapers in the Middle West.

All the States were greatly pleased with section 2, making State law conclusive in regard to Federal suffrage or qualifications, and it was a great help in obtaining ratification of the Constitution. *But few if any of the States were pleased with section 4*, giving Congress ultimate control of everything pertaining to Federal elections except qualifications of electors; *and it almost prevented ratification by some of the larger States*, seven States asking for its prompt amendment.

Now the proponents of this bill do their very best, or worst, *to belittle and disparage section 2 and to magnify and commend section 4.* In many devious ways they try to make out that *section 2 does not mean what it says—was not intended to mean what it said.* The *arrogance* and *impudence* of this contention are almost beyond the power of words to describe. It is as if one should contend that a person may be convicted of treason on the testimony of *one* witness when the Constitution says *two*, or of two witnesses to *different overt acts* when the Constitution says *the same overt act.* But, it seems, we must *explain* and *argue* that the Constitution *means what it plainly says.*

Thus Mr. Morrison, speaking of section 2, says:

"It represents an acceptance for the time being only, of the status quo; it does not even suggest that the adjustment made shall be permanent; indeed, it was purposely designed to permit of change; and certainly it does not even imply that only the individual States can change it." (Main brief, p. 32.)

Perhaps "lunacy" would be the right word for it, if there were not so much *method* in its madness. That a lawyer could speak in this manner of a basic provision, the only one relating to suffrage, is amazing. *Not one of the four sentences quoted is a truthful statement.* Even such a fundamental provision as section 2 may be changed, but only in the manner provided in the Constitution itself; and the fact that it is in the Constitution *is conclusive evidence that it was intended to be permanent.* It need not "suggest" that fact.

In a more coherent and rational form, Mr. Brant, Mr. Morrison, and others contend that the words "manner of holding elections," in section 4, give Congress power to deal with "qualifications," although on the preceding day the convention had adopted section 2, establishing a definite rule on that subject. If we assume that, in the absence of section 2, authority to prescribe the "manner of holding elections" *might* include power to fix qualifications, it will still be obvious, *by every rule of construction or common sense*, that use of the word "manner" in section 4 cannot nullify or impair the force of section 2, completely disposing of the subject of qualifications. Although the language is clear, we also know that the delegates expressly avowed that section 2 was designed to please the States *and make them willing to ratify the Constitution*, and we know that leading delegates assured the American people that the section meant what it said. (Earlier brief, pp. 8–10.)

No body of sane and honest men, having adopted on Wednesday a definite rule for qualifications, would come back on Thursday to adopt a *section that would*

secretly mangle and destroy what they had done on Wednesday unanimously and after full debate. *Proponents are making fools of the founding fathers*, or, if not fools, then knaves; for it would have been grossly dishonest *to submit section 2 as a bait for ratification* if it was not intended to mean just what it said.

POINT 1. MADISON MISQUOTED

Mr. Pressman and Mr. Brant have made desperate attempts to find statements made by founding fathers, showing that section 2 was not considered *literally binding on the Federal Government*. Whenever the meaning of a section of the Constitution is uncertain, it is proper and useful to inquire what the founding fathers thought or said about it, if reliable proof has come down to us. But if the meaning is not uncertain, *it makes no difference what they thought or said;* the only possible meaning for us is *what the Federal and State conventions said in the Constitution itself*. It is obvious that the meaning of the suffrage rule in section 2 is perfectly certain.

Mr. Pressman and Mr. Bryant discovered a paragraph in No. 57 of *the Federalist* consisting of four sentences. Concluding that the first three were useful to them but the fourth was not, they included the three in a quotation *but omitted and suppressed the fourth*. The quotation *represented* to their readers or hearers that Madison expressed an opinion *very different from the opinion which he did express. It was a false representation*, made to induce a certain attitude and action on the part of the Judiciary Committee, the Senate and the public. (My earlier brief, 7, 16; record, October 1943, 38, 49; proponents' main brief, 19.)

POINT 2. MADISON'S STATEMENT MISAPPLIED

Mr. Pressman and Mr. Brant have found another statement by Madison in which, they assert, he expressed the opinion in 1788 that the Constitution gave Congress power to legislate with reference to qualifications of voters. During Mr. Pressman's testimony and argument on October 26, 1943, Senator Murdock asked him a long hypothetical question, to which he replied:

"Senator, in addition to my answer * * *, let me give you the words of Mr. Madison, who is a far greater authority than I. James Monroe wrote to Mr. Madison asking that very question and, on June 14, 1788, here is what Mr. Madison replied: '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'" (record, 56).

In order to understand a sentence, it is usually helpful, often necessary, to have the context. It is also convenient to know *what the author was talking about*. Mr. Pressman did not disclose what Madison was talking about, but said he was answering the "very question" which the Senator had asked *him*. *The questions were not the same, not even similar*. The Senator's question was about qualifications of voters under section 2, not about regulation of "times, places, and manner" under section 4. Monroe's question was:

"Why Congress had an ultimate control over the time, place, and manner of elections of Representatives, and the time and manner of that of Senators, and also why there was an exception as to the place of electing Senators" (3 Elliot's Debates 366–367).

Mr. Pressman's statement that Monroe asked the question by letter, was more fiction; it was asked and answered orally during the debate in the Virginia ratifying convention, the answer taking 38 lines and the quoted sentence beginning on line 18.

Since the sole subject of question and answer was the rule in section 4 concerning the power of Congress over "times, places, and manner," *it is obviously unreasonable* to conclude that Madison's reference to a possible deprivation of "the right of suffrage" had anything to do with qualifications, the subject of section 2. Moreover, Madison's answer shows that the sentence quoted by Mr. Pressman was *pertinent and applicable* to the discussion of section 4. Placing that sentence in its context, we have Madison's complete reply:

"Mr. Chairman, the reason of the exception was that, if Congress could fix the place of choosing the Senators, it might compel the State legislatures to elect them in a different place from that of their usual sessions, which would produce some inconvenience and was not necessary for the object of regulating the elections. But it was necessary to give the general government a control over the time and manner of choosing the Senators, to prevent its own dissolution.

"With respect to the other point, it was thought that the regulation of time, place, and manner of electing the Representatives should be uniform throughout the continent. Some States might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. Elections are regulated now unequally in some States, particularly South Carolina, with respect to Charleston, which is represented by 30 members.

"Should the people of any State by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the general government. (Sentence quoted.)

"It was found impossible to fix the time, place, and manner of the election of Representatives in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the State governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity and prevent its own dissolution.

"And, considering the State governments and general government as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former, and the general regulations to the latter. Were they exclusively under the control of the State governments, the general government might easily be dissolved. But if they be regulated properly by the State legislatures, the congressional control will very probably never be exercised. The power appears to me satisfactory, and as unlikely to be abused as any part of the Constitution."

Mr. Brant, at the hearing of September 23, 1942, quoted Madison's entire reply and argued, as Mr. Pressman later assumed (October 26, 1943), that Madison intended to include a deprivation caused by a change in the qualifications of voters. They rely especially on the phrase, "by any means."

This is proved to be a false conclusion both by what Madison said and by the circumstances under which he was speaking. He gives warning twice of the danger that the Federal Government might be dissolved, asserting that it was necessary for that Government to have power to control elections of both Senators and Representatives in order to prevent such dissolution. Hamilton, in No. 59 of *The Federalist*, had spoken more in detail:

"* * * an exclusive power of regulating elections for the National Government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it by neglecting to provide *for the choice of persons to administer its affairs*."

Madison, Hamilton, and other farsighted men recognized the possibility that two or more State governments might join in refusing or neglecting to provide for election of Senators and Representatives, and thus might prevent normal functioning by the Federal Government. But it was also recognized that such a situation might arise in one or more States from causes *beyond the control of a State government*, such as invasion, rebellion, pestilence, etc. Whatever the cause of failure might be, the general government should have power to provide for the required elections and thus to prevent "the people of any State" from being "deprived of the right of suffrage" *by any means*.

If a State had no Senators or Representatives in the Nation's Capital, its people might well be said to be "deprived of the right of suffrage." That is obviously the sense in which Madison used this expression; and the words "by any means" indicated various causes such as those I have mentioned.

Why are Mr. Pressman and Mr. Brant so eager to take 1 sentence of 29 words out of the middle of Madison's long answer (340 words relating solely to explanation and defense of sec. 4), and to insist that this sentence was intended also as an expression of his opinion in regard to section 2, an entirely different matter? *Is that an honest thing to do, or is it a tricky and unscrupulous thing?*

In the debate on adoption of section 2 by the Convention, Madison was one of two delegates who spoke positively *against leaving the regulation of suffrage to Congress;* and he was one of the first delegates to announce that he favored placing in the Constitution a provision on suffrage that *would be pleasing to the States*, by which the new Constitution must be ratified (5 Elliot's Debates 387).

There is other important evidence. Madison was a most active and influential advocate of ratification in the Virginia convention, in which section 2 was explained and defended by Wilson Nicholas, who opened the debate on June 4, 1788. His praise of section 2 was unstinted. He said:

"If, therefore, by the proposed plan, it is left uncertain in whom the right of suffrage is to rest, or if it has placed that right in improper hands, I shall admit that it is a radical defect; but in this plan there is a fixed rule for determining

the qualifications of electors, and that rule the most judicious that could possibly have been devised, because it refers to a criterion which cannot be changed. *A qualification that gives a right to elect representatives for the State legislatures, gives also, by this Constitution, a right to choose representatives for the general government*" (3 Elliot's Debates 8).

This statement of the "most judicious" rule and an unchangeable "criterion" satisfied the Virginia convention, as it had satisfied many others. *No objection was made by Madison or any other delegate.* Madison allowed the convention to ratify the Constitution in complete reliance upon Nicholas' statement. If he did not believe it and accept it for himself, he was a contemptible deceiver. *But Madison was no deceiver.* (See also Madison's report of the debate on sec. 4; 5 Elliot's Debates 401-402.)

POINT 3. A CURIOSITY IN CONSTITUTIONAL LAW

Mr. Morrison's efforts proceed along different but no less inexcusable lines of argument and statement of fact. The National Lawyers Guild's statement that he is an "outstanding constitutional lawyer," is evidently an exaggeration. In proponents' main brief he says:

"* * * the determination of the qualifications of voters is a power unquestionably exercised by the Government of the United States in article I, section 2, of the Constitution itself. The very exercise of the power by the Constitution proves conclusively that it is one 'vested by this Constitution in the Government of the United States'" (p. 31).

This is obviously sheer nonsense and evidence of anything but ability in constitutional law. *A constitution does not and cannot exercise a power;* it is a mere written instrument, describing and establishing a government and *conferring power upon certain officials or bodies* who later may exercise the powers conferred. The situation was this:

When section 2 was proposed and ratified as a part of the Constitution, *the new Government was not in existence.* On final ratification and formation of a government *under the Constitution*, that Government found section 2 *in force and was bound by it.* It left the power to fix qualifications of *electors of State officers* in the possession of the States, where it had been since 1776. *It adopted, for electors of Federal Representatives in each State*, the qualifications which that State had fixed, or might fix in the future, *for electors of one branch of the State legislature;* and it commanded that these qualifications be used *in electing Representatives in Congress from that State. It did not confer any power upon anyone*, except that it provided for election of Representatives by the people. It left the States with no discretion whatever; *they must use the same qualifications* in the Federal election, which they had adopted for use *in the State election.* They were to treat the United States the same as they treated themselves.

POINT 4. WAS HAMILTON A PREVARICATOR?

Mr. Morrison, in his joint role of witness and attorney before the subcommittee of the Senate Judiciary Committee, July 30, 1942, *achieved the rather unique distinction* of calling Alexander Hamilton a liar. History is emphatic in its verdict that Hamilton was quite particular in matters concerning honesty and integrity; in fact it might almost be said that personal integrity was one of his hobbies. But Mr. Morrision finds that what Hamilton said in No. 60 of *The Federalist* was "completely at variance" with what he had said in No. 59. These numbers were both devoted to explanation and defense of section 4. In No. 60, speaking of the alleged danger that "the wealthy and well born" would be favored in regulations by Congress with respect to the "places * * * of holding elections," Hamilton sums it all up by saying:

"The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulation of the *times*, the *places*, the *manner* of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the Legislature" (Congress). [Italics his.]

This is a knock-out blow to Messrs. Morrison, Pressman, Brant, and all other supporters of this sinister attempt to destroy our Constitution. *Those who still make the excuse of ignorance and good intentions, had better inform themselves.*

I do not know of any supporter of the bill, except Mr. Morrison, who has even mentioned this statement by Hamilton, and he mentions it only in a footnote (record, 232), along with a slanderous statement concerning the author. After quoting three paragraphs from Hamilton's statement in No. 59, he says:

"It is true that in the following number (Federalist No. 60), Hamilton expressly states that prescribing qualifications of electors 'forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulation of the times, the places, and manner of elections.' *But this assertion is so completely at variance with the above-quoted statement, that it can be considered only as dictated by the political exigencies of the moment.*"

There is not the slighest "variance" with anything in No. 59; but I will quote the three paragraphs quoted by Mr. Morrison:

"I am greatly mistaken, notwithstanding, if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition, that *every government ought to contain in itself the means of its own preservation.* Every just reasoner will, at first sight, approve an adherence to this rule, in the work of the Convention; and will disapprove every deviation from it which may not appear to have been dictated by the necessity of incorporating into the work some particular ingredient, with which a rigid conformity to the rule was incompatible. Even in this case, though he may acquiesce in the necessity, yet he will not cease to regard and to regret a departure from so fundamental a principle, as a portion of imperfection in the system which may prove the seed of future weakness, and perhaps anarchy.

"It will not be alleged, that an election law could have been framed and inserted in the Constitution, which would have been always applicable to every probable change in the situation of the country; and it will therefore not be denied, that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded, that there were only three ways in which this power could have been reasonably modified and disposed: That it must either have been lodged wholly in the National Legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with reason, been preferred by the Convention. They have submitted the regulation of elections for the Federal Government, in the first instance, to the local administrations; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

"Nothing can be more evident, than that an exclusive power of regulating elections for the National Government, in the hands of the State legislatures, would leave the existence of the *Union* entirely at their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say, that a neglect or omission of this kind would not be likely to take place. The constitutional possibility of the thing, without an equivalent for the risk, is an unanswerable objection. Nor has any satisfactory reason been yet assigned for incurring that risk." (Record, 231–232; also main brief, 33–34. Copied here from the sesquicentennial edition; Mr. Morrison's quotation has many errors.)

In these quoted paragraphs, as well as the rest of No. 59 and the whole of No. 60, *Hamilton was talking about section 4*, dealing with regulation of "times, places and manner" of holding Federal elections, and *saying nothing about section 2 or qualifications*, except to explain (in No. 60) *that section 4 gave Congress no power over qualifications*, but "expressly restricted" its authority to regulation of "times, places, and manner," qualifications being "defined and fixed in the Constitution" and "unalterable" by Congress, *as had been "remarked upon other occasions." To anyone who can read and think honestly*, it will be obvious that there was *no "variance" or contradiction whatsoever* between this explanation and anything in No. 59.

It should also be noted that if Hamilton was a liar, so were many other distinguished statesmen who in 1787–88 were making similar statements; for example, Rufus King (2 Ell. Deb. 49, 51), James Wilson (Ib. 438–439), Wilson Nicholas (3 Ell. Deb. 8), John Steele and William R. Davie (4 Ell. Deb. 59–62, 71). (Earlier brief, 8–10.)

POINT 5. ANOTHER WAY TO DESTROY SECTION 2

Mr. Morrison also contends that section 2 does not mean what it says, but he employs a method all his own. That section, as reported by the Committee of Detail and unanimously adopted by the Convention August 8, 1787, was:

"The qualifications of the electors shall be the same, from time to time, as those of the electors, in the several States, of the most numerous branch of their own legislatures."

As it finally appeared in the Constitution, it was:

"The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

The change in wording was made by the Committee of Style and Arrangement, as appears from its report of September 12. (*Formation of the Union*, Government Printing Office, 1927, p. 702.) Evidently, the "style" was improved, *but the meaning was the same.* Although the words, "shall be the same, from time to time," were exchanged for other words and the number reduced from 31 to 21, *it was plain that persons voting for Federal Representatives must have the qualifications then, at the time of the election, required* of persons voting for members of the larger branch of the legislature. It was impossible for the new form to have any other meaning; if the "qualifications requisite" were not to be those in force *when the Federal Representative was to be elected*, what would or could be their date? Mr. Morrison has suggested no other date, for the good reason that *none would make any sense or be consistent with the wording of the rule in the Constitution.*

But he constantly refers to the "omission" of those eight words as "highly significant." He hints darkly of lurking doubts and fears in the minds of the delegates, also of an imaginary "compromise" for the purpose of placating Gouverneur Morris, who opposed the report of the Committee of Detail and moved to limit the right of suffrage to "freeholders." After long debate the motion was defeated, 7 States to 1 (Delaware), and the report of the Committee *was adopted without a dissenting voice* (5 Ell. Deb. 389).

There can be no *bona fide* difference of opinion about the meaning of the rule in section 2. To the framers and ratifiers of the Constitution, that meaning was crystal clear; it was tersely given by Wilson Nicholas in the Virginia ratifying convention:

"A qualification that gives a right to elect representatives for the State legislatures, gives also, by this Constitution, a right to choose Representative for the General Government" (3 Ell. Deb. 8).

If a person claims the right to vote at an election for Congressman or Senator, the only possible test of his right is this: Is he qualified *on that day, under State law, to vote in a State election* for members of the larger branch of the State legislature? The rule has been universally *so understood and so applied in actual practice*, no doubt in every State of the Union, ever since the organization of the Government in 1789. If there was ever any ambiguity in the rule, it has long since been resolved in conformity with the practice. *But no ambiguity ever existed.*

It was the duty of the Committee of Style and Arrangement to improve the style of the draft submitted to it, *but never to change the meaning.* Mr. Morrison accuses that committee (William S. Johnson, Connecticut; Alexander Hamilton, New York; Gouverneur Morris, Pennsylvania; James Madison, Virginia; and Rufus King, Massachusetts) of the serious offense of intentionally changing the meaning of this rule in section 2; *but he is unable to tell in what way the meaning was changed.* He accuses them also of violating their duty by changing the meaning of other sections of the Constitution, *though he cannot tell what or how.* Addressing the Senate committee, he says:

"This is not the only instance—I have not made a check to see, but my recollection is that this is not the only instance in which the Committee on Style and Arrangement * * * made very important changes in the substance of the Constitution *which are fully recognized as being changes of substance and not mere changes of style*" (record, 228).

I know of no such "recognized" changes of substance, and I doubt that any have been recognized by a competent historian or jurist. But the Convention had 5 days *in which to detect "changes of substance,"* during which many important changes were proposed and some were adopted, one just before the signing, on the last day. In Madison's report of the Convention proceedings of September 13, 1787, it is stated:

"The report from the Committee of Style and Arrangement was taken up, *in order to be compared with the articles of the plan, as agreed to by the House, and referred to the committee*, and to receive the final corrections and sanction of the Convention" (5 Ell. Deb. 540).

This *comparing* of the committee's final draft with the draft approved by the House (Convention) was continued, along with certain new proposals by individual members; and, so far as the record shows, the Convention *detected no change of meaning by the committee* (5 Ell. Deb. 540-556).

Can a person be both sane and honest who asserts the committee did change the meaning, *when he cannot or will not specify the change made?* Is he acting in good faith when he charges the committee, five distinguished founders of the Republic, with making divers other improper alterations, *which he does not specify and has not taken the trouble to "check"?*

In his effort to destroy section 2, Mr. Morrison suggests certain other reasons for thinking the makers did not mean what they plainly said. One especially ludicrous "reason" is that they could not have meant the States to have power *to revive the "theocratic system"* under which in early days certain colonies *had required church membership as a qualification for voting* (record, 230; main brief, 32). Mr. Morrison's discussion is permeated with irrational statements recklessly made. For example, he says:

"To turn this clause (sec. 2), then, into a surrender of power by the National Government to the States is to miss *the point always insisted upon by the fathers*, that the National Government *must itself prescribe the qualifications of its voters*, and to defeat the whole purpose of its inclusion in the Constitution, for it is obvious that if the purpose of the clause were to surrender the power to the States, it need never have been included in the Constitution at all, or would have been phrased in unambiguous language * * *" (record, 230-31; main brief, 32-33).

There is no foundation for any of these statements. First, section 2 *is* "phrased in unambiguous language," as we have already seen; and it is *an inexcusable misstatement of fact to contend that it is not*, especially without stating wherein it is ambiguous.

Second, Section 2 is not claimed to be "a surrender of power" to the States, to fix qualifications for voting in Federal elections; *it is an adoption, for use in Federal elections, of qualifications already fixed by the States for use in their State elections.* It could not have been a useless thing, to put section 2 in the Constitution; without it, *there would not have been such an adoption.*

Third, the point which Mr. Morrison says was "*always* insisted upon by the fathers," was *never* "insisted upon" by them. His statement is wildly reckless. In the Federal Convention no proposal was made, to give "the National Government" (Congress) power to "prescribe the qualifications" of *persons voting for Representative, the only Federal officer to be elected by the people.* In the debate on section 2, the only section mentioning "qualifications," 12 delegates participated, and not one spoke in favor of giving the power to Congress. Two (Madison and Mason) *spoke against any exercise of such power by Congress;* Mason called it "dangerous." (Earlier brief, 3-4.) In the ratifying conventions, no one appears to have *thought* of objecting to section 2, *making State law the absolute rule for qualifications.* In proposing the Bill-of-Rights amendments, the first Congress apparently never thought of it.

POINT 6. TRICKS

In addition to the tricky methods already described, certain others should be mentioned. Mr. Pressman, in his brief filed with the committee October 25, 1943, said:

"Testimony has been presented to this committee in support of both this bill and previous bills, by way of quotations from constitutional debates and from statements of many of those who participated in the framing of our Constitution. I shall only attempt to cite just a few of these quotations * * *. Mr. James Madison, in No. 57 of the Federalist, had this to say: 'Who are to be the electors of the Federal Representatives? Not the rich, more than the poor'", etc. (point 1, above; record, 38).

For the next and last citation, he says:

"Mr. Alexander Hamilton, in Federalist No. 59 and No. 60, made the following comments: 'Nothing can be more evident than that an exclusive power of regulating elections for the National Government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy * * * for incurring that risk'" (point 4).

Mr. Pressman gives no warning that Hamilton is not talking about qualifications or section 2, and persons not extremely well informed will infer that the two quotations relate to the same subject, as he obviously desired them to do. The result is that persons who accept the first quotation as genuine and persuasive are deceived; for, being mutilated, *it does not express Madison's opinion.* And those who accept the second quotation are deceived because, although it expresses Hamilton's opinion, *he was talking about an entirely different subject,* telling why section 4 was desirable.

Mr. Pressman says the general purpose which these founding fathers had in view was, "to assure Federal protection against arbitrary action by States *to deny the people their right of suffrage*" (record, 38). After filing his brief, Mr. Pressman addressed the committee. Introducing the quotation from Hamilton, he stated the issue as follows:

"Whether Congress has the right at all to inquire into the issue of *appropriate qualifications*" (record, 50).

Thus we have *repeated representations* that the quotation from Hamilton, as well as the one from Madison, related directly to the subject of "suffrage" and "qualifications" of voters. *They are false representations,* made to catch the uninformed or unwary listener and reader. *They were made boldly at a session of the Senate Committee on the Judiciary.* It is to be hoped that now Madison and Hamilton may be permitted to rest in peace and not be represented as endorsing views which in their lifetime they strongly repudiated.

As stated above, Mr. Pressman said in his brief that *many* statements made by framers of the Constitution had been quoted, but he would cite "*just a few* of these quotations." However, he actually cited *only two,* those mentioned above, and *both citations were tricky and deceptive.* In addressing the committee he cite done more, a quotation from Madison (p. 56), *and that was no better* (point 2, above). Evidently there was nothing more to be cited or quoted.

One of Mr. Morrison's tricks is to quote an objection by one of the delegates *to a certain proposal, rejected by the Convention,* and later to quote the same objection as if it had been made by that delegate *to a certain other and different proposal,* to which the delegate in question was not at all opposed.

On June 21, 1787, Gen. Charles C. Pinckney moved "that the first branch (House of Representatives), instead of being elected by the people, should be elected in such manner as the legislature of each State should direct." There was opposition, alleging that probably the legislatures themselves would choose to elect the Representatives. Commenting on this proposal, Mr. Morrison says (quoting Madison's report):

"King (Rufus King, Mass.) enlarged on the same distinction. He supposed the legislatures would constantly choose men subservient to their own views, as contrasted to the general interest, *and that they might even devise modes of election that would be subversive of the end in view*" (record, 228–229; main brief, 30). [Italics Mr. Morrison's.]

Pinckney's motion was defeated by the close vote of 6 States to 4, showing that nearly one-half of the States were willing to give the State legislatures power not only to fix qualifications but even to prescribe the entire process of election. Mr. Morrison misstates the effect of the vote:

"Here, then, is a perfectly clear expression by the Convention that the State legislatures should *not* be permitted to exercise an exclusive discretion *as to the qualifications of electors* of national officers because 'they may even devise modes of election that would be subversive of the end in view'."

Clearly, *the vote had no such effect.* The proposal to which King objected and which was defeated, was not a proposal to allow the States *to fix qualifications.* It was a motion to *give the legislatures unlimited power to prescribe the manner in which Federal Representatives were to be elected,* and King's phrase with which he opposed that motion, cannot properly on honestly be quoted as showing that a *different proposal* was objectionable to him or to others. When section 2 was before the Convention Mr. King made no objection and, after Morris' substitute was defeated, *it was adopted without any objection.* Yet in other paragraphs Mr. Morrison repeatedly uses King's words for purposes clearly improper. Thus, in addressing the Senate Committee, he said:

"The implication is that if the legislatures have an exclusive power to regulate the qualifications, they may, *just as King pointed out as early as June 21, 1787,* 'even devise modes of elections that would be subversive of the end in view'" (record, 229).

Mr. Morrison knew very well that King said nothing about *regulating qualifications.*

POINT 7. TWO COURT DECISIONS MISREPRESENTED

The question whether the right to vote *is conferred upon electors by the State or by the Federal Constitution*, for the purpose of choosing Representatives and (more recently) Senators, *is not important in this argument.* The suffrage rule in section 2 was followed in the election of Congressmen for nearly a century before a decision of that question was required by circumstances largely accidental. It happened in "reconstruction" days that Congress passed a law making it a criminal offense *to interfere with the exercise, by any person, of a right "secured to him" by the Constitution of the United States.* In the case of ***Ex parte Yarbrough*** (110 U. S. 651), decided in 1884, Yarbrough and others were prosecuted for interfering with the exercise of the right to vote, by certain qualified voters, at an election of a Congressman in Georgia. They were charged with making violent attacks upon these persons in order to prevent their voting. The defendants contended that the offense was not within the terms of the statute, since the right to vote *was conferred by the State and not by the Federal Constitution.* It was evident *that both State and Constitution had a part in securing this right*, since State law defined the class of persons to whom the Constitution granted the right to vote at congressional elections; and the Supreme Court so held, sustaining the prosecution.

Yet Messrs. Pressman, Brant, and Morrison, while pretending to accept this decision and claiming that it sustains their contention that the Federal Constitution is the source of the right to vote in Federal elections, *actually ignore and suppress the latter part of the decision*, in which it is held that the Constitution gives and guarantees this right *only to those persons who are qualified under State law to vote for members of the larger branch of the State legislature.* The unanimous Court *recognizes completely the full force and effect of section 2*, as I have stated it. The Court says (pp. 663–664):

"The States, in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualification 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 the same persons shall vote for Members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for Members of Congress.

"It is not true, therefore, that electors for Members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend *exclusively* on the law of the State."

These leading counsel and others do not quote this statement by the Court; and if by chance they include it with others, they don't mention it. It does not fit in with their plans for argument that poll-tax payment, as a qualification, *obstructs the exercise of a sacred constitutional right.* They even contend that it is an abridgment of one of the "*privileges or immunities of citizens of the United States*," in violation of the fourteenth amendment.

The case of *United States* v. *Classic* (313 U. S. 299), in 1941 was similar to the *Yarbrough* case in that it was a prosecution of persons (Classic and others) for interfering with the exercise, by certain qualified voters (in Louisiana), of the right to vote at a congressional (primary) election, a right given them by the Federal Constitution. The only *new* question involved was whether the statute was applicable to the *primary* as well as the *final* election, which was decided in the affirmative. On the question whether the right to vote was given by the Constitution of tthe United States, the Court cited and followed the *Yarbrough* decision, holding that it was given *only to persons qualified under State law* to vote for members of the larger branch of the legislature. The Court said:

"Such right as is *secured by the Constitution to qualified voters* to choose members of the House of Representatives is thus to be exercised in conformity to *the requirements of State law*, subject to the restrictions prescribed by section 2 and to the authority conferred on Congress by section 4, to regulate the times, places and manner of holding elections for Representatives.

"We look then to *the statutes of Louisiana* here involved to ascertain *the nature of the right* which under the constitutional mandate *they define and confer on the voter*" (p. 310).

"The right of the people to choose, * * *, is a right established and guaranteed by the Constitution, and hence *is one secured by it to those citizens and inhabitants of the State entitled to exercise the right*" (p. 314).

Messrs. Pressman, Brant, and Morrison do not quote or refer to all these important statements taken from the Court's opinion written by Justice Stone, now Chief Justice. They proceed as if the Court had treated the second section of the Constitution *with utter contempt and disobedience, and had merely decided that the Constitution gives and guarantees the right to vote to citizens of the United States residing within the State*, without any regard for what the State had done in prescribing the "qualifications requisite for electors of the most numerous branch" of the legislature, and without any regard for the *command* of the Constitution that the electors of Representatives "shall have" those same "requisite qualifications." *The Court had not done any of these things.*

The conduct of these counsel and the statements made by them might be summed up as *a false representation as to the facts.* Mr. Morrison makes the following statement:

"The *Classic case* has held fully, finally and decisively that 'the right of the people to choose (i. e., the elective franchise in national elections) . . . is a right (privilege) established and guaranteed by the Constitution . . . .'

"This being so, it must inevitably be a 'privilege or immunity of citizens of the United States' within the first section of the XIV amendment." (Main brief, 38; record 237.)

He therefore contends that Congress may pass the pending bill as "appropriate legislation" authorized by section 5 of that amendment, to enforce the provision forbidding abridgment of such privilege or immunity. His first paragraph is obviously untrue; neither the *Classic* case nor the *Yarbrough* case, nor any other case, has held that the Constitution gives or guarantees the right to vote for Representatives, *without making the right dependent on the law of the State* in accordance with section 2. A reading of the opinions in those cases, or the above quoted excerpts therefrom, will be sufficient proof. His second paragraph is both untrue and ridiculous. How can a right to vote be a "privilege or immunity of citizens" when only a limited number of them can vote, *those qualified under State law*, and when citizens having the right *may lose it by a change in the qualifications prescribed by the State?*

Mr. Brant, speaking of "the poll tax, employed as a restriction upon the right of sufferage," says:

"It violates and can be abolished by Congress under the fourteenth amendment, which says that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.'" (Main brief, 15; record, 208.)

Not being a lawyer, Mr. Brant *is freed from most of the impediments of legal knowledge;* specific language in the Constitution, or even a positive *command*, means little to him. It is the "true substance and purpose" of any provision, as a part of "an organic whole," which determines meaning. He says:

"The mere fact of placing an affirmative clause in the Constitution gives the Federal Government the power and duty of policing that clause, to see that it is obeyed in accordance with its true substance and purpose as a part of the fundamental law." (Main brief, 17; record, 210.)

This would make a written constitution little better than an unwritten one and *would enable Congress to do as it pleases.* That the right to vote *is not one of the "privileges or immunities of citizens,"* is well settled by the wording of the Constitution and by judicial decision. In the *Slaughterhouse cases* (16 Wallace (83 U. S.) 36, in 1873), over vigorous dissent by four Justices, the Court established the definite rule that such privileges and immunities are *only those which citizens of the United States possess by virute of that citizenship*, as distinguished from those arising out of State citizenship; and that these Federal rights "arise *out of the nature and essential character of the National Government*, the provisions of its Constitution, or its laws and treaties made in pursuance thereof." Such privileges and immunities *must accompany national citizenship from the day of birth or naturalization through the entire life of every citizen.*

At page 79 the Court mentions many examples of such national rights, including the right of a citizen "to come to the seat of government to assert any claim he may have upon that Government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions." Further examples are the right of access to seaports, to the sub-Treasuries, land offices and courts of justice in the several States, the right to demand care and protection of his life, liberty, and property on the high seas or within the jurisdiction of a foreign government, etc. *No right to vote or anything like it, is mentioned. It should be obvious to everyone* that when the Constitution says the

right to vote for Senators and Representatives *depends on the action of each State*, fixing qualifications of persons entitled to vote for State officers, *it is impossible for the right of suffrage to arise out of national citizenship.*

To a certain extent the right is given by the Constitution; but it is sometimes given *to aliens as well as citizens*, since it is specifically given to *persons qualified under State law* and in many States aliens have been allowed to vote *upon merely declaring their intention to become citizens* or even without that declaration, and the right is given by the Constitution to citizens *only upon their becoming qualified voters under State law.*

The Supreme Court also held that the fourteenth amendment (1868) *did not change the character or increase the number* of "the privileges or immunities of citizens," but merely provided *additional means for their protection.* So, prior to the *Yarbrough* case (1884), it was commonly said that the right of Federal suffrage *was conferred entirely by the States;* and in 1874 in *Minor* v. *Happersett* (21 Wallace (88 U. S.) 162), when a woman citizen of Missouri claimed the right to vote on the ground of her Federal citizenship, the Supreme Court unanimously held that her right was subject to State law, and that the Constitution, including the fourteenth amendment, "does not confer the right of suffrage upon anyone." This was explained in the *Yarbrough* case as not intended to deny that the Constitution *confers that right upon persons qualified under State law.*

That Mr. Brant does not base his conclusions on the Constitution and its background in 1787 and since, is shown by his statement:

"The privileges and immunities protected by the Constitution . . . are the accumulated rights and privileges of the whole period in which they were developed, *from the days of Protagoras (fifty century B. C.) down to the present moment,*" and his further remark that—

"*The right to vote is among the natural rights of men.*" (Main brief, 23, 24; record, 214, 215.)

This is neither good political philosophy *nor good constitutional law;* and it is very plain that Mr. Morrison and Mr. Brant, by their suppression of a vital and essential part of these Supreme Court decisions, in the *Yarbrough* and *Classic* cases, have made a *false representation as to the content and effect of those decisions.*

Whether Mr. Pressman *has asserted explicitly* that the right to vote in Federal elections is one of the "privileges or immunities of citizens," protected by the fourteenth amendment, is not entirely clear. *But his statement is equivalent to that, and he joins in misrepresenting these Court decisions.* His brief contains numerous assertions *about the "constitutionally guaranteed right to vote"* (record, October, 1943, 32–38), and at page 32 he says:

"The United States Supreme Court in a recent case (the *Classic* case) has determined that the right of American citizens to vote for Federal officers is a right protected by the United States Constitution; that it is a privilege and immunity of citizens of the United States to be protected under the Constitution."

He does not disclose that the Court with equal clarity held that the right is given and guaranteed *only to persons qualified under State law to vote in a State election for State officers.* The latter part of his statement is not true; the Court did not say or hold that the right is a "privilege or immunity of citizens." Mr. Pressman therefore *has joined with Mr. Morrison and Mr. Brant in a false representation concerning the Court's decisions.*

The proponents of this bill and their counsel cite the decision in the *Classic* case as supporting the power of Congress to pass a bill of this sort. That is not true; the decision gives them no support whatever. I have answered their claim in my earlier brief at pages 10–11.

POINT 8. PRESIDENTIAL ELECTORS WRONGFULLY INCLUDED

It seems quite obvious that the anti-poll-tax bill now pending in the Senate *is not an honest bill.* In this respect it is like its predecessors; it puts the *appointment* of Presidential electors on the same basis with the *election* of Senators and Representatives. Assuming that an argument of some sort can be made that it is constitutional *with respect to Senators and Representatives, it is not possible to make any such argument* with respect to Presidential electors. *Proponents and counsel must know this.* Sections 2 and 4 of article I, the seventeenth and fourteenth amendments, so prominent in the former attempt to argue, *have nothing to do with the latter.* The Constitution gives no right to vote for electors; it does not *require or allow them to be elected.* It says "each State *shall appoint*" *them* (sec. 1, art. II). Section 1 of the bill says that—

> the requirement that a poll tax be paid as a prerequisite to voting * * * at primaries or other elections for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, is not and shall not be deemed a *qualification of voters or electors* voting * * * at primaries or other elections for said officers, *within the meaning of the Constitution*, but is and shall be deemed an interference with the manner of holding primaries and other elections for *said national officers* and a tax upon the right or privilege of voting for *said national officers*.

Since we do not vote directly for President and Vice President, the *"appointment" of electors by the States at the time determined by the Congress* is all that we need consider; and it is evident that *the provisions in section 1 of the bill are entirely irrelevant and inapplicable to the choosing of electors.*

In sections 2 and 3 of the bill it is said to be "unlawful" for any State or subdivision thereof to prevent any person from voting for said "national" officers on the ground of nonpayment of a poll tax, or to levy a poll or other tax on the right to vote, or to interfere with the *manner* of holding elections for said officers. These provisions are evidently dependent on the statement in the first section that poll-tax payment *is not a "qualification"* within the meaning of that word in the Constitution. Qualifications of *voters or electors* are mentioned only in section 2 or article I and the seventeenth amendment; and therefore the word is used only in connection with *the election of Representatives and Senators by the people*. It is used nowhere in the Constitution in connection with *the appointment of Presidential Electors by the States*. If the constitutional term "qualifications" has any relation to the appointment of electors, *the States are the sole judges of what they shall be;* for the command of the Constitution is:

"Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to" etc. (sec. 1 of Art. II).

If the legislature of a State should "direct" that its electors be appointed *by the Governor, by the legislature, by the board of aldermen* of the State metropolis or capital city, or by *the assembled body of town constables of the State*, who could prevent it? Obviously the Congress would have no jurisdiction.

Section 1 of the bill says that requiring voters to have paid a poll tax is "an interference with the *manner* of holding" elections "for said national officers." Evidently this is said with an eye on section 4 of article I, which gives Congress ultimate power to regulate the "manner of holding elections for Senators and Representatives." But no power is given Congress to regulate *the manner of appointing electors*. Section 1 of the bill refers to Presidential electors, as well as Senators and Representatives, as "national officers." But proponents and their counsel *must know that electors are not national officers*, and that the Supreme Court has said so in most emphatic language, in *In re Green* (134 U. S. 377, 379), holding that they are—

> Presidential electors, being State officers, *are appointed by a strictly State process*, and even when the legislature directs that they be appointed in the "manner" of an election, along with other State officers and perhaps candidates for Federal Senator and Representatives on the same ballot, they are still chosen *at a strictly State election*, over which Congress *has no jurisdiction or power*, except to fix the day on which the electors shall be chosen. Their election and the Federal election held at the same time and place for convenience, *are different elections*, in law subject to different rules and followed by different consequences. (*Ex parte Yarbrough* (110 U. S. 651, 660–62); *In re Green* (134 U. S. 377, 378–80).)

> no more officers or agents of the United States than are the members of the State legislatures when acting as electors of Federal Senators, or the people of the States when acting as the electors of Representatives in Congress.

That Congress has no power to interfere with the "manner" of appointment, is made still plainer by the provision giving Congress a limited power relating only to procedure:

"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."

Clearly the legislature might "direct" the appointment of electors in the "manner" of an election, in which case it was obviously free to direct that they be appointed *by the votes of taxpayers only, or of persons paying a particular sort of tax, a poll tax.*

At the first election, in 1788, in five States the electors were appointed by the legislatures, and in the next half-century there was great diversity and many changes in the methods employed. When it was in the *manner* of an election,

in some of the States there was *a general ticket;* in others the electors were appointed separately, *in districts.* After 1832 the general ticket was commonly used in all States except South Carolina, which retained appointment by the legislature until 1860, and Michigan, which used the district method in the brief period 1891–93. In that State the change of method was contested as unconstitutional, but the Supreme Court unanimously and emphatically *sustained the power of the legislature to adopt a new method,* no matter how long the old one had been in use. In an opinion by Chief Justice Fuller, the Court said:

"In short, the appointment and mode of appointment of electors belong *exclusively to the States* under the Constitution of the United States. * * * 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.*" (*McPherson v. Blacker,* 146 U. S. 1, 35.)

The Court says those who "framed" the Constitution tried to *exclude* "congressional and Federal influence" by making Senators, Representatives and other Federal officeholders ineligible for the office of elector. But the proponents of this bill would have us *thrust those influences into the electoral college* by allowing Congress to interfere with the "manner" of appointing electors. The Court quoted with strong approval the holding in its earlier decision (*In re Green*), that *Presidential electors are not national officers.* Being State officers, *they can be appointed only at a State election,* and it is admitted, even by proponents and their counsel, that Congress has nothing to do *with qualifications prescribed by a State for its own State elections.* (Record, October, 1943; Mr. Pressman, p. 43, and Mr. Perry, p. 67.)

And yet, notwithstanding this extraordinary situation, in which from a legal and constitutional standpoint *there is practically nothing in common* between Presidential electors and Members of the Congress, the proponents of this bill *have lumped them all together,* thinking perhaps that *the difference might not be too noticeable.* How do they and their counsel explain their attempt to force through Congress a bill asserting authority over "qualifications" of persons voting to *appoint* Presidential electors? With very few exceptions, *they avoid explanations; the rule is silence.* I do not discover that Mr. Pressman, Mr. Bryant, or Mr. Morrison has said or written a word on the subject. But in their main brief proponents make reply to a *direct question* asked by the chairman of the Senate Judiciary Subcommittee, as follows:

"While Congress could not question the right of a State legislature to provide the manner of appointment of Presidential electors, a State legislature in exercising that right must exercise it in conformity with the requirements of the Constitution. If the legislature provides for the appointment to be made by the process of election, that election, like a primary election for congressional candidates, 'involves a necessary step in the choice of candidates' for national office 'which in the circumstances of this case controls that choice' (*United States v. Classic,* 313 U. S. 299, 320), and that choice must be made in a manner that does not offend the Constitution or such legislation as the Congress may reasonably deem appropriate to protect the rights of constitutionally qualified voters from discrimination and invasion. Article II, section 1, clause 2 of the Constitution does not authorize the State legislature to fix arbitrary conditions to the right to vote for Presidential electors which have no relation to the voter's worth or ability."

This cryptic and confused statement hardly deserves a reply. The citation of the *Classic* case is inept and unscrupulous, for *there is no similarity between the situation in that case and the situation concerning Presidential electors.* That case involved a congressional *primary* (in a Louisiana district), a "step in the choice of candidates" for Representative, a *national* office; and the Court noted the fact that in that district the winner of the Democratic primary was invariably successful in the final election. The point decided by the Court was that, since the primary was a part of the election process, inspectors of election at the *primary* who falsely counted the votes and certified the result could be punished under a Federal statute making such conduct at an *election* a criminal offense. The decisiveness of the primary in that district was noted but was not held necessary to the decision. The case involved a *Federal* election, and Congress had full power under section 4 of article I *to regulate the "manner" of holding the election* and to provide for punishment of fraudulent action by State officers conducting it. The voters concerned were *duly qualified under the State law.*

But the appointment of Presidential electors, in the manner of an election, is in the manner of a *State, not Federal,* election. Persons receiving a majority vote become *electors, State officers,* not candidates as in a primary. That election is not a "step in the choice of candidates for national office," as proponents assert. The persons chosen, with others from other States, elect a President and Vice President, national officers. Those chosen in one State do not control the choice of a President unless the election is very close. *It is obvious that there is no identity, or similarity, or even analogy,* in the two situations. The Constitution gives each State full power to control the appointment of its electors, in the manner *directed by its legislature;* and the Supreme Court says *"the appointment and mode of appointment of electors belong exclusively to the States."* (*McPherson v. Blacker,* above.)

After this conclusive decision, there is little need for reply to the further contention that Congress may interfere by legislation "to protect the rights of constitutionally qualified voters." With respect to appointment of electors, *there are no such "rights" unless the State has violated the fifteenth or the nineteenth amendment.* And with respect to Senators and Representatives, there are no such "qualified voters" *except the class of persons qualified under State law* in accordance with section 2 and the seventeenth amendment.

In the last sentence of the statement above quoted it is said that the Constitution (sec. 1 of art. II) does not authorize the legislature to make the right to vote for electors subject to *"arbitrary conditions which have no relation to the voter's worth or ability."* On the form of this objection, the obvious comment might be that a Constitution or statute, after conferring a power, *seldom authorizes an abuse of that power.* But assuming that the intention is to raise the objection that poll-tax payment is not a "qualification" for voting, within the constitutional meaning of that word, it must be said, first, with respect to the appointing of Presidential electors, *that the sections relating to "qualifications" are expressly limited to Senators and Representatives* and so have no application to the choosing of electors.

It may be said, second, that this objection, with respect to Senators and Representatives, *is completely answered* in my earlier brief at pages 12–15, showing that payment of a poll tax, as well as other taxes, *was a common qualification at the time of adoption of the Constitution* and for a considerable period thereafter; also that *it has been used in most of the other democratic nations* up to very recent times, along with qualifications based on ownership of property, payment of rentals, etc.; also that the last use of poll-tax qualification in Belgium, which had "proved a success" according to the Encyclopedia Britannica, was in 1919 repealed in favor of unlimited universal suffrage *"at the demand of the Socialist Party."* It appeared, further, that the eminent English philosopher, John Stuart Mill (1806–73), in his *"Considerations on Representative Government"* (p. 177) recommended, as a qualification for voting, *a direct tax in the form of a capitation (poll tax).* He also thought a voter should be able to read and write and do a problem in "the rule of three." In view of these facts, I asked:

"Will any rational person maintain that a qualification which *seemed proper and highly desirable to John Stuart Mill* 'has *nothing whatever* to do with the qualifications of the voter'?"

I have heard no affirmative answer to that question. *Obviously, no rational person who is also honest and intelligent could make that answer.* But we have also the approval of the Encyclopedia Britannica, which, in describing "modern" suffrage systems, says:

"But the most universal qualification of all is some outward visible sign of a substantial interest in the State. * * * This tangible sign of interest in the State may take the form of possession of property, however small in amount, or the payment of some amount of direct taxation" (eleventh edition, 1911, vol. 28, p. 216).

And in volume 19, page 165, of the fourteenth edition (1941) it is said that Mill's discussion of the subject "proceeds on high grounds which are still worth careful consideration."

In the Encyclopedia Americana, volume 27, page 467 (1941), it is said:

"In the Philippines the voter must take an oath of allegiance to the United States and qualify either *as a taxpayer* or under an educational test."

We also have the *opinion of one of the most distinguished American jurists of the past century,* Judge Thomas M. Cooley (1824–98), many years a member of the Michigan Supreme Court, author of legal and historical works and first Chairman of the Interstate Commerce Commission (1887). Like Marshall, he combined the qualities of a jurist with those of a statesman. In his work on

Constitutional Law (1880) he considers "suffrage" and "qualifications for voting." He does not consider it a "denial" of the right to vote, to require the personal presence of a voter at the polls *although he is necessarily elsewhere in the public service*, or to require a voter to be able to read, *since any man can acquire that ability*. He says:

"* * * many of the States admit no one to the privilege of suffrage unless he is a taxpayer. * * * *To require the payment of a capitation (poll) tax is no denial of suffrage; it is demanding only the preliminary performance of public duty*, and may be classed, as may also presence at the polls, with registration, or the observance of any other preliminary to insure fairness and protect against fraud" (p. 203).

Will anyone say that what appeared to Judge Cooley to be "no denial of suffrage" but only a "performance of public duty" is an "arbitrary condition" which has "no relation to the voter's worth or ability"? Plainly, *no informed, intelligent, and honest person could say that*. Certain other statements by Judge Cooley are relevant:

"The State is therefore left to fix these qualifications (of electors of 'most numerous branch' of its legislature) without any restraint or limitation, except that which is imposed by the fifteenth amendment" (p. 250; the nineteenth amendment came 40 years later).

"The Constitution of the United States confers the right to vote upon no one. That right comes to the citizens of the United States, when they possess it at all, under State laws, and as a grant of State sovereignty" (p. 206).

Judge Cooley's work (1880) came before the *Yarborough* case, and, like the Supreme Court in *Minor* v. *Happersett*, he undoubtedly did not intend to deny that the Constitution confers the right upon persons already qualified by State law to vote in a State election.

Two revisions of this work were made during Judge Cooley's life, published in 1891 and 1898, and a revised and enlarged edition in 1931, *all including the above quoted statements without change and without comment*. The editors of these editions were preeminently qualified for the work; they were (1) the late Alexis C. Angell of Detroit, distinguished as a lawyer, judge, and professor of law; (2) Andrew C. McLaughlin, professor of American history at University of Michigan, later professor of history and head of history department at University of Chicago, distinguished teacher of history and author of works on American history, receiving Pulitzer prize in 1936 for Constitutional History of United States; and (3) the late Andrew A. Bruce, professor of constitutional and criminal law at Northwestern University, distinguished as lawyer, author, teacher of law, and associate and chief justice of North Dakota Supreme Court.

The question is whether poll-tax payment *is a qualification within the discretion of a State*, to adopt for its use in electing its legislature. There have not been many years, if any, since 1787, when this qualification has not been in use in one or more States of the Union; and they have by no means always been Southern States. Massachusetts and Pennsylvania have been conspicuous examples. This qualification has a very important "relation to the voter's worth or ability." Proponents do a great disservice to persons whom they call "disfranchised," by helping *to destroy that sense of responsibility and duty which a citizen owes to the Government* which protects him and renders valuable services. One obvious reason for nonpayment of the poll tax and the very light vote in recent years, is that *the supporters of this bill desire the number of "disfranchised citizens" to be as large as possible*, for use in their "arguments."

The pending anti-poll-tax bill clearly is not an honest bill, because it treats presidential electors as "national officers," and *in the same class with Senators and Representatives*, with respect to the power of Congress to prescribe the "manner" of their appointment. The contention that poll-tax payment is not a "qualification" of voters within the meaning of the Constitution, even if valid with respect to members of the Congress, *is in no way relevant or applicable to presidential electors*. However, that contention is not valid with respect to Senators and Representatives. It is not only untrue *but is so stupidly absurd that it is difficult to believe it to be honest*. As Senator Bailey (North Carolina) recently said in the Senate (Congressional Record, May 1944, p. 4246), an able-bodied man, for all he receives from the Government, *should "be ashamed not to pay" his poll tax*. In many instances a temporary abstinence from liquor or tobacco would furnish the necessary money.

POINT 9. PROPONENTS REFUTE THEMSELVES

Many significant "points" remain, illustrating the methods employed by leading counsel; but only one, a basic point, will be considered here. The proponents and their leading counsel have put themselves "out of court" completely. Mr. Pressman, attempting to distinguish the unfavorable decision in *Breedlove* v. *Suttles*, 302 U. S. 277, said:

"You may remember, in that case it was sought to attack the poll tax as a condition for voting, *in State elections as well as Federal elections*, as being unconstitutional under the United States Constitution. The Court there said that the poll tax, *as there raised in that case*, was not unconstitutional." (Record, October 1943, p. 43.)

He saw the futility of contending that it was not a lawful qualification in *State* elections. In a brief filed with the Senate committee by Mr. Leslie S. Perry for the National Association for Advancement of Colored People (Ib. 60, 67), a similar attempt was made, stating that in the *Breedlove* case the plaintiff, who had not paid the poll tax, applied to be registered "for voting *for Federal and State officers*"; also that the plaintiff's error was in not making his application "as a Federal elector" and only for "Federal elections." Mr. Perry concludes:

"Since, then, petitioner, insofar as the State election was concerned, was challenging a State statute *of undoubted constitutionality* as applied to him, the Supreme Court concluded that his claim should be denied. (Ib.67.)

I do not find anyone contending that poll-tax payment is not a lawful qualification for voting in State elections. But I do find the drafters and supporters of this bill contending that poll-tax payment is not lawful for *Federal* elections. Apparently they do not see the contradiction *which demolishes their entire argument like a house of cards;* for the Constitution *commands* that in electing Representatives and (later) Senators,

"the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

Unquestionably, *this makes any qualification that is lawful for State elections lawful also for Federal elections*, and puts upon objectors the burden of proving, first, that a qualification, *when used for State elections*, violates some provisions of the Federal Constitution.

This has always been the law. In 1884 the Supreme Court decided in the *Yarbrough* case:

"They (the States) define who are to vote for the popular branch of their own legislature, and *the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualification thus furnished* as the qualification of its own electors for members of Congress" (p. 663).

When the Constitution "adopts" them, *it obviously makes them lawful.* Perhaps the proponents hope that a qualification, valid for State elections, will be held invalid for Federal elections because in section 1 of the bill *they declare it to be so.* That is obviously a vain hope; *their declaration cannot make it so.* The Constitution commands that *State Representatives and Federal Representatives be elected by use of the same qualifications.* The proponents are "out of court," by their own admission.

SENATOR PEPPER, CHIEF SPONSOR OF THE BILL IN THE SENATE

Senator Claude D. Pepper (Fla.) introduced the anti-poll-tax bill in the Senate and has with great enthusiasm endorsed the arguments and methods used by Mr. Morrison to prove the bill constitutional. At the close of his argument at the hearing of July 30, 1942, the Senator said:

"You have presented a splendid statement."

During the argument the Senator interrupting, said:

"Dr. Morrison, I would like to say the power to protect and preserve the purity of the ballot did not rest on any express grant of authority in the Constitution, but rests on the implied power necessary to carry out the general scheme of the Constitution." (Record, 233.)

In spite of Mr. Morrison's response, "You are quite correct," it is quite obvious that the power *does rest on an express grant of authority* in section 4 of article I, giving full power to regulate "times, places, and manner of holding elections," a power of which Congress has made very little use. Having neglected *the power*

expressly given, Congress is now urged *to usurp a power not given*, to control the qualifications of voters, a power *expressly withheld from Congress* by the terms of section 2. Section 4 *is universally recognized as giving power to prohibit and punish violence and fraud in holding Federal elections.* (*Ex parte Yarbrough*, 110 U. S. 651, 660.) It is only when the misconduct is separate from the election, in time or space, as in the *Yarbrough* case, that the exercise of implied power may be necessary.

Senator Pepper again interrupted Mr. Morrison to suggest that when Hamilton, in No. 60 of *The Federalist*, stated that prescribing qualifications of electors "forms no part of the power to be conferred upon the National Government," he may have been speaking of electors at *State elections, not Federal.* Although Mr. Morrison replied: "Yes, it is very possible," the truth is that very few things *could have been more impossible.* Probably no one ever thought of the possibility of interference by the National Government with *State suffrage.* No assurance on that point was necessary or given. But some "doubting Thomas" would ask about *Federal suffrage*, and Hamilton was *again assuring them*, by publishing his views in a leading newspaper, as follows:

"Its (National Government's) authority would be expressly restricted to the regulation of the *times*, the *places*, the *manner* of elections. The qualifications of the persons who may choose or be chosen, *as has been remarked upon other occasions*, are defined and fixed in the Constitution, and are unalterable by the legislature" (Congress). [Italics his in first sentence.]

No doubt Senator Pepper had read this latter part of No. 60. He should have learned not only what Hamilton was talking about but also the fact that the Constitution has "defined and fixed" the "qualifications of the persons who may choose" Congressmen; not specifically but *by adoption of those fixed by the States for a State purpose*, and that qualifications thus fixed are "unalterable by the legislature" (Congress). In other words, a poll-tax qualification, *if lawful for the State, is also lawful for the Nation.*

That Senator Pepper has not understood the elementary principles involved, is also shown by his suggestion, accepted by Mr. Morrison, that State power *to fix qualifications of voters* is similar to State power *to make laws regulating interstate commerce*, which will be valid until such time as Congress makes a general law, when the State regulations will cease to be effective. (Record, 236.)

Does the Senator think it makes no difference that *the Constitution has given Congress general power to regulate interstate commerce*, but no such power to the States, whereas *it has given Congress no power* to fix qualifications, but has provided that Federal qualifications *shall be identical with State qualifications* fixed for State purposes? It is quite plain that it does make a difference, *what the Constitution says.*

Senator STENNIS. I want to thank these gentlemen for their contribution, Mr. Chairman, and I want to thank you for the hearing today.

Mr. Orton, which of these comes first?

Mr. ORTON. The small one comes first. That was written in 1944, and the other was written in 1946.

The CHAIRMAN. Thank you, Mr. Orton. We were delighted to have these gentlemen, and I have enjoyed their presentation very much.

If nobody else now wishes to testify, we will start at 10 o'clock in the morning.

(Whereupon, at 12 noon the committee adjourned, to reconvene at 10 a. m., Tuesday, March 23, 1948.)

POLL TAX

TUESDAY, MARCH 23, 1948

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:05 a. m., in room 104B, Senate Office Building, Senator C. Wayland Brooks (chairman) presiding.

Present: Senators Brooks (chairman), Green, Hayden, Wherry, and Stennis.

Also present: Senators Harry Flood Byrd, A. Willis Robertson, John H. Overton, Burnet R. Maybank, and Spessard L. Holland.

The CHAIRMAN. Governor Tuck, may we call this meeting to order so that we can have your testimony. Do you have a prepared statement, or can we have the benefit of your oral testimony?

STATEMENT OF HON. WILLIAM M. TUCK, GOVERNOR, STATE OF VIRGINIA

Governor TUCK. Thank you, Mr. Chairman. I am sorry to have to say that I regret that I did not make a prepared statement. I do have two copies of a very able statement made up by former Attorney General Abram P. Staples of Virginia in connection with a former hearing involving this same matter.

Mr. Staples was recently appointed to the Supreme Court of Appeals of Virginia. He is now a member of the supreme court of appeals. This is a very able presentation of our views in the case.

Also we have the distinguished attorney general-elect of Virginia who is now a Congressman from the Sixth Virginia District, and he does have a prepared statement.

I would simply like to add that in our opinion, as you will see from the statement to be filed by the attorney general, as well as the able brief of the former attorney general, Mr. Staples, that we contend that this is absolutely unconstitutional, and while I know that those who oppose us in this may say, "Well, if this is absolutely unconstitutional, why not leave it to the Court?" But we feel it is unbecoming for a good American citizen if he believes a thing is unconstitutional to fail to assert that opinion with respect to any matters pending before the Congress or before any other legislative body.

In Virginia, I believe we are one of the seven or eight States in the Union, which now requires the payment of a poll tax as a prerequisite to voting. There has been quite a lot of discussion and agitation down in Virginia for a number of years in regard to this subject.

As I recall it, the first organized group to agitate for the repeal of the poll tax was the Communist Party of Virginia, and then later the

Republicans took it up, and now quite a number of Democrats have taken it up. But under our Constitution, we cannot amend the Constitution until a proposed amendment passes through two sessions of the general assembly—one of them fresh from the people—different from the other.

So, during the first session of the general assembly, when I came in as Governor, we proposed an amendment to the Constitution repealing the present Virginian constitutional requirement with respect to the payment of poll taxes as a prerequisite to voting, and then at the session which adjourned about 10 days ago, the new legislature agreed also to that proposal, and that will now be submitted to the people in an election to be held in November 1949, and if the people of Virginia vote for the repeal of the present constitutional requirement, then on July 1, 1950, Virginia will have abolished the payment of poll taxes as a prerequisite to voting.

We have always taken the position that every person who votes should be required to do something to show a sustained interest in his Government, whether by the payment of a poll tax or whether by requiring them to do something else. But each voter should be required to do something to show this sustained interest in his Government, because in this way only can we have the very best government.

I want to make this statement, that while a great many people in Virginia favor the repeal of the poll tax, I take it that our general assembly would not have submitted this question to the people had they not felt that there was a concerted demand, a considerable demand coming from the people themselves for the repeal of the poll tax as a prerequisite to voting.

But so far as I have been able to learn, certainly a large number, if not all of them who have advocated the repeal of the poll tax in Virginia, feel that it should come by State action and not by Federal action.

If the Congress should pass the bill, which is now proposed, it would, in those States such as Virginia and other States, too, where no movement has been started to repeal the poll tax, it would make it necessary to have two sets of election books which would prevail and it would be very complicated and confusing. We think that would be a bad situation.

Now, it is my information that when the Constitution was adopted—am I talking too long, sir?

The CHAIRMAN. No. Go right ahead.

Governor TUCK. When the Constitution was adopted, a large number of the States, if not all of them who went into the Union at that time, had a requirement in their respective constitutions that the payment of a tax, either a poll tax or property tax, should be required as a prerequisite to the right to vote.

Now, that has gradually been done away with by these States of their own accord, and it has been recognized generally throughout the history of the country that the matter of controlling the qualifications of the electors is expressly stated by the Constitution of the United States, and rests entirely with the States, and there has never been delegated to the National Government such a power, and legislation of this kind only serves to break down States' rights, which I consider certainly as ane individual to be one of the great bulwarks against communism which is now running rampant in Europe.

I believe in using every force against communism; I believe in using armaments; I believe in using, moderately, money to relieve those people, although I am sorry to have to say this, that probably much of the money that has been sent over there has been wasted. It is no good. But I believe in fighting the enemies of this country on every front.

In my opinion, communism can thus be opposed by the preservation of the rights of the 48 States of the American Union because, as we know, communism is something that comes by way of infiltration, and through a method of indoctrination; and I believe that we will find that it is not beyond the control of any country except in those countries where they have first built up a strong central power, and if we can keep these powers diffused among the 48 States of the Union, as it was undoubtedly the original intent of the Founding Fathers of this country, we should be able to carry our Nation safely through this great crisis which confronts us.

I do not believe that I have anything else to say, unless you have some questions.

The CHAIRMAN. Senator Stennis?

Governor TUCK. Mr. Chairman, I would like to have the privilege of filing this very able brief by former Attorney General Staples.

The CHAIRMAN. We will be very glad to have it made a part of the record.

Governor TUCK. I do not believe that any lawyer can read that brief and not reach the conclusion that such legislation as this is absolutely unconstitutional.

(The brief referred to is as follows:)

STATEMENT OF ABRAM P. STAPLES, ATTORNEY GENERAL OF VIRGINIA, BEFORE THE SUBCOMMITTEE OF THE JUDICIARY CONCERNING THE CONSTITUTIONALITY OF S. 1280 RELATING TO STATE POLL TAXES

The bill would make it unlawful for any State or local government, or any election officials thereof, to require the payment of a poll tax as a prerequisite for any person to register or vote at any election for President or Vice President, for Presidential electors, or for a United States Senator or Member of the House of Representatives.

As the chairman of the subcommittee, Senator O'Mahoney has pointed out, the proposed legislation is met at the threshold with the question whether the Constitution has delegated to Congress the power to legislate in this field, which has heretofore been confined exclusively to the States. The question is a fundamental one in our dual system of government created by the Constitution and it is impossible to exaggerate its importance as affecting the continued existence of that system. The far-reaching repercussions which may be expected to flow from denying the States the power over suffrage (which is the effect of the proposed bill) were thus stated in 1914 by Mr. Chief Justice White, of the United States Supreme Court, when, in referring to the fourteenth amendment and its effect upon this State power, he said:

"Beyond doubt the amendment does not take away from the State governments in a general sense the power over suffrage *which has belonged to those governments from the beginning, and without the possession of which power the whole fabric upon which the division of State and National authority under the Constitution and the organization of both governments rest would be without support, and both the authority of the Nation and the State would fall to the ground.* In fact, the very command of the amendment recognizes the possession of the general power by the State, since the amendment seeks to regulate its exercise as to the particular subject with which it deals" (*Guinn* v. *United States*, 238 U. S. 362, 59 L. ed. 1347). [Emphasis supplied.]

The chairman has invited discussion of the constitutional power of Congress to enact the proposed legislation, to which invitation, because of the transcending

importance of the question and its vital effect upon the integrity and even continued existence of the governments of the States as established by the Constitution, the attorney general of Virginia has felt it his duty to respond, and to undertake to maintain the following propositions:

1. The Constitution reserves in the States the exclusive power to determine the manner of choosing its electors to vote for President or Vice President of the United States, and confers no power whatsoever on Congress to legislate on this subject.

2. Article 1, section 2, of the Constitution, and the seventeenth amendment, reserve unto the States the exclusive power to prescribe the qualifications of the electors for Members of the Senate and House of Representatives, and this power is in no way modified or impaired by the power delegated to Congress by article 1, section 4, to regulate the time, place, and manner of holding elections.

3. The requirement of the payment of a poll tax as a prerequisite to the right to vote is a qualification of an elector within the meaning of article I, section 2, of the Constitution and of the seventeenth amendment.

4. Even if the requirement of the payment of a poll tax be deemed not to be a qualification of electors it is nevertheless a proper exercise of the reserved powers of the States over suffrage, as well as of the taxing powers of the States.

5. The Constitution protects the right to vote of only those who are qualified to vote under State statutes.

6. Whether a State has exercised its constitutional power to prescribe the qualification of electors in an unconstitutional manner so as to deprive citizens of rights guaranteed to them by the Constitution is a judicial question, and is for the courts, not the Congress, to determine.

The foregoing propositions will be discussed in the order set out.

1. THE CONSTITUTION RESERVES IN THE STATES THE EXCLUSIVE POWER TO DETERMINE THE MANNER OF CHOOSING ITS ELECTORS TO VOTE FOR PRESIDENT OR VICE PRESIDENT OF THE UNITED STATES, AND CONFERS NO POWER WHATSOEVER ON CONGRESS TO LEGISLATE ON THIS SUBJECT

The only provision of the Constitution relating to the power of appointment of electors is contained in article II, section 1, of the Constitution, which confers upon and vests in the State legislatures plenary power over the method of subject except as to the time of choosing the electors. The second clause of the section provides as follows:

"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; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector."

The fourth clause is as follows:

"The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States."

Nothing can be clearer than the effect of these quoted provisions. In drafting and adopting the Constitution, the States were not conferring powers on themselves, they were reserving powers already possessed and conferring them upon their own legislatures. By these provisions the States delegated to Congress the power only to determine the time of choosing the electors, while they conferred on their own respective State legislatures the exclusive power to direct the method and manner in which said electors shall be chosen or appointed. There is no requirement that they shall be elected by the people, or, if so elected, what qualifications the legislature may prescribe for those privileged to vote for them. In fact, in the first Presidential election, in 5 of the 11 States which had then ratified the Constitution, the appointment of electors was made by the State legislatures (*McPherson* v. *Blacker*, 146 U. S. 1, 36 L. ed. 869, 875). In construing the second clause in the cited case, Mr. Chief Justice Fuller said:

"The Constitution does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors. It recognizes that the people act *through their representatives in the legislature, and leaves it to the legislature exclusively to define the method of effecting the object.*" (36 L. ed. at p. 874.)

And at page 877 of 36 L. ed. he said further:

"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, 379 (33: 951, 952) 'no more officers' or agents of the United States than are the members of the State legislatures when acting as electors of Federal Senators, or the people of the States when acting as the 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." [Italics supplied.]

The opinion also quotes with approval (36 L. ed. 877) from a report of the Senate Privileges and Elections Committee made in 1874, in which it is stated that "it is no doubt competent for the legislature to authorize the Governor, or the supreme court of the State, or any other agent of its will to appoint these electors."

And referring to the provision of the fourteenth amendment penalizing the State representation in the House of Representatives where the right to vote at any election is denied or abridged except for crime, the Court said further:

"* * * The first section of the Fourteenth Amendment does not refer to the exercise of the elective franchise, though the second provides that if the right to vote is denied or abridged to any male inhabitant of the State having attained majority and being a citizen of the United States, then the basis of representation to which each State is entitled in the Congress shall be proportionately reduced. Whenever presidential electors are appointed by popular election, then the right to vote cannot be denied or abridged without invoking the penalty, and so of the right to vote for representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof. *The right to vote intended to be protected refers to the right to vote as established by the laws and constitution of the State.* There is no color for the contention that under the amendments every male inhabitant of the State being a citizen of the United States has from the time of his majority a right to vote for presidential electors." (36 L. ed. 878). [Emphasis supplied.]

The fourteenth amendment applies to State officers as well as Federal, and, while it penalizes the States for the exercise of their power to deny or abridge the right to vote, it at the same time recognizes the existence of that power. It certainly does not prohibit its exercise. The only power conferred on Congress is to reduce the State's representation.

It is clear, therefore, that nowhere does the Constitution confer on Congress any power to supervise or in any manner interfere with the State legislatures in directing the manner of appointment of a State's presidential electors, or in saying who may vote in elections to choose them, if the legislature directs that method of appointment and prescribes who may vote therein.

The second proposition will now be discussed.

2. ARTICLE 1, SECTION 2, OF THE CONSTITUTION, AND THE SEVENTEENTH AMENDMENT, RESERVE UNTO THE STATES THE EXCLUSIVE POWER TO PRESCRIBE THE QUALIFICATIONS OF THE ELECTORS FOR MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES, AND THIS POWER IS IN NO WAY MODIFIED OR IMPAIRED BY THE POWER DELEGATED TO CONGRESS BY ARTICLE 1, SECTION 4, TO REGULATE THE TIME, PLACE, AND MANNER OF HOLDING ELECTIONS

Article 1, section 2, clause 1, provides:

"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."

The seventeenth amendment, clause 1, is as follows:

"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 legislatures."

Article 1, section 4, reads thus:

"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."

The tenth amendment provides that:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It is not contended by the proponents of the bill that the States delegated to Congress the power to prescribe the qualifications of electors for the most numerous branch of the State legislatures. That power, then, was undoubtedly reserved by each of the several States unto itself. This automatically, as a matter of law, resulted in vesting in each State the power to determine the qualifications of electors for its Senators and Representatives in Congress, because the qualifications are fixed by article 1, section 2, as the same as the electors for the State legislature. It is obvious, therefore, that a congressional power to prescribe qualifications for electors for Senators and Representatives would necessarily carry with it the power to fix the qualifications for voters for the State legislatures, since they must be the same.

It is a fundamental and universally accepted principle governing the interpretation of the Constitution, where the respective powers of the State and Federal Governments are the subject of inquiry, that the States, in creating the Constitution, reserved all legislative powers which they did not grant to the Congress. If the Constitution had merely provided that each State should have the right to be represented in Congress by two Senators and a number of Representatives, without any provision at all as to their method of selection, each State would have possessed complete power to select its Representatives in any manner it might see fit. When the Constitution was being drafted each State had unlimited sovereign powers with respect to the selection of any Representatives it might send anywhere. Since the States already possessed this power, it is wholly inaccurate to speak of their conferring such power upon themselves. The situation was analagous to that in which the United States would find itself if a constitution of a League of Nations were being drafted. Would it be necessary for such a constitution to provide a method of selection of our representatives in such a League. If the League constitution should entitle us to certain representatives, the Congress possesses ample power to determine the method of their selection. It need not derive it from the League constitution. If the League constitution did provide a particular method of selection of our representatives in the League, it would clearly operate as a restriction upon the powers of Congress, not as a grant of power.

It is likewise undoubtedly true that article 1, section 2, of our Constitution was not a grant but a restriction upon the power of the States, in that it prohibited them from prescribing different qualifications for electors for Representatives in Congress than for those voting for the most numerous branch of their State legislatures. The States would clearly have had the right to fix different qualifications if the Constitution had been silent on the subject.

And the patron of the bill, Senator Pepper, in addressing the Senate on August 25, 1942 (Cong. Rec. p. 7201), admitted that Congress is without power to prescribe qualifications of these electors, but contended that the Federal Government delegated the power to the States. He said: "I did not say that the Federal Government prescribed the qualifications of electors. Of course, it does not. It delegates that power to the State legislatures." This is obviously an incorrect or erroneous viewpoint from which to approach the question of State powers. When the Constitution was drafted and in process of being adopted by the States, our Federal Government was not even in existence and possessed no powers. It never has possessed the power to prescribe voting qualifications in the States, and, therefore, could not possibly delegate it. Nor do the State legislatures have power to fix such qualifications. This is provided for in State constitutions unless such constitutions themselves confer the power on the State legislatures.

It has been argued, however, by some, in favor of the constitutionality of the bill, that under its power to regulate the "manner of holding" such elections Congress may fix suffrage qualifications. Not only is this in the teeth of the interpretation placed upon this power by the framers of the Constitution, but it also runs afoul of the practical construction which has been placed upon it by the Supreme Court and the courts of the States, by the States in amending the Constitution, and by Congress itself in submitting such amendments to them.

Interpretation of framers of Constitution

Alexander Hamilton, who took a leading part in drafting the Constitution and in expounding its meaning to the State legislatures then considering its adoption, emphasized the wisdom of the suffrage provision in article I, section 2. The provision, he explained, necessitated the placing of the voting qualifications in

the *State constitutions* and removed it from *State legislatures*, for the obvious reason that there could be no election for members of a State legislature until the State constitution had provided for their election and the qualifications of their electors. "The provision made by the convention appears, therefore, to be the best that lay within their option," he said. "It must be satisfactory to every State because it is conformable to the standard *already established*, or which *may be established by the State itself*. It will be safe to the United States. because *being fixed by the State constitutions*, it is not alterable by the State governments * * *." [Italics supplied.] Hamilton also said that to have left the right of suffrage "open for the occasional regulation of the Congress, would have been improper" (The Federalist, No. LII).

It is significant that the initial power to regulate the "time, place, and manner of holding elections" is lodged by article II, section 4, in the legislature of the States. But as Hamilton explained, these legislatures would have no power to prescribe qualifications of their electors, because necessarily this must be done by the State constitution. It follows, then, that the power of Congress "to make or alter such regulations" is necessarily limited to the regulations which the State legislature could make; and prescribing the qualifications of their own electors is not one of them. Article I, section 2, does not purport to vest any power at all in the State legislatures. It contemplates that the voting standards shall be fixed by the States themselves, in their constitutions, but the power to regulate the time, place, and manner of holding such elections is vested in the State legislatures, and this power is paramount to a conflicting State constitutional provision to regulate same (*McPherson* v. *Blacker*, 146 U. S. 1, 36 L. ed, at p. 874).

That it was the intention of the States to reserve to themselves complete control of suffrage is manifest from contemporaneous discussions of the subject. Objections were urged by those opposing the adoption of the Constitution that the power conferred on Congress of final control over the place of holding such an election would enable Congress to designate places so located that the "wealthy and well-born as they are called" would dominate the choice of Representatives. Hamilton pointed out that people of that class were not segregated in particular localities, and that no such discrimination could be successfully practiced. He then added this significant statement:

"* * * The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing *qualifications of property* either for those who may elect, or be elected. *But this forms no part of the power to be conferred upon the national government.* Its authority would be expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon another occasion, are defined and fixed in the Constitution; and are unalterable by the legislature" (The Federalist No. LX). [Emphasis supplied.]

In the debates concerning the adoption of the Constitution at the Massachusetts convention, in discussing this question, it appears from page 28 of volume II of Elliot's Debates (second edition) that Mr. White expressed the view that Congress might prescribe "that none should be electors but those worth 50 or a 100 pounds sterling." To which it appears from page 51 of said volume that Mr. King, who with Hamilton was also a member of the style drafting committee, replied as follows:

"The idea of the honorable gentleman from Douglass, * * *, transcends my understanding; for the power of control given by this section extends to the *manner* of election, not the qualifications of the electors."

See also to the same effect the statement of Mr. Nicholas, chairman of the Virginia convention, as reported in volume III, page 8, Elliot's Debates.

At page 71 of volume IV, Elliot's Debates, Mr. Steele, of North Carolina, referring to the election of Representatives in Congress, stated the following:

"Who are to vote for them? Every man who has a right to vote for a representative to our legislature will ever have a right to vote for a Representative to the general government. Does it not expressly provide that the electors in each State shall have the qualifications requisite for the most numerous branch of the State legislature? Can they, without a most manifest violation of the Constitution, alter the qualifications of the electors? The power over the manner of elections does not include that of saying who shall vote; the Constitution expressly says that the qualifications which entitle a man to vote for a State representative. It is, then, clearly and indubitably fixed and determined who shall be the electors; and the power over the manner only enables them to determine how these electors shall elect—whether by ballot, or by vote, or by any other way. Is it not a maxim of universal jurisprudence, of reason and common

sense, that an instrument or deed of writing shall be so construed as to give validity to all parts of it, if it can be done without involving any absurdity?"

At page 61 of said volume, Mr. Davie, of North Carolina, in support of the granting of the power, stated the following:

"* * * If gentlemen will pay attention, they will find that, in the latter part of this clause, Congress has no power but what was given to the States in the first part of the same clause. They may alter the manner of holding the election, but cannot alter the tenure of their office. They cannot alter the nature of the elections; for it is established, as fundamental principles, that the electors of the most numerous branch of the State legislature shall elect the Federal Representatives, and that the tenure of their office shall be for 2 years; * * * Here, in the first part of the clause, this power over elections is given to the States, and in the latter part the same power is given to Congress, and extending only to the time of holding, the place of holding, and the manner of holding, the elections. Is this not the plain, literal, and grammatical construction of the clause? Is it possible to put any other construction on it, without departing from the natural order, and without deviating from the general meaning of the words, and every rule of grammatical construction. Twist it, torture it, as you may, sir, it is impossible to fix a different sense upon it. * * *"

Supreme Court decisions

There is an unbroken line of decisions of the Supreme Court which recognize the exclusive power of the States to prescribe the suffrage qualifications of their electors, except insofar as they are restriced by the fifteenth and nineteenth amendments which forbid discriminations only because of race, color, or previous conditons of servicude, or of sex. In *Breedlove* v. *Suttles* (302 U. S. 277, 283), decided less than 5 years ago, the Supreme Court in a unanimous opinion said:

"To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the fourteenth amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the fifteenth and nineteenth amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate (*Minor* v. *Happersett*, 21 Wall. 162, 170 et seq., 22 L. ed. 627, 629; *Ex parte Yarbrough*, 110 U. S. 651, 664, 665, 28 L. ed. 274, 275, 4 S. Ct. 152; *McPherson* v. *Blacker*, 146 U. S. 1, 37, 38, 36 L. ed. 869, 878, 13 S. Ct., 3; *Guinn* v. *United States*, 238 U. S. 347, 362, 59 L. ed. 1340, 1346, 35 S. Ct. 926, L. R. A. 1916A, 1124, * * *" (82 L. ed. 256)).

The patron of the bill here under consideration sought to discredit the language above quoted: "The privilege of voting is not derived from the United States." He argued that the Supreme Court has since held in the *Classic case* (313 U. S. 229) that the right to vote and have the vote counted is derived from article I, section 2, of the Constitution. The argument overlooks the distinction between privilege and right. The suffrage laws of the State determine those who are privileged to vote. When this privilege has been conferred on any person by State law, the Constitution protects the right to exercise that privilege. The distinction was clearly drawn in an old case *Ex parte Yarbrough* (1883) (110 U. S. 651, 28 L. ed. 274), from which the following is quoted:

"But it is not correct to say that the *right to vote* for a Member of Congress does not depend on the Constitution of the United States.

"The office, if it be properly called an office, is created by that Constitution and by that alone. It also declares how it shall be filled, namely: by election.

"Its language is: '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 same qualifications requisite for electors of the most numerous branch of the State legislature' (art. I, sec. 2). The States *in prescribing the qualifications of voters for the most numerous branch of their own legislatures*, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualification 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 the same persons shall vote for members of Congress in that State.* It adopts the qualification thus furnished as the qualification of its own electors for Members of Congress.

"It is not true, therefore, that electors for Members of Congress owe their *right* to vote to the State law in any sense which makes the *exercise of the right to depend exclusively on the law of the State.*

"Counsel for petitioner, seizing upon the expression found in the opinion of the court in the case of *Minor* v. *Happersett* (21 Wall. 178 (88 U. S. XXII, 631)),

that 'the Constitution of the United States does not confer the right of suffage upon anyone,' without reference to the connection in which it is used, insists that the voters in this case do not owe their right to vote in any sense to that instrument.

"But the Court was combating the argument that his right was conferred on all citizens, and therefore upon women as well as men.

"In opposition to that idea, it was said the Constitution adopts as the qualification for voters of Members of Congress that which prevails in the State where the voting is to be done; therefore, said the opinion, the right is not definitely conferred on any person or class of persons by the Constitution *alone*, because you have to look to the *law of the State* for the description of the class. But the court did not intend to say that *when the class or the person is thus ascertained*, his *right* to vote for a Member of Congress was not fundamentally based upon the Constitution, which created the office of Member of Congress, and declared it should be elective, and *pointed to the means of ascertaining who should be electors*" (28 L. ed. 278). [Italics supplied.]

Thus the Supreme Court clearly sustains the exclusive power of the States to prescribe who shall vote for their Senators and Representatives in Congress.

The patron of the bill argued that the Classic case, in effect, overruled the Breedlove case above quoted from. But the Classic case itself recognizes the distinction between the right to vote by voters qualified and those not qualified under the suffrage laws of the State.

The Classic case did not involve any question of the power of Congress over suffrage. There was no denial of the qualification of the voters there affected under State laws. The only question was whether the protection of the Constitution extends to persons qualified by State law to vote in primary elections as well as in general elections. The defendants, commissioners of elections in Louisiana, were indicted on a charge that in a congressional primary they "willfully altered and falsely counted and certified the ballots of voters cast in the primary election." The Court said:

"* * * 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' within the meaning of sections 19 and 20 of the Criminal Code, and whether the acts of appellees charged in the indictment violate those sections" (313 U. S. 307). [Emphasis supplied.]

And upon the question as to what the right is which is secured, the Court said:

"* * * Such right as is secured by the Constitution to *qualified voters* to choose Members of the House of Represenatives is thus to be *exercised* in conformity to the *requirements of State law subject to the* restrictions prescribed by section 2 and to the authority conferred on Congress by section 4, to regulate the times, paces, and manner of holding elections for Representatives.

"We look then to the statutes of Louisiana here involved to ascertain the *nature of the right* which under the constitutional mandate they *define and confer on the voter* and the *effect upon its exercise* of the acts with which appellees are charged, all with the view to determining, first, whether the right or privilege is one secured by the Constitution of the United States; second, whether the effect under the *State statute* of appellee's alleged acts is such that they operate to injure or oppress citizens in the exercise of that right * * *" (313 U. S. 310-311). [Emphasis supplied.]

The opinion thus makes clear that the State laws define and measure the right to vote in elections for Representatives and Senators in Congress, and the Court said that "obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a State to cast their ballots and have them counted at congressional elections." These qualified voters, it must be remembered, are those conforming to the qualifications of voters for the most numerous branch of the State legislature, as prescribed in the State constitution.

The patron of the bill, Senator Pepper, has seized upon language in the opinion which was not used in relation to the question of voting qualifications, and argued before this committee that although this power to prescribe such qualifications was in no way involved in the case, yet the Court intended to overrule all previous decisions on the subject, and to hold that the power of Congress to alter State regulations relating to the time, place, and manner of holding such elections also embraces the power to prescribe suffrage qualifications for the electors at such elections (and as a consequence at elections of State legislatures, since the qualifications must be the same). It is important to bear in mind that the statute involved in the Classic case regulated only the manner of holding elections. The language referred to is as follows:

"* * * While, in a loose sense, the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the States [citing cases], this statement is true only in the sense that the States are authorized by the Constitution, to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by he exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers'." (See *Ex parte Siebold*, 100 U. S. 371, 25 L. ed. 717; *Ex parte Yarbrough*, *supra* (110 U. S. 663, 664, 28 L. ed. 278, 4 S. Ct. 152); *Swafford* v. *Templeton*, 185 U. S. 487, 46 L. ed. 1005, 22 S. Ct. 783; *Wiley* v. *Sinkler*, 179 U. S. 58, 64, 45 L. ed. 84, 88, 21 S. Ct. 17 (313 U. S. 315).)

In the language italicized, it is clear that the Chief Justice was not being precise, because the power to prescribe qualifications contained in section 2 is only part of the powers which the States may exercise. Section 4 confers on the State legislatures the power to regulate the time, place, and manner of holding elections. Regulations adopted by State legislatures pursuant to section 4 control unless Congress restricts the action of the State legislatures by exercising its supervisory power conferred by the same section to "make or alter all such regulations." It is obviously the congressional power to supervise regulations as to time, place, and manner of holding elections enacted by State legislatures that was referred to as being subject to congressional restriction, because of the four cases cited by the Court to support the proposition, none denies the supreme power of the States to prescribe the qualifications of the electors who are to vote for the most numerous branch of their legislatures, and, consequently, their Senators and Representatives in Congress. The first case cited, Ex parte Siebold, involved solely the question of the power of Congress to provide for the supervision of elections for Representatives in Congress by Federal marshals and their deputies, and by supervisors appointed by the Federal judges. These Federal officers were required to be present at the voting places, and it was made a crime by the act of Congress for any one to interfere with them in the discharge of their duties. The opinion of the Court did not touch upon the question of suffrage qualifications, or even refer to section 2 of article I. It was restricted solely to the power to regulate the manner of holding the election as appears from this language in the opinion: "The clause of the Constitution under which the power of Congress, as well as that of the State legislatures, to regulate the election of Senators and Representatives arises is 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 place of choosing Senators.'" This expressly excludes the possibility that the Court considered section 2, relating to qualifications of electors as included in the power to regulate the "manner of holding elections." Otherwise, reference would have been made to section 2 as well as section 4.

The second case cited in the opinion in the *Classic* case is *Ex parte Yarbrough*. In this case (heretofore quoted from at length at pp. 18, 19, herein) the Court expressly recognized the power of the States to prescribe such qualifications, saying that the States "define *who are to vote* for the popular branch of their own legislature, and the Constitution of the United States says *the same persons shall vote* for members of Congress in that State." [Emphasis supplied.] If the language relied on by the patron of the bill hereinabove quoted from the *Classic* case had been intended to mean that Congress is empowered to define "who are to vote" at such elections, the Court certainly would not have cited the *Yarbrough* case in support of that proposition. In fact, such a meaning would have the effect of completely overruling that case.

The next case cited by the Chief Justice in the *Classic* case is *Swafford* v. *Templeton*, which involved the question whether a person qualified to vote under *State laws*, who is wrongfully denied that right, has a cause of action for damages arising under the Constitution of the United States. In answering the question in the affirmative, the Court referred to the *Yarbrough* case, *supra*, and thus interpreted that opinion:

"* * * That is to say, the ruling was that the case was *equally one arising under the Constitution or laws of the United States*, whether the illegal act complained of arose from a charged violation of some specific provision of the Constitution or laws of the United States, *or from the violation of a State law* which affected the exercise of the right to vote for a Member of Congress, *since the Constitution of the United States had adopted, as the qualifications of electors for*

Members of Congress, those prescribed *by the State* for electors of the most numerous branch of the legislature of the State" (46 L. ed. 1007, 1008). [Emphasis supplied.]

It is significant that the Court says that the Constitution adopts the qualifications of electors prescribed by the State, not that Congress adopts same. Since the Constitution adopts them, Congress is without power to alter this adoption or in any manner same.

The last case cited by the Chief Justice in the Classic case is *Wiley* v. *Sinkler*, which also held that the right of a person, qualified under State law to vote for the popular branch of the legislature, to vote also for Members of Congress is protected by the Constitution. But the opinion quoted with approval the proposition laid down in the Yarbrough case that the States "define who are to vote for the popular branch of their own legislature and the Constitution of the United States says the same persons shall vote for Members of Congress in that State." Not the slightest question is raised in the Wiley case as to the supreme and paramount power of the States to say who shall vote in the elections.

It is clear, therefore, that any argument that the language quoted from the Classic case was intended to overrule the four cases cited to support the correctness of the proposition stated by that language, is wholly without justification or merit.

In his argument before this subcommittee, the patron of the bill, Senator Pepper, expressed the view that the decision of the Supreme Court in the Breedlove case, supra (which sustained the validity of the requirement for the payment of a poll tax as a suffrage qualification or prerequisite to the voting privilege), was in effect overruled by the Classic case. He further expressed the view that the Breedlove case was entitled to little weight because the voter in that case, who challenged the constitutionality of the requirement, was demanding to vote at an election for both State officers and for Representatives in Congress. He then stated that the case of *Pirtle* v. *Brown* (118 F. (2d) 218), presented an ideal one for testing the constitutional question, since that election was one restricted solely to a congressional Representative. The United States Circuit Court of Appeals for the Sixth Circuit, in a unanimous opinion, based largely on the Breedlove case, had held the poll-tax-qualification requirement constitutional. The patron of the bill criticised this decision severely, stated that a writ of certiorari from the Supreme Court would be sought, and confidently predicted that same would be granted and the case reversed. As it turned out, however, the Supreme Court denied certiorari on October 13, 1941 (86 L. ed. (Adv. 68) 62 Sup. Ct. Rep. 64). Thus, the Supreme Court again placed the stamp of its approval on the Breedlove case, and also approved it as the controlling authority to sustain the validity of the poll-tax qualification in elections solely for congressional Representatives. There can be no doubt, therefore, that the poll-tax qualification for voting for a State's Representatives in Congress does not violate any constitutional rights of the citizens of the State or of the United States under decisions of the Supreme Court of the United States.

State court decisions

There have been numerous court decisions sustaining the validity of the poll-tax qualification. It would unduly prolong this statement to undertake to review them. However, in the last volume of American Law Reports, annotated (vol. 139) the case of *Pirtle* v. *Brown*, last above referred to, is reported, and in an annotation thereto, beginning on page 572, this proposition is stated: "The courts are unanimous in holding that failure to pay a valid poll tax imposed as a condition of voting has the effect of disqualifying the voter and rendering his vote invalid." In support of the statement, the annotation cites the Breedlove case, also *Pirtle* v. *Brown*, and innumerable decisions from the following States, Alabama, Arkansas, Delaware, Florida (5 cases), Georgia, Kentucky, Louisiana, Massachusetts, Mississippi, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

Congressional and State action

Congress has proposed two amendments to the Constitution, the purpose of each of which was to restrict the unlimited reserved power of the States over suffrage. The fifteenth amendment prohibits denial of the right to vote "on account of race, color, or previous condition of servitude," while the nineteenth amendment prohibits such denial "on account of sex." If Congress considered that it possessed the power to prohibit such denial, there would have been no necessity or reason for submission of these amendments. A prohibitory statute would have been sufficient in each case. Furthermore, the fourteenth amend-

ment expressly recognizes the full power of the States over suffrage qualifications by conferring on Congress power to reduce the basis of representation of any State which may abridge or deny the right to vote of male citizens 21 years of age, "except for participation in rebellion or other crime." This provision, the Supreme Court, referring to the State's power over suffrage, held "recognizes the possession of the general power by the State, since the amendment seeks to regulate its exercise as to the particular subject with which it deals" (*Guinn v. United States*, 238 U. S. 362).

Thus, by submitting these amendments, the Congress has construed the Constitution as reserving in the States full power over suffrage requirements, and the States, by ratifying same, have placed a like construction on same.

Summarizing what has been said on this second proposition, it is clear beyond debate that, under the construction placed on sections two and four of article I of the Constitution, (a) by the contemporaneous statements of the framers of the Constitution, (b) by the unanimous decisions of the Supreme Court of the United States and of the highest courts of the States, and (c) by the actions of Congress and the States with respect to constitutional amendments regulating in certain particulars the State's exercise of its powers over suffrage, the States reserved unto themselves full and unlimited powers to prescribe who may vote at all elections, except as restricted by the provision that the qualifications to vote for their Senators and Representatives in Congress should not be different from those prescribed for voters for the popular branch of the State legislatures.

This brings us, then, to the consideration of the third propositon which is as follows:

3. THE REQUIREMENT OF THE PAYMENT OF A POLL TAX AS A PREREQUISITE TO THE RIGHT TO VOTE IS A "QUALIFICATION" OF AN ELECTOR WITHIN THE MEANING OF ARTICE I, SECTION 2, OF THE CONSTITUTION AND OF THE SEVENTEENTH AMENDMENT

Section 1 of the bill provides that a requirement of payment of a poll tax as a prerequisite to voting for President, or for a State's Senators and Representatives in Congress, is not a "qualification of voters or electors" in elections for these officers, but is "an interference with the manner of holding" such elections. Thus, the bill carries on its face the implied concession that if such requirement is a qualification, then Congress possesses no power to legislate with respect to same.

The bill recites that payment of the poll tax has no reasonable relations to wealth, yet much of the testimony before this committee is to the effect that the great majority of those who do not pay the tax are too poor to do so. Their poverty would in most, though not all, cases also have reasonable relation to intelligence, ability, and character, though the recital in the preamble of the bill denies this to be a fact. It might with greater truth be said that length of residence, or even citizenship itself, has no reasonable relation to intelligence, ability, wealth, character, and so forth.

The word "qualification" is thus defined in Webster's Dictionary: "A condition precedent that must be complied with for the attainment of a status, the perfection of a right, etc., as the qualification of citizenship."

"Qualified voter" is defined as "one who possesses certain specific qualifications for voting, especially as to citizenship, age, and residence, and sometimes also as to literacy and ownership of property."

Alexander Hamilton, in his statement heretofore quoted herein, used the expression in connection with suffrage, "prescribing qualifications of property." Mr. Steele in the North Carolina convention, in his statement also above quoted, interpreted the power of the State to prescribe qualifications of electors as the power to determine "who shall be the electors." Mr. Davis, in the same convention, in a statement also heretofore quoted herein, said that "it is established, as fundamental principles that the electors of the most numerous branch of the State legislature shall elect the Federal Representatives." He obviously construed the word "qualifications" as embracing all suffrage requirements. But under the bill here being considered, the Virginia electors for members of its legislature would not be the same as those for Virginia's United States Senators and Representatives.

And the Supreme Court itself has interpreted the State's power to prescribe suffrage qualifications as embracing the entire field of determining who may vote. In the Yarbrough case, supra, the court said the States "define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own

electors for Members of Congress." [Emphasis supplied.] It was after this judicial interpretation of the language used in section 2 of article I that the same language was employed in the seventeenth amendment with respect to the qualification of voters for United States Senators. It is an elementary principle of the law that Congress is absolutely bound by this judicial interpretation of language afterwards adopted in amending the Constitution. It cannot enlarge its own powers by changing the judicially fixed meaning of words.

As before pointed out, the Yarbrough case, in which the language quoted was used, was cited with approval in the recent Breedlove and Classic cases, and in *Swafford* v. *Templeton*, *supra* (decided in 1902), and the language itself was quoted with approval in the year 1900 in *Wiley* v. *Sinkler*, *supra*. It cannot be successfully denied that the Supreme Court has repeatedly held that the States have the absolute and exclusive right to prescribe who may vote in such elections.

The word "qualifications" with respect to suffrage has from and before the foundation of our Government continued at all times to be used in the sense of defining the class or classes of persons who are entitled to vote. As pointed out above, the word was so interpreted by the framers of the Constitution, and those debating its adoption in various State conventions. In addition to those above mentioned, in the 1937 edition of Elliot's Debates (vol. 5, (supplement), p. 385), it appears that in the discussion in the constitutional convention concerning the adoption of what is now section 2 of article I, Mr. Governor Norris moved to amend it by striking out "beginning with the words 'qualifications of electors'" so as to "restrain the right of suffrage to freeholders." "Give the votes to people who have no property," he said, "and they will sell them to the rich, who will be able to buy them." Mr. Wilson thought "it would be difficult to form any uniform rule of qualifications for all States;" and that "it would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the State legislature, and to be excluded from a vote for those in the National Legislature."

Colonel Mason observed that some of the States had "extended the right of suffrage beyond the freeholders," and that "a power to alter the qualifications would be a dangerous power in the hands of the legislature" (Congress). He thought property qualifications should not be confined to ownership of land. Mr. Ellsworth found difficulty in defining the freehold and favored giving to "every man who pays a tax" the right "to vote for the representative who is to levy and dispose of his money." "Taxation and representation ought to go together," he said. James Madison was undecided "whether the constitutional qualification ought to be freehold" but said the right of suffrage ought not to be left to be regulated by the legislature (Congress). Mr. Rutledge opposed "restraining the right of suffrage to the freeholders." Mr. Morris' proposed amendment was defeated and the section in its present form was adopted by the convention.

It is obvious from the discussion by the members of the convention that the words "right of suffrage" were considered by them as synonymous in meaning with "qualification of electors" as used in section 2 of article I.

And the interpretation of "qualifications" of voters or electors has persisted to the present time, volume 29 of Corpus Juris Secundum (1941), in the article on "Elections," carries as its second main heading the words "Qualifications and Disqualifications of Voters." Under this there are various requisites of qualification discussed. Section 28, page 50, under the subheading "Property," states that "unless required by the constitutions or by valid statutory regulations the ownership of property is not a qualification for voting." Section 29, page 51, has the subtile "Payment of Taxes," and states that "unless required by the constitution or statutes payments of taxes is not a qualification for voting. And note 37, page 52, contains this 'statement: "Constitutional amendments qualifying electors who have paid poll taxes to vote 'at any election,' was held to include municipal elections." And likewise, in 18 Am. Jur. (1938), in the article on "Elections," under the main heading "Electors," and the subheading "Qualifications," th earticle treats of the various requisites of voting qualifications, among them being citizenship, age, sex, and residence. The seventh requisite considered is entitled "Ownership of Property," and in section 70, page 225, it is stated that, unless prohibited by the constitution of the State, its "legislature may prescribe property qualifications." The eighth requisite considered in said article is entitled "Payment of Taxes," and in section 72, page 227, appears this sentence: "Whether the adoption of the nineteenth amendment to the Federal Constitution had the effect of rendering women subject to a poll-tax qualification theretofore applicable to men only is a question which has been answered

in the affirmative in some jurisdictions and in the negative in others." The word "qualification" is used in this article in referring to the payment of poll taxes and other taxes as a prerequisite to the right to vote.

It is clear, therefore, that from the time of the foundation of our Government and up to and including the present, the requirement of payment of a tax as a prerequisite to the right of suffrage has been deemed a suffrage qualification. But the power of the State to so condition suffrage is not dependent upon the meaning of the words "qualifications of electors," as will appear from the following discussion of the fourth proposition.

4. EVEN IF THE REQUIREMENT OF THE PAYMENT OF A POLL TAX BE DEEMED NOT TO BE A "QUALIFICATION" OF ELECTORS IT IS NEVERTHELESS A PROPER EXERCISE OF THE RESERVED POWERS OF THE STATES OVER SUFFRAGE, AS WELL AS OF THE TAXING POWERS OF THE STATES

It is essential in determining the power of the States over suffrage—that is, on what classes of persons the State will confer the privilege of voting—to keep in mind the nature of the action taken by the several States in formulating and adopting the Federal Constitution. It is elementary that the States were not conferring powers on themselves. They already possessed absolute sovereign powers. Some of these powers they were contemplating surrendering or granting to the proposed Federal Government. Such as they would not grant, obviously they would retain, but, to remove any possible doubt on this point, they adopted the tenth amendment expressly providing for such reservation of powers not delegated. When the Constitution was adopted, each State possessed and exercised unlimited power over suffrage, generally prescribing some qualification or condition such as ownership of property or payment of taxes. In *Minor v. Happersett* (88 U. S. (21 Wall.) 162, 22 L. ed. 627, 629–630), Mr. Chief Justice Waite thus stated the suffrage requirements contained in the various State constitutions at the time of the adoption of the Federal Constitution:

"* * * Upon an examination of those Constitutions we find that in no State were all citizens permitted to vote. Each State *determined for itself* who should have that power. Thus, in New Hampshire, 'Every male inhabitant of each town and parish with town privileges, and places unincorporated in the State, of twenty-one years of age and upwards, *excepting paupers and persons excused from paying taxes* at their own request,' were its voters; in Massachusetts 'Every male inhabitant of twenty-one years of age and upwards, *having a freehold estate* within the Commonwealth of *the annual income of three pounds*, or any estate of the value of *sixty pounds*'; in Rhode Island 'Such as are admitted free of the company and society' of the Colony; in Connecticut such persons as had 'Maturity in years, quiet and peaceable behavior, a civil conversation, and *forty shillings freehold or forty pounds personal estate*,' if so certified by the selectment; in New York 'Every male inhabitant of full age who shall have personally resided within one of the counties of the State for six months immediately preceding the day of election * * * if during the time aforesaid *he shall have been a freeholder, possessing a freehold of the value of twenty pounds within the county*, or have rented a tenement therein of the yearly value of forty shillings, and been rated *and actually paid taxes to the State*'; in New Jersey 'All inhabitants * * * of full age who are *worth fifty pounds*, proclamation money, clear estate in the same, and have resided in the county in which they claim a vote for twelve months immediately preceding the election'; in Pennsylvania 'Every freeman of the age of twenty-one years, having resided in the State two years next before the election, and within that time *paid a state or county tax which shall have been assessed at least six months before the election*'; in Delaware and Virginia 'as exercised by law at present'; in Maryland 'All freemen above twenty-one years of age having a *freehold of fifty acres of land* in the county in which they offer to vote and residing therein, and all freemen having property in the State above the value of *thirty pounds current money*, and having resided in the county in which they offer to vote one whole year next preceding the election'; in North Carolina, for Senators, 'All freemen of the age of twenty-one years who have been inhabitants of any one county within the State twelve months immediately preceding the day of election, and *possessed of a freehold* within the same county *of fifty acres of land for six months next before* and at the day of election,' and for members of the House of Commons, 'All freemen of the age of twenty-one years who have been inhabitants in any one county within the State twelve months immediately preceding the day of any election, *and shall have paid public taxes*'; in South Carolina, 'Every free white

man of the age of twenty-one years, being a citizen of the State and having resided therein two years previous to the day of election, and who *hath a freehold of fifty acres of land, or a town lot* on which he hath been legally seized and possessed *at least six months before such election*, or (not having such freehold or town lot) hath been a resident within the election district in which he offers to give his vote six months before said election, and *hath paid a tax the preceding year of three shillings sterling* towards the support of the government'; and in Georgia, 'Such citizens and inhabitants of the State as shall have attained to the age of twenty-one years, *and shall have paid tax for the year next preceding the election*, and shall have resided six months within the county.'

"In this condition of the law in respect to suffrage in the several States, it cannot for a moment be doubted that if it had been intended to make all citizens of the United States voters, the framers of the Constitution would not have left it to implication. So important a change in the condition of citizenship as it actually existed, if intended, would have been expressly declared." [Emphasis supplied.]

Thus were the various States exercising their sovereign powers with respect to conferring the right of suffrage upon their citizens. Whether the requirements to be met in each State be termed a "qualifications of electors" or be referred to by any other term or word or words, the States possessed and exercised the unlimited power over suffrage and the granting of the voting privilege. In adopting the Federal Constitution, the States did not grant to Congress any of their powers over suffrage. They did, however, in article 1, section 2, restrict their own powers over suffrage requirements of electors for their Congressional Representatives so that they could not prescribe for such electors "qualifications" different from those entitled to vote for the popular branch of their own legislatures. If the payment of a tax as a prerequisite to the right of suffrage is a qualification, then the States must prescribe the same requirement for both classes of electors referred to in section 2. If, however, it is not a qualification, then the States undoubtedly have the power to require the payment of the tax for those voting for their members of Congress and Senators without requiring it of those voting for members of their legislatures. It is obvious that the broader the meaning of the term "qualifications of electors," the greater the restriction imposed on the suffrage powers of the States by section 2, because the restriction applies only to qualifications. The power of the States to impose conditions or requirements of suffrage other than qualifications is in no way restricted by section 2, or by any other provision of the Constitution as originally adopted. And this interpretation of section 2 merely as a restriction upon State power was adopted in the Classic case, supra, as appears from the following language in the opinion:

"* * * Such right as is secured by the Constitution to qualified voters to choose members of the House of Representatives is thus to be exercised in conformity to the requirements of *State law subject to the restrictions prescribed by section 2* and to the authority conferred on Congress by section 4, to regulate the times, places, and manner of holding elections for representatives" (313 U. S. 310). [Emphasis supplied.]

The absolute power of the States over suffrage requirements (except as restricted by art. 7, sec. 2, and by the fifteenth and nineteenth amendments) has been repeatedly asserted by the Supreme Court, and never questioned in any of its decisions. The powers of the States are thus stated in *United States* v. *Reese*, 92 U. S. (2 Otto), 214, 23 L. ed. 563, 564:

"The fifteenth amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference, in this particular to one citizen of the United States over another, on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of *age, property, or education*. Now it is not. If citizens of *one race* having certain *qualifications* are permitted by law to vote, those of *another* having the same *qualifications* must be. Previous to this amendment, there was no constitutional guaranty against this discrimination; now there is. * * *" [Emphasis supplied.]

And this principle is likewise clearly reaffirmed in *Breedlove* v. *Suttles*, *supra*, the Court saying: "Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the fifteenth and nineteenth amendments, the State may condition suffrage as it deems appropriate." The only constitutional provision restricting the State's power over suffrage other than the two amendments referred to is section 2 of article 1, and if the require-

ment of a poll tax payment is not a qualification, then that section has no application.

But the requirement of payment of the poll tax as a prerequisite to the privilege of voting is the valid exercise of the taxing power of the State, as well as the suffrage power. In the Breedlove case the Court said: "Exaction of payment before registration undoubtedly serves to aid collection from electors desiring to vote, but that use of the State's power is not prevented by the Federal Constitution." The proponents of the Bill do not point out any power conferred on Congress thus to interfere with the States' exercise of their taxing powers. Alexander Hamilton did not consider that Congress was being given any such power, for he says, in No. XXXIII of the Federalist, that a law passed by Congress "abrogating or preventing the collection of a tax laid by the authority of a State (unless upon imports and exports) would not be the supreme law of the land, but an usurpation of a power not granted by the Constitution." The effect of the proposed bill is virtually to prohibit the collection of the poll tax, as the cost of enforcing collection would, in most cases, exceed the amount of the tax. The proceeds from poll taxes in Virginia are used for the purpose of operation of public schools, and there are many persons whose children are in the schools who pay no other tax or make any other contribution to them. The obstruction to the collection of these revenues which would result from the proposed bill cannot be justified by any power conferred on Congress by the Constitution.

It is clear, therefore, that Congress possessed no power to regulate or interfere with the exercise by the States of their power to prescribe suffrage requirements, or of their power to lay and collect the poll tax.

The fifth proposition will next be considered.

5. THE CONSTITUTION PROTECTS THE RIGHT TO VOTE OF ONLY THOSE WHO ARE QUALIFIED TO VOTE UNDER STATE STATUTES

The excerpts from the opinions in the Classic case, supra, and the four cases therein cited, and from the Breedlove case, which have been heretofore quoted in this statement, conclusively show that, so far as decisions of the Supreme Court can be considered an authoritative interpretation of the Constitution, the right of a person to vote for his State's Representatives and Senators in Congress depends upon whether the State has conferred upon him the privilege of voting for members of the most numerous branch of the legislature of the State. When that privilege has been so conferred on him, then, and not until then, does the Constitution give him the right to vote for these Federal Representatives and Senators. It is, therefore, unnecessary to repeat what has already been so clearly expressed in the opinions referred to, but attention is again directed to the fact that within the last year the Supreme Court has, in effect, reaffirmed those decisions by its refusal to grant a writ of certiorari in the case of *Pirtle* v. *Brown*, *supra*.

The last proposition, the sixth, will now be discussed.

6. WHETHER A STATE HAS EXERCISED ITS CONSTITUTIONAL POWER TO PRESCRIBE THE QUALIFICATIONS OF ELECTORS IN AN UNCONSTITUTIONAL MANNER SO AS TO DEPRIVE CITIZENS OF RIGHTS GUARANTEED TO THEM BY THE CONSTITUTION IS A JUDICIAL QUESTION, AND IS FOR THE COURTS, NOT THE CONGRESS, TO DETERMINE

Those arguing in favor of the constitutionality of the bill lay much emphasis upon the fact that the right to vote for a State's Senators and Representatives in Congress is derived from the Constitution. This principle is not new, but, as above pointed out, was laid down in the Yarbrough case in 1884. It has been seized upon, however, as the basis of a claim that it constitutes a new source of congressional regulatory powers over suffrage. But this contention is not new. It was thus answered in *Newberry* v. *United States* (256 U. S. 232, 249):

"We find no support in reason or authority for the argument that because the offices were created by the Constitution Congress has some indefinite, undefined power over elections for Senators and Representatives not derived from section 4. 'The Government, then, of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.'"

That Congress may enact laws to protect the right to vote for Federal representation of persons entitled to vote for State legislators is not denied by anyone. But protecting the right to vote and conferring such a right as his bill proposes are essentially different powers. The first has to do with regulating the machin-

ery for holding elections, the latter relates solely to suffrage. The first power was by the Constitution conferred by the States on their own legislatures in section 4 of article I, subject to the supervisory regulation of Congress, while the right of suffrage was wholly reserved to the States to be controlled primarily by State constitutions, subject only to the restriction that the qualifications of voters for State legislators and Federal Representatives be the same. The Constitution conferred no supervisory power on Congress over the actions of the States in prescribing suffrage requirements. And there was no reason why it should. The Representatives sent by a State were to be its own Representatives, not those of other States, so why should the latter dictate the suffrage requirements of the former? The debates of the convention show that it was the intention that the Senators, especially, should represent the interests of the States, as such, and safeguard against Federal usurpations of power or encroachments on the powers reserved to the States. The Supreme Court has emphatically stated that United States Senators "cannot properly be said to hold their places 'under the Government of the United States'" (*Burton* v. *United States*, 202 U. S. 344, 369). The reason Congress was given supervisory power over the time, place, and manner of holding elections for Representatives was because it was feared some of the State legislatures might fail to provide election machinery and the Congress might die for want of adequate membership. The debates clearly show this, and that the fear arose from the action of the Rhode Island Legislature in failing to provide for the selection of its members in the Congress of the old Confederation.

The preamble to the bill, if enacted, would have the effect of convicting eight of the States of fraudulent conduct in not repealing constitutional provisions requiring poll-tax payment as a suffrage requirement, although such provisions until recent years were common to a great many States, and although many of the original States required payment of taxes at the time they adopted the Federal Constitution, and for many years thereafter, it is argued by some that conditions have so changed as to justify this finding by Congress. But conditions in the South, which struggled through the poverty of the painful days of reconstruction with the burden of its racial problems, have not improved as rapidly as in other sections. The per capita wealth is much lower, and in spite of the substantial revenues for school purposes derived from the poll taxes the South's per capita school expenditures are very much less. There are very few wealthy people in the South, and sources of taxation are scarce.

It is also argued by some that the poll-tax qualification results in fraud, in that some persons buy up poll-tax receipts for others and thus influence their votes. This may or may not be true. But even if it is, buying up fraudulent receipts and presenting them at elections, is not a compliance with the laws here sought to be annulled, but is a violation of same. Furthermore, it is an act committed in the holding of the election, and Congress possesses ample power to prevent and punish such acts under section 4. It is not common knowledge that fraudulent acts in connection with elections occur on a much larger scale in States other than those here under attack?

But does Congress have jurisdiction to convict the States of fraudulent conduct? What has become of the due process of law necessary to such a finding? If the State laws under attack operate as a fraud on the United States, the courts have ample jurisdiction so to find and apply the appropriate remedy. But the courts have unanimously held exactly the opposite, including the Supreme Court as at present constituted (in denying certiorari in *Pirtle* v. *Brown*, *supra*). But this bill would have Congress, ex parte, decide adversely to the States issues of fact which the Supreme Court has already decided in their favor in properly conducted judicial proceedings in which all parties in interest were heard. Protection of constitutional rights is primarily a judicial function and it is for the courts to say whether they have been violated.

It is argued in one of the statements in support of the bill's validity that James Madison was in favor of universal suffrage at the time of the convention. The argument is not supported by his statements, and his native State, Virginia, at that time had a property qualification which he seemed to favor in the convention, as above pointed out. In the Virginia Constitutional Convention of 1829, in advocating the extension of suffrage to housekeepers and heads of families, he said:

"It would be happy if a state of society could be found or framed, in which an equal voice in making the laws might be allowed to every individual bound to obey them. But this is a theory which, like most theories, confessedly requires

limitations and modifications. And the only question to be decided, in this as in other cases, turns on the particular degree of departure, in practice, required by the essense and object of the theory itself" (Elliot's Debates, vol. V, p. 583).

Another argument advanced by some in denial of the State's exclusive power over suffrage is that they might say that only Democrats or only Republicans may vote, or that only a certain religious sect could exercise that privilege. Such arbitrary action would be an obvious denial of the equal protection of the laws (fourteenth amendment), and the courts would undoubtedly so hold. But the courts have unanimously held that the poll-tax qualification does not deny equal protection.

Extravagant statements are made by some in support of the bill to the effect that it is necessary for Congress to possess the power of supervising suffrage in order to preserve the existence of the Government. The answer is that the Government has existed and prospered for over 150 years without any such congressional power and has grown into the richest and most powerful one in the world, although during a large part of that time a great number of States had poll tax or similar voting qualifications.

The argument is made by some favoring the bill to the effect that although the States formerly possessed the power to prescribe a property qualification or one requiring payment of taxes, the Constitution has undergone a metamorphosis in recent years and this power has disappeared. They would reverse the time honored principle that the long undisputed exercise of powers is the best test of their possession and substitute in its place a rule that the sovereign powers of the States have but a life span and perish with age, instead of becoming more firmly fixed and rooted. And they would endow the Congress with power to amend the Constitution by forbidding the States to continue the exercise of old powers it no longer deems desirable. Article V of the Constitution providing for its amendment by the States, in their eyes, has perished from obsolescence.

Conclusion

It is respectfully submitted in conclusion that the Constitution has not delegated to Congress any regulatory power whatever over suffrage requirements prescribed by the States, that the Courts possess ample power to protect against any denial of constitutional rights which might result from voting qualifications or conditions which the States may impose and that the proposed bill is clearly unconstitutional.

Senator ROBERTSON. Mr. Chairman, may I ask the Governor one or two brief questions?

The CHAIRMAN. Yes.

Senator ROBERTSON. Governor, speaking of preserving the rights of sovereign States, the delicate balance, as Daniel Webster said of national sovereignty and individual rights, is it not a fact that those highly centralized governments in Europe, where the Communists, without a popular majority at the polls, have come to power, that the first office in the government that they seize is the department of the interior, which controls the place.

Governor TUCK. That is true, from what I understand.

Senator ROBERTSON. That means getting a cabinet position, getting the department of the interior, getting control of the police, and then they can make a movement that affects the destiny of the entire country.

In Virginia, you are the commander in chief of the State militia that has to be called out.

Governor TUCK. Yes.

Senator ROBERTSON. You have the control of the State police force, highway force, you appoint the adjutant general of the National Guard?

Governor TUCK. That is right, Senator.

Senator ROBERTSON. Now, with respect to a poll tax as a means of financing government, were you not taught in the law school at Washington and Lee, in my home town, that the Romans were great lawgivers?

Governor TUCK. Yes; I certainly was.

Senator ROBERTSON. Did not the Romans, under the Caesars, require all countries that they conquered, whether citizenship was extended or not, to pay a poll tax?

Governor TUCK. Well, I did not study much Roman law.

Senator ROBERTSON. Well, you will find that that is why the Jews had to come into Jerusalem once a year to be assessed for a poll tax. You remember that in the study of the Bible.

Governor TUCK. I will accept those statements as correct.

Senator ROBERTSON. You have referred to the steps taken in Virginia, that if the poll tax is to be repealed, it would not be by act of the general assembly, in violation of our Constitution, but through an amendment to the Constitution.

Governor TUCK. That is the only way that it could be repealed.

Senator ROBERTSON. Do you think the approach——

Governor TUCK. The matter of qualification of the electors, as I understand it, does not rest with the general assemblies of the respective States, but with the people of those States who shall set it up in their respective constitutions.

Senator ROBERTSON. Exactly.

Governor TUCK. Not even the General Assembly of Virginia has that right.

Senator ROBERTSON. Now, extending that to the national level, do you endorse the position taken by the great Republican Party at its last convention in which it said, "We favor the repeal of the poll tax by constitutional amendment if we want Federal action at all"?

Governor TUCK. I would say this: If you wanted Federal action at all, that would be the only way to have it. Now, some of those who are opposed to it, down in Virginia say that we are trying to fight the War Between the States over again when we clamor for States' rights. But those questions were settled, those questions involved in that conflict were settled, and as I recall it, by constitutional amendment.

But here is an entirely new question, whether or not covered in the Constitution.

Senator ROBERTSON. And the South claimed, and the one phase of State rights is the right to secede, and that was settled.

Governor TUCK. I want to change that. I said not covered in the Constitution. I mean had not been delegated by constitutional amendment to the National Government by the respective States.

Senator ROBERTSON. I know you were taught at law school at Washington and Lee that the Federal Government has no powers, except those expressly delegated to it or delegated by necessary implication.

Governor TUCK. That is right.

Senator ROBERTSON. And that all the other powers remained either in the States or in the sovereign people.

Governor TUCK. That is right.

Senator ROBERTSON. Thank you, sir.

The CHAIRMAN. Do you have any questions, Senator Stennis?

Senator STENNIS. Just as this point, Mr. Chairman, in connection with the point that the Governor has made, I want to read into the record on this point that we are discussing a paragraph from the Republican Party's platform in 1944. I am reading from the Plat-

form of the Two Great Political Parties, 1932 to 1944, compiled by South Trimble, page 423, of the 1944 platform, which provides as follows:

> Antipoll tax: The payment of any tax should not be a condition of voting in Federal elections, and we favor immediate submission of a constitutional amendment for its abolition.

That covers the point there about their procedure.

Senator GREEN. Mr. Chairman, may I ask a question? As I said before I did not have the privilege of hearing the beginning of the statement of Governor Tuck and my friend and esteemed colleague from Virginia.

The question I would like to ask is this, Governor: You state and your argument depends to a considerable extent on the definition of the qualification of voters, does it not?

Governor TUCK. Yes; it is my understanding that that is left entirely with the States.

Senator GREEN. Well, now, it comes down to this: Do you consider the ownership of a certain amount of property a qualification?

Governor TUCK. Well, we do not have any such qualification as that set up in our constitution.

Senator GREEN. Would you consider that a qualification?

Governor TUCK. Well, I would think that the people of the States would have a right to do that, if they are the judges of the qualifications.

Senator GREEN. Then, you would consider it a qualification under the language of the Constitution?

Governor TUCK. I would consider it a qualification—I would consider that one of the matters that the States could determine, if they wished to do it.

Senator GREEN. Then, they could say, according to that, that a man would have to have $100,000 in order to vote, could they not?

Governor TUCK. Well, of course, that it is carrying it quite a little bit far, but I might say that it is also in the Federal Constitution, that the Federal Government has a right to determine whether or not these elections, of course, have been fair or violative of any fundamental principle of the Constitution.

Senator GREEN. Yes; but if a State has the right to determine that, and as you say, you think it has, then the State—I am not saying that it is wise or unwise—would have a right to say that in order to vote the citizen would have to have $100,000.

Governor TUCK. I would think it might be unreasonable.

Senator GREEN. I am not saying it was reasonable or unreasonable. But if you did do such a thing, do you think the Federal Government would have a right to intervene?

Governor TUCK. Well, I do not know. In due deference to you, as a distinguished Senator, I do not think that your question bears upon the subject at all. Of course, we recognize that the Federal Government has some control over the manner of holding elections.

Senator GREEN. Well, that would not be manner; that would be matter.

Governor TUCK. Well, I do not get away from this one iota, and that is this, that the question of the qualification of the electors of both Federal and State, under our Constitution, is a matter to be determined by the people of the respective States in their constitutions.

Senator GREEN. I understand your argument.

Governor TUCK. And you can conclude that to mean whatever you wish, but that is what it is anyhow.

Senator ROBERTSON. May I ask a question at that point?

Senator GREEN. I think I would like to get an answer to my question, if you do not mind. I apparently did not make myself clear.

The question I am trying to raise is, What is a qualification?

Governor TUCK. That is a matter for the people to determine.

Senator GREEN. Not the people of a particular State to determine what the Constitution of the United States means. You would not say that the people of Rhode Island had the right to determine what the Constitution of the United States means?

Governor TUCK. My dear sir, that is what the Constitution of the United States says.

Senator GREEN. Oh, no.

Governor TUCK. That is all I know.

Senator GREEN. There are other provisions in the Constitution besides that. The question is——

Governor TUCK. Well, if you can cite one that is in contradiction to that, I would like to hear it.

Senator GREEN. But I want to know, did I understand you to say—do you think that the ownership of property is one of the qualifications which a State might in its wisdom or unwisdom determine; is that right?

Governor TUCK. Well, it is my understanding that some of the States—possibly the State of New York, but I do not make this statement as a fact—does require——

Senator GREEN. That is not my question. My question is what your opinion is. You come here as a witness and we want your help in determining this question, and I would be glad to have you explain. I am open-minded on the subject. I would like to know why you say that the ownership of property is a qualification within the meaning of the Constitution that a State can determine one way or the other, any way it sees fit.

Governor TUCK. I can say this is not one of the requirements under our constitution in Virginia.

Senator GREEN. That may be.

Governor TUCK. And it has not been since approximately 1850.

Senator GREEN. But the way to test a law is to give an extreme case, is it not?

Governor TUCK. But I have always heard—I do not propose to qualify as any profound lawyer—but I have always heard that the reason of the law is the life of the law, and it seems to me that you are trying to inject a proposition in here that is just wholly unreasonable.

Senator GREEN. Well, I put it as too large an amount. Let us say $10,000 or $1,000. Do you think that the State could make that as a qualification that would be under the Constitution?

Governor TUCK. It is my understanding that some of the States do that, but we do not do it in Virginia, sir.

Senator GREEN. I know you do not do it, but as to your construction of the Constitution, do you think the State can do it?

Governor TUCK. My construction is just exactly what I told you and you cannot get away from it, and that is that this is a power that rests entirely with the respective States of the Union, and that it has

never been delegated by them to the Federal Government, and the Constitution of the United States expressly recognizes this, sir, by saying that the respective States are the judges of the qualifications of the electors thereof, and I am not going to get away from that proposition. You can ask any question that you want.

Senator GREEN. I am not asking you to get away from that. I am agreeing that the Constitution provides the qualifications of a State, but the question is, What is a qualification? Is a man's color a qualification? Is it property owned which is a qualification? Is it the color of his eyes which is a qualification? Is his ability to read a qualification?

Governor TUCK. Well, the Constitution——

Senator GREEN. What is your definition of a qualification?

Governor TUCK. Well, the Constitution of the United States expressly says that you cannot set up color as a qualification. We have not tried to do so in Virginia. We have many thousands of colored people in Virginia who vote and make us very fine citizens.

Senator GREEN. Then, you think it would be unconstitutional for them to set up a color qualification?

Governor TUCK. Well, the Constitution of the United States, I think, by the thirteenth or fourteenth amendment—I have forgotten which—expressly says so. That was one of the things settled by the War Between the States. They settled it by amendment, but they did not do it by destroying the Constitution, as some of you gentlemen up here seem to be willing to do now.

Senator GREEN. I do not want to press you unduly, but would you care to give us a definition of what you consider a qualification?

Governor TUCK. Well, all I can tell you is this: That the Constitution of Virginia sets up the qualifications of electors in our State. It is not up to me to set up the qualifications. I think the qualification of a voter is a person who is intelligent, and who understands something about government, and who embraces our principles of democracy, and who has shown some sustained interest in government. I think that makes anyone a qualified voter.

Now, what those tests are, as to whether or not they should own property, or whether or not they should register in advance of the election, or whether or not they should pay a poll tax as a prerequisite to vote, that is a matter for the people through the constitutions in their respective States to determine.

Senator STENNIS. Governor, regardless of what may be a qualification, somebody has to decide it, do they not?

Governor TUCK. Somebody has to decide it.

Senator STENNIS. And your point is that it is better for the States to decide it for each respective State, than it is for the Congress to decide it by mere congressional act.

Governor TUCK. That is right, sir.

Senator ROBERTSON. Mr. Chairman, may I ask another question?

The CHAIRMAN. If you will confine it to a question.

Senator ROBERTSON. Senator Green has raised the issue of what is a proper test of an instrument that was adopted in 1787. Do you agree with me that there can be no better test of what that instrument meant than the interpretation placed upon it by James Madison and others who were more instrumental than anybody in the 13 Colonies in framing them, and is it not a fact that when Virginia was organized

as a State under that Constitution, that James Madison and Thomas Jefferson, and all of the Founding Fathers agreed to the Virginia law which required property as a test for a voter in the early days of the State?

Governor TUCK. I think that is right, sir, and I think, furthermore, the fact that the respective States, as well as the Federal Government have recognized throughout the long and glorious history of this country that this is a matter that belongs exclusively to the States, is a strong point in its favor, because what gives firmness and stability to law is its long recognition by the courts of the land.

Senator ROBERTSON. And is it not a fact that we, in Virginia, now think that the intelligence of the voter is a better test than how much property he may own or have inherited?

Governor TUCK. Yes. We require an intelligence test.

Senator GREEN. May I say in explanation, I do not wish there to be any misunderstanding, that I am not questioning—I am not saying whether I am for or against a property qualification or whether it was constitutional or unconstitutional. I think that I agree with my colleague from Virginia that in that case it was constitutional, but I am just using that as a test as to what is a qualification.

Governor TUCK. In other words, you are just trying to test me.

Senator GREEN. Well, I am sorry to confess that I did not get any definition of qualification from you.

Governor TUCK. Yes.

Senator GREEN. I just have gotten an illustration of some things on one side of a line, and some things on the other side of the line, but I do not get any definition of where the line is to be drawn.

Governor TUCK. Well, I thought I gave you a definition of what I thought——

Senator GREEN. That is one side of the line. If anybody had all those admirable qualifications I understand they would be eligible. But suppose a man did not have your ideas of everything that made a good citizen.

Governor TUCK. Well, as to the test, that is a matter for only the State to determine and not our National Government to determine.

The CHAIRMAN. Do you have any more questions?

Senator GREEN. No.

The CHAIRMAN. Thank you very much.

Governor TUCK. Thank you, Mr. Chairman, very much.

The CHAIRMAN. Who is your next witness?

Senator STENNIS. Mr. Almond.

Senator MAYBANK. May I make a statement?

Senator STENNIS. Yes.

The CHAIRMAN. Senator Maybank, we will be glad to have you make whatever statement you desire.

STATEMENT OF HON. BURNET R. MAYBANK, MEMBER OF THE UNITED STATES SENATE FROM SOUTH CAROLINA

Senator MAYBANK. Mr. Chairman, I only have a short statement to make because I have to go to the Armed Services Committee meeting.

Mr. Chairman, I want to thank you for letting me make a short statement at this time.

In 1942 I testified at length, along with the Governor, the then Governor of South Carolina, the attorney general and the president of the State senate, and I will ask unanimous consent of the committee, if they would have my statement made as a Senator in 1942 printed.

The CHAIRMAN. Without objection, it will be made a part of the record and part of your statement.

(The statement referred to is as follows:)

STATEMENTS OF SENATOR BURNET R. MAYBANK, GOVERNOR R. M. JEFFERIES, ATTORNEY GENERAL JOHN M. DANIEL, AND STATE SENATOR EDGAR A. BROWN, IN OPPOSITION TO S. 1280, A BILL CONCERNING THE QUALIFICATION OF VOTERS OR ELECTORS WITHIN THE MEANING OF SECTION 2, ARTICLE I, OF THE CONSTITUTION, MAKING UNLAWFUL THE REQUIREMENT FOR THE PAYMENT OF A POLL TAX AS A PREREQUISITE TO VOTING IN A PRIMARY OF GENERAL ELECTION FOR NATIONAL OFFICERS, BEFORE THE SUBCOMMITTEE OF THE JUDICIARY COMMITTEE OF THE UNITED STATES SENATE, OCTOBER 13, 1942

POLL TAXES

TUESDAY, OCTOBER 13, 1942

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in the Committee on the Judiciary committee room, United States Capitol, Senator Joseph C. O'Mahoney, chairman, presiding.

Present: Senators O'Mahoney, Connally, Murdock, and Norris.

Also present: Senators Maybank and Pepper.

Senator O'MAHONEY. The committee is now in session.

Senator Maybank, we are ready to proceed if you care to introduce the spokesmen for your State.

Senator MAYBANK. Mr. Chairman, I would like to make one short statement, if I may, because there seem to be so many different types of poll-tax requirements that I would like for the record to show that in the primaries in South Carolina no poll tax is required. In fact, the only requirement is that when registering the enrollee to vote, if he cannot sign his own name the name is signed for him. The books are even sent from house to house in order that everybody may be enrolled in the Democratic Party under our rules, and the Republicans likewise; so, insofar as the poll tax affects the voting in South Carolina, we have never had any trouble in general elections. It is primarily a constitutional question which at this time the people in our State think should not be passed upon without thorough study and thought.

I will ask Governor Jefferies to testify.

Senator O'MAHONEY. Governor, we shall be very glad to hear you. Will you come forward and take a seat at the table?

STATEMENT OF HON. R. M. JEFFERIES, GOVERNOR OF SOUTH CAROLINA

Governor JEFFERIES. Mr. Chairman and gentlemen. I am glad to have this opportunity of appearing before the Judiciary Committee of the United States Senate, a committee composed of some of the ablest attorneys in the Nation, in order that I may, in behalf of my State, speak for the constitutional rights of South Carolina. I am firmly of the opinion that this committee being composed of such capable men, will finally determine that the Congress of the United States and the Federal Government should not meddle into the affairs of the States by attempting to regulate the right of suffrage and qualifications therefor, and having full confidence in the ability, courage, and devotion to duty of the members of this committee, I will submit this argument in behalf of my State.

I. THE POLL TAX IN SOUTH CAROLINA IS LEVIED FOR PURPOSES OF REVENUE AND IS NOT USED TO DISFRANCHISE ANYONE

I have not been able to understand how intelligent people can believe that the poll tax in South Carolina is a device to disfranchise Negroes and underprivileged peoples. The poll tax now has no relation whatsoever to the preventing of the exercise of the right of suffrage as I will attempt to show in this discussion.

It will be interesting to observe how the poll tax is levied and collected in South Carolina. The tax is a constitutional one. I quote from article II, section 6, of the Constitution of South Carolina of 1895, the constitution now in effect, the quoted portion being a part of the article dealing with education in the State, as follows:

"There shall be assessed on all taxable polls in the State between the age of twenty-one and sixty years (excepting Confederate soldiers above the age of fifty years), an annual tax of $1 on each poll, the proceeds of which tax shall be expended for school purposes in the several school districts in which it is collected."

In accordance with the constitutional provision the State legislature also enacted the poll tax into the general statutory law of the State, the present statutes having been in effect even longer than the constitutional provision quoted. Section 2565 of the Code of Laws of South Carolina for 1932, volume II, reads as follows:

"There shall be assessed on all taxable polls in this State an annual tax of $1 on each poll, the proceeds of which tax shall be applied solely to educational purposes. All males between the ages of twenty-one and sixty years, except those incapable of earning a support from being maimed or from any other cause, shall be deemed taxable polls."

It will be observed from the foregoing constitutional and statutory provisions that the tax is an educational one and used for educational purposes in the State. The same section of the constitution from which I quoted above provides that if the poll tax and a constitutional property tax of 3 mills on the dollar—

"shall not yield an amount equal to $3 per capita of the number of children enrolled in the public schools of each county—"

certain other property taxes shall be levied annually to operate the schools for such times in each year as the central assembly may prescribe. It, therefore, is clear that the poll tax is a vital part of the revenue for the operation of the public schools in South Carolina.

The legislature has very carefully guarded the use of the poll tax for educational purposes by many statutes. Section 1563 of the Criminal Code, volume I, Code of Laws for South Carolina, 1932, reads as follows:

"The several country treasurers shall retain all the poll tax collected in their respective counties; and it is hereby made the duty the of said county treasurer, in collecting the poll tax, to keep an account of the exact amount of said tax collected in each school district in his county; and the city of Charleston, for the purpose of this section, shall be deemed a school district, and the county treasurer shall pay over to the city board of school commissioners the amount of poll tax collected in said city; and the poll tax collected therein shall be expended for school purposes in the school district from which it was collected; and any violation of this section by the county treasurer shall constitute, and is hereby declared, a misdemeanor, and on conviction thereof, the said county treasurer shall pay a fine of not less than $500 nor more than $5,000, to be used for school purposes in the county suffering from such violation, or imprisonment in the discretion of the court."

Section 5394 of the Civil Code, volume II, reads almost identically. Other criminal statutes are sections 1564, 1565, and 1566 requiring county treasurers to report to the county superintendents of education all money collected, county treasurers to report to the State superintendent of education the amount of all other school taxes collected and the county auditor to forward to the board of trustees in each county a list of the taxable polls in the respective school districts in order that additional names may be added by the board of trustees. Similar provisions to the criminal statute are found in the Civil Code.

It will be observed further from the constitutional provision and the statutes levying the poll tax in South Carolina that the same does not apply to women. Therefore, under no stretch of the imagination can it be said that the levying of a poll tax could in anywise restrict the right of suffrage of female voters.

I would like to digress for a moment from the prepared statement to say that there has been agitated in South Carolina for many years the question of levying a poll tax on women. Some of the leading women of the State and some of the women's clubs of the State have gone on record as strongly favoring such a tax, but the general assembly has not seen fit to levy any poll tax on women in South Carolina. So, it is very clear that our poll tax does not limit the right of women of any race, underprivileged, or otherwise, to vote in any and all elections.

Senator MURDOCK. Will you permit a question?

Governor JEFFERIES. Yes.

Senator MURDOCK. From your statement, is it a fair inference that it does restrict the male inhabitants of your State?

Governor JEFFERIES. I have stated previously that it did not, and I brought in the fact that we do not levy it on the women as an absolute clincher of the question, so far as the women voters are concerned. I stated in the first part of the statement that it did not restrict the vote. First, the tax is only the sum of $1.

Senator MURDOCK. Is it cumulative?

Governor JEFFERIES. No, sir. Second, the tax is enforced by a criminal statute. It is a crime in South Carolina for anybody to owe a poll tax and not pay it, therefore, he must pay it, and if he must pay it it follows that it does not restrict his right to vote. The constitutional provision, requiring proof of the payment of taxes 30 days before an election is an additional method of collecting the poll tax, which is an integral part of the revenue of South Carolina and used entirely for school purposes.

Senator MURDOCK. Are criminal prosecutions very numerous down there because of the failure to pay a poll tax?

Governor JEFFERIES. I would not say that they are numerous. In some counties—just as an illustration, in the county in which I am a legal resident, the schools wanted to furnish free textbooks to all schools attended by all races, and the legislature was petitioned to allow the poll tax to be used for furnishing free textbooks. It was so related to the educational work that everybody gladly paid the poll tax, in order to get the free textbooks for the use of the children. If you will study the situation in South Carolina you will find in many cases that the poll tax is the only tax some people pay for the support of the State government and schools, and that is the sum of $1, unless there are indirect taxes, like taxes on cigarettes—things like that. We do not have the general sales tax in South Carolina. We have a selective sales tax whereby commodities classed as luxuries are taxed. Of course, everybody that buys luxuries would pay some tax, but as a direct tax the poll tax in many instances is the only tax paid. A man may have a dozen children in school and he is only too glad to pay his dollar in order to get the free textbooks, in the illustration I mentioned a few moments ago. The constitution states it must be used for school purposes within the school district.

Senator MURDOCK. Is there any rule about interrupting the witnesses during the giving of their testimony or their prepared statement?

Senator O'MAHONEY. This is like any other hearing.

Governor JEFFERIES. I have no objection, gentlemen. I am here to answer questions that the committee would like to ask. You can throw it open, as far as I am concerned.

Senator NORRIS. If the gentleman prefers not to be interrupted, I do not think we ought to interrupt him.

Senator O'MAHONEY. The Governor made no such request.

Governor JEFFERIES. I have no objection to any question. I am here to give you, if I can, the South Carolina view point on this matter.

Senator O'MAHONEY. Governor, may I ask you what the revenue is in South Carolina from the poll tax?

Governor JEFFERIES. The attorney general has the exact figures.

Senator O'MAHONEY. Very well.

Governor JEFFERIES. It is in the neighborhood of $275,000 to $300,000 a year. To get that straight, while we have the man here who can tell us; that is substantially correct, is it, General?

Mr. DANIEL. About $294,000 assessed and a little over $200,000 collected.

Senator O'MAHONEY. What is the average vote cast?

Governor JEFFERIES. In the general elections we poll from 65,000 to 100,000, when we have any interest like the election of 1936. Normally, the general election of South Carolina will not run over 50,000 votes. The average of the last six elections shows 67,350 votes.

Senator O'MAHONEY. Then, you levy and collect a larger number of poll taxes than votes are cast in the general election?

Governor JEFFERIES. Yes, sir. Just frankly, if the question here is one of Negro suffrage, you would have to go much further than this bill. This poll tax does not keep anybody from voting; that is one thing certain.

If you investigate the way South Carolina handles its affairs with regard to its suffrage, you will have to go into other constitutional provisions having to do with the right of registration. When you get through with that then South Carolina will have no rights whatsoever; we might as well turn over the elections to the Federal Government.

The poll tax is not what keeps them from voting.

Now, we have the primary election, the democratic primary, and the Republican Party, if it wishes, or any other party that may want a primary. Normally, when it comes to the general election there is not much interest in the matter. South Carolina, you remember, was the No. 1 democratic State a few years ago when we won the donkey that was given by Mississippi, I believe. They claimed to beat us at the elections. The vote—I do not remember the exact figure. The vote was 98,000, as I recall it, or 100,000.

Senator MAYBANK. It was more than that. It was 102,000, I believe.

Governor JEFFERIES. We are sort of democratic in South Carolina.

Senator O'MAHONEY. That is pretty generally understood.

Governor JEFFERIES. Because we believe the Democratic Party is a party of State rights. We believe that Jefferson believed in an association of States rather than a strong central government. We are State Righters in South Carolina.

Senator O'MAHONEY. Of course, this committee is not investigating anything except the bill which was given to it to conduct hearings upon.

Governor JEFFERIES. That is right.

Senator O'MAHONEY. This hearing this morning was directed by the full committee for the purpose of allowing you and several other representatives of the so-called poll-tax States to make whatever statement you desired to make to the committee.

Governor JEFFERIES. Yes, sir.

Senator O'MAHONEY. The questions which will be propounded here for the most part are simply those which are suggested to members of the committee by the testimony of the witnesses.

Governor JEFFERIES. I will be glad to try to answer any questions that you may ask. If I can throw any light on it, I will be only too glad to do it.

Senator O'MAHONEY. Following up the question I asked you with respect to the number of poll taxes levied and collected and the number of votes cast in the general election, do I understand from the statement of Senator Maybank that the right to cast a vote in the primary, either Democratic or Republican, is not in any way restricted by the payment of a poll tax?

Governor JEFFERIES. That is correct. There is no poll-tax requirement for voting in the primary elections.

Senator MAYBANK. Mr. Chairman, may I add this? We even go so far as to send the books around to the houses and beg the people to enroll, and if they cannot write their names they can make a cross.

Governor JEFFERIES. Our constitutional provision is the poll tax must be paid 30 days ahead of the election only. So, it will not keep anybody from voting if they really want to vote. It is not one of those things where you have got to pay a year in advance, and all those other things, just so it is paid 30 days in advance, that is all that is necessary. It is a very salutary provision, and I shall point out in my statement later on, it is not to keep the eligible people from voting, but it will keep people from other States going there to vote, and it will keep fraudulent votes from being cast.

The soldiers, for example, we have many thousands of soldiers in South Carolina today. Of course, they have not tried to vote, but if we did not have devices like the poll tax, things of that kind, as restrictions, they would go right ahead and vote and run the South Carolina elections like they did the Ohio elections in 1863, as I shall quote from a discussion on that matter a little later on in the prepared statement.

Now, if there are no further questions at this stage, I will return to the prepared statement, but interrupt me at any stage, gentlemen, that you may desire. I am here, if I can, to assist and not to retard.

Senator O'MAHONEY. Go ahead, Governor.

Governor JEFFERIES. It will be interesting to note the methods used in South Carolina for enforcing the payment of the poll tax and the first method is the

one that insofar as my State is concerned probably causes the ill-informed and misguided reformers to sponsor such legislation as that now before this committee.

Paragraph (e) of section 4 of article 2 of the Constitution of South Carolina of 1895 reads as follows:

"Managers of election shall require of every elector offering to vote at any election, before allowing him to vote, proof of the payment 30 days before any election of any poll tax then due and payable. The production of a certificate or of the receipt of the officer authorized to collect such taxes shall be conclusive proof of the payment thereof."

Section 4 containing the provision just above quoted related to the qualifications for suffrage but in reality the provision is useful in enforcing the collection of the poll tax in South Carolina. Its value is far greater in assisting the State in collecting necessary revenue than it is as a qualification for suffrage. It is certain that in South Carolina the poll tax does not prevent anyone from voting because in the first place it applies only to a certain number of males, in the second place the tax is only $1 and, in the third place, as we shall later see, the failure to pay the tax is a violation of the criminal law of the State.

The above-quoted paragraph (e) of section 4, article 2 of the Constitution of 1895 is the section as amended by the act of February 26, 1931, ratifying the constitutional amendment. The section as it originally appeared in the constitution of 1895 reads as follows:

"Managers of election shall require of every elector offering to vote at any election, before allowing him to vote, proof of the payment of all taxes, including poll tax, assessed against him and collected during the previous year. The production of a certificate or of the receipt of the officer authorized to collect such taxes shall be conclusive proof of the payment thereof."

Digressing for a moment, I would emphasize the original constitutional amendment included the payment of all property taxes of any kind as well as the poll tax, but the people of the State thought it well to repeal that portion having to do with property tax as a prerequisite for voting. It was often inconvenient for people with small incomes to pay even the personal property tax.

Senator O'MAHONEY. When was that?

Governor JEFFERIES. In 1931. The General Assembly ratified the constitutional amendment revising the constitutional provisions so as to require the payment of poll tax only instead of all taxes assessed against the citizen.

Senator O'MAHONEY. Did the abolition of the payment of the property tax qualification result in any increase in votes?

Governor JEFFERIES. I do not think it resulted from that. There was an increase, as I stated, in the 1936 election when South Carolina was held up to the Nation as the greatest democratic State in the United States. It increased then, but it was just a great interest in the nominations of the Democratic Party at that particular time. That, incidentally, was the year that the Republican Party cast the lowest number of votes it had cast in quite a number of years.

Senator MAYBANK. Mr. Chairman, I would like to mention here that last year, in the general election, there were not any offices filed for by the Republican Party, no nominees for offices.

Governor JEFFERIES. So far we have no nominee this year, of the Republican Party, for the election coming on in November. We have two Republican parties down there. Both of them have held conventions in the last month. It was suggested that they might name some candidates, and the executive committee could name them. They did not have any primary and up to the present time we have not heard of any Republican from either one of the two Republican parties there being nominated for office.

Senator NORRIS. You haven't got enough Republicans down there to fill out the ticket, if you have got two Republican parties, have you?

Governor JEFFERIES. They cannot fill the whole ticket for the members of the general assembly. It would take all they have down there. They have a big split on the Negro issue down there. Mr. Tolbert's faction had been in charge of the Republican Party many years. They always carried in the conventions quite a number of Negroes. It was the Republican Party, no doubt about it—it was the Negro Party. Then, they formed the Lily White Party down there, the Republican Lily White, all whites. That ran pretty good during the election of President Hoover, but in the last convention, strange to say, the last national convention, the Lily White Party won out. Apparently, it was told that it must take in the Negroes, because at the recent convention they had about one-fourth of the people attending the convention from the Negro race.

Senator MAYBANK. On the idea that the Tolbert Party was very provoked about the Democratic convention, and so expressed themselves at the recent meeting.

Governor JEFFERIES. Now, in addition to the provision of the constitution making the payment of the poll tax necessary before those liable for its payment can vote the failure to pay the poll tax constitutes a crime in South Carolina. I quote section 1720 of the Criminal Code, volume I, of the Code of Laws, 1932, as follows:

"Any person failing or refusing to pay his poll tax within the time prescribed by law, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding ten dollars, together with costs of said suit, or by imprisonment at hard labor on the public works of the county not more than twenty days: *Provided*, That the county shall not pay the costs or fees of any constable or sheriff for the execution of any warrant or other process issued in any case by virtue of the provisions of this section, unless the defendant in such case shall be arrested and convicted."

The courts have held that this section made the failure to pay the tax a crime and that warrants issued under this section were a part of the criminal procedure.

It said the failure to pay the poll tax constituted a crime under the laws of South Carolina.

It would therefore appear that those who are liable to the payment of the poll tax in South Carolina are made to pay it by the operation of the criminal statute and that the constitutional provision requiring the payment before permitting those liable for the payment of the tax to vote is simply an additional safeguard for its payment. The criminal statute dealing with nonpayment of the poll tax is enforced against all people and races fairly and uniformly. It would be ridiculous for anyone to say that the poll-tax requirement in South Carolina prevents people from voting when all who are liable for its payment must pay it or go to jail. We have seen from the foregoing discussion the present status of the constitutional and statutory provisions in South Carolina dealing with the poll tax. We believe that a brief discussion of the history of the imposition of poll taxes in South Carolina will show that such taxes are and have always been revenue measures for the support of the State government and for the last 75 years for the schools of the State. I, therefore, ask your attention to a discussion of the history of poll taxes in South Carolina.

The custom of levying a per capita tax on the people of South Carolina originated at a very early date. As early as 1702 an act of the general assembly to make Charles Town defensible provided:

"That the said 550 pounds per annum be raised by a pole—"

they spelled it p-o-l-e—

"every man within the bounds of the town that is capable of bearing arms to pay 20 shillings per annum.

"And every single woman or widow that is a housekeeper and finds a watchman in the constable's watch to pay also 20 shillings per annum."

Digressing for a moment, it might be interesting here to revert to the journals of the general assembly of 1702 with regard to that particular tax. You notice I read it in a more modern version of English, but it is the Old English and gives the symbols for the pounds and shillings. That is the first reference we can find to poll taxes in South Carolina.

Senator O'MAHONEY. What is the date of that?

Governor JEFFERIES. 1702, in a bill to make the city of Charles Town defensible. They were having trouble then with the Spanish colony at St. Augustine, and with the Indians. They resorted to a poll tax. They put part of it on women, as you notice from that language.

Senator MURDOCK. You rather stress the fact that there is a criminal statute to enforce the payment of the poll tax and if people do not pay the poll tax they go to jail. I was not here when you began, but I assume you are the attorney general.

Senator O'MAHONEY. This is the Governor.

Senator MURDOCK. I beg your pardon. You are the Governor of South Carolina?

Governor JEFFERIES. Yes.

Senator MURDOCK. Do you know of any person now confined in any jail in South Carolina because of not having paid the poll tax?

Governor JEFFERIES. They usually pay it. This is Senator——

Senator MURDOCK. Murdock.

Governor JEFFERIES. Senator Murdock. They usually pay it, Senator, without having to go to jail. It is not a hardship to pay that $1. The testimony in the former hearings that I have had occasion to look through seems to make it appear big.

Then, I want to say this with regard to that hardship: What you are trying to do, if I understand it, by your bill——

Senator MURDOCK. It is not my bill.

Governor JEFFERIES. It is Senator Pepper's bill, S. 1280. I am very glad you disclaim authorship. I would myself, I believe, Senator, with all respect to you.

At any rate, this bill will not cure the ability of the people of South Carolina to pay a poll tax, because that poll tax will still continue if you pass this bill. It will deprive South Carolina, if it be constitutional of a method of enforcing a very just and necessary revenue.

Senator MURDOCK. Now, let me ask you this: I have inferred from what you stated that the payment of poll taxes in South Carolina is practically unanimous. Everybody pays it; is that right?

Governor JEFFERIES. We do not have much trouble with it. I will say this: sometimes there is laxity in enforcing it, Senator—I will be absolutely fair. Some counties do not bother with it much, I read a little while ago a statute requiring the county auditor to give the trustees of each school district a list of taxable polls of that school district so the board of trustees could add more names to that list. We have tried to collect it, but like any other law, sometimes enforcement is lax. The provision is intended in order to be sure that our ballots are clean and clear, and also to help us collect this poll tax. It is intended for both. We think it is a very salutary provision down there to prevent frauds, and we know of no case in our State where anybody has been deprived of the right to vote by reason of inability to pay the sum of $1 as a poll tax.

Now, I would like to underscore that statement. We have never heard of any such thing in South Carolina.

These reformers who go about interfering with the business of other people, these social workers, make those charges, but they are absolutely unfounded in truth. They do not prevent anyone from having the right to vote in South Carolina.

Senator CONNALLY. May I ask you a question right there?

Governor JEFFERIES. Yes, Senator.

Senator CONNALLY. Governor, may I ask you if in South Carolina, in the collection of these poll taxes, there is any discrimination made on account of race, color, and things of that kind?

Governor JEFFERIES. Absolutely not.

Senator CONNALLY. In other words, if a man is white or black, he pays the poll tax, irrespective of race or color?

Governor JEFFERIES. If he is between 21 and 60, and not physically incapable of working.

Senator CONNALLY. Are there any devices in your law or the enforcement of the law that operates as discrimination although not on the surface?

Governor JEFFERIES. There is no such device.

Senator CONNALLY. All right; that is all.

Senator O'MAHONEY. Does it follow that since, as you say, there are fewer votes in the general election than there are poll taxes levied and collected, the passage of this bill would not in fact affect the situation in South Carolina with respect to voting in the general elections?

Governor JEFFERIES. There might be some few who pay the poll tax, to be sure, they have a right to vote. I have always done it to protect my right to vote; I have done it on time. We have it separated too. You can pay your poll tax on a separate list. You do not have to pay all your property taxes. Usually, when the tax books open around the 1st of September, to be on the safe side, I send o dollar in to pay my poll tax so if an election should come I am ready to vote. I might say there are a few who would become careless if we did not have that salutary restriction in there.

Senator CONNALLY. As I understand what Senator O'Mahoney said, since under the present system there are fewer votes in the general election than there are qualified voters on account of the payment of poll taxes it would not necessarily follow that the passage of this act would increase the voting very much.

Governor JEFFERIES. That is right. No, sir; the passage of this act is not going to increase the voting.

Senator NORRIS. Is it not the history of other States who have abolished the requirement of the payment of a poll tax that it resulted in an increase of the votes cast?

Governor JEFFERIES. I notice those statements have been made pretty generally throughout your record. Of course, I have not had a chance to analyze the reasons for such statements, but I think you will find that the abolishment of the poll tax had very little if anything to do with it. I think there are other causes. For illustration, I mentioned awhile ago our vote in 1936, when we were intensely interested in the national election, when it increased tremendously without any regard whatsoever to the poll tax. It was just about double what we had normally cast. You could have your investigators analyze a heap of the testimony offered here, especially comparing Tennessee and Kentucky. I read that with much interest. You will find there were other factors that helped increase the vote in Kentucky. Possibly you should study the situation in Tennessee. I am not speaking for every one of those States, please understand that. There are other factors that explains the increased vote, in my humble judgment.

Senator NORRIS. Those other factors must be, in their nature, confined to the State.

Governor JEFFERIES. Yes, sir; they are local issues.

Senator NORRIS. They are local issues. If it should develop that the increase of the voting has always taken place when the State poll tax was abolished, and continued to be increased, that would have quite a bearing toward indicating what might happen even in South Carolina, would it not?

Governor JEFFERIES. No, sir; I do not agree with you, Senator. If I may, I would like to respectfully differ from your opinion.

Senator NORRIS. Certainly.

Governor JEFFERIES. I think other factors have probably increased it. For illustration, one time in the American Nation nearly all the States had poll taxes. Of course, the votes have increased in the two-party States, where one party wins this year and another party wins at the next election. Now, those States have abolished the poll tax. I do not know whether your State ever had it or not.

Senator NORRIS. I was born and raised in Ohio. We had the poll tax.

Governor JEFFERIES. That is right. We got ours from Ohio.

Senator CONNALLY. May I ask the witness a question?

Senator O'MAHONEY. Surely, Senator.

Senator CONNALLY. Governor, you spoke about a two-party State. Is it not true in a State where there is an appreciable division of the parties and there is always a contest that there is more of an effort of the parties and organizations to do what we call "get out the vote?"

Governor JEFFERIES. That is correct, sir.

Senator CONNALLY. Is not there more of an effort of the parties to do that than there is in a State where it is assumed, "Oh, well, we are going to win," and the people are more or less indifferent and do not go to the polls?

Governor JEFFERIES. Yes.

Senator CONNALLY. Not on account of not paying the poll tax but just through a spirit of "Well, what is the use?"

Governor JEFFERIES. Yes.

Senator CONNALLY. A spirit of "We are going to carry on anyway, and we do not have to vote."

Governor JEFFERIES. Yes.

Senator O'MAHONEY. Before you came in, Senator, the Governor pointed out that in South Carolina in the present election the Republican Party has no candidate.

Senator CONNALLY. Yes.

Senator O'MAHONEY. Therefore there would be little interest in the general election. That, however, was different in the primary.

Governor JEFFERIES. Yes, sir.

Senator CONNALLY. Just as Senators do not always go to the committee meetings.

Governor JEFFERIES. I will say this, in my humble opinion, the votes in the general election in November of 1942 will be less than one-half of the voters that cast their ballots in South Carolina in 1936. There is no issue down there disturbing us about the general election. There is one little constitutional amendment that we vote on in South Carolina in reference to some county—I forget which one it is. It is local in scope. Sometimes we have a constitutional amendment that will bring out a big vote. We have none this year. The Republican Party has no ticket in the field so far this year, so I am looking for an extremely

small vote this year. The poll tax will have absolutely nothing to do with making that small vote.

Senator MAYBANK. Mr. Chairman, I would like to say in the general election last year there was not any opposition, and some of the managers did not even bother to go to get any ballots.

Governor JEFFERIES. Now, I had referred to the earliest time, the earliest record of the poll tax.

Thereafter poll taxes were often relevied by the Legislature of South Carolina and by the year 1865 the people of the State and the legislature had come to consider the poll tax as a proper revenue measure to raise money for the support of the Government.

Soon after the accession of President Johnson to the Presidency in April 1865, he began to make plans for restoration of civil government to the seceded States of the South which the United States Supreme Court declared had not been out of the Union.

With that end in view he appointed Benjamin J. Perry provisional Governor of South Carolina, June 13, 1865. He then issued a proclamation instructing Governor Perry to call a convention of the people of the State for the purpose of organizing a government for the State. Governor Perry issued an order for the election of delegates to a convention to meet in Columbia, September 13, 1865. The opening paragraph of the journal of that convention recites:

"Pursuant to the proclamation of his Excellency B. J. Perry, Provisional Governor of the State of South Carolina, providing for the calling of a Convention of the people of the State, to assemble in Columbia, Wednesday, the 13th of September A. D. 1865, the Delegates from the several Election Districts of this State, assembled in the Baptist Church in the town of Columbia, on this day, at 12 o'clock noon."

When the convention had organized for business Governor Perry sent in the following message:

"GENTLEMEN: You have been convened in obedience to the proclamation of his Excellency, Andrew Johnson, President of the United States, for the purpose of organizing a State Government, 'Whereby justice may be established, domestic tranquillity insured, and loyal citizens protected in all their rights of life, liberty, and property.' As Provisional Governor of the State of South Carolina under whose orders you were elected and have assembled, it is proper that I should address you on the present occasion and assist you, if I can, in restoring our beloved State 'to her constitutional relations to the Federal Government', and aid you by my suggestions in presenting 'such a republican form of State Government as will entitle South Carolina to the guarantee of the United States therefor, and her people to protection by the United States, against invasion, insurrection, and domestic violence.' * * *

"The President of the United States had manifested a generous and patriotic solicitude for the restoration of the Southern States to all their civil and political rights, under the Constitution and laws of the United States. He desires to see the Federal Union reconstructed as it was before the secession of those States; and he will oppose the centralisation of power in Congress and the infringement of the constitutional rights of the States. * * *

"African slavery, which was a cherished institution of South Carolina from her earliest colonial history, patriarchal in its character, under which the Negro has multiplied and increased with a rapidity proving that he has been kindly cared for and protected—"

I will digress to say that was from a man from the North sitting as Governor in South Carolina—

"is gone, dead forever, never to be revived or hoped for in the future of this State. Under the war-making power, the military authorities of the United States have abolished slavery in all of the seceding States. The oath you have solemnly taken to "abide by and faithfully support all laws and proclamations which have been made during the existing rebellion, with reference to the emancipation of slaves," requires you, in good faith, to abolish slavery in your new or amended constitution. The express terms on which your pardons have issued stipulate that you shall never again own or employ slave labor. It is likewise altogether probable that the proposed amendment to the Federal Constitution abolishing slavery will be adopted by three-fourths of the States and become a part of the Constitution. Moreover, it is impossible for South Carolina ever to regain her civil rights and be restored to the Union till she voluntarily abolishes slavery and declares, by an organic law, that neither 'slavery nor involuntary servitude, except as a punishment for crime, whereof the party

shall have been convicted,' shall ever again exist within the limits of the State. Until this is done, we shall be kept under military rule, and the Negroes will be protected as 'freedmen' by the whole military force of the United States. But I know that you are all honorable men, as well as patriotic men, and will do your duty faithfully to yourselves and your country, however painful it may be."

The convention adopted a new constitution for the State, and section 1 of article I thereof provided:

"The general assembly, whenever a tax is laid upon land, shall at the same time impose a capitation tax, which shall not be less upon each poll than one-fourth of the tax laid upon each hundred dollars' worth of assessed value of the land taxed; excepting, however, from the operation of such capitation tax all such classes of persons, as from disability or otherwise, ought, in the judgment of the general assembly to be exempted."

I digress to say that the first reference to a poll tax in the Constitution of South Carolina was adopted by South Carolinians, when, under the command of the President of the United States they adopted a constitution to allow South Carolina to become again a member of the Union, or to remain a member of the Union.

Senator NORRIS. Did that provision provide for a criminal penalty or that they had to pay poll tax before they were allowed to vote?

Governor JEFFERIES. This did not, sir.

Senator NORRIS. When was the beginning?

Governor JEFFERIES. 1895. I am coming to that.

On the qualification for voting, I want to give you one other provision of the constitution, on the subject that had the poll tax in it.

The new constitution provided for a governor and State officers to be elected in November following for terms of 4 years, but in 1868, Congress having outlawed Johnson's action, South Carolina was taken over by armed forces of the United States who deposed Governor Orr, who had been elected in 1865, and issued a call for delegates to a new constitutional convention. Most of the white population of the State was denied the right to participate in the election, so the majority of the delegates elected were Negroes and the white delegates were strangers who had but recently come into the State. Very few of the delegates—white or black—owned any property in South Carolina whereon to pay taxes.

Yet section 2 of article IX of this Constitution of 1868, which was brought from Ohio, Senator, by the Reconstruction rulers of the State, provides:

"The General Assembly may provide annually for a poll tax not to exceed one dollar on each poll, which shall be applied exclusively to the public school fund. And no additional poll tax shall be levied by any municipal corporation."

I might digress to say, as a constitutional provision South Carolina is indebted to the Federal Government for the first two references to poll taxes in our constitution in that they sent the armed forces of the Nation down there to bring about the adoption of the 1868 constitution and sent a provisional governor down there in 1865. The purpose of this discussion is to show you that the poll tax in South Carolina, by history, is not a device intended to disenfranchise any voter. That is the reason it is in point. You may miss the point I am trying to make. I am trying to show you by the history of it that it is not a fraudulent method of keeping people from voting.

In 1876, Wade Hampton led the movement in South Carolina which resulted in the redemption of the State from the misrule and corruption of the carpet-baggers, scalawags, and Negroes, and South Carolina was supposed to have completed its reconstruction period. However, bills like that which we are here to discuss today would lead us to believe that a beneficent—and I put a question mark after that—Federal Government, grown far stronger than the founding fathers ever intended, is again trying to reconstruct South Carolina by amending its State constitution on a matter of internal interest only. But one of the first acts of the Legislature after Wade Hampton had redeemed it was passed on March 22, 1878, section 49 of which reads as follows:

"That the several county treasurers shall retain all the poll tax collected in their respective counties; and it is hereby made the duty of the said county treasurers, in collecting the poll tax, to keep an account of the exact amount of said tax collected in each school district in his County * * * and the poll tax collected therein shall be expended for school purposes in the school district from which it was collected."

Thereafter the State continued to live under the constitution of 1868 which had been adopted in a convention composed almost entirely of Negroes, carpet-

baggers, and scalawags until "Pitchfork," the Honorable Benjamin Ryan Tillman, led in the movement for the adoption of the new constitution of 1895. I have cited above the provisions from that constitution having to do with the levying of a poll tax and requiring its payment before electors are permitted to cast their ballots.

Senator Norris, I will say the constitution of 1895 was the first time that the provision requiring the voter to pay the poll tax went into the constitution.

Senator NORRIS. That is the point I wanted to get out, as a matter of history.

Governor JEFFERIES. It was in there, as I stated awhile ago. I do not know whether I made it clear. The provision in 1895 required proof of the payment of all taxes, but in 1931 the people in South Carolina amended this provision of the constitution to require only the payment of poll taxes.

Senator NORRIS. Yes.

Governor JEFFERIES. Now, the statement has been made in your record here that it is difficult to amend the constitution in a Southern State. I can speak for South Carolina and say it is relatively simple. Of course, it does require the amendment to be submitted by a two-thirds vote of the general assembly, passed upon by the people at a general election, and it comes back for ratification by the general assembly. But we amend our constitution almost every general election. There is some amendment of a local character, that I mentioned a little while ago that will come up to be voted on in November of this year. It is not hard to do it.

Senator NORRIS. Governor, I want to call your attention to a statute that I suppose was passed—I do not have it before me—for the readmission, as they call it, of South Carolina into the Union.

Governor JEFFERIES. Yes, sir.

Senator NORRIS. I have here, taken from the record, the testimony of Mr. Finerty, that statute applying to Virginia. He said in his testimony some other States had the same or similar statute, he thinks all of them, and that statute, that had to be approved by Virginia before they were readmitted to the Union, contained this language, and I am wondering if the same statute applied to South Carolina, whether it was not passed also about that same time:

"The Constitution of Virginia shall never be so amended or changed as to deprive any citizens or class of citizens of the United States of the right to vote, who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law—"

and so forth.

Was there a similar statute, Federal statute applying to South Carolina?

Governor JEFFERIES. I referred a while ago to the act of President Johnson to require the State of South Carolina to abolish slavery, the act of 1868, reviewing what had been done on reconstruction in the South and ordering a new constitutional convention. I do not recall the exact language you quoted there, Senator.

Senator NORRIS. That language is from the statute that the Congress passed at that time.

Governor JEFFERIES. I do not recall the exact language. I do know they legislated on the South from Appomattox in 1865 until apparently to the present day. I do not recall that particular statute. That is the only way I can answer that.

It is, therefore, respectfully submitted that the poll tax in South Carolina does not abridge the right of any citizen to cast a ballot and that compliance with the poll-tax requirements is not only easy but is forced by criminal processes.

II. THE PENDING BILL IS CLEARLY UNCONSTITUTIONAL

As I understand the matter the subcommittee in considering this legislation has held that the same is unconstitutional and this alone should be sufficient to dispose of this issue. I shall not cite the many cases leading to the conclusion that the proposed legislation is unconstitutional. I shall leave this in the hands of the attorney general of my State and the other attorneys general who are appearing here today. Magnificent briefs have been filed by the attorneys general and this subject has been fully covered.

It would be appropriate, however, for me to appeal to this committee to leave the Constitution of the United States alone now and not to suggest any amendment interfering with the internal affairs of the sovereign States. The Constitution under which we now live has done a great work in building a nation and in holding it together. It has been good enough to tide us over all kinds of

troubles. It is satisfactory for all problems of today. Our fathers tell us to let it alone. Our future prosperity and safety require that we let it alone. National unity can be promoted by letting it alone.

If, however, you think that you must suggest an amendment to the Constitution outlawing poll taxes in various States and by Federal mandate require an amendment of the State Constitution of South Carolina, then I suggest that it would be just as reasonable for your amendment to provide that the Federal Government will conduct elections for President, Vice President, and Members of the Congress as well as to provide qualifications for suffrage for such positions. Federal troops during the reconstruction did conduct shams and perpetrations which they called elections in South Carolina and by any constitutional amendment on this subject you might consider directing that this be done again.

Since the foundation of this Government it has been generally recognized that citizenship is a State matter primarily and that qualifications for suffrage belong to the States. It is true that at certain stages certain constitutional amendments have been adopted which might throw restriction on the right of the State to prescribe qualifications for suffrage which constitutional amendments we of the South claim were illegally adopted. But it is still true that the qualifications for suffrage is under constitutional government in America a matter for the individual States. If you are tiring of this salutary constitutional principle and wish to further amend the Constitution such action will in my humble opinion be an opening wedge for other amendments to follow. It is just as reasonable in my opinion for the Congress to propose a constitutional amendment permitting Senators and Representatives to be elected from any of the States instead of from the State of their residence as it would be to deprive States by constitutional amendment of the right to require the payment of the poll tax as a prerequisite for voting. In fact, to tamper with this suffrage question might finally lead to the abandonment of the constitutional safeguard of two Senators from each State regardless of population, because if we sit idly by and permit constitutional amendments or legislation to interfere with the rights of individual States then all individual States are in danger of losing their right to have two Senators.

Senator O'MAHONEY. Governor, of course, you do not challenge the constitutional right of Congress to submit any amendment that its Members in a constitutional way desire to submit to the States for ratification?

Governor JEFFERIES. No, sir; but I challenge the wisdom of it, Senator.

Senator O'MAHONEY. You are discussing merely the wisdom?

Governor JEFFERIES. This is policy now.

Senator O'MAHONEY. A constitutional amendment providing that no State should deny any person the right to vote by reason of any property or tax-payment qualification is no different, in constitutional law, from amendments which we have adopted like that which provided for the popular election of United States Senators instead of their election by the legislatures and that which provided that no State should deny any person the right to vote by reason of sex.

Governor JEFFERIES. As a matter of law, I am not here challenging the right of the committee or of the Congress to submit any constitutional amendment it wishes. I am here protesting as vigorously as I can, as Governor of the State of South Carolina, the wisdom of bringing forth a constitutional amendment covering this particular subject which, insofar as South Carolina is concerned, relates only to a revenue measure of that State for the support of the common schools of that State.

Senator O'MAHONEY. Your present testimony, then, Governor, is merely that, in your judgment, it would not be a wise thing to do?

Governor JEFFERIES. Yes, sir; and I am saying here if we do that I think there will be other constitutional amendments that will follow from that, that will cause lots of embarrassment to the Nation as a whole. Maybe next time we will not be regulating the affairs of South Carolina and 7 other Southern States, but it may apply to all 48 States.

Shall I continue?

Senator O'MAHONEY. If you please.

Governor JEFFERIES. I respectfully submit that the eight poll-tax States are inhabited by true Americans willing and ready to make every sacrifice for the protection of our national existence. These eight poll-tax States are a part of what is generally referred to as the "Solid South." We in these States have adhered strongly to the Democratic Party because it was the party of our fathers and because we believed in its principles, one of which was that the Democratic Party stood for the rights of individual States. We still believe that the Democratic

Party is the States Rights Party, and we do not believe that such a party now in power in the National Congress will "sell us down the river" by enacting legislation which would so clearly violate the rights of individual States.

III. A REQUIREMENT FOR THE PAYMENT OF POLL TAX AS A PREREQUISITE FOR VOTING PROTECTS THE BALLOT AGAINST ILLEGAL VOTERS

We have attempted to show above that the constitutional provision of South Carolina requiring the proof of the payment of the poll tax before voting is practically a method of enforcing the payment of the poll tax, or at least that the provision does not restrict the right of ballot because all upon whom the tax falls must pay it or go to jail. But it is a fact that requiring the production of poll-tax receipts will often prevent gross frauds. In spite of careful registration law it is possible for citizens of other States under some circumstances to obtain registration certificates. They would, therefore, be eligible to vote but for the other requirement that they must produce a poll-tax receipt.

In this connection it might be well to go back to the War between the States for a good illustration of soldiers temporarily stationed in a State voting in elections. In 1863 Clement L. Vallandigham, former Representative from Ohio, attended the National Union Convention of Democrat and Republican Sympathizers, at Philadelphia. In 1863, while he was exiled because of his States' rights utterances, he had been Democratic candidate for Governor of Ohio. He now declared he was "utterly opposed to breaking up the Democratic Party, and expected yet to see them governing the country. He said he received more votes for Governor of Ohio than any candidate ever did before, and yet he was beaten 120,000 votes. The whole Army, from Massachusetts, Connecticut, and other States, was allowed to vote against him. Some of the soldiers boasted that they voted five time at the election." (See Reminiscences of Public Men, with Speeches and Addresses by ex-Governor B. F. Perry, pp. 299, 301.)

Senator CONNALLY. Is that the same fellow that was Governor of South Carolina?

Governor JEFFERIES. Yes, sir; that is the one. He came from Ohio, it is my recollection—he came from Ohio, and he was in touch with all the public men. I will say, on that point, that this poll-tax requirement of just $1 for the public schools will assist the State in preventing illegal votes. It is a safeguard around our registration laws and has resulted in the elections in South Carolina being conducted without any suspicion of fraud.

Senator CONNALLY. Does it prevent repeaters?

Governor JEFFERIES. It does positively prevent repeaters.

In South Carolina today, there are enough soldiers from other States to control many elections which might be conducted in South Carolina. A provision that each male voter must produce proof of the payment of poll tax will prevent the ballot being exercised by those who are not legally entitled to it.

IV. SUCH LEGISLATION AS NOW PROPOSED AND DISCUSSIONS ABOUT IT ARE UNTIMELY

When such reform measures which interfere with the rights of individual States are suggested like those represented by the proposed bill No. 1280 the people of this country wonder whether the Members of Congress have been reading the newspapers. The people ask: "Have you heard of Pearl Harbor? Do you know anything about Wake Island, Bataan Peninsula, Corregidor, Singapore, the Dutch East Indies, the Coral Sea, Midway, and the Solomon Islands? Do you know what is going on in England and Europe? Have you heard of the gallant stand of the Russians at Stalingrad?" If you have heard of all these things the people of the Nation ask that you quit trying to meddle into the affairs of the individual States and spend your time in efforts to win the war. If there is nothing for you to do to help win the war then please let the governors and the attorneys general of these eight States whose affairs you are now unjustly trying to regulate have a breathing spell from such interferences until the Nation has been made safe. If you must bring up these things which everybody with any degree of common sense knows would produce disunity, dissension, and discord, as you love your country, please postpone further discussion of such issues until enemies such as the Japs and the Germans have been disposed of.

It will be time enough for us to exercise the democratic right of fighting among ourselves on mere nothings such as Senate Bill No. 1280 when we have conquered the common foe.

I realize that the statements I have just made are rather vigorous but they are conscientiously made in the hope that none of us in the future will do anything whatsoever to cause dissension.

CONCLUSION

In summary, I respectfully submit that the Congress of the United States has no right to amend the Constitution of South Carolina. In South Carolina our poll taxes are levied for educational purposes. They have been established from early colonial days. They are proper taxes for the raising of revenue for the schools of South Carolina, and they are not used to prevent anyone from voting. The poll tax in South Carolina is only $1 and it is levied on a very limited number of male residents.

Senate bill No. 1280 is clearly unconstitutional. The right of qualifications for suffrage is a matter for the States and has been so since the founding of the Government. It justly should remain so. Constitutional provisions requiring proof of the payment of poll taxes before electors are permitted to vote serve to make citizens respond to the needs of their Government and are useful in protecting the sanctity of the ballot.

A discussion of such matters is most untimely now. All of us must realize that we have no other business before us than that of winning the war. We can postpone internal disputes and dissension on really small matters, such as poll taxes, until the democracies of the world earn their right to continue to exist.

After all it is time we realize that we are united States. Surely all of us know that the States make the Nation and that the Nation can never be greater than the sum total of the individual States and the rights guaranteed to those States by the Constitution of a great Nation called the United States.

I appreciate very much, gentlemen of the committee, the opportunity, in behalf of my State, to appear here today. I have tried to cover the matter from the standpoint of South Carolina, and I must respectfully request that the bill be defeated, or at least that no further action be taken on this matter until the Nation wins the war in which it is now engaged.

Senator O'MAHONEY. Are there any questions, Senator Norris?

Senator NORRIS. No.

Senator O'MAHONEY. Senator Connally?

Senator CONNALLY. No.

Senator O'MAHONEY. Senator Murdock?

Senator MURDOCK. I haven't any further questions.

Senator O'MAHONEY. Thank you, Governor.

STATEMENT OF JOHN M. DANIEL, ATTORNEY GENERAL, SOUTH CAROLINA

Mr. DANIEL. Mr. Chairman and gentlemen of the committee:

I have already filed, under the permit of this committee, a statement in regard to the unconstitutionality of this bill, S. 1280. I have been thinking that there would probably be a later hearing before the whole committee. In the 9 pages that I have written out here, you will see why it might have reference to a meeting at which the entire committee is present, but when I was called here I adopted that for a short written statement. This is an additional brief on behalf of the State.

As said by Senator O'Mahoney, the chairman of this subcommittee, which has conducted hearings on bill S. 1280—

"the first question which will arise in the consideration of bill S. 1280, is the question of constitutional power—"

and that—

"it would seem, from section 2 of article I, that the Constitution adopts the qualifications of electors which may be fixed by the separate States."

I have hastily glanced through the record of the hearings before this subcommittee and although many witnesses appeared and testified or put into the record printed statements, no one seems to have charted a path to be followed that removes us from the provisions of section 2, article I, of the Constitution.

Generally when the people find a matter answered by the very words contained in the Constitution, they feel that the answer is contained in a document that will not be altered or amended, except in the way designated for amending the Constitution. In all that has been put into the record on this bill I find no witness suggesting that an amendment be put forward to settle this matter in the Constitutional way.

A cheering statement in this record comes from Senator O'Mahoney in commenting on a statement made by the witness Agar (p. 130). He says:

"The question which is presented to the members of this committee is not altogether as simple and as clear as the ideal which you have so eloquently phrased in your presentation just now.

"Every member of this committee might agree that the poll-tax system is, in fact, contrary to the fundamental principle of free government. For myself, I believe that to be the fact. I think poll taxes ought to be abolished without any question at all, and that in a free country, in free States, in free counties, and free cities and free towns, the people ought to rule, and there should be no obstacles raised between them and the power of exercising their control over Government, or at least the power of expressing their desires at the ballot boxes, but the Federal Government, of which we are a minor part, is a government set up under a constitution which recognizes the sovereignty of the States within the structure of the Government.

"It is a commonly repeated statement that the Government is a Government delegated and with limited power. We can do only so much.

"Now, one of the very unfortunate results of oppression of any kind is that those who are oppressed or deprived of their right or liberty, when pushed far enough, will eventually revolt and turn to force.

"The ideal of our Government, however, of all democratic governments, is to attain results by cooperation, negotiation, by reasoning, and not by force.

"So, we are asked here to pass a bill which shall have the effect of compelling the States to follow a certain course. The question arises, I have propounded it several times in the course of these hearings—whether, under the Constitution, we have the right to do that, and whether or not, it would be better for those who believe in the abolition of poll taxes to follow the obvious road, namely, of proposing a constitutional amendment so that there can be no question that the change is being made in the manner provided in the Constitution for making such changes.

"I have already tried, extemporaneously yesterday, to set forth the queries which must be answered. I find, Senator Austin, that the reporter has transcribed my few scattered remarks yesterday on this constitutional question, and is distributing them to persons who may be interested, but that is the question which will determine the action of this committee, because the Members of the Senate sit here because the Constitution created the Senate and we come here under oath to support the Constitution."

That statement—that fine, reassuring statement—came from Senator O'Mahoney on March 14, 1942, after 125 pages of the record had been filled with suggestions dealing with many views of this matter, but not one of which outlined a course for the Congress to follow that would help in solving the question of how to escape the mandate contained in the plain, unambiguous language of section 2, article I, of the Constitution. The command of this section was still, Senator O'Mahoney said, deserving of attention by the witnesses and by the Senate whose Members are sworn not to be swayed by sentiment—or to do something that might appeal to a Senator as an individual. We must not forget as some of these witnesses seem to have done that "the Federal Government," of which the Senate is a great part, "is a government set up under a Constitution which recognizes the sovereignty of the States within the structure of government" and, therefore, the Senate and the Congress can do "only so much."

Again, the people of South Carolina are cheered amid the condemnation attempted to be heaped upon them by some of the contents of this record—when we see that this committee has not been led to agree that the provisions of the Constitution are obsolete, unimportant, and worthless unless they authorize the doing of the things we wish, or find it pleasant to do. In the face of the position taken by some witnesses that would seemingly have the Senate and the Congress ignore the Constitution, where its provisions are in the way, and will not permit the doing of the thing they desire, we find that Senator O'Mahoney, although he favors the bill, if the Senate has the constitutional authority to pass it—taking the part of the States and local governments and their right to exercise the powers and authorities guaranteed by the Constitution. He said:

"Yes; and one of the more important considerations in this world crisis, at least, so it seems to me, is the preservation of the greatest possible degree of local self-government.

"One of the primary causes in which the world finds itself today, is that local self-government has been undermined, and in most parts of the world destroyed, and when people cannot freely support themselves, they cannot freely govern themselves.

"Now, part of the process of centralism, which is the very curse of and cause of this war, is the destruction of the independence of local governing units and the turning toward central authority to make local authority do what those who control the central authority feel that the local authority ought to do."

In contrast listen to this aid to the solution of how to dispense with the command of section 2, article I. It is made by the witness Julius G. Lahrsen, executive secretary-treasurer of the Railway Labor Executive Association. He says:

"While many sound reasons can be advanced against poll tax, they need not be repeated because these few minority States should yield to the vast majority who, although having had poll taxes at one time, have long ago abandoned them as iniquitous."

That statement shows that the "vast majority" of States that once had poll taxes and which abandoned them under the law of those States, after they reached the point where such taxes were looked upon as "iniquitous" are not willing for the minority States to act as they feel proper—but that these self-styled spokesmen for majority States cite their abolition of poll taxes as proof positive that minority States should take a similar bath as and when directed by those who did not themselves act on this question until they got good and ready.

These witnesses tell us in effect that poll tax States should be ashamed to cite their rights under section 2 of article I of the Constitution of the United States.

In the State of South Carolina friction between employer and employee seldom ever occurs and the relationship between all classes is commendable and cooperative.

In some of the majority States, things are happening today which might appear to some living in poll-tax States to retard the war efforts and war aims; but we of the poll-tax States do not cite these acts as occurring because the said States do not have poll taxes.

Mr. Lahrsen continues with his reasons and plan for getting around the provisions of section 2, article I, with this statement:

"It would seem that national public pride alone would persuade those few remaining States to fall in line and outlaw the poll tax voluntarily rather than through compulsion. * * *

"It might well be that the pointed finger of shame and scorn be directed at those who yet fail to see that a treaty elected representative is one chosen where the full freedom of franchise is given to all the people of the State."

Such a sentiment shows why it was wise to fix definitely in the Constitution as to who was to vote for a Congressman. It was not a small matter, in the minds of its framers, to be construed by those who seem to feel that might makes right.

America is now telling the rest of the world that when this World War No. 2 is over, the little nations are to rise again—and be free. What use would their freedom be if such thoughts, as those here expressed on behalf of majority States are substituted for the free will of minority States or little nations? If rambling agents, passing through the States only a few times, are to shape the internal policy of such States, or if nonresidents of States are to tell small nations and minority States that their freedom to have their constitutions speak the will of their people is an empty dream, unless its provisions are measured in the half bushel of the majority States.

The plan of our Federal Constitution makes the States equal by giving each State two United States Senators. If the Constitution did not speak on the subject, so clearly, the majority States could sprout a sentiment to abandon the Senators of the smaller States entirely as being useless or as preventing their plan for ignoring the constitutional mandates.

Listen to this additional offering as to how to evade the Constitution:

"How can we reason wisely or soundly that Federal legislators from poll-tax States, where freedom to vote is restricted, can be properly placed on a parity and equality with the votes of legislators coming from States where freedom to vote is granted?"

This witness says:

"Our association recommended to both political party conventions in 1936 that the platform contain the means and ways through which poll tax would be eliminated, but neither party did so."

I answer that both political parties felt their responsibility under the Constitution of the United States to leave this poll tax matter alone, for the several States to handle under section 2, article I. Let us re-read the section:

"The House of Representatives shall be composed of members chosen every second year by the people of the several States and the electors in such State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

It is proposed by bill S. 1280 that the electors voting for Congressmen shall have different qualifications to what the electors have who vote for the most numerous branch of the legislature. This bill makes it unlawful to follow section 2, article I. I regret that any person should be willing to make it a crime to follow the plain words of this section. It is not a question of whether the personnel of the Supreme Court of the United States has changed, for so long as a decision of that Court is in force, it is, in my opinion, just as binding upon Congress as it is upon other people. Section 2, article I, has been construed. The most that is claimed in the face of Court decisions is that if this bill is passed and presented to the Court, as constituted today, it will be upheld. The people generally have, in my opinion, a greater faith in the Supreme Court than some of this record would indicate. It is not an opportune time to attempt to shake faith in any section of our Constitution, or in any court or in any of the States of these United States.

I must not overlook the additional suggestion of how the unconstitutionality of this bill, S. 1280, can be overcome—hear the witness from the State of Pennsylvania:

"Mr. Chairman, abolition of the poll tax is a necessary element in bringing about a speedy and victorious conclusion of the war. As long as we disfranchise from 6,000,000 to 10,000,000 of our citizens, so long can the Axis point out that we are not fully democratic and that our war aims, consequently, are not democratic.

"And the Axis is using this propaganda over the short air waves today in their broadcast to this country."

It is my opinion that Axis influence is on the decline in the United States and in the nations crushed at present by its brutal war machine, and that generally Hitler is regarded as the biggest liar the world has ever known. What he stands for will not ultimately prevail. The poll-tax States are, regardless of what this record may say about them, composed of fine Americans—the boys from the poll-tax States are not retarding the winning of the war. They are soldiers in the front ranks and are not writing essays favoring poll-tax repeal.

Listen to another witness:

"Thus, the issue of the poll tax transcends narrow questions of constitutionality. Abolition of the poll tax will shorten the war and hasten victory."

We quote now from the statement of John P. Davis, National Secretary of National Negro Congress:

"Who opposes it? Only those forces who either willfully or blindly followed the appeasement policies of America's Cliveden set and who, naturally enough, from their point of view, don't want to be defeated for Federal public office through enfranchisement of millions of loyal democratic Americans. Just as those anti-democratic forces which enacted poll-tax legislation were brutally frank in admitting their purpose to be to disfranchise Negro voters, so today there is brutal admission by word and deed on the part of the opponents of poll-tax repeal of their linkage with pro-Nazi appeasement in this country.

* * * The road of constitutional amendment does not meet the urgent problems of winning the war. * * *

"The unanimous support of the whole American people, the grave need for this bill as a war measure of extreme urgency, the need to save America and the world from the dangerous threat of Hitler tyranny demand that the Congress liberally construe the Constitution of our country, and construe it as a document which can and will bring life, liberty, and the pursuit of happiness to all Americans. Our deep need for national unity demands the passage of the bill. It is for these reasons it has the complete and hearty support of the entire membership of the National Negro Congress and of the broadest sections of the Negro race."

I have inserted the above quotation to show to what lengths the witness was willing to go, in order to convince the committee. I believe that the language of the quotation is perhaps strong enough to bury itself in the graveyard of needless remarks. But I remind you that the same Constitution from which that witness would strike down the clear words of section 2, article I, guarantees to him the right to make a more worthy statement. I rely upon the sense of fairness of this committee and feel that the language which the witness chose does not carry conviction, that the bill, S. 1280, is constitutional.

After 181 pages of the record had been made, the range of views other than upon the question of the constitutional authority of Congress to pass bill S. 1280 was so far from throwing the proper light upon the constitutionality of this bill that Senator O'Mahoney, your chairman, said in effect that it was still the constitutionality of the bill, S. 1280, that the subcommittee wanted discussed. After 219 pages, the committee was still pointing to section 2, article I, of the Constitution, still wanting to know the power and authority of Congress to fix a different qualification for electors who vote for Congressmen in a State, to those qualifications fixed by the States to qualify electors to vote for tthe members of the most numerous branch of the Legislature.

Could it have been the intention of the framers of the Constitution that whenever people may differ as to the propriety of certain sections of the Constitution all that is necessary is for witnesses to get up and make the statement that they or even the Congress find it to be a fact that such section of the Constitution is preventing the passage of certain bills and that it is then proper and within the power of Congress to pass a bill nullifying such a section instead of amending the Constitution? That is about what some of the witnesses have argued as to this bill.

Suppose some person or organization should start a movement to amend that section of the Constitution that says each State shall have two Senators. Suppose they should argue that two Senators retard the winning of the war and make it twice as difficult to pass a bill, would the Senate doubt that such a proposal was in the teeth of the wording of section 3, article I, and article 17 of the amendments of the Constitution? Suppose they should say as to two Senators from each State that it causes the Senate to be cumbersome, that there should be only one Senator from each State so as to make it easier to get a bill through the Senate? Suppose they should argue that by reducing the number of Senators it would enable certain elements to get rid of Senators opposed to certain legislation, would such statements prove the power and authority to make that change any more than the statements in this record prove the constitutionality of bill S. 1280? I think not, gentlemen of the committee.

I am glad that the action already taken shows that you feel that our position on this bill is correct and that the committee cannot recommend that the Congress has the power and authority to enact bill S. 1280, as it conflicts with section 2 of article I of the Constitution.

Then, I want to call to the attention of the committee the fact that the amendment to the Constitution that was passed bringing about the election of United States Senators "by the people" was ratified in 1913 and in it they changed the language of the former section and made it conform to that required for the Members of the House. They found it good enough in 1913 to repeat it and to say it was the will of the people, that the people in the respective States who were qualified to vote for Members of the House of Representatives were still good enough to vote for United States Senators. I think, as I glance around me, and observe the Members since elected, that the wisdom of the provision is good. I think it succeeded in sending able Members to the Senate, and I would hate to see it struck down. We are in dangerous times.

I do not want to be lengthy. I sympathize with the members of this committee and with the Members of the Congress. I feel like I am out of place up here, and if it were not for the seriousness to my own State I would not ask your time to listen to me. But we are in the midst of a bad time, when we must devote our greatest efforts toward winning the war. Every time we listen to the radio and read our papers they are telling us to get behind this and get behind that to help win this war and put Hitler and his breed out of existence forever.

In the midst of such a terrible fix, with a great big question mark standing here over the power of Congress to act, would not the people of this great country, as a whole, appreciate the fact if Congressmen repose in the people of the State some wisdom in knowing how to act intelligently? Cannot all the States cite their leaders in Congress to show that they have not handled lightly the privilege of the ballot?

I think the fact that the people as late as 1913 have reaffirmed that they want the people of the State to handle this matter and to fix the qualifications of electors shows that it has worked well. The State of South Carolina is not the home of corruption. I would be glad for any Senator to come to South Carolina and not notify the officials that they are coming. Sometimes when you notify people they put the best foot forward, but come in unexpectedly and see if you find corruption existing in South Carolina. Visit us on election day and stay the whole day, if you want, and see how it is done.

We may be behind on some things, gentlemen, if other people would set themselves up as a standard that we ought to follow, but sometimes we are rather proud of the fact that we are different. We do not seem to get away from the idea that it was sort of intended that there should be individuality in the country, and we cannot allow any person who may feel he has more power than he really has to say to us, "Now, here is our straightedge and you have to follow it. I did not make any change until I saw fit; but you make yours at once." Such threats and attempted coercion do not follow the democratic principle for which they say they are standing in their testimony. I feel that they are assaulting my State, the way they put it in there. I am willing to stand on what we are, and to tell you that none of us have reached perfection up to date, but we are still looking forward and trying to do better. We have not had anyone up here, as I understand it, from South Carolina, pleading very strongly that poll taxes ought to be abolished.

Our people feel proud of the fact that they can contribute a dollar to the support of their government, from which they are receiving so much in return. Of course, some of the States may possibly have all the money they need and any tax may be popular, but I have not found any taxes that are very popular. The people of South Carolina feel that paying poll tax and educating their children is a privilege and they would feel cheap if they did not contribute at least a dollar to the upkeep of their State government. They feel it an honor to pay a little tax. If they did not pay a poll tax, they would not pay any—a lot of them would not pay any at all. He could not come up and assert his rights, stand up boldly and proclaim his rights if he did not make some contribution. Now he goes along and it probably adds some little incentive to him to keep himself in good shape—by paying a dollar and voting.

I think some people take advantage of practically every postponement of the payment of taxes, sort of put it off a little bit, like treating a toothache—they do not rush into it, but if some interesting election is coming on—they pay their poll tax and vote.

I know when I was in the legislature we had a great deal of trouble getting the members to attend the metings of the committees. They would ask the chairman if there was anything important coming up that afternoon, if he said no, there would be a very small attendance in the committee, but if there was something very interesting they would all put forth a great effort to be there.

You have heard, gentlemen, that in South Carolina opposition does not usually appear in the general elections. The Republicans sometimes come forward in a year when a President is to be elected, because if there were to be a change they would love to take the jobs available.

Our Supreme Court said as to those voting upon constitutional amendments that those who do not vote are supposed to favor the amendment. The people say, "Well, nobody is opposing the fellow. It looks like he ought to be able to win," and they do not go and vote. It is not because of any poll-tax payment at all that he does that.

I want indulgence to read just a short excerpt here from a brief I made on another occasion:

"If the court should not be satisfied with the pronouncement of the South Carolina Supreme Court on this subject, we feel that we could not do more than call to the attention of the court and quote at some length from the case of *United States* v. *Gradwell et al.* (243 U. S. 476, 61 L. Ed. 857):

" 'Whatever doubt may at one time have existed as to the extent of the power which Congress may exercise under this constitutional sanction in the prescribing of regulations for the conduct of elections for Representatives in Congress, or in adopting regulations which States have prescribed for that purpose, has been settled by repeated decisions of this court.' "

Then comes a long list of citations that I am not going to quote.

"Although Congress has had this power of regulating the conduct of congressional elections from the organization of the Government, our legislative history upon the subject shows that except for about 24 of the 128 years since the Government was organized, it has been its policy to leave such regulations almost entirely to the States, whose representatives Congressmen are. For more than 50 years no congressional action whatever was taken on the subject until 1842, when a law was enacted requiring that Representatives be elected by districts, thus doing away with the practice which had prevailed in some States of electing on a single State ticket all of the Members of Congress to which the State was entitled.

"Then followed 24 years more before further action was taken on the subject, when Congress provided for the time and mode of electing United States Senators, and it was not until 4 years later, in 1870, that for the first time, a comprehensive system for dealing with congressional elections was enacted. This system was comprised in paragraphs 5 and 6 of the act approved July 14, 1870.

"These laws provided extensive regulations for the conduct of congressional elections. They made unlawful false registration, bribery, voting without legal right, making false returns of votes cast, interfering in any manner with officers of election, and the neglect by any such officers of any duty required of him by State or Federal law; they provided for appointment by circuit judges of the United States of persons to attend at places of registration and at elections, with authority to challenge any person proposing to register or vote unlawfully, to witness the counting of votes, and to identify by their signatures the registration of voters and election tally sheets; and they made it lawful for the marshals of the United States to appoint special deputies to preserve order at such elections, with authority to arrest for any breach of the peace committed in their view.

"These laws were carried into the revision of the United States Statutes of 1873-74, under the title 'Crimes Against the Elective Franchise and Civil Rights of Citizens.'

"It will be seen from this statement of the important features of these enactments that Congress by them 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 that the control thus established over such elections was comprehensive and complete. It is a matter of general as of legal history that Congress, after 24 years of experience, returned to its former attitude toward such elections, and repealed all of these laws with the exception of a few sections not relevant here. This repealing act left in effect as apparently relating to the elective franchise, only the provision contained the eight sections of chapter 3 of the Criminal Code, Nos. 19 to 26, inclusive, which have not been added to or substantially modified during the 23 years which have since elapsed.

"The policy of thus entrusting the conduct of elections to State laws, administered by State officers, which has prevailed from the foundations of the Government to our day with the exception, as we have seen, of 24 years, was proposed by the makers of the Constitution, and was entered upon advisedly by the people who adopted it, as clearly appears from the reply of Madison to Monroe in the debates in the Virginia Convention, saying that—

"'It was found impossible to fix the time, place, and manner of election of representatives in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the State governments as being best acquainted with the situation of the people, subject to the control of the General Government, in order to enable it to produce uniformity and prevent its own dissolution—were they exclusively under the control of the State government, the General Government might easily be dissolved. But if they are regulated properly by the State legislature the congressional control will probably never be exercised. The power appears to me satisfactory, and as unlikely to be abused as any part of the Constitution.'"

Now, gentlemen, I appreciate the kindness you have shown me. I want to make that clear, that we are not here, as the record might seek to show, as a people who have no regard for law and who are trying to pull any "fast ones" on the rest of the United States. We are right in the midst of a situation that we have to handle, and I cannot help but believe that the people of any State are, generally speaking, the parties best qualified to determine what should be the law and procedure in their State. Feeling that way, we ask that the wording of section 2, article I, be let alone so we can look to the Constitution as being our log book and chart, if necessary that may not be shot at promiscuously, but it is there to be amended in the regular way under an orderly process of government.

STATEMENT OF EDGAR A. BROWN, PRESIDENT PRO TEMPORE AND CHAIRMAN OF THE FINANCE COMMITTEE OF THE SENATE OF THE STATE OF SOUTH CAROLINA

Mr. BROWN. I do not think I can add anything to what has been so ably said by the Governor of South Carolina and the Attorney General of South Carolina, and by the Governor of Alabama on the subject of our situation with reference

to the so-called poll-tax issue. As Chairman of the Senate Finance Committee in South Carolina, I am interested, of course, from the standpoint of revenue, and I came along to support the Governor's position in this matter.

It is silly for anyone to say that we use the poll tax in the South to refuse the franchise to anybody. It has been in the Constitution and our Statute since the time immediately after the war between the States, when there was no thought of disfranchising anybody.

Now, gentlemen, I agree firmly with the sentiment expressed by the Governor of Alabama, that this is a most inopportune time for questions of this sort to be raised in the Nation. As dean of the South Carolina Legislature, a member of the Board of Directors of the Council of State Governments, and many other organisations, I spend about half of my time now in public matters relating to the war effort. This is just one of the things that is not related to the war effort that we do have to give our attention to. I think of all the things that you could do, or that should be done, with a bill of this sort at this time is to pigeon-hole it. That would be a very good disposition of it.

Senator MAYBANK. All I want to say in addition is that the poll tax was first levied in South Carolina in 1702. The tax was used to defend the citizens against the Indians. It applied to those between the ages of 21 and 60. It remained in the State constitution when the State came into the Union; it remained there after the War Between the States.

The new constitution was written by the then carpetbagger government that we of the South know so much about. They rewrote that provision in the constitution—the government at that time in 1866.

Now, the tax applies only to those between the age of 21 and 60, does not apply to women, and any man can go and take an oath, saying that he cannot pay the $1, and he can vote anyhow.

So, it does not apply to any poor people. It does not apply to women; it does not apply to anybody over 60, so, the net result is that only about 30 percent of the voters are even concerned with the poll tax.

We have tried on several occasions to repeal it. Each time we have had a bill up before the legislature, there has been agitation from Washington that has hurt us in our effort to repeal the tax. We hope that this committee will not report the bill out. We hope that it will be left with us in South Carolina to repeal it when we are able to do so.

We think that every one of these hearings and every one of these bills that have been introduced in the past few years have only delayed the repeal of the poll tax, but again I want to say that it cannot by any stretch of the imagination deny any people of such privilege when I say that only 30 percent of the voters pay for it; no poor people pay the poll tax; no women pay the poll tax, and nobody who wants to go down to the courthouse and file an oath as to his inability to pay it has to pay it, and it costs only 2 cents a week, a dollar a year, and it is not retroactive.

The CHAIRMAN. Thank you, Senator Maybank. Do you have any questions, Senator Stennis?

Senator STENNIS. No. I think that covers this. Senator Overton may have a statement.

Senator OVERTON. Mr. Looney will make a statement.

The CHAIRMAN. Is it all right to proceed with Congressman Almond?

Senator OVERTON. Yes.

Senator BYRD. I would like to state that Congressman Almond has just been elected attorney general of Virginia.

STATEMENT OF HONORABLE J. LINDSAY ALMOND, JR., MEMBER OF THE HOUSE OF REPRESENTATIVES FROM THE SIXTH CONGRESSIONAL DISTRICT OF VIRGINIA, AND ATTORNEY GENERAL-ELECT OF THE STATE OF VIRGINIA

Mr. ALMOND. I want to say, Mr. Chairman, that I was appearing in a dual capacity as a Member of Congress and as attorney general-elect of the State of Virginia, and I am grateful for the privilege of registering my opposition to the enactment of this bill.

My approach to this subject is not circumscribed by the fact that since 1902 the constitution of Virginia has prescribed, as one of the qualifications as a prerequisite to the exercise of the franchise in all elections, the personal payment of a poll tax. Nor does the fact that the legislature of Virginia has already taken the legal steps to submit the issue in the form of a constitutional amendment to the people of my State, have any bearing on the subject immediately before us or my views relative thereto.

My opposition stems solely from my firm conviction that the Federal Government is devoid of constitutional authority, express or implied, to invade the sovereign right of a State to prescribe the qualifications of its citizens to participate in any election on its soil and conducted through its governmental processes.

In the congressional hearings and debates on this agitated subject many and diverse irrelevant arguments and preposterous theories have been advanced. Some of these are appeals to emotion based on the crackpot theory that this is a moral issue; that it will stimulate or stifle voting and that the elimination of a $1.50 tax dedicated to free public education will enable the poor to vote.

Some of the agitators go so far as to contend that the tax constitutes an onerous burden on many thousands who receive the blessings and protection of government, refuse to pay the tax and thereby escape the payment of any tax of any nature whatsoever. Their ostensible but crocodile concern is for those who, with equal facility, claim and receive all of the blessings of government and pack the burdens on the shoulders of their fellowman.

Considerations of political advantage and expediency motivating many of the proponents of this legislation are an unmitigated travesty on political honesty and decency. The amalgamated wolf-pack confederacy of Communists, left-wingers and ultraradicals who seek, with undisguised bitterness and effrontery, to ravish the honor and sovereign integrity of the southern States, are certainly strange and unsanitary bedfellows for some of my colleagues who have voluntarily elected to cohabit with them in support of this legislation. Their harvest will be to reap the illegitimate offspring inevitably to be spawned from this unholy and illicit consortium.

There are some, however, who advocate passage of this legislation for whom I entertain the highest respect and whose motives I cannot and do not impugn. Their unblemished records of salutary public service conclusively refute any assertion to the contrary.

None will deny that the Federal Government, in its relation to the several States, is the creature and not the creator. The States through common consent and concessions formed the central govern-

ment, breathed into it the breath of life, pulsated it with sovereignty and bestowed upon it all of the authority, though limited, which it possesses. Those rights which the States regarded as inalienable, and indispensible to State sovereignty, were expressly reserved by the several States inviolate from the impingments of the Federal Government.

Whether or not there should be a poll tax prerequisite in any State is a debatable question. It is a State and not a Federal question. This is not the proper forum for such a debate except on the question of submitting a constitutional amendment to the States for ratification. The matter of statutory repeal belongs exclusively to the States. The same is true, of course, in regard to the elimination of poll tax provisions from State constitutions.

Under our system there is no such thing as a Federal election. All elections are State elections and only those who qualify under State law acquire the right to vote therein. Every cog in the election machinery including expense and full responsibility for every step in the process is under complete State supervision and control.

The debates in the constitutional convention clearly demonstrate that the matter of elector qualifications was amply considered and discussed. Various suggestions were made and proposals advanced. Certainly there was no pretermission of the subject of qualifications. The proposal of uniformity of qualifications was considered. Objections were raised against leaving the matter subject to the will of the several States and it was proposed that the power to prescribe qualifications be vested in the Congress. Conditions, restrictions, and inhibitions were considered. The composition of the conflicting views of the framers produced article I, section 2, of the Constitution:

> 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.

The only limitation imposed by the Constitution on the subject of qualification is that it must conform identically to that prescribed by the State for electors of the most numerous branch of the State legislature. This defines the limit of the power conferred by the States upon the Federal Government relative to the qualification of electors.

The identical language found in the seventeenth amendment relating to the election of Senators is conclusive of combined congressional and State recognition that the matter of elector qualification resides solely with the States subject to being divested only by amendment to the Federal Constitution.

In an unbroken line of decisions the Supreme Court has recognized and affirmed the exclusive power of the States to prescribe the suffrage qualifications of their electors subject to the provisions of the fifteenth and nineteenth amendments forbidding discriminations only because of race, color or previous condition of servitude, or sex.

In *Breedlove* v. *Suttle* (302 U. S. 277) the Supreme Court in a unanimous opinion said:

> To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the fourteenth amendment. Privilege of voting is not derived from the United States but is conferred by the State and save as restrained by the fifteenth and nineteenth amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate—

and citing a long line of cases.

It has been contended by some of the proponents of the pending measure that the Supreme Court has subsequently held in the *Classic case* (313 U. S. 299) that the right to vote and have the vote counted is derived from article I, section 2, of the Constitution. The Classic case does not support this contention. It draws a clear distinction between privilege and right. The State law determines the qualification necessary to exercise the privilege to vote. The Constitution protects the right once it has been acquired through the exercise of the privilege to qualify. This distinction was drawn in *Ex parte Yarbrough in 1883* (110 U. S. 651), wherein the Supreme Court clearly sustained the exclusive power of the States to prescribe the qualifications of voters.

In the Classic case the Court defined the issue with this language:

> 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 within the meaning of sections 19 and 20 of the Criminal Code, and whether the acts of the appellees charged in the indictment violate those sections.

It is clear, therefore, that the Classic case dealt with the rights of qualified voters and not with qualifications prerequisite to the exercise of those rights.

The decision in the Breedlove case stands unimpaired, without qualification by subsequent decision and is the final authority for the proposition that the matter of voter qualification has always resided with the States.

It seems entirely clear that under the construction placed on sections 2 and 4 or article I of the Constitution, (1) by the contemporaneous statements of the framers of the Constitution, (2) by the unanimous decisions of the Supreme Court of the United States and the courts of last resort of the States, and (3) by actions of Congress and the States with respect to constitutional amendments regulating the State's exercise of its powers over suffrage, the States reserved unto themselves full and unlimited powers to prescribe qualifications for voters at all elections, except that such qualifications as to Senators and Representatives in Congress should not be different from those prescribed for voters for the most numerous branch of the State legislatures.

Section 1 of H. R. 29, which I understand is the bill immediately before the committee, manifests an attempt on the part of the legislative branch to place a judicial construction on article I sections 2 and 4 of the Constitution. It undertakes to say, in the face of a contrary adjudication by the Supreme Court, that the matter of qualification "shall be deemed an interference with the manner of holding" elections "and a tax upon the right or privilege of voting." It is an effort to repeal a vital provision of the Constitution of the United States in a manner which violates that instrument.

Furthermore, it is a tacit admission that if the requirement is a "qualification," then Congress possesess no power to legislate with respect thereto.

Article I, section 4 of the Constitution relating to "the times, places, and manner of holding elections for Senators and Representatives" was not designed by the framers and has not heretofore been construed or applied to embrace the subject of "qualifications." Under this section the power of Congress is restricted to the making or altering regu-

lations prescribed by State legislatures only as to the "times, places and manner of holding elections." It does not invade the field of prerequisite "qualifications." The qualification of a voter is something entirely separate, distinct and apart from the holding of an election. A qualified voter may or may not, as he chooses, participate in an election. Until he qualifies he cannot.

Alexander Hamilton was the most outstanding early champion of a strong centralized government. His construction of section 4 was as follows:

> Its authority would be expressly restricted to the regulation of the times, the places and the manner of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon on other occasions, are defined and fixed in the Constitution and are unalterable by the legislature.

In support of this view a quotation from Story on the Constitution is highly pertinent:

> The history of the times indicates beyond reasonable doubt that if the Constitution makers had claimed for this section the broad regulation which some now contend, the Constitution would never have been ratified.

If we should concede, for the sake of argument, that the payment of a poll tax is not properly embraced by the inclusive term "qualification" its requirement is nevertheless a proper exercise of the reserved powers of the States over suffrage, as well as over the taxing powers. In conferring powers upon the Federal Government through ratification of the Constitution the States granted only those powers defined by the Constitution and such implied powers as were necessarily incident to the reasonable exercise of the powers expressly granted. All powers not granted, nor expressly prohibited to the States by the Constitution were reserved by and to the States through the tenth amendment. When the Constitution was adopted each State possessed and retained unlimited power over suffrage.

Recurring again to the Breedlove case:

> Privilege of voting is not derived from the United States, but is conferred by the State, and save as restrained by the fifteenth and nineteenth amendments, the State may condition suffrage as it deems appropriate.

The fifteenth and nineteenth amendments do not confer the right of suffrage. They do nothing more than prevent discrimination against those who meet the test of qualification required of those who are permitted to vote.

The requirement of the payment of a poll tax as a prerequisite to vote is a valid exercise of the taxing power of the State. In the Breedlove case, again, the court said:

> Exaction of payment before registration undoubtedly serves to aid collection from electors desiring to vote, but that use of the State's power is not prevented by the Federal Constitution.

I respectfully submit that this is a judicial and not a legislative matter. An attempt by this method, whatever the motive be, to repeal any part of the Constitution of the United States is a violation of the oath to uphold and defend it. The only constitutional legislative approach is through the prescribed procedure for amendment. This has been the unyielding course of the past. Political expediency does not render the great charter of our liberty less sacred or less inviolate. God forbid that it ever will.

If the Constitution is being violated by the States, as some contend, if rights of citizens are being abridged or denied the only remedy is

resort to the courts for redress. If Congress has the power, through this method, to abrogate the poll-tax requirements of the several States then, by the same token, it possesses the power to nullify requirements as to registration, age, residence and mentality. It can open the ballot box to the moron, the idiot, and the felon. If it can enlarge the privilege of suffrage it can diminish it. If it can undermine the sovereign rights of the States in this respect, it can destroy the last vestige of those rights.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Are there any questions, Senator Green?

Senator GREEN. As I understand it, you draw a distinction, do you not, between a condition of voting and a qualification for voting?

Mr. ALMOND. That is right.

Senator GREEN. And you alluded to the different construction of that clause in the Constitution, first, the qualification, saying that if the payment of the poll tax was a condition of voting, you would reach the same result as though it were a qualification.

Do I understand that one State might decide it was a condition of voting and another that there was a qualification of voting?

Mr. ALMOND. No, sir. I do not take that position, Senator Green.

Senator GREEN. What was the distinction you drew?

Mr. ALMOND. The position that I took was that under section 2 of article I that the matter of qualification was left entirely to the States by the Constitution of the United States.

Senator GREEN. I understood that.

Mr. ALMOND. And, therefore, that the States had the power to prescribe those qualifications.

Senator GREEN. Yes.

Mr. ALMOND. And, first, after those qualifications had been laid down, then the Federal Government could step in, as it did by the nineteenth amendment and the fifteenth amendment, and protect the exercise of that right on the part of a qualified voter.

Now, getting back to the question you propounded to Governor Tuck, I am sure I do not think I can do any better than the distinguished Governor of Virginia. I take the position under the Constitution that if the States, in the judgment of the Congress, are abusing the matter of qualification by placing unreasonable qualifications which may amount to restrictions, then, as has been the course of constitutional history in the past, the only way to remedy it is by proposing and submitting a constitutional amendment to the States.

Now, my position is based on this: That this matter was thoroughly debated and discussed, and the matter of property qualifications, that the Senator raised awhile ago, possessing so much wealth, all of that was carefully gone into in the constitutional convention, and with that before them and with those restrictions then obtaining in various State constitutions, I think Massachusetts had one, they decided to leave that question of qualification to the several States.

If the States abuse their privilege and their rights, as some seem to think, let the Congress of the United States, in a constitutional method and manner, propose to the several States an amendment, and let the States then, as the Constitution prescribes and the spirit of the Constitution invokes, yield that power to the Federal Govern-

ment to regulate a qualification which may, I concede, become a restriction; there is no getting away from that.

Senator GREEN. I understood you to make that argument, but you also later in your argument referred to the fact that certain people regarded this provision, poll tax, as a condition of voting and not a qualification for voters. In fact, you referred to them in the beginning of your remarks very unflatteringly.

Mr. ALMOND. Yes, sir; I did. I mean that, too. Not that it is any reflection on the distinguished Senator, but I have seen some of that in Congress.

Senator GREEN. Well, I want to know where you draw the line between a condition of voting and a qualification for voting.

Mr. ALMOND. I do not know, sir, that I can draw that line. Of course, you refer to condition in the sense of a restriction, do you not, sir?

Senator GREEN. Well, it might be.

Mr. ALMOND. Yes, sir.

Senator GREEN. You dealt with this point when you spoke about the places of voting and registration, and other things that did not, you say, refer to qualifications.

Mr. ALMOND. That is right.

Senator GREEN. The question is where do you draw the line between the two.

Mr. ALMOND. A condition or a restriction under section 4 of article I, as it has been construed throughout the history of the country by the Supreme Court and by the framers of the Constitution, relates to the times and the places and the manner of holding an election. It has nothing to do with the qualification of a person as a prerequisite to exercise the franchise. Once that has been done, then the Constitution, by virtue of these amendments, says that the States are compelled to permit them in an untrammeled manner to exercise that right which they have acquired through qualifications belonging to the domain of State sovereignty.

Senator GREEN. Yes. The question is whether it is a qualification.

Mr. ALMOND. Well, we differ on that.

Senator GREEN. I do not know that we do differ. I am just trying to find out where we draw the line.

Mr. ALMOND. I have so much respect for the distinguished Senator, I would like for him to draw the line.

Senator GREEN. I know, but perhaps I will have an opportunity to testify later. These questions came up in connection with the draft, did they not? They came up in the question of soldier voting, did they not?

Mr. ALMOND. Yes, some of them did.

Senator GREEN. Well, the question was whether or not the Federal Government could provide that the soldiers might vote elsewhere—the States had not provided for the anticipation of the problem of service.

Mr. ALMOND. Yes.

Senator GREEN. What do you think about that?

Mr. ALMOND. I do not think anything about it. The States permit it. I am going to vote tomorrow in an election in Washington which is permitted by my State.

Senator GREEN. Did you think the Federal Government could be said to have the power to say that anyone who was in the armed services of the United States could vote?

Mr. ALMOND. I would be in accord with that.

Senator GREEN. You are not?

Mr. ALMOND. I was.

Senator GREEN. You were opposed to it?

Mr. ALMOND. I was in accord with it.

Senator GREEN. Then why is not the Federal Government correct in having the power to waive this provision as to the poll tax?

Mr. ALMOND. However, I think the procedure there would have been for the Federal Government to call upon the States who had restricted provisions or conditions, whichever you choose to call them, or qualifications to cooperate with the Federal Government in the exercise of States' rights with reference to qualifications, and they did.

Senator GREEN. All of them?

Mr. ALMOND. As far as I know, Senator. I may be ill-advised on that subject.

Senator STENNIS. Mr. Chairman, I am very much embarrassed to bring this up, but we have witnesses here from Louisiana and South Carolina.

Senator GREEN. In view of that fact, I will defer that examination. I was just trying to get additional light.

Senator STENNIS. Senator Holland is here also, and he has a committee assignment and wants to make a statement.

The CHAIRMAN. Senator Holland, we are glad to have you here. Will you give us the benefit of your views, please?

STATEMENT OF HON. SPESSARD L. HOLLAND, MEMBER OF THE UNITED STATES SENATE FROM THE STATE OF FLORIDA

Senator HOLLAND. Mr. Chairman, thank you. I will be very happy to do so.

Insofar as my opposition to the so-called antipoll tax statute now proposed to be passed by the Congress is concerned, I want to make it plain in the beginning that my opposition is based upon what I regard as the completely unconstitutional aspects of such proposed statutory treatment, and also upon the fact that this proposed enactment is but a part of a much broader and more comprehensive program of attack upon all of the Southern States, which I think cannot be very safely considered as standing solely by itself, but must be considered as a part of that general punitive program.

In the first place, with reference to the constitutional aspects. But let me say before going into that subject, that I have personally, as a member of the legislature of the State of Florida, not only voted for, but strongly supported the repeal of the poll-tax requirement that was formerly a part of our State statutory law as a result, however, of legislative action under a specific constitutional provision permitting it, and limiting it to not more than $1 poll tax required to be paid by any elector for any 1 year.

We repealed the State requirement of poll-tax payment as a prerequisite for voting in 1937, at which time I was a member of the State senate, and strongly supported that repeal. I think that the results that we attained in our State justified the repeal.

I hope that the conditions in the seven States, where poll taxes are still required, may shortly and speedily justify the repeal in those States. But, my own hope along that line should, of course, be construed always by those who are directly affected, those in the seven States as only a hope, for their decision must be based on what they believe to be the situation in their State, and the compelling reasons, both for and against such action.

In my view, the only ways to accomplish the proposed action, the repeal of the poll tax payment, as a requirement for voting, are two: One, and preferably, by action of the States themselves. Second, and not the preferable course, but a perfectly constitutional one, the adoption by the Federal Government under either of the ways permitted, of a Federal constitutional amendment on the subject.

With reference to the action by several States, let me call the attention of the committee to the fact that since the adoption of the constitutional amendment for the direct election of United States Senators in 1913, four of the southern States have completed action by which the abolition of the poll tax requirement for voting was accomplished as to those four States, and other States have embarked upon the course of repeal by State action.

For instance, in the State of Tennessee—and I presume that has already been placed in the record—the State legislature took action only to find that they ran into contradictory provisions of the constitution which required constitutional amendment, which, I understand, is long and difficult in Tennessee, although I am not familiar with the specific requirements.

In the State of Virginia, where constitutional amendment would be required, I am told that it is required that two State legislatures must submit the proposed amendment before it can be submitted to referendum by the people, and that one of the required legislatures has taken that action.

The CHAIRMAN. Let me interrupt that to say that Governor Tuck testified that they both had done so.

Senator HOLLAND. I was going to say that I understood that such action was contemplated to be taken by the session of the Virginia Legislature which has just concluded. But I had not kept up closely enough with it to know whether the action was taken.

But, at any rate, that shows rather positively the desire of the people of Virginia, at least, as represented by their legislators to move towards the repeal of this requirement. That, I think, is the sound and safe way to go at it. If no progress is being made or insufficient progress, progress which is not as fast as the Congress thinks should be made, of course, there is always the other alternative by proposing a Federal amendment.

Now, let me say to the committee that in my judgment the wording of the Constitution on this matter is so thoroughly clear and so thoroughly conclusive that when taken into consideration with the actual situation in the various States at the time of the drafting of the original Constitution, and then at the time of the adoption of the amendment in 1913 for the direct election of Senators, that it seems to me there can be no question but that originally the founding fathers who wrote the Constitution wrote it against a background which compels interpretation of section 2 of article I of the Constitution in such a way as to require the settlement of this question on a State basis, and that the situation in the several States in 1913, at the time of the adop-

tion of the seventeenth amendment, also compels that interpretation as the only reasonable one which can be applied to the words of the Constitution.

I am afraid that in mentioning those words again I will place in the record what has been put there by many other witnesses, but I remind the committee that the exact words of section 2 of article I of the Constitution are 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.

The electors in each State shall have those qualifications—the words used are "the qualifications" but that means those very definite qualifications requisite for electors of the most numerous branch of the State legislature.

Now, I don't know whether it has been placed in the record or not—if it has, I shall not ask that it be again placed there—that is the table of constitutional requirements in the Original Thirteen States at the time of the drafting of the Constitution bearing on this question of qualifications of electors.

The CHAIRMAN. I don't recall that it has.

Senator STENNIS. I think that was in Mr. Orton's statement. Mr. Orton, do you have the requirements of the qualified electors at the time of the adoption of the Federal Constitution?

Mr. ORTON. I don't have them completely.

Senator STENNIS. It is not in the pamphlet you filed yesterday?

Mr. ORTON. No; it is not.

Senator HOLLAND. Mr. Chairman, I would like to file now as a part of my testimony the chart shown on pages 39 and 40 of the pamphlet known as Report 530 of the Seventy-eighth Congress expressing the minority views of the Committee on the Judiciary on this same proposition. That particular compilation shows not only the qualifications of electors prescribed by the constitutions of the States which acted together in the adoption of the original Constitution, but to make the question a little broader it shows the qualifications appearing in that particular period, the period from 1776 to 1800, in the State constitutions, including not only the States who themselves first approved the Constitution, but also those States that came into the Union prior to 1800, which it seems to me is a very good way to approach the subject because it doesn't only include the facts which must have been conclusively known to the framers of the Constitution at the time they met in Philadelphia; namely, the facts in the constitutions of the States who were meeting at that convention to frame the Constitution, but it also shows the current practice in that field by incorporating the constitutional provisions of the States admitted shortly thereafter and up to 1800.

Without wearying the committee by reading from that table at this time, I just want to say that in my judgment there is a real basis which will allow for a reasonable interpretation of the meaning of these words placed in the Constitution by the founding fathers, and I see no better way to propose a background for such an interpretation.

The CHAIRMAN. Without objection, it will be made a part of the record.

(The material referred to above is as follows:)

APPENDIX

[Extracts from The Constitutional History of the American People, 1776–1850, by Francis Newton Thorpe (Harper Bros., New York), vol. I, pp. 93–971.]

Qualifications of electors prescribed by the Constitutions, 1776–1800

State	Constitution	Age	Residence	Property	Taxation	Religion [1]	Sex	Race	Native or naturalized
New Hampshire	1784	21	Town	Having town privileges, freehold.	Poll tax		Male		
Vermont	1792	21	do	Freehold			do		
	1777	21	1 year in State				do		Foreigner after 1 year's residence.
	1786	21	do						Do.
	1793	21	do				do		Do.
Massachusetts	1780	21	1 year in town	Freehold of annual income of £3, or estate of £60.			do		
New York	1777	21	6 months in county	Freehold of £20 or paying rent of 40s. Freehold of £100 to vote for State senator.	Taxpayer, or freeman of Albany or New York City.				
New Jersey	1776	21	12 months in county	Estate of £50			do		
Pennsylvania	1776	21	1 year in State		Taxpayer		Male or female.	White or black.	
Delaware	1790	21	do		State or county tax		Male		
	1776 [2]						do		
Maryland	1792	21	2 years in State		State or county tax				
	1776	21	1 year in county	Freehold of 50 acres or property of £30.			Male	White.	
Virginia	1776 [2]						do		
North Carolina	1776	21	12 months in county	Freehold in county of 50 acres for 6 months before election may vote for State senator.	Paid public taxes, may vote for member of H. C.				
South Carolina	1776 [2]								
	1778	21	1 year in State	Freehold of 50 acres or town lot or paid taxes equal to tax on 50 acres.		Acknowledges the being of a God and a future state of rewards and punishments.	Male	White.	
	1790	21	2 years citizen of the State.	Same as in 1778	If not freeholder, has paid tax of 3s. sterling.		do	do	

Georgia	1777	21	6 months in State	Property of £10 or being of a mechanic trade or a taxpayer.				
	1789	21	6 months in county, citizens and inhabitants of the State.					
	1798	21	do		Taxpayer			
Kentucky	1792	21	2 years in State or 1 year in county.				Male	
	1799	21	do				do	White
Tennessee	1796	21	6 months in county	Freehold			do	

[1] In New Hampshire, Massachusetts, Connecticut, and V[illegible] eighteenth century, most of the electors were church members.
[2] Qualifications "as fixed by law," see table, p. 41.

Senator HOLLAND. Thank you, Mr. Chairman. You will note, incidentally, that the only State that had a poll-tax provision that was a constitutional provision at that time was the State of New Hampshire. The poll-tax requirement as a qualification for voting, that is. You will find, however, that every other State at that time had more severe tax-paying or property-owning qualifications than that, either by the terms of its constitution or in a few cases by the terms of the statutory requirements existing at that time.

Now, in order to supplement the picture just made, I would like at this time to include with the showing just introduced as part of my testimony the showing appearing at the top of page 41 in this same report, which shows the statutory provisions in some cases enacted under permissive provisions of the State constitution, in some places enacted as an addition to the mandatory State constitutional requirements, but constituting the statutory qualifications for electors in the several States shown by that list, which is not as large a list as the all-inclusive list already adopted, but which is necessary to show, Mr. Chairman, in my humble judgment, the complete picture of what were the qualifications, the actual qualifications, for the participation of electors in voting for the members of the lower house of the State legislature in all of the States which participated in the framing of the Constitution in 1787, and also in those years from that time on to 1800, covering that period of time.

The CHAIRMAN. Without objection, that will be printed as a part of the record.

(The document referred to is as follows:)

The qualifications of electors as prescribed by law

State	Date of law	Age	Requirements
Massachusetts	Mar. 23, 1780		Freeholders who pay 1 single tax, besides the poll, a sum equal to two-thirds of a single poll tax.
Rhode Island	1762	21	Inhabitants. £40 in realty, or 40s. per annum rent, or eldest son of freeholder.
Connecticut	1715	21	Realty—40s. per annum, or £40 in personal estate.
New York	Mar. 27, 1778		Every mortgagor or mortgagee in possession, and every person possessed of a freehold in right of his wife, vote viva voce for senators and assemblymen; by ballot for governor and lieutenant governor.
New Jersey	Feb. 22, 1797	21	Free inhabitants having £50 property, and 12 months in the county. Women, aliens, and free Negroes, thus qualified, voted.
Pennsylvania	Feb. 15, 1799	21	Citizen of State 2 years, paying State or county tax 6 months before the election; sons of electors vote "on age"; i. e., at 21, without payment of the tax.
Maryland	October 1785 - Dec. 31, 1796		Free Negroes not to be electors.
Virginia	Law of 1762-69		Free Negroes and women not to be electors; an elector a freeman having 500 acres of land unsettled, or 25 acres settled, having thereon a house 12 by 12. Elector voted in the county in which the greater part of his land lay, if it lay in 2 counties.
Do	Law of 1781		Poll tax—½ bushel wheat, or 5 pecks oats, or 2 pounds sound bacon. Repealed November 1781, and made 10s.
South Carolina	Oct. 7, 1759		Elector—free white man possessing settled freehold estate, or 100 acres unsettled, or £60 in houses, or paying a tax of 10s.

Senator HOLLAND. All right, Mr. Chairman, without wearying the committee by reciting from those two compilations, both of which now are available to the committee in the record, it will be seen there that the requirements in every State but New Hampshire were

much more severe, were much more restrictive, than the mere requiring of the payment of a poll tax as a prerequisite to voting.

I cannot attempt to read them all, but, for instance, in the State of Vermont it was necessary to be a freeholder in order to participate, that being one of the early States to be admited prior to 1800.

In the Commonwealth of Massachusetts the requirement by constitution was the ownership of a freehold with an annual income of £3 or an estate not a freehold of £60, and so on, if the Senators will read the list.

For instance, in the State of Maryland right adjoining the District of Columbia and out of which the District was cut, the requirement by constitutional provision was the ownership of a freehold of 50 acres of land or of property of £30 in value; and so, if the list be checked, it will be found that the most liberal, let's put it this way—the easiest requirement to meet was that prescribed by New Hampshire and that did lay down payment of poll tax as a prerequisite for voting.

Now, Mr. Chairman, that, I think, affords the background against which the provision of the original words which I have already quoted in my testimony, appearing in the first article of the Constitution, section 2 of the first article must be interpreted.

Now, Mr. Chairman, coming down to 1913, which was the time at which the adoption of the seventeenth amendment providing for the direct election of United States Senators was accomplished, we find that those Members of the Congress who submitted that amendment, and who are presumed conclusively to have known the fair meaning and intent of the words they included in that amendment, which incidentally were the identical words included in the provision of section 2 of article 1—namely, "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature"—I say, Mr. Chairman, that the Members of the Congress who submitted that proposed amendment, which was speedily enacted, must have known and undoubtedly did know that at that time the following States did have poll-tax qualifications for voting; and the submission of that amendment in those words, it seems to me, must reasonably be interpreted as having been submitted against a known background of the requirement of payment of poll taxes as a prerequisite for voting in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

Several of those States, incidentally, were in the number that approved the constitutional amendment, namely North Carolina, Texas, Arkansas, Tennessee, and Louisiana, and it would be wholly idle, Mr. Chairman, to say that those States actually approving the amendment and having that provision in their State laws at the time did not know and did not rely upon and did not have full knowledge that they were relying upon their right to continue to prescribe the payment of poll tax as a qualification for electors in their State elections and in Federal elections.

Now, Mr. Chairman, I presume it has already been called to the attention of the committee that the only provisions under which there are direct opportunities given for voting under the Federal Constitution are the two that I have just mentioned—that is for the Members of the

House of Representatives and for Members of the Senate. The provision for the selection of electors does not appear in so many words in the Constitution as I recall that provision, and the wording of the Constitution will have to supersede any recollection of mine on it, but as I recall it, it simply provides that the method of assignment of electors should be fixed by the various legislatures of the States and that there are various ways which have been prescribed. As a matter of fact, here you go a good deal farther than in these provisions I have just mentioned by adopting not any particular fixed procedure, but any procedure that is provided by the States for the selection of their electors; so it seems to me, Mr. Chairman, and members of the committee, looking at the Constitution you see very fully that the entire field for voting for Federal officials as set up in the Constitution is such as to preclude any other reasonable construction than that the States' requirements for qualifications for electors for the election of the most numerous branch of the State legislature shall apply to and are the qualifications for participation in the Federal elections.

Now, Mr. Chairman, one or two more points and I shall be through. I wish that I had the time to elaborate upon a point I made in the beginning, but I shall not attempt to elaborate; but it is unquestionably true that this particular proposal is part of a much broader program, and it may not be considered without giving consideration at the same time to the whole punitive program.

I remember particularly, Mr. Chairman—and the chairman himself will recall it, and the able senior Senator from Rhode Island also—that in connection with the consideration by this same committee of the proposal by the various members of the Senate for the change of the cloture rule, which came up for consideration last year, at that time I sat in as a member of the subcommittee on the hearings. Almost without exception, if not without exception, the Senators who were proposing change of the cloture rule predicated their statement upon the necessity of dealing with certain questions of which this was one—namely, the poll-tax question, the question of the so-called antilynching bill, the question of FEPC, the question of segregation, and the like.

I remember distinctly two of the Senators who brought that whole field together in the urging of proposed change in the rule, and they were the senior Senator from Idaho, Senator Taylor, and the senior Senator from Massachusetts, Senator Saltonstall; and a checking of the records of the hearings of this committee will so show.

I am going to close with one additonal point, Mr. Chairman, and that is this: It is passing strange to me that in the suggestion of this course so clearly overriding our own Federal constitutional provisions and so clearly crushing down the provisions in the constitutions of seven States, and I think recognized as doing so by the report of the so-called President's Commission on this subject, that no attention is given to the fact that in that same report it is shown that the Indians of two of the States are precluded from voting by constitutional provisions of those two States, that is, the States of New Mexico and Arizona. The provisions of their constitutions are set out in this report. Apparently the seven States of the South which have yet not taken final action on the poll-tax question, some of which are now taking action, are made the whipping boy, Mr. Chairman, without any attention to

the fact that here are two large groups of citizens which by race are being excluded from voting in two States when there is no such provision at all, no such result at all, that is accomplished by the poll-tax requirement.

Mr. Chairman, the idea that the payment of the poll tax of 50 cents or $1 or $1.50 or whatever it may be, precludes any great group by race from participating in voting is completely false, particularly at present standards of pay and at present means prevailing throughout the Southland and throughout the seven States which are affected; and I am sure it has been called effectively to the attention of the committee that there are many elements in the Negro racial group, which seems to be always the group that is considered in connection with such legislation, who are not affected in the slightest by the poll-tax requirements, not because of their ability to pay but because they are veterans or because they are past an age limit which is set by law for the required payment of poll tax.

Incidentally, Mr. Chairman, I realize this committee hasn't taken responsibility, and probably will not, for this report of the President's Commission on Civil Rights, but I have been intrigued greatly, and I want to call the attention of the committee to the fact that while the Commission was perfectly willing to grant in the cases of the States of New Mexico and Arizona that the requirements of their constitutions should be respected and that those States should be respectfully advised to consider the changing of their constitutions, that apparently no such course was regarded as being a considerate or lawful or necessary course to follow in the case of the seven southern States.

For instance, I read now from that record under subsection 5 of principal section III of the recommendations of that Commission, which is on the subject, "The granting of suffrage by the States of New Mexico and Arizona to their Indian citizens." It says:

> These States have constitutional provisions which have been used to disfranchise Indians. In New Mexico, the constitution should be amended to remove the bar against voting by "Indians not taxed." This may not be necessary in Arizona where the constitution excludes from the ballot "persons under guardianship." Reinterpretation might hold that this clause no longer applies to Indians. If this is not possible, the Arizona Constitution should be amended to remove it.

In this recommendation the Commission confined itself to recommending the taking of this action by the two States that are affected; whereas, in the case of the seven Southern States, apparently, either this pending statutory action or the amendment of the State constitution is the course to be followed. I don't know why any such distinction should be made.

I would like to call the attention of the committee to paragraphs 1 and 2 of that same general subhead:

> 1. Action by the States or Congress to end poll taxes as a voting prerequisite. Considerable debate has arisen as to the constitutionality of a Federal statute abolishing the poll tax. In four times passing an anti-poll-tax bill, the House of Representatives has indicated its view that there is a reasonable chance that it will survive a court attack on constitutional grounds. We are convinced that the elimination of this obstacle to the right of suffrage must not be further delayed. It would be appropriate and encouraging for the remaining poll-tax States voluntarily to take this step. Failing such prompt State action, we believe that the Nation, either by act of Congress, or by constitutional amendment, should remove this final barrier to universal suffrage.

2. The enactment by Congress of a statute protecting the right of qualified persons to participate in Federal primaries and elections against interference by public officers and private persons.

This statute would apply only to Federal elections. There is no doubt that such a law can be applied to primaries which are an integral part of the Federal electorate process or which affect or determine the result of a Federal election. It can also protect participation in Federal election campaigns and discussions of matters relating to national political issues. This statute should authorize the Department of Justice to use both civil and criminal sanctions. Civil remedies should be used wherever possible to test the legality of threatened interferences with the suffrage before voting rights have been lost.

Now, that shows the completely different approach that is made by the Commission to the southern problem that is involved as if the southern States were not entitled to the same sort of handling of constitutional questions of grave importance to them as are the States of New Mexico and Arizona.

Thank you.

The CHAIRMAN. Thank you very much.

Senator GREEN. I hope you will take the same position if and when the subject of cloture comes up on the floor of the Senate.

Senator STENNIS. That is three times that you have got that in the record already, Senator.

Mr. Chairman, may I bring up the proposition as to whether you will have an afternoon session? You know, the committee limited 2 days, but didn't limit the hours. We have the Honorable Frank J. Looney, who is here from Shreveport, La., and we have Mr. Fulmer, assistant attorney general from South Carolina.

The CHAIRMAN. Is it impossible to file their statements in full and confine their oral testimony to 15 minutes apiece? Is that unacceptable?

Senator STENNIS. I will confer with them on that, Mr. Chairman.

The CHAIRMAN. May I say that Senator Fulbright in cooperation with the committee is submitting his statement in writing. It is a statement by the Honorable Guy E. Williams, attorney general of Arkansas. It will be incorporated in the record at this point.

(The statement referred to is as follows:)

STATEMENT OF HON. GUY E. WILLIAMS, ATTORNEY GENERAL OF ARKANSAS

The State of Arkansas where I have the honor of serving as attorney general is one of the States which has established the payment of a nominal poll tax as a prerequisite for voting. The Arkansas State Constitution provides for the poll tax and its payment is required for electors for State and local officials as well as for Federal officials. In appearing in opposition to H. R. 29, I am confident that I speak for the elected officials in Arkansas and for the vast majority of the citizens of our State. There may be some persons in Arkansas who do not favor the poll tax but even the majority of these believe its abolition—or continuation—is a decision which rightfully belongs to the people of Arkansas.

The arguments against H. R. 29 and its many predecessors have been presented very ably by outstanding constitutional lawyers and students of American Government in previous hearings and also in the present hearings being conducted by the members of this subcommittee. Points such as that which holds that the several States and not the Federal Government possess the power of regulating the rights of suffrage have been made with force and vigor and it seems almost repetitious to review them again. However, I am compelled to present for the record of these hearings my own interpretation of this legislation and its effect upon the rights and functions of the sovereign State of Arkansas.

H. R. 29 would make unlawful "the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national officers." It is obvious, of course, that the poll-tax requirement as stated in the Arkansas State Constitution and in supplementary legislation enacted by the State legis-

lature would be outlawed by the enactment of this bill. In effect, the Federal Government would, through the outlawing of one qualification for voting in the States, assume the power of establishing all of the qualifications for the electors of Federal officials. This is, I believe, beyond the power delegated to the United States in the establishment of the Federal Government.

Section 2 of article I of the Constitution has been cited in virtually every discussion of the so-called anti-poll-tax legislation. It provides, of course, simply that the electors of the Members of the House of Representatives "in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." It is my view that this section of our Constitution acknowledges in unmistakable terms the right of the States to regulate the question of suffrage.

If there is any doubt as to the meaning of this section, it is well to realize that at the time of the Constitutional Convention in Philadelphia in 1787, the constitutions of several States had fixed certain qualifications for electors of the members of State legislative bodies. As Hon. Charles Warren pointed out in the hearings on anti-poll-tax legislation in 1943, "the members of that Convention had before them the actual restrictions which their State constitutions had put on the right of their State inhabitants to vote for members of the most numerous branch of their legislature. They had before their eyes the fact that New Hampshire, in 1784, had a requirement for the payment of a poll tax. They had before them that in Massachusetts, in 1780, its constitution required the possession of a freehold. They had the Constitution of 1777 of New York, which required that a man should be either a freeholder or a taxpayer of New York or Albany. They had the Constitution of New Jersey of 1776, which required that a man should possess an estate of 50 pounds. They had the Constitution of Pennsylvania of 1776, that a voter for the legislature should be a taxpayer. They had the Constitution of Maryland, which required that a voter for the State legislature should be a freeholder of 50 acres or the possessor of 50 pounds. They had the Constitution of North Carolina of 1776, that he should be a freeholder or a taxpayer, and so on. They had South Carolina and Georgia, which had similar requirements for voting in their State constitutions.

The delegates knew of these qualifications for electors in their own States and under the circumstances which prevailed at that time, I cannot by any stretch of the imagination believe that the delegates intended to grant any power to the Federal Government to determine or to define such qualifications.

H. R. 29 is, I believe, a direct violation of the right of the States to regulate suffrage. I, therefore, urge the members of this subcommittee to report this legislation adversely.

Senator STENNIS. I have several other statements, but I will not introduce them at this time. Mr. Looney, will you please take this seat.

STATEMENT OF FRANK J. LOONEY

The CHAIRMAN. Will you give us the benefit of your testimony, Mr. Looney, please.

Senator OVERTON. Are you representing the Governor of Louisiana or are you appearing as an individual?

Mr. LOONEY. I was requested on Saturday about 20 minutes to 12 by the attorney general to come up here. He said he had received a telegram from you and Senator Ellender suggesting that if he couldn't come, that I come.

Senator OVERTON. Yes, sir.

The CHAIRMAN. Thank you. You may proceed, sir.

Mr. LOONEY. The State of Louisiana is pretty much in the position of the State of Florida. It has abolished the poll tax. Now, the poll tax was originally abolished by a constitutional amendment passed under the regime of Huey Long, and at the time it required everyone to register for 2 years with the sheriff, just as the poll-tax law had required a payment of $1 per year during the current year to the sheriff's office.

Afterward, that provision was again submitted by a constitutional amendment and it was voted out of the constitution; so the Constitution of Louisiana doesn't contain any reference to a poll tax or any effect arising from the idea of a poll tax today.

The interest of the State of Louisiana, of course, is the interest common to all the States of the Union. I want to call attention to the fact that in the Constitution of the United States the word "State" is mentioned almost twice as often as the words "United States," showing that in the minds of the men who wrote the Constitution the State was of paramount importance.

Now, "United States," on the contrary, was a term that wasn't applied to a government at all, and I think that the best proof of that is a little proposal which was signed by George Washington. In that he states:

Present, the States of New Hampshire, et cetera, resolved that the preceding Constitution should be laid before the United States in Congress assembled.

That demonstrates that there were United States already existing under the Articles of Confederation, and those were the United States which were continued under the Constitution, not as individual States, not as a new national organization, but as a union; and the Constitution so states. The word "union" is frequently used in the Constitution.

Now, in the Constitutional Convention, as Senator Holland has shown—and right here I would state that in 1942, a brief on qualifications of voters, which was prepared by me, was submitted by Senator Ellender and printed in the Record instead of his own remarks, and that is found in the Congressional Record. I will file that as a full statement of the matters that are concerned here.

The CHAIRMAN. It may be received and printed as a part of your remarks.

Senator OVERTON. Can you give the Congressional Record reference?

The CHAIRMAN. It is a reprint and shows the date of November 23, 1942.

(The document referred to is as follows:)

[From Congressional Record]

QUALIFICATIONS OF VOTERS

BRIEF OF HON. FRANK J. LOONEY—REMARKS OF HON. ALLEN J. ELLENDER, OF LOUISIANA, IN THE SENATE OF THE UNITED STATES, NOVEMBER 23, 1942

Mr. ELLENDER. Mr. President, had the gentlemen's agreement made last Friday not been consummated, I was scheduled to speak at length in opposition to the poll-tax bill. I am glad that the Senate so overwhelmingly voted against cloture and thereby put the bill to sleep for the remainder of the present Congress.

I ask unanimous consent to have printed in the body of the Record, following my remarks, a very learned brief on the subject of qualifications of voters, prepared by Hon. Frank J. Looney, chairman of the Democratic State Central Committee of Louisiana, and an able and distinguished member of the Louisiana Bar.

(There being no objection, the brief was ordered to be printed in the Record, as follows:)

QUALIFICATIONS OF VOTERS

FOREWORD

Very recently a southern Member of the United States Senate appeared on the radio to champion his bill to abolish the poll tax as a qualification for voting in Federal primaries and general elections. He made two statements for which he offered no proof in law, logic, or fact, except *United States* v. *Classic*. The first statement was: There are three ways to abolish the poll tax (or was it to fix

Federal qualifications for electors?)—the first by the State constitution; second, by State legislature; third, by Congress. The other statement was that there were two viewpoints as to whether or not Congress could fix qualifications for voters in State or local elections.

As to the first statement, he showed his preference by advocating Federal enactment of his bill. On the other proposition he expressed no opinion.

The purpose in this pamphlet is not to challenge the patriotism or intellectual qualifications of any Senator, but to attempt to provide data to set straight on a fundamental matter all who may entertain these ideas.

Chapter I

The Constitution of the United States, article I, section 2, clause 1:

"SEC. 2. 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 requisit for electors of the most numerous branch of the State legislature."

This section was in the original Constitution, as adopted in convention September 17, 1787, and has never been amended in any way. On the contrary, it has been fortified by the seventeenth amendment, the first clause of which reads:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for 6 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 legislatures."

The identity of the language as to qualifications shows no intention of changing one iota from the purposes of 1787. So that the same standard is to be understood as being accepted in 1787 and in 1912–13, or during and after 126 years. This is significant; especially in view of the fact that suffrage occupied the public and national mind as of utmost importance in 1869–70, as is evidenced by the fifteenth amendment, which did not pretend to fix qualifications for voters, but denied the State and the United States the power to abridge or deny "the right of citizens to vote * * * on account of race, color, or previous condition of servitude." There is no suggestion that a State should be prohibited from denying the right to vote for nonpayment of a tax.

We furthermore find language in the fourteenth amendment, 1866–68, which recognizes the right of States to deny the right to vote to male citizens, but penalize those States by reducing the basis of representation. See section 2, fourteenth amendment. Section 3 of this amendment distinguishes between electors and elected and imposes a disability (which could be and has been removed by Congress) merely against officials.

The nineteenth amendment prohibits denial or abridgement of the right to vote on account of sex. This is the last constitutional provision dealing with suffrage, and again omits all reference to nonpayment of taxes.

The original Constitution in article II, section 1, clause 2, goes even further in delegating power to the States over selection of electors for President and Vice President.

It reads:

"Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors."

Clause 3 of the same article thus deals with the power of Congress in this matter, and in a limitative manner:

"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."

The twelfth amendment provides the manner in which these electors evidence their votes, and, in event no person shall have received a majority, requires the House of Representatives to choose by ballot, from the three highest voted for by the electors, the President. It preserves the original language, changing only the spelling of "chusing," and provides, "But in choosing the President, the votes shall be taken by States, the representation from each State having one vote."

The twentieth amendment, which deals with the power only of the President and Vice President, Senators, and Representatives, amends portions of article II, section 1, clause 2, of the Constitution, but nowhere touches on the qualification of voters who should choose electors.

It is interesting and proper to note the accuracy of the language employed, both in the original Constitution and in the amendments, and especially where the word "manner" is used.

The twelfth amendment provides the manner in which these electors evidence manner as the legislature thereof may direct, a number of electors." The word "elect" is nowhere used, and the manner of making the appointment and all matters incidental thereto, except as to times and days heretofore mentioned, are left to the discretion of the State legislatures. The selection of electors is a function of the State, and the State is the recognized unit where the selection of a President is left to the House of Representatives. This has been emphatically asserted by the Supreme Court of the United States and will be shown in another part of this discussion.

The word "manner" has a different application in article I, section 4, clause 1, which reads, as in the original:

"SEC. 4. 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 choosing Senators."

This clause refers to "holding elections" only. In no way does it deal with the qualification of voters. Obviously, the members of the Constitutional Convention saw and made a clear distinction between what may be called the mechanics of elections, or rather, the mechanism, and the persons of electors.

Article I, section 5, clause 1, still as originally written, reads: "Each House shall be the judge of the elections, returns, and qualifications of its own members." Again distinguishing between the electors and the elected, as to qualifications. In another chapter the congressional interpretation of these sections will be treated.

Chapter II

Qualifications of Voters in the Thirteen Colonies

A reference to any standard encyclopedia will show the investigator that in the Colonies, both at the time of holding the Constitutional Convention and anterior thereto, provision was made as to qualification of voters. There were property qualifications in Connecticut, Massachusetts, Rhode Island, Delaware, New Jersey, New York (except in New York City and Albany), Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, and Georgia; religious qualifications in Massachusetts, New York, and some others at times; limitation of suffrange to native-born subjects of England in Pennsylvania; to Englishmen or descendants and French Huguenots in South Carolina; and male suffrage only, in Virginia.

In 1787 all of the States required payment of taxes on real or personal property, and most of them required the ownership of a fairly valuable estate as a qualification for Governor, Senator, or Representative in the State legislature. A rather full statement of these provisions as to property and tax-paying qualifications is to be found in *Minor* v. *Happersett* (21 Wall. (U. S.) 162, 172–173).

There was nothing in the Constitution as adopted to abridge or add to qualifications of voters in any State, but this subject was left in the hands of the States, with a full knowledge of the members of the Convention as to the different requirements in the different States.

Chapter III

Articles of Confederation

For the reason that the Constitutional Convention distinguished between the manner of holding elections or making appointment of electors, or "chusing" Senators by legislators, attention is directed to the provision in the Articles of Confederation which were adopted July 9, 1778.

Article II, section 1:

"For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislatures of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year."

Section 4 reads:

"In determining questions in the United States, in Congress assembled, each State shall have one vote."

This in the midst of war, shows how jealously each State guarded its right to provide the qualifications of those who voted and who represented it and its

people, and the phraseology served as a guide, and in at least one instance as a model, to be followed in preparing the Constitution. Compare article II, section 1, clause 2: "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, etc."

Chapter IV

Proceedings in the Constitutional Convention

When the Convention assembled, several members of the body offered drafts of constitutions. In order to provide a ready reference, the following citations will be of pages of Formation of the Union, a Government publication issued in 1927 under House Concurrent Resolution No. 23 of date May 10, 1926.

1. Edmund Randolph's plan, presented May 29, 1787 (p. 116):

"4. *Resolved*, That the members of the first branch of the National Legislature ought to be elected by the people of the several States every —— year for the term of ———, etc."

Alexander Hamilton's plan presented June 18, 1787 (p. 979) after providing for an "assembly" and a senate as the legislature of the United States:

"11. The assembly to consist of persons elected by the people to serve for 3 years."

In Charles Pinckney's draft, article III, read: "The members of the House of Delegates shall be chosen every —— year by the people of the several States; and the qualifications of the electors shall be the same as those of the electors in the several States for their legislatures." (This language is not found in Formation of the Union, where the plan is skeletonized, p. 664, but in Elliott's Debates, second edition.). The language as to qualifications seemed to have influenced the phraseology used in the Constitution which substituted "electors of the most numerous branch of the State legislature" for "their legislatures."

After considering different plans and proposals affecting the qualifications of electors, the Committee of Detail to whom the plans and resolutions had been referred, on August 6, submitted its report (p. 471). Under article IV, section 1, they recited, "The Members of the House of Representatives shall be chosen every second year by the people of the several States comprehended within this Union. The qualification of the Members shall be the same from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures." A comparison with article I, section 2, clause 1, shows the above idea abbreviated and made more concise.

The Committee of Detail were: Rutledge, of South Carolina; Edmund Randolph, of Virginia; Nathaniel Gorham, of Massachusetts, who was chairman of the Committee of the Whole; Oliver Ellsworth and James Wilson, of Pennsylvania. John Rutledge was offered a place on the first United States Supreme Court and was afterward appointed Chief Justice. Edmund Randolph was Washington's first Attorney General. Oliver Ellsworth was Chief Justice of the Supreme Court. James Wilson was a member of that Court. The legal ability and their fitness to distinguish between shades of meaning in words employed to state a legal requirement cannot be questioned.

In the convention notes of Rufus King of date August 7 (Formation of the Union, p. 873), when the phrase "Electors to be the same as those of the most numerous branch of the State legislature," King quotes Morris, who offered as an alternative, "to add a clause giving to the National Legislature powers to alter the qualifications." Whereupon Ellsworth said, "If the Legislature (i. e., Congress) can alter the qualifications they may disqualify three-fourths, or a greater portion, of the electors. This would go far to create aristocracy—the States have staked their liberties on the qualifications which we have proposed to confirm."

John Dickinson wished to confine the electors to freeholders, saying, "not from freeholders but from those who are not freeholders, free governments have been endangered" (pp. 873–874); and Madison said, "I am in favor of entrusting the right of suffrage to freeholders only" (p. 874).

On August 8 the discussion being continued, Gorham spoke as follows: "The qualifications (being such as the several States prescribe for electors of their most numerous branch of the legislature) stand well. * * * There is no risk in allowing the merchants and mechanics to be electors, they have been so time immemorial in this country and in England. We must not disregard the habits, usages, and prejudices of the people" (pp. 815–816).

In Madison's own notes, August 17, 1787 (p. 487), he reports Mr. Gouverneur Morris, "Another objection against the clause as it stands is that it makes the

qualifications of the National Legislature depend on the will of the States, which he thought not proper." On this same date he reports James Wilson as stating, "This part of the report was well considered by the committee, and he did not think it could be changed for the better. It was difficult to form any rule of qualifications for all the States. Unnecessary innovations he thought, too, should be avoided. It would be hard and disagreeable for the same persons at the same time, to vote for representatives in the State legislature and to be excluded from a vote for those in the National Legislature" (p. 487). Madison also reports, "Mr. Ellsworth thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the State constitutions. The people will not readily subscribe to the National Constitution if it should subject them to be disfranchised. The States are the best judges of the circumstances and temper of their own people" (p. 487).

Dr. Franklin said among other things: "He did not think the elected had any right in any case to narrow the privileges of the electors" (p. 491). "Mr. Rutledge thought the idea of restraining the right of suffrange to the freeholders a very unadvised one" (p. 491).

There may be those who will insist that these arguments are based on the fear that the power vested in the National Legislature, or in other words "the elected," might disfranchise, rather than enfranchise, but it is plain that the sword is two-edged, and Congress being without the power by fixing qualifications to diminish the number of electors, is equally without power to increase the electorate.

The Attorney General of the United States and these three appointees to the Supreme Court of the United States being of one mind in understanding the phrase "electors to be the same as those of the most numerous branch of the State legislature," how can a contrary interpretation be honestly accepted by any intelligence, 155 years thereafter?

Chapter V

The Federalist No. LII

(By Hamilton, though claimed as Madison)

"I shall begin with the House of Representatives. * * * The first view to be taken of this part of the Government, relates to the qualifications of the electors and the elected.

"Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. The definitions of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the Convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress would have been improper for the reason just mentioned. * * * The provision made by the Convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established or which may be established by the State itself" (p. 290).

The above was written by Hamilton, according to that best of authorities, General Washington. Hamilton believed not only in centralized government but in monarchical government, and we cannot charge him with States' rights which influenced his explanation of the clear language of the Constitution and its exclusive—its properly exclusive—meaning.

In contrast to the provision for electors, the Federalist, No. LII, discusses the "elected": "The qualifications of the elected, being less carefully and properly defined by the State constitution, and being at the same time more susceptible of uniformity, have been very properly considered and regulated by the Convention" (p. 291).

Chapter VI

In the State conventions held to consider adoption of the Constitution, there were no resolutions criticizing the phrase, "the electors in each State shall have the qualifications requisite for electors in the most numerous branch of the State legislatures." There were, however, evidences of dissatisfaction with the concluding language of article I, section 4, clause 1, referring to times, places, and manner of holding elections, and which read, "but the Congress may at any time by law make or alter such regulations except as to the place of chusing Senators."

Massachusetts, on February 7, 1788, recommended "That Congress do not exercise the powers vested in them by the forth section of the 1st Article, but in cases

where a State shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress agreeably to the Constitution." (Elliott's Debates, second ed., p. 54.)

South Carolina, on May 27, 1788: "And whereas it is essential to the preservation of the rights reserved to the several States, and the freedom of the people, under the operations of the general government, that the right of prescribing the manner, time, and places of holding the elections to the Federal Legislature, should be forever annexed to the sovereignty of the several States: This Convention doth declare, that the same ought to remain to all posterity, a perpetual and fundamental right in the local, exclusive of the interference of the general government, except in cases where the legislatures of the States shall refuse or neglect to perform and fulfill the same, according to the tenor of the said Constitution." (Elliott's Debates, second ed., p. 350.)

New York on July 26, 1886, "In full confidence * * * that the Congress will not make or alter any regulation in this State, respecting the times, places, and manner of holding elections for Senator or Representative, unless the legislature of this State shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same" (Elliott, 2d ed., p. 363).

Rhode Island, on May 29, 1789, copied without change the New York declaration, and added after the final word there, a comma and the words "and that in those cases such power will only be exercised until the legislature of this State shall make provision in the premises."

Chapter VII

Decisions of United States Courts

Bradley, Circuit Justice, in Federal Case No. 14, page 897, *U. S.* v. *Cruikshank*, speaking of the fifteenth amendment, declares, "It does not confer the right to vote. That is the prerogative of the State laws. It only confers a right not to be excluded from voting by reason of race, color, or previous condition of servitude, and this is all the right that Congress can enforce. It confers upon citizens of the African race the same right to vote as white citizens. It makes them equal. This is the whole scope of the amendment. The powers of Congress, therefore, are confined within this scope."

And, again, "It is not the right to vote which is guaranteed to all citizens. Congress cannot interfere with the regulation of that right by the States except to prevent by appropriate legislation any distinction as to race, color, or previous condition of servitude. The State may establish any other conditions and discriminations it pleases, whether as to age, sex, property, education, or anything else." (Of course, "sex" has been added by the nineteenth amendment.) This case was decided in 1874.

In 1875, the cost of *U. S.* v. *Reese* (92 U. S. 214) was decided by the Supreme Court of the United States, wherein, on page 217, the Court said, "The fifteenth amendment does not confer the right of suffrage upon anyone * * *." This case is of particular interest because of the discussion of the capitation tax in the dissent of Justice Clifford. Justice Clifford thus states the Kentucky law, "Such citizens, without distinction of race, color, or previous condition of servitude, in order that they may be entitled to vote at any such election (i. e., a municipal election) must be free male citizens over 21 years of age, have been a resident of the city at least 6 months, and of the ward in which he resides at least 60 days prior to the day of election, and have paid the capitation tax assessed by the city on or before the 15th of January preceding the day of election * * *" (92 U. S;, p. 226). "Payment of the capitation tax on or before the 15th of January preceding the day of the election, is, beyond all doubt, one of the prerequisite acts, if not the only one referred to in that part of the section." The section referred to is section 3 of the Enforcement Act of Congress of May 31, 1870, 16 Statutes at Large 140. Section 3 of the Enforcement Act is explained by Judge Clifford, page 228, and by the Court's opinion, page 216, as providing, "Whenever, under the constitution and laws of a State, or the laws of a Territory, any act is or shall be required to be done by any such citizen as a prerequisite to qualify to entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, be

deemed and held as a performance in law of such act." Judge Clifford further states, page 229, "Obviously, the payment of the capitation tax on or before the time mentioned is a prerequisite to qualify the citizen to vote." And again, page 231, "Had Congress intended by the third section of that act to abrogate the election law of the State creating the prerequisite in question, it is quite clear that the second section would have been wholly unnecessary."

Judge Hunt in his dissent, page 247, says: "By the second section of the fourteenth amendment, each State had the power to refuse the right of voting, at its elections, to any class of persons, the only consequence being a reduction of its representation in Congress, etc. * * * This was understood to mean, and did mean, that if any one of the late slave-holding States should desire to exclude all its colored population from the right of voting at the expense of reducing its representation in Congress, it could do so." Judge Hunt quotes the act of Congress, pages 239–240, and quotes from the indictment in this case, which specifically alleged "that by the statute of Kentucky to entitle one to vote in an election in that State the voter must possess certain qualifications recited and have paid a capitation tax assessed by the city of Lexington; that James F. Robinson was the collector of said city entitled to collect said tax; that Garner, in order that he might be entitled to vote, did offer * * * to pay any capitation tax, etc."

There is a recognition after the passage of the fifteenth amendment, by the Department of Justice and the courts, as well as by Congress, of the States' right to make a capitation or poll tax a prerequisite to voting.

In 1884, in the *Ku Klux cases* (110 U. S. 651), after quoting article I, section 2, the Court said: "The States in prescribing the qualifications of voters for the most numerous branch of their own 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 the same persons shall vote for Members of Congress in that State." Later in this decision the Court said: "It is as essential to the successful working of the Government that the great organisms of its executive and legislative branches should be the free choice of the people, as that the original form of it should be."

In 1914, in *Guinn* v. *U. S.* (238 U. S. 347), speaking of the fifteenth amendment, the Court said: "It is true also that the amendment does not change, modify, or deprive the States of their full power as to suffrage except, of course, as to the subject with which the amendment deals and to the extent that obedience to its command is necessary. Thus the authority over suffrage which the States possess and the limitation which the amendment imposes are coordinate and one may not destroy the other without bringing about the destruction of both" (p. 362). In stating the Government's contentions, the Court had just previously said: "It (the United States) says State power to provide for suffrage is not disputed, although, of course, the authority of the fifteenth amendment and the limitation on that power which it imposes is insisted upon" (p. 359).

In 1916, in *U. S.* v. *Gradwell* (243 U. S. 476), the Court reviewed the acts of Congress in regulating the conduct of congressional elections, and said of this (p. 483): "It will be seen from this statement of the important features of these enactments that Congress by them 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 that the control thus established over such elections was comprehensive and complete."

In 1919 in *Hawke* v. *Smith* (253 U. S. 221), on page 227, the Court said: "A legislature was then (i. e., in 1787) the representative body which made the laws of the people. The term is often used in the Constitution with this evident meaning. Article I, section 2, prescribes the qualifications of electors of Congressmen as 'those requisite for electors of the most numerous branch of the State legislature.'" And on page 228: "There can be no question that the framers of the Constitution clearly understood and carefully used the terms in which that instrument referred to the action of the legislatures of the States. When they intended that direct action by the people should be had, they were no less accurate in the use of apt phraseology to carry out such purpose. The Members of the House of Representatives were required to be chosen by the people of the several States" (art. I, sec. 2).

In 1920, in *Newberry* v. *United States* (256 U. S. 232), on page 249, we read, "We find no support in reason or authority for the argument that because the offices were created by the Constitution. Congress has some indefinite, undefined power over elections for Senators and Representatives not derived from section 4."

The decision then quotes from Judge Iredell (afterwards of this Court) in the North Carolina Convention of 1788, "* * * the same observation may be made as to the House of Representatives, since as they are to be chosen by the electors of the most numerous branch of each State legislature, if there are no State legislatures, there are no persons to choose the House of Representatives" (p. 249). On page 255, the Court said, "Section 4 was bitterly attacked in the State conventions of 1787–89, because of its alleged possible use to create preferred classes and finally to destroy the State. * * * Mr. Hamilton asserted, 'The truth is that there is no method of securing to the voter the preference apprehended, but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulation of the times, the places, and the manner of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon another occasion, are defined and fixed in the Constitution and are unalterable by the legislature.' (The Federalist, LX.) The history of the times indicates beyond reasonable doubt that if the Constitution makers had claimed for this section the latitude we are now asked to sanction, it would not have been ratified." (See Story, Constitution, sections 814, et seq.) It is highly noteworthy that the two authorities above cited, Alexander Hamilton and Justice Story, were perhaps, with Chief Justice Marshall, the most prominent proponents of a strong National Government and in no wise equally strong advocates of State sovereignty.

In 1931, in *Smiley* v. *Holm* (285 U. S. 355, p. 366), Chief Justice Hughes (Cardoza took no part): "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, not only as to times and places, but in relation to notices, registration, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short to the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental rights involved. * * * All this is comprised in the subject of times, places, and manner of holding elections and involves lawmaking in its essential features and most important aspect." This case involved the power of the Governor to veto a congressional redistricting act passed by the legislature. There the Court said, "At the time of the adoption of the Federal Constitution it appears that only two States had provided for a veto upon the passage of legislative bills. * * * But the restriction which existed in the case of these States was well known."

In the same year, in the case of *Koenig* v. *Flynn* (285 U. S. 375), the argument of Henry Epstein, late candidate for attorney general and his brief, cosigned by John J. Bennett, contained authorities to sustain their contention that fixing the boundaries of congressional districts "calls for the exercise of the lawmaking function." And the brief for James A. Farley, filed by Robert F. Wagner and John J. O'Connor, argued that "the phrase 'prescribed in each State by the legislature thereof' means legislation in each State by whomsoever each State has determined to be its lawmaking power."

It is true that the question of "qualifications" is not raised in these cases, but the language of the United Stateh Constitution which gives the Congress the power to "make or alter such regulations" is specifically explained in *Smiley* v. *Holm*, which is given as the basis for the Supreme Court's decision in the Koenig case. It is to be noted that not only are "qualifications" for voters distinguished from "the time, places, and manner of holding elections," but these latter provisions are in section 4 while the former are in the first clause of section 2 and are part of the same sentence that creates the "House of Representatives."

Chapter VIII

This brings us to the case of *United States* v. *Classic* (313 U. S. 299), which has been declared by the United States Senator first referred to as an authority for his position. An examination of the facts on which this case was founded refutes any contention that it even suggests an interference with the right of the States to fix qualifications for voters. Mr. Justice Stone, now Chief Justice, states that "The questions for decision are whether the right of qualified voters to have their ballots counted is a right 'secured by the Constitution within the meaning of sections 19 and 20 of the Criminal Code, and whether the acts of appellees charged in the indictment violate those sections" (p. 307). On page 308, "The charge * * * was that the appellees conspired * * * to injure and op-

press citizens in the full exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States; namely (1) The right of qualified voters who cast their ballots in the primary elections to have their ballots counted as cast for the candidate of their choice." It is obvious that the "qualifications of voters" was not an issue in this case, but the voters involved were unquestioned "qualified voters," and the question was fraud in "holding" a primary election.

On the other hand, in the Classic case, the Court said, "That the free choice by the people of representatives of Congress subject only to the restrictions to be found in sections 2 and 4 of article I and elsewhere in the Constitution, was one of the great purposes of our constitutional scheme of government cannot be doubted" (p. 316). Again, the Court said, "As we have said, a dominant purpose of section 2 so far as the selection of representatives in Congress is concerned, was to secure to the people the right to choose representatives by the designated electors, that is to say, by some form of election." The restrictions, of course, are those imposed by the phrase, "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature," and "the designated electors" are the electors designated in the same phrase.

We may add that as far back as the Fourteenth Congress (1815–17) in the case of *Potterfield* v. *McCoy* (C. and H. 267, 270), where there had been an agreement between the two candidates as to the classes of voters that were to be admitted, the committee to whom the contest was referred, held that the agreement of parties could not enlarge or diminish the rights of voters and decided the votes to be legal or illegal according to the Virginia law and the House adopted the report of the committee.

Chapter IX

The other question raised was as to the right of Congress to fix qualifications for voters in State or local elections. This matter should be set at rest by the authorities heretofore cited, but the exact matter has been dealt with in a definite manner. First, there is nothing anywhere in the Constitution itself fixing the qualifications for voters in State elections; second, in three places we find provisions in the Constitution that leave to the State or its governmental agencies the determination of the electorate:

(a) Article I, section 2, "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature," to vote for Representative;

(b) Article I, section 3, clause 1, "The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for 6 years, and each Senator shall have one vote."

(c) "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, etc.," to vote for President and Vice President.

(d) The first and third cited provisions have never been changed.

Article I, section 3, clause 1, has been changed by the seventeenth amendment and made to conform to article I, section 2, clause 1, by making the same qualifications, to wit: "Electors of the most numerous branch of the State legislatures," the electors of United States Senators.

In *Hawke* v. *Smith* (253 U. S. 221), the Court said, page 227, "It is not the function of courts or legislative bodies, national or State, to alter the methods which the Constitution has fixed."

In *United States* v. *Cruikshank* (92 U. S. 542), page 556: "The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States; but the last has been." This decision was rendered by Chief Justice Waite in 1876.

The same Court at the same term, the same Justice speaking, in *United States* v. *Reese* (92 U. S. 214), on page 218, said, "The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment." These decisions were rendered during the days when factions pressed hard for legislation and adjudication that would make the Congress supreme and give it full jurisdiction over the situation in the South, and the above two cases arose in Louisiana and Kentucky, respectively.

In *McPherson* v. *Blocker* (146 U. S. 1), decided in October 1892, the Court considered a Michigan statute requiring electors for President to be elected by districts instead of the State at large, and held it valid. In the course of its decision, the Court said, "The right to vote intended to be protected refers to the right to vote as established by the laws and constitution of the State." These compre-

hensive words, "the right to vote," necessarily preclude intervention by Congress and conclude all discussion, so that views contrary to the Supreme Court's continual rulings as to State elections cannot be treated as resting upon logic or law.

Mr. LOONEY. In that I have tried to cover the point which Senator Holland covered, but not in the detail he did, showing that the various colonies at that time had laws in which they made property or tax qualifications requisite on practically all the voters.

As he states, there was some poll tax, some for taxes, and other things. There was a great debate in the Constitutional Convention as to whether or not the United States Government should fix these qualifications. Some thought they should, but the majority opinion, which was expressed by some of the ablest men in the Convention, among whom was Madison, favored the idea of letting the States, determine the qualifications of voters, because if they tried to give that power to the Federal Government, sooner or later the Federal Government might use that to the detriment of various classes of individuals in the States; whereas, the States themselves, if they determined the qualifications of voters, and as they have determined the qualifications of voters, were always subject to change because a constitutional amendment could at any time change the qualifications.

In some States, it is true, they may have added provisions for the payment of poll tax by the legislature, but, of course, that was easier to abolish than the other.

However, after all, the fundamental theory of the sovereignty of the people was preserved when they held that the representatives of the States either in Constitution or in convention should determine who should vote in those States, who should exercise the suffrage, and the Constitution of the United States, as has been repeatedly stated—and, of course, all of the members of the committee know that it requires that the electors of Congress and now the electors of the Senators both are subject to the qualifications imposed on the electors by the respective States.

Now, the very fact that during three different periods of time it was necessary for an amendment to be submitted not to Congress alone, but to all of the States in order to change these qualifications, shows that the Constitution doesn't intend that the qualifications be changed in any way as is suggested in Congress.

In the first place, it was after the Civil War when, of course, there were all sorts of agitation not only against the South, but in order to enable the race that had previously been in slavery to become educated enough to the point where they could have the ballot itself, but they didn't see fit in those days to change the original provision of the Constitution that the States should determine the qualification of electors. They did write in those limitations.

Later on, when the ladies acquired the right to suffrage, they changed it again, but they didn't by any congressional enactment change it. They again took the methods of the Constitution, which the Constitution provides, and you will find that the Supreme Court of the United States has often referred to the fact that you didn't have any right to violate the Constitution in order that people might have the fundamental right of voting, but the Constitution itself had limited it, and it had limited it, I think, wisely, because it is necessary that the people of the particular States determine who shall cast the vote in their States.

Now, suppose, for instance, that the privileges and immunities clause, which says that the privileges of citizens of one State shall be cherished in another State, why was that not also made so that the word "privilege" covered the provision of the Constitution that the States determine the selection of their voters? In other words, if a man who lived in the State of Iowa moved down into the State of Louisiana, he would say, "Well, you are not permitting me to exercise my privilege which I had in Iowa of voting."

"No; you can't do that. You have to wait until you have lived here a certain length of time. You have to do certain other things." They may have no educational qualifications up there. We do. We want that qualification pursued before that man can vote.

Before that we had the poll tax, and, of course, we had the registration.

Now, registration is a twofold thing. Registration can be required to vote in Federal elections.

I heard one of the witnesses here—I believe the attorney general of Virginia—say there were no such things as Federal elections. I can't entirely agree with him on that because the elections of Senator now are just the same as the election of Members of Congress, and the time and the place and the manner of holding those elections are all within the power of the Federal Government; and for that reason I would consider that they must be held as Federal elections.

However, the Senator from Rhode Island has said, "Why do you draw a distinction between manner and qualification?" I think that was pretty clearly shown by Chief Justice Hughes in the decision of *Smiley* v. *Holme*, rendered in 1931, in which he said that the subject matter is times, places, and manner of holding elections for Senators and Representatives. It cannot be doubted that these comprehensive words imply authority to provide a complete code for congressional elections, not only as to registration, protection of voters, protection of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns—in short, to the numerous requirements as to the procedure and safeguards which experience shows are necessary in order to force the fundamental rights involved.

Now, there he draws a clear distinction between qualifications of voters and the manner of holding elections and the various things that can be included in the manner of holding elections.

Now, we note that the Senate and the House of Representatives have the right to determine the qualifications of their Members. Now, there are certain qualifications of membership prescribed in the Constitution: Age, residence, and citizenship. Those are all prescribed there. Of course, the House has a right to determine that, but the House and the Senate have a further right to determine whether or not there has been corruption used in these elections, and they have extended it even to the right to determine whether something wrong has been done in a primary election.

Therefore, it is very clear that the different things that are required to be done—the qualifications of the Constitution and the qualifications of the State are all to be taken into consideration in order to determine whether or not a man is entitled to sit in the House of Representatives or in the Senate of the United States. But in no place does the right under the Constitution, which says that a Senator

must be at least 9 years, I believe, a citizen of the United States and has to live in the State and he has to be 30 years old, and the President has to be 35 years old—in no case are those qualifications at all impinged on by State qualifications or are State qualifications for voters in any way influenced by the requirements of the Federal law.

The only difference is that the States can't make any law changing the Federal law and, of course, Congress can't make any law without submitting a constitutional amendment.

I want to call attention to one little thing that was even before the Constitution of the United States. That is the Declaration of Independence. One of the reasons why the Declaration of Independence was drawn, one of the reasons why the action of the King of England was denounced, is this:

He has combined with others to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws.

Now, does the Congress of the United States intend to subject the people of the United States to a jurisdiction foreign to the Constitution itself and unacknowledged by our laws by passing a law that will be in direct contradiction of the Constitution of the United States in reference to Representatives and in reference to Senators? Shall the Congress be permitted to impose such a jurisdiction that is foreign to our Constitution and unacknowledged by our laws without pursuing the true and proper course which is a constitutional amendment?

Now, as I have stated, it doesn't make any difference particularly insofar as we are concerned to the State of Louisiana, but we feel that as a member of the States of the Union and as a State that has already led the way in disposing of the poll tax, that we are entitled to a certain amount of consideration and ought to have been heard.

The CHAIRMAN. Thank you very much. You are very kind.

Senator STENNIS. That was a very fine statement.

The CHAIRMAN. I see both Senator Johnston and Senator O'Daniel are here. I want to explain what our problem is, gentlemen. We tried to conclude this hearing in two sessions. It was the order of our committee. Some of the men have talked a little longer, and some of the Senators have been good enough to file their statements with us for the record. Is it your desire to do that or how are we going to divide up 15 minutes?

Senator JOHNSTON. I would like to have about 2 minutes now and then I would like to file my statement.

The CHAIRMAN. If you will do that, that will be fine.

Senator O'DANIEL. I can complete mine in 3 or 4 minutes.

STATEMENT OF HON. OLIN D. JOHNSTON, SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator JOHNSTON. Mr. Chairman, and members of the committee, my State of South Carolina has a poll tax. We pay $1; that is, all able-bodied men up to 60 years of age.

In South Carolina we do not require any poll tax to vote in the primary elections, any of them. We do require it in the general elections.

If anyone has followed the elections in South Carolina, it means that the poll tax has no effect in my State. The reason I say that is

that a great many members of the House and Senators forget to vote when the general election comes around because they do not take much interest in the general election due to the fact that when the primary election has been finished, that finishes the election as far as my State is concerned, which is about 20 to 1 democratic. That is a fact that we must bear in mind.

Now, I would like to call to the committee's attention the fact that the Constitution of South Carolina in 1868—and you will note who was in charge at that time—inserted into our constitution a $1 poll tax in South Carolina. It has been there ever since in the constitution. It was reenacted in 1895.

The main reason that we object to the repeal of the poll tax by the Federal Government is that we believe it is a clear invasion of State rights. We would have repealed it long ago if it had not been agitated in Congress. We passed it in one House or the other on various occasions and had it pending when the matter was brought up in Congress. Then they said, "Let Congress handle the situation if they are going to take over, and we will not repeal it." We would repeal it overnight, as far as the State is concerned, but we do not want the Federal Government interfering in our elections.

We think as far as the qualifications for people that vote are concerned, that should be left entirely to the States. I will file my paper later.

The CHAIRMAN. Very well.

(The document referred to is as follows:)

MR. CHAIRMAN AND GENTLEMEN:

I appreciate the gracious gesture of this committee in agreeing to hear the opponents of such legislation as is contemplated by the bill before us.

After full study and exploration of this question, I am of the firm conviction that an honest decision can arrive at only one determination. To enact the pending bill would do great violence to the rights of the several States as expressly guaranteed by the Federal Constitution.

Neither by written word nor implication was the right to regulate suffrage or the qualifications therefor ever surrendered to the Federal Government.

It would hardly seem necessary for me to repeat and reiterate the legal aspects of this case. The citations of law—from the Constitution of the United States and of the several States, the various statutes, and the numerous court opinions—have been fully covered in the legal briefs filed by the outstanding lawyers representing officially the executive departments of South Carolina and other States.

In South Carolina the poll tax denies no one the right to vote. Nomination in the Democratic primary in my State is tantamount to election. The poll tax is not a perquisite to voting in the primaries in South Carolina.

The poll tax was seized upon years ago as a dynamite-laden issue by the radical extremists and social agitators outside the South. They have distorted the facts, misrepresented the case, and have just plain lied, libeled, and slandered the sovereign government of the State of South Carolina.

The proceeds of the poll tax are used for the support of public schools in South Carolina—schools which are provided for the children of all races. It is the only direct tax which thousands of persons in my State ever pay. One dollar per year these people pay—and most of them send at least one or more children to public schools.

An obvious answer to the charge that the poll tax is used as an instrument or device for disenfranchisement of people of certain rates is the fact that it is not levied upon female citizens. If we were attempting to discourage the voting of Negroes through the rentention of the poll tax, would it not seem more logically thorough to levy it against members of both sexes?

It appears to me that Members of this Congress could more properly and efficiently occupy themselves with the discharge of the functions and responsibilities and duties specifically and properly delegated to the Federal Government,

than by wasting valuable time and clogging legislative production lines with proposed legislation which seeks to encroach upon or usurp rights and privileges which remain prerogatives of the individual States for the very excellent reason that they were never delegated to the Federal Government.

That, to me, is reason enough for not reporting this bill to the floor for consideration.

OLIN D. JOHNSTON.

The CHAIRMAN. You may proceed, Senator O'Daniel.

STATEMENT OF HON. W. LEE O'DANIEL, SENATOR FROM THE STATE OF TEXAS

Senator O'DANIEL. I am asking for a few minutes of your time to register my opposition to the approval of this bill or any other bill that seeks to take from the sovereign States their constitutional right to establish the requirements of citizenship necessary to vote in their respective States in either city, county, State, or national elections.

The CHAIRMAN. Are you going to read that whole statement?

Senator O'DANIEL. It will just take 3 or 4 minutes. It is very important.

The CHAIRMAN. I understand. Go ahead.

Senator O'DANIEL. When my State says to the citizen that he or she must pay $1.75 into the public school fund before he can participate in any of these elections, my State is acting within its sovereign rights guaranteed to it by the Constitution of the United States. This fact alone should be sufficient to prevent the reporting of this bill out of your committee for consideration by the Senate.

There is not one word, syllable, or sentence in the Constitution of the United States that says that Congress shall have the power to prescribe the rules for qualifiying voters in any State. But, Mr. Chairman, the Constitution does delegate this power to the separate States and down to this very moment this right has not been abridged by the Federal Government. The Constitution does say that "each House shall be the judge of the elections, returns, and qualifications of its own Members," but it does not say one word as to who shall vote or what the voters qualifications must be.

Furthermore, let me quote from section 2 of article I of the Constitution, which says:

* * * the qualifications used for the State purpose must be also used for the purpose of electing Representatives.

This specifically states that the Federal elections must observe the rules of the separate States. There is no avenue of escape. There is no provision which makes it possible for Congress to set aside the "rule of the States," but demands that the National Government must use the same election laws and requirements for voting that have been set up by the separate States.

This program was adopted by our forefathers. They were wise in that they saw that without giving of such assurances to the separate States, that the Constitution could not have been ratified. The States were zealous of their independence. They cherished this independence because they had fought for it and had established it through generations of sweat, blood, and tears. Those of today who seek to break down State lines, destroy the sovereignty of the separate States, have slight interest or sentiment for these things.

Some States have lowered the age limit from 21 to 18 years as a prerequisite for voting. There are literally hundreds of other different rules and regulations in the 48 States. If some politically minded Federal officeholders believe they can get a few more votes to get themselves reelected to office by changing the poll-tax requirement in some States, they will then be wanting to change other State laws to suit their whims and it will be an endless struggle for voting advantage.

But, gentlemen, the Constitution does not give this committee or the Congress the right to meddle in the State election laws. It does not, by any stretch of the imagination, grant the Congress any power whatsoever to tell any of the sovereign States how it shall hold its elections or who the State shall qualify as eligible to cast a ballot. This is the function of the State legislature. It always has been and I hope always will remain so.

If you gentlemen want to support the Constitution you surely must maintain the right of the separate States to require or not require a poll tax to vote. Most States have a law that requires registration of the voter. That is the right of those States guaranteed to them under the Constitution of the United States. But, Mr. Chairman, that same Constitution guarantees to my State and other States the right to collect a poll tax if the legislatures of these States pass a law making this a requirement to cast a legal ballot.

Texas has not always had the poll tax. There was a time when there was no poll tax, but the people of Texas voted to amend their State constitution to require the payment of a poll as a qualifying act to casting a legal ballot. Now, every citizen of Texas regardless of race, creed, or color, who is interested enough in his Government to vote and who is otherwise qualified, can cast a legal ballot simply by paying his poll tax and getting himself listed upon the election roster. If the citizen is above 60 years he no longer pays a poll tax, but applies for an exemption certificate and thereby qualifies himself to vote for 1 year.

Texas citizens voted the poll-tax amendment to stop mass voting of "repeaters." Before the poll tax white and Negroes moved from one voting box to another. There was trouble on election days, and I can assure you that our people, white or black, do not want to return to the conditions of those days. This poll-tax amendment was voted in by all of our citizens regardless of race, color, or creed. It is a law of the people. There are some citizens in Texas who favor the repeal of the poll-tax amendment, but they do not want the Federal Government taking a hand in the affair. They know the confusion this proposed law will bring about. They do not want to experience this confusion.

Now, Mr. Chairman, for this committee or this Congress to undertake to repeal this State law and substitute a Federal law means that an attack is being made upon the sovereignty of the poll tax States. This is not only unconstitutional but it is un-American and it is un-Christian. The money collected from the poll tax payments goes into our State public school fund, and I am protesting on the behalf of the school children of Texas, black and white, against the meddling into the educational affairs of our States. You have no right under the Constitution of the United States to step in and cancel out these

funds from the educational fund of the poor children of the poll tax States.

It seems to me that this committee, like all Members of this Congress, as well as the President of the United States, have taken an oath to uphold the Constitution of the United States. Destroying the sovereign rights of the separate States is not upholding the Constitution, and every Federal official who advocates or supports this process of destroying our Federal Constitution and sabotaging States' rights should hang their heads in shame. Every Senator took that oath, just as I did, and I hope each will remember the sanctity of that oath when they get down to reporting upon this vicious piece of legislation.

If the sovereign States want to repeal their poll tax laws, that is their right and privilege. It is definitely not the Constitutional right of this Congress. So, I plead with you gentlemen to cast this obnoxious and oppressive proposal aside by refusing to report it favorably to the Senate. Let us cease this never ending attack upon the rights of the States and once again strive to become a government of the people, by the people, and for the people.

The CHAIRMAN. Thank you, Senator O'Daniel.

Senator O'DANIEL. I thank you, Mr. Chairman.

The CHAIRMAN. Now, the young man who came up from South Carolina. We are going to run overtime in order to give you the 15 minutes which was promised to you. You may go ahead. If you can confine your oral statement to 15 minutes and file your written statement, that will be satisfactory. Please give your name and identify yourself for the record.

STATEMENT OF HON. MONROE FULMER, ASSISTANT ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA

Mr. FULMER. I am Monroe Fulmer, assistant attorney general for the State of South Carolina.

On behalf of the Governor and the attorney general I would like to thank the committee for the opportunity to voice our objection to the proposed legislation. We have prepared a rather lengthy brief, which we would like to incorporate in the record, but I will not read that. It is overlapping with the legal brief that was filed by the attorney general for Virginia, but the fundamental issues are the same as to whether or not the proposal would be constitutional. We respectively submit it.

The CHAIRMAN. Do I understand you want to file it as part of the record?

Mr. FULMER. That is right, Mr. Chairman.

The CHAIRMAN. It will be filed as part of your remarks.

(The brief referred to is as follows:)

A BRIEF FOR THE STATE OF SOUTH CAROLINA IN OPPOSITION TO ANTI-POLL-TAX LEGISLATION—J. STROM THURMOND, GOVERNOR, STATE OF SOUTH CAROLINA; JOHN M. DANIEL, ATTORNEY GENERAL, STATE OF SOUTH CAROLINA

A STATEMENT BY THE GOVERNOR AND THE ATTORNEY GENERAL FOR SOUTH CAROLINA IN OPPOSITION TO THE PROPOSED ANTI-POLL-TAX LEGISLATION

The historical background concerning South Carolina's poll tax

The practice, custom, and tradition of levying a poll tax in the State of South Carolina had its origin prior to the American Revolution. In 1702 the general assembly passed an act for the purpose of raising revenue to be used in the defense

of Charles Town. This act provided that 550 pounds per annum be raised by a poll tax (spelled p-o-l-e). It provided for the payment of 20 shillings per annum by each man within the bounds of the town who was capable of bearing arms. It is interesting to note that this act also provided for the payment of 20 shillings per annum by every single woman or widow that is a housekeeper within the bounds of the town. Thus we find that from the earliest time the poll tax was used as a revenue measure which, indeed, it is today in South Carolina.

After 1702 the poll taxes were often levied by the legislature of South Carolina, and by the year 1865 it had become the custom and accepted tradition of the people of the State as a means of raising revenue necessary for the support of the government. On June 13, 1865, Benjamin F. Perry was appointed provisional Governor of South Carolina by President Johnson (the Supreme Court of the United States having declared that the seceded States of the South had not been out of the Union). Governor Perry called a convention of the people of the State for the purpose of reorganizing the government of the State. An order for the election of delegates for the convention to meet in Columbia on September 13, 1865, was promulgated by Governor Perry. This convention was held as scheduled on September 13, 1865, and a new constitution for the State was proposed. Section 1 of article I provided as follows:

"The general assembly, whenever a tax is laid upon land, shall at the same time impose a capitation tax, which shall not be less upon each poll than one-fourth of the tax laid upon each hundred dollars worth of assessed value of the land taxed; excepting, however, from the operation of such capitation tax all such classes of persons as from disability or otherwise, ought, in the judgment of the general assembly, to be exempted."

This new proposed constitution was actually adopted in 1868 and we find article IX, section 2, reading as follows:

"The general assembly may provide annually for a poll tax not to exceed $1 on each poll, which shall be applied exclusively to the public-school fund and no additional poll tax shall be levied by any municipal corporation."

It is to be remembered that at this point in the history of the State, South Carolina was under the rule of those who had migrated to the State of South Carolina for the purpose of personal gain, and Congress should take notice of the fact that these rulers considered the pole tax an important and necessary means of raising revenue within the State.

In 1876, Wade Hampton was elected Governor of the State of South Carolina, thus returning the official leadership of the State back to the citizens of South Carolina. Shortly thereafter the legislature passed an act providing for the collection of a poll tax referred to in the constitution of 1868 which is quoted above. This act was ratified on March 22, 1878, and reads as follows:

"That the several county treasurers shall retain all the poll tax collected in their respective counties; and it is hereby made the duty of the said county treasurers in collecting the poll tax, to keep an account of the exact amount of said tax collected in each school district in his county * * * *and the poll tax collected therein shall be expended for school purposes in the school district from which it was collected.*" (Emphasis added.)

We therefore find that since March 22, 1878, the poll tax has been earmarked for school purposes. The constitution of 1868 remained in effect until 1895. The people of South Carolina lived under this constitution (1868) which was adopted in a convention composed almost entirely of carpetbaggers, scallawags, and Negroes, and which contained a provision for levying and collecting from the people of the State the tax known as the poll tax. In 1895 the Honorable Benjamin Ryan Tillman led a movement for the adoption of a new constitution. The section dealing with poll tax in this constitution of 1895, which is to this date the Constitution of the State of South Carolina, is article XI, section 6, which in part reads as follows:

"There shall be assessed on all taxable polls in the State between the ages of 21 and 60 years (excepting Confederate soldiers above the age of 50 years) an annual tax of one dollar on each poll, the proceeds of which tax shall be expended for school purposes in the several school districts in which it is collected."

Article XI, section 4, of the South Carolina Constitution dealing with the "qualification for suffrage" reads in part as follows:

"Managers of elections shall require of each elector offering to vote at any election before allowing him to vote proof of the payment 30 days before any election of any poll tax then due and payable. The production of a certificate or of a receipt of the officer authorized to collect such taxes shall be conclusive proof of the payment thereof."

Thus we find that the poll tax is not a levy of recent years but rather that it is a source of taxation which has been used in the State of South Carolina since the American Revolution and even prior to the American Revolution when the State was a mere colony.

The constitutionality of the proposed legislation

The proposed legislation is in direct conflict with article I, section 2, of the Constitution of the United States in that it attempts to take from the several States a right guaranteed to the States by the Constitution. This proposed legislation, known and designated as H. R. 29, and entitled "An act making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national officers," is in effect changing the qualifications for electors for national officers in violation of article I, section 2, of the Constitution of the United States.

Article I, section 2, of the Constitution of the United States reads 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."

This section of the Constitution is clear and unambiguous. The framers of the Constitution wisely decided that the qualifications requisite for electors of the House of Representatives should be left entirely to the several States. It is true that the qualifications of these electors may not be the same in each of the several States, which itself shows that the framers of the Constitution did not desire uniformity.

The State of South Carolina has a poll tax of $1 which is provided for by article XI, section 6, of the constitution of 1895. This section of South Carolina's Constitution reads as follows:

"There shall be assessed on all taxable polls in the State between the ages of 21 and 60 years (excepting Confederate soldiers above the age of 50 years) an annual tax of one dollar on each poll, the proceeds of which tax shall be expended for school purposes in the several school districts in which it is collected."

This section of the State constitution shows clearly that the poll tax is purely and simply a revenue measure, even going so far as providing the purpose for which the proceeds of the tax may be used.

In order to insure the collection of the poll tax as provided in the constitutional sections above quoted, the framers of the State constitution deemed it advisable to require the proof of the payment of the poll tax, 30 days before any election, as a prerequisite and qualification for suffrage. This section of the constitution, designated as article II, section 4 (e), reads as follows:

"Managers of elections shall require of each elector offering to vote at any election, before allowing him to vote, proof of the payment 30 days before any election of any poll tax due and payable. The production of a certificate or of the receipt of the officer authorized to collect such taxes shall be conclusive proof of the payment thereof."

The Supreme Court of the State of South Carolina held in *Mew* v. *Charleston & S. Railway Company* (55 S. C. 90; 32 S. E. 828), in construing this section of the constitution, as follows:

"This section prescribes the qualifications for an elector, as suffrage is the right to vote, and not the act of voting."

There we have the Supreme Court of the State declaring judicially that article II, section 4 (e), specifically defines the qualifications of an elector.

From the above we find that in South Carolina the State constitution provides for a poll tax for the purpose of raising revenue for school purposes (art. XI, sec. 6). We also find in the State constitution that "qualification for suffrage" is the payment of the poll tax provided for in the foregoing section. We now have clearly before us the qualifications of an elector for the House of Representatives as defined by the constitution of the State and judicially determined by the Supreme Court of the State of South Carolina. Let us now look at the Constitution of the United States and find what that document says with reference to the qualification of the electors of the House of Representatives. We find the answer in article I, section 2, of the United States Constitution which reads 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.*" (Emphasis added.)

From the foregoing we find that in order for an elector to vote for a person seeking election to the House of Representatives or the most numerous branch of the State legislature, the elector must be registered and in addition he must show "proof of the payment 30 days before any election of any poll tax then due and payable."

The Constitution of the United States in article I, section 2, clearly defines the qualifications of an elector voting for Members of the House of Representatives. This elector must have the qualifications of an elector voting for members of the most numerous branch of the State legislature. This section is mandatory. We therefore submit that it is beyond the power of Congress to legislate on the subject of the qualifications of electors for Members of the House of Representatives without doing violence to the solemn provisions of article I, section 2, of the Constitution of the United States. To do so would change the qualifications so defined by the Constitutions of the State of South Carolina and the Constitution of the United States.

Let us now look to the State and Federal courts for their construction of the sections of the Constitution quoted and discussed above. The Supreme Court of the United States has already judicially determined that a State may provide for the collection of a poll tax as a prerequisite to voting without violating any of the provisions of the Federal Constitution. In the case of *Nolen R. Breedlove* v. *T. Earl Suttles, Tax Collector* (302 U. S. 277–284; 82 L. Ed. 252; decided December 1937), the Supreme Court of the United States upheld the right of the State of Georgia to collect a poll tax of $1 as a prerequisite to voting and specifically held that such requirement did not violate the equal protection of the laws, nor did it abridge the privileges and immunities as guaranteed by the fourteenth amendment. In passing upon the question the Court said:

"To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the fourteenth amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the fifteenth and nineteenth amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate" (*Minor* v. *Happersett*, 21 Wall 162, 170 et seq.; 22 L. Ed. 627, 629; *Ex Parte Yarbrough*, 110 U. S. 651, 664, 665; 28 L. Ed. 274, 275; 4 S. Ct. 152; *McPherson* v. *Blacker*, 146 U. S. 1, 37, 38; 36 L. Ed. 869, 878; 13 S. Ct. 3; *Guinn* v. *United States*, 238 U. S. 347; 362; 59 L. Ed. 1340, 1346; 35 S. Ct. 926; L. R. A. 1916 A, 1124).

In the same case the Supreme Court of the United States said, "The payment of poll taxes as a prerequisite to voting is a familiar and reasonable regulation long enforced in many States and for more than a century in Georgia."

As to the constitutional requirement that evidence of the payment of the poll tax be offered as a prerequisite to voting, the Court said:

"That measure reasonably may be deemed essential to that form of the levy. Imposition without enforcement would be futile. Power to levy and power to collect are equally necessary. And, by the exaction of payment before registration, the right to vote is neither denied nor abridged. * * * It is fanciful to suggest that the Georgia law is a mere disguise under which to deny or abridge the right of men to vote."

The Breedlove case, supra, is the final word from the Supreme Court of the United States with reference to the imposition of a poll tax as a prerequisite to voting, and we see by that case that such a requirement is in harmony with the United States Constitution. This case has been followed with approval since 1937 in the following cases: 68 Fed. Supp. 748; 164 Pa. 2d 169; 207 S. C. 489; 183 Tenn. 370.

Again in 1941 the Supreme Court of the United States in an opinion by Mr. Chief Justice Stone, passing upon the meaning of section 2, article I, of the United States Constitution, said in the case of *United States of America* v. *Patrick B. Classic* (313 U. S. 298; 85 L. ed. 1368):

"Section 2 of article I commands that Congressmen shall be chosen by the people of the several States by electors, the qualifications of which it prescribes. The right of the people to choose, within its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by State acts in conformity to the Constitution, *is a right established and guaranteed by the Constitution and hence is one secured by it to those citizens and inhabitants of the State entitled to exercise the right.*" [Emphasis added.]

It is argued by some that the Classic case, supra, to some extent overruled the principles enunciated in the Breedlove case, supra. This position cannot be maintained, however, when the language of the Court and the authorities

cited therein are carefully analyzed. It is important to bear in mind that the statute involved in the Classic case regulated only the manner of holding elections. The language used by the Court and relied upon by those who maintain that new and different legal principles were established by the Classic case is as follows:

"While, in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the States (citing cases), this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article 1, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'"

To sustain this proposition the Court cited: *Ex parte Siebold* (100 U. S. 371; 25 L. ed. 717); *Ex parte Yarbrough* (110 U. S. 663, 664; 28 L. ed. 278; 4 S. Ct. 152); *Swafford* v. *Templeton* (185 U. S. 487; 46 L. ed. 1005, 22 S. Ct. 783); *Wiley* v. *Sinkler* (179 U. S. 58, 64; 45 L. ed. 84, 88; 21 S. Ct. 17).

All of the authorities cited in the Classic case definitely hold that the several States have supreme power to prescribe the qualifications of the electors who are to vote for the most numerous branch of their legislatures, and consequently their Senators and Representatives in Congress. The first case cited, Ex parte Siebold, involves solely the question of the power of Congress to provide for the supervision of elections for Representatives in Congress by Federal marshals and their deputies, and by supervisors appointed by the Federal judges. These Federal officers were required to be present at the voting places, and it was made a crime by an act of Congress for anyone to interfere with them in the disposition of their duties. The opinion of the Court did not touch upon the question of qualifications for suffrage or even refer to section 2 of article I. It was restricted solely to the power to regulate the manner of holding the election, as appears from the language in the opinion. This language is as follows:

"The clause of the Constitution under which the power of Congress, as well as that of the State legislatures, to regulate the election of Senators and Representatives is as follows: 'The times, places, and manner of holding an election 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 place of choosing Senators'."

This expressly excludes the possibility that the Court considered section 2 relating to qualifications of electors as included in the power to regulate the "manner of holding elections." If this were not correct, reference would have been made to section 2 as well as section 4 of article I.

The second case cited in the opinion in the Classic case is Ex parte Yarbrough. In this case the Court expressly recognized the power of the States to prescribe such qualifications, saying that the States "* * * define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State."

If the language relied upon by those who did propose such legislation quoted from the Classic case had been intended to mean that Congress is empowered to "define who are to vote" at such elections, the Court certainly would not have cited the Yarbrough case in support of that proposition. In fact, the Yarbrough case is authority for the principle that Congress has no such power.

The next case cited by the Chief Justice in the Classic case is *Swafford* v. *Temple* which involved the question whether a person qualified to vote under State laws, who is wrongfully denied that right, has a cause of action for damages arising under the Constitution of the United States. In answering the question in the affirmative the Court referred to the Yarbrough case, supra, and interpreted that opinion:

"That is to say the opinion was that the case was equally one arising under the Constitution or laws of the United States whether the illegal act complained of arose from a charged violation of some specific provision of the Constitution or laws of the United States, or from the violation of a State law which affected the exercise of the right to vote for a Member of Congress, since the Constitution of the United States had adopted, as the qualifications of electors for Members of Congress, those prescribed by the State for electors of the most numerous branch of the Legislature of the State" (46 L. ed. 1007-1008).

It is significant to note that the Court says that the Constitution adopts the qualifications of electors prescribed by the State, not that Congress adopts

same. Since the Constitution adopts them it necessarily follows that Congress is without power to alter this adoption or in any manner change same.

The last case cited by the Chief Justice in the Classic case is *Wiley* v. *Sinkler* which also held that the right of a person qualified under State laws to vote for the popular branch of the legislature is also qualified to vote for Members of Congress and such right is protected by the Constitution. The opinion quoted with approval the proposition laid down in the Yarbrough case that the States 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. The power of the several States to define these qualifications is supreme and paramount.

Certainly these cases cited in the Classic case should dispell any argument by the proponents of such legislation that the language in the Classic case was intended to overrule the principle long established in this country that the qualification of electors is to be prescribed by the several States.

The principles enunciated by the Supreme Court of the United States in the Breedlove case and in the Classic case were again affirmed on October 13, 1941 when the Supreme Court denied certiorari in the case of *Pirtle* v. *Brown* (118 Fed. 2d. 218 (certiorari denied 86 L. ed. 68; 62 S. Ct. Rep. 64)). In *Pirtle* v. *Brown* the United States Circuit Court of Appeals for the Sixth Circuit, in a unanimous decision based largely on the Breedlove case, held the poll-tax requirement constitutional. Thus the Supreme Court again placed the stamp of its approval on the Breedlove case and approved it as the controlling authority to sustain the validity of the poll-tax qualification in elections solely for congressional Members.

There are numerous State court decisions sustaining the validity of the poll tax qualification. Time and space will not permit a review of all of these authorities. Suffice it to say that in the following States the courts are unanimous in holding that failure to pay a valid poll tax imposed as a condition of voting has the effect of disqualifying the voter and rendering his vote invalid: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Massachusetts, Mississippi, North Carolina, Oregon, Pennsylvania, Tennessee, Texas, Virginia, and South Carolina. (See Annotation A. L. R., vol. 139, p. 572.)

Congress itself has heretofore recognized the principle discussed above, for on two occasions Congress proposed amendments to the Constitution. The sole purpose of each was to restrict the unlimited reserved power of the States over suffrage. The fifteenth amendment prohibits denial of the right to vote "on account of race, color, or previous condition of servitude." And the nineteenth amendment prohibits such denial on account of sex. If Congress had considered that it possessed the power to prohibit such denial there would have been no necessity for these two amendments, since a prohibitory statute would have obtained the desired results in each case.

Thus by submitting those two amendments Congress has construed the Constitution as reserving in the States full power over the qualification of voters, and the States by ratifying same have placed a like construction thereon.

All that has been said with reference to the qualification of electors for Members of the House of Representatives applies with equal force to the qualification for electors for Members of the United States Senate, for the obvious reason that the seventeenth amendment to the United States Constitution so provides. This amendment reads as follows:

"The Senate of the United States shall be composed of two Senators from each State, selected by the people thereof, for 6 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."

From the foregoing we clearly see that the imposition of a poll tax by constitution or statute, and the payment thereof as a prerequisite to voting has been judicially determined by many of the State courts and by the Supreme Court of the United States to be within the constitutional rights of the several States. We also find that Congress itself has interpreted the Constitution to mean that the qualification of suffrage is power reserved to the several States, and this interpretation has been accepted by all of the States. Conversely, we find that the qualifications of an elector voting for Members of the House of Representatives are specifically defined by the Constitution of the United States in article I, section 2, and that the qualifications for electors voting for Members of the United States Senate are specifically defined in the seventeenth amendment to the Constitution of the United States. It therefore necessarily follows that since these qualifications of electors are defined in the Constitution,

any attempt on the part of Congress to limit, restrict, or enlarge these qualifications by congressional action would be clearly unconstitutional.

CONCLUSION

The principle is as ol das the Constitution of the United States and as new as the most recent decision of the Supreme Court on the issue that there is no Federal suffrage. The power to create such suffrage was not one granted to the Federal Government in the Constitution. The several States are the source of the right of suffrage. It is their function and prerogative alone to deal with that right. This principle has always been regarded as one of the bulwarks of the liberty of the American people because it guarantees them against the ability of a Federal administration to perpetuate itself in power through Federal control of the ballot boxes of the Nation.

Certainly this is not the hour in our history for Congress to propose legislation in direct conflict with the Constitution of the United States, as well as the customs and traditions of the people of the several States, all of which have been mellowed by age; and such action on the part of Congress would merely divide the country over domestic issues, while at the same time war clouds are gathering for the third time within one generation.

Respectfully submitted.

J. STROM THURMOND,
Governor of the State of South Carolina.
JOHN M. DANNIEL,
Attorney General for the State of South Carolina.

MARCH 22, 1948.

Senator STENNIS. I would like for Mr. Fulmer to bring out any points he wants to so that we can subject him to cross examination on those points if anybody wants to question him.

Mr. FULMER. We submit that the proposed legislation would be in violation of article 1, section 2. Now, what has been said heretofore, I see no necessity in repeating it. I would like to make one observation that hasn't been made this morning however.

That is the fact that Congress itself, not the courts, but Congress itself has recognized the Federal Government has no right to define the qualification of electors in States. That is obvious when you look and find that the fifteenth amendment and the nineteenth amendment did exactly that.

Now, if you could do that by congressional action which you propose to do in this bill, why did we amend the Constitution in order to permit or prohibit discrimination against race and discrimination against sex? If you had that power, which you now maintain in regard to this proposed legislation, if you had that power to define qualifications of voters, it could simply have been done by passing an act of Congress just as your proposal does here. That in itself should be binding on this committee and also, we think, upon Congress.

If it is necessary to change the Constitution to define the qualification of voting with reference to sex and with reference to race, color, or previous condition of servitude, then it would certainly be necessary in the orderly process of government to amend the Constitution rather than attempt to do it by legislative enactment. That is the one point that I don't think has been mentioned this morning.

I will not go over the constitutional issues. We do submit if the legislation is passed, that it would be unconstitutional and that we further think this agitation from Washington rather than aiding the situation is certainly aggravating it, because I believe I can say with fairness that if Congress forces the legislation upon the States and if the Supreme Court should sustain it—and we respectfully submit they would not—but if that would happen, instead of aiding those

minority groups, which apparently it is the purpose of this proposal so to do, I believe that in South Carolina the poll tax would be doubled. I believe that you would not be helping those because the people would resent it as coming from outside of the bounds of the States.

We think you would be dictating to us in the wrong manner, and I am afraid it might be the undesirable results which would be attained rather than the desired results.

Thank you.

The CHAIRMAN. At no time did you contemplate contesting the constitutionality of the provision we passed eliminating all poll taxes for soldiers during the war, did you?

Mr. FULMER. No, sir; we did not, but they did pass an act in the legislature permitting that.

In that connection, Mr. Chairman, if you will pardon a personal reference, I was at sea for 3 years. I was appointed the voting officer aboard the ship, and when it came up the ballots were sent out there, and the men on my ship—I can't speak for all of them—the men on my ship resented it. We were continually under pressure. We didn't know whether that night would be the last night or not, and we didn't think that was the appropriate thing to do.

We were more concerned with winning the war at that time than trying to hold an election. It happened when this election came up we were in an invasion, but it had been directed that we hold an election and we set off a separate part of the ship for that purpose. It was absurd, it was ridiculous.

The CHAIRMAN. I am talking to the provision of the bill that was passed by the Congress which eliminated the paying of a poll tax by all soldiers as a prerequisite for voting.

Mr. FULMER. As I say, we did that. We did not litigate the matter, but there was an act of the State legislature giving the right to the men to vote. If it had been attacked, perhaps it would have been thrown out as unconstitutional, even our own act, but nobody did it.

Senator STENNIS. I wasn't a Member of the Senate when that was passed. I want to ask this question:

The pasasge of this act, wasn't it considered solely as an emergency war measure and also a gesture toward the soldiers?

Mr. FULMER. Perhaps so, sir.

Senator JOHNSTON. It was, and I would like to say in my State that in order to save any litigation on the matter I made a recommendation to the legislature that they immediately let the soldiers vote without all these restrictions, which was passed immediately by my legislature in South Carolina.

The CHAIRMAN. Thank you. Does that conclude it, Senator Stennis?

Senator STENNIS. That is all. I want to introduce some matters into the record.

The CHAIRMAN. Very well.

Senator STENNIS. I want to state for the benefit of the record that Mr. Orton who appeared yesterday appeared at the special request of Senator Russell, of Georgia, and he was representing the State of Georgia in his appearance.

Now, Mr. Chairman, that is all the witnesses except Senator McKellar wanted to come down. Something happened and he couldn't come yesterday. I assume that the Senator will have the privilege

of coming here and making a statement any time before the bill is passed on; is that right?

The CHAIRMAN. I want to say I am deeply grateful to you and to the Senators who have wanted to testify here for keeping religiously to the time limit that we set. Certainly we will make some provision for Senator McKellar's testimony.

Senator STENNIS. Thank you very much.

(Senator McKellar subsequently submitted the following statement:)

Mr. Chairman, you ask me about poll taxes.

I am in favor of the States levying poll taxes when they so desire, for many reasons, among which: (1) It makes the young voter, man or woman, take more interest in the Federal and State Governments; (2) the poll tax charge is very small and it makes the would-be voter feel a greater interest in his government; (3) it is of large benefit to the States because it increases the aggregate of taxes and in such a manner as not to be a burden upon anyone.

Senator STENNIS. Now, I have a letter here from the Honorable Charles Warren, who is a nationally known constitutional lawyer of Washington, D. C., who was invited to appear before the committee. He is not here solely because he is unable physically to be here. He sent a letter, one to Senator Connally and also one to me, and in which he incorporates by reference his testimony given before a Senate committee on a hearing on a similar bill in 1943. It appears in volume 716, Senate committee hearings, division 14, beginning at page 78.

I wish, Mr. Chairman, to have that statement appearing at that place incorporated in the record, the statement by Mr. Warren, together with the two letters that I hand here to the stenographer.

The CHAIRMAN. Without objection, it will be incorporated.

(The statement referred to above is as follows:)

SUBMITTED STATEMENT OF CHARLES WARREN

Mr. WARREN. Charles Warren. My business address is 710 Mills Building, Washington, D. C.

The CHAIRMAN. You may proceed in any way you choose, Judge Warren.

Mr. WARREN. Thank you.

Mr. Chairman, honorable members of this committee, in order that you may not think that my argument on the constitutionality of this bill is colored by my personal views in favor of a poll tax, I desire to say that I consider that the requirement of a poll tax to make a man eligible to vote is, in fact, unjust and unreasonable and should be abolished by the sovereignty which created it and not by any other sovereignty, that is, by the State and not by Congress.

I was very much interested to read the printed hearings of the subcommittee of the Committee on the Judiciary of the Senate covering hearings in 1941 and 1942. I had a personal interest in various references contained in that volume because a number of the witnesses who appeared in favor of the bill cited the case of Gov. William E. Russell, of Massachusetts, who succeeded in obtaining the abolition of the Massachusetts State poll tax as a requirement for voting after a very vigorous campaign back in 1901.

I said I had a personal interest in that statement because I have a very vivid personal memory of it and personal contact with it. As a very young man, I was appointed private secretary to the Governor of Massachusetts by Gov. William E. Russell. He was the first Democratic Governor we had had in Massachusetts for about 25 years and before my appointment I had, in the previous years, taken some part in Governor Russell's campaign for the abolition of the poll tax as a requirement for voting. His campaign in that respect was successful and the Legislature of Massachusetts abolished it. At that time certainly there was no intimation that the United States Congress had power to abolish it or that any request would be made to Congress to perform an act which at that time was supposed to be a futile act as not within the power of the Congress.

I make that preliminary statement so as to clear the minds of the members

of the committee that my argument on the constitutionality has anything to do with my views as to the merits or nonmerits of a poll tax.

Before I go into any questions of detail I should like to clear away a few of what I might call the debris which has rather clogged and interfered with the real questions at issue which I find in previous hearings. There has been a great deal of talk and argument, so far as I can make out, from the witnesses about the question whether the right to vote for Congress is or is not a Federal right secured by the Constitution. Well, I didn't suppose there was the slightest doubt that it was a right secured by the Constitution. The proponents of the bill have devoted much time to what they call the Classic case 2 years ago to support that proposition. Why, the Supreme Court has held that for 40, 50 years, that the right to vote for Congressmen was a Federal right secured by the Constitution but the question here is: The right of whom to vote for Congressmen? That is the issue here, not whether the right exists; of course it exists. The Constitution created the office of Congressman, a Member of the House. It prescribed when they should be elected. It prescribed who should elect them. So it must be a Federal right secured by the Constitution; but the question is, not whether it is a Federal right, but to whom is the right given?

There is another phrase which has been very loosely used all through the hearings in 1941 and 1942. I find in briefs and all through the hearings references to "Federal suffrage," and to the rights of "national citizenship." I was surprised to find a brief, signed by the dean of the law school of Nebraska, I think, and concurred in by a group of law professors from Yale, Columbia, and Wisconsin, in which they referred constantly to the "rights of the citizens to vote." Then in their brief they speak later of the "right of Congress to prohibit the States from unduly restricting the rights of national citizenship." Later on they speak of the imposition by the State of proper qualifications for voting "which do not abridge the rights of national citizenship" and they refer later to "protecting the rights of national citizenship." (See testimony in 1941 and 1942, pp. 35-52.)

Now, that, of course, is an entire misapprehension. There is no right of national citizenship to vote. There were many citizens of the United States who could not vote in the past and who cannot vote today. A woman was a citizen of the United States. She possessed national citizenship—but she could not vote until 1920; and this idea that "national citizenship" confers a right to vote for Congress is, of course, entirely erroneous. The right to vote for Members of Congress is given only to such United States citizens as possess the qualifications for voting in the States for the most numerous branch of the legislature. That is the portion of United States citizens—that is the class of United States citizens—who can vote; but there is no right to vote vested in citizens of the United States in general; so that the issue is clogged and beclouded by using such expressions here as are used in this brief of these law professors.

With those preliminary very fundamental remarks about this right to vote for Members of Congress, I now want to take up a phase which is equally fundamental. I am not going to go into the details of the Federal Convention of 1787, what they said and what they did not say. I am not going to go into the details of discussions of recent cases in the Supreme Court. Those have been discussed at great length and, I feel, at unnecessary length in the testimony of some of the previous witnesses.

But I am going to take up now the question in detail of what this section 2 of article I of the Constitution does and does not do. First, at the risk of going perhaps farther than is necessary with gentlemen of your distinction and legal knowledge, I am going to impress upon you once again, what article X of the Bill of Rights provides, the tenth amendment. We must not lose sight of that for an instant, in trying to ascertain what the section of the Constitution now involved really means. Article X says:

"The powers not delegated to the United States nor prohibited by it to the States are reserved to the States respectively or to the people."

Now, what does this article X actually do? What is its function and what is its content?

In arriving at this method of disposing of the question of the right to vote in the Federal Convention of 1787, there was a threefold contest. The contest was between those members who wished a uniform qualification for electors (freehold property or otherwise) to be prescribed in the Constitution itself; there was another group of delegates who wished the power to prescribe to be vested in Congress, and there was still a third group who wished the Constitution to prescribe qualifications—not uniform qualifications but qualifications such as the respective States prescribed for their own people.

It was the last group who prevailed, and after 2 days of active debate, they left the Constitution in this respect as it now stands in (and I must trespass upon your patience by even reading again) this much-read section—section 2 of article I:

"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."

You notice that that is not a grant of power specifically to the Congress of the United States. In fact, it is not a grant of power to anyone. It is a requirement of the Constitution for the formation of the new government. The first part of it is a requirement that the people of the several States shall choose Members of the House of Representatives every second year. That was no relinquishment or delegation of power from the States. That was a constituent part of the formation of the new Government, and was a command to the States to elect their Members of Congress every second year. That was a command. It was neither a delegation of power nor was it a prohibition. It was a command and is so referred to in the recent cases in the Supreme Court.

The second thing that section 2 did was: It vested a right in the electors in each State who have the qualifications requisite for electors of the most numerous branch of the State legislature—a right in those persons in the State and those only who were entitled to vote for Members of Congress. That was not a delegation of power by the State, because the State never had the power to vote, the State inhabitants never had that power to vote for Members of Congress, because there were no such things. That was a direct provision in the establishment of the new Government, and it did vest a right, but it vested a right in only certain people to vote for Members of Congress.

Now, the third thing that that section 2 contains is this: It contains undoubtedly an implied prohibition on the States against fixing for electors of the Members of Congress and different requirements for suffrage from those which they fixed for the electors of their own most numerous branch of their legislature, i e., any qualifications which were not those requisite for to render an inhabitant of their own State eligible to vote.

Let me repeat that. There is undoubtedly an implied prohibition that the States cannot establish qualifications for the electors of members of their own legislature which shall be different from those which they establish for electors of Members of Congress. That is neither a delegation nor a grant of power; that is an implied restriction, undoubtedly.

Now, is there in that section 2 any grant of power whatever? Not specifically, of course. I suppose there is, under the necessary and proper clause of section 8 of article I, an implied power to Congress to do certain things, but what is the extent of those implied powers? It is to make all laws which shall be necessary and proper "for carrying into execution" the above provisions of article I, section 2.

What are the provisions? I go back again. First, Congress undoubtedly has power to legislate so as to see to it that the States do elect Members of Congress every second year. Congress undoubtedly has the power to protect the right which the Constitution vested in such persons in the States as had the qualifications requisite to vote for members of the State legislature. Congress undoubtedly has that power; and thinks Congress has, under the necessary and proper clause, power to legislate so as to see that the States make the same provisions for qualifications of electors of Members of Congress as they do for electors of their own legislature.

Those are the only three things that can be done under article I, section 2, and those are the only three things on which Congress can act under the necessary and proper clause, and "carry into execution" under that clause.

Senator CONNALLY. Would it interrupt you if I asked you a question right there?

Mr. WARREN. No.

Senator CONNALLY. Is it your view or contention that in article I, section 2, where it says they shall elect Congressmen and the electors shall possess the same qualifications as the electors for the most numerous branch of the State legislature, is that a constitutional fixation by the Federal Government of the absolute requirements to participate in the congressional election?

Mr. WARREN. I will say so. For those who are qualified.

Senator CONNALLY. That is what I mean. In other words, is it or not a fixation by the Federal Government of the qualifications of a man who wants

to vote for a Congressman and does it not become a Federal requirement that he must possess these qualifications before he can vote?

Mr. WARREN. Yes, sir; it is a Federal right.

Senator HATCH. The point he just brought out was what I was going to ask: Whether he meant the Constitution in this section does actually prescribe and fix the qualifications of voters.

Mr. WARREN. I haven't any doubt it does.

Senator HATCH. And that qualification is, of course, the same qualification that applies to the State legislature?

Mr. WARREN. Yes.

Senator HATCH. Following up that point, if that be true and the Constitution has actually fixed the qualifications, then any law that would either add to or take from the qualifications of the Constitution would violate that section of the Constitution?

Mr. WARREN. Not necessarily the qualifications as they existed in 1787.

Senator HATCH. The qualifications fixed by the Constitution, you say, are the same qualifications that the State fixes for its own representatives?

Mr. WARREN. Yes.

Senator HATCH. Now, if the State has a law, a poll-tax law, we will say, as a requirement for voting for State representatives and Congress would attempt to abrogate that, would it not, in effect, change that section of article I?

Mr. WARREN. I do not think so. I think that section refers to any qualifications that the States might fix for their own members of the legislature. No one would claim——

Senator HATCH. I don't believe you get my point.

Mr. WARREN (continuing). No one would claim, of course, that the qualifications were fixed as of the date 1787.

Senator CONNALLY. He did not mean that. I think you misunderstood him, if I may interpret it. If the Federal Government lays down the qualifications which require the same qualifications to vote ror the State legislature, then any Federal legislation that would modify that would be in violation of that clause of the Constitution?

Senator HATCH. Yes.

Senator CONNALLY. That was his point. I think he was in entire agreement with you.

Mr. WARREN. Let me change one word, Senator. You say, "If the Federal Government lays down."

Senator CONNALLY. When I said "the Government," I meant the "Federal Constitution."

Senator DANAHER. I would like to ask you a question if I may, sir. A moment or two ago you said, sir, that Congress may exercise the power of seeing to it that the State conducted an election every second year for Members of the House of Representatives.

Mr. WARREN. I said I thought that probably was within their powers under the necessary and proper clause; yes.

Senator DANAHER. Have you given any thought as to how Congress would cause the State to call such an election?

Mr. WARREN. No; that is beyond the present question, as to how Congress could act. I said it probably had the power to see that that portion of the section was carried into execution. How, is another matter. That is not within the purview of the present bill.

Senator DANAHER. One other point. It seems to me in the light of one of your comments on the power that should be exercised that article I of section 2 does not say a State shall hold an election, it uses the word "chosen."

Mr. WARREN. Yes.

Senator DANAHER. And it may make a very real difference in the manner of choice.

Senator CONNALLY. But when it says "electors," that is the implication.

Mr. WARREN. It is the implication, I should say, but I will not go into that because that is a little beyond the purview of my argument, and I was trying, at present, to establish what I consider the limits of the necessary and proper clause as applied to this section.

Senator MURDOCK. Mr. Chairman, I have one question which I hope will be a brief question.

Judge Warren, do you attach any significance to the fact that in section 2 of article I the Constitution uses this language: "chosen every second year by the people." It seems to me that they could have used in place of the word "people,"

"chosen every second year by the legislators of the several States and the electors in each State shall have certain qualifications."

To me, the fact that the Constitution uses the word "people" is significant and I just wondered if you wanted to comment on that at all.

Mr. WARREN. I suppose that they were synonymous. If a person is chosen by the people he is the person who is elected by the people. I suppose that the choice by the people meant the choice by electors.

Senator MURDOCK. I don't mean to make any distinction between "choosing" and "electing" but it seems to me that the use of the word "people" there means something and that when we find a condition as we find it today in some States, at least, where half of the people are disfranchised, that it probably would be a violation.

Mr. WARREN. I will take that up a little later in discussing what happened in connection with the fourteenth amendment. That argument, of course, was made by a few selected Senators—only one as I recall—who claimed that universal suffrage was prescribed by the Constitution. Of course, the matter did not get very much further than a similar argument on that subject in connection with the fourteenth and fifteenth amendments—but I will take that up, later, I hope.

Now, going a little further, section 2, of course, contains no power, specifically, of Congress to prescribe to the States who they shall qualify to vote for the members of their State legislatures and you have got to find such a power implied if anywhere under the necessary and proper clause. Let us see what the right of the State to prescribe the qualifications, the requirements for voting for its own legislature were when this section was under discussion and when it was adopted by the Convention and when it was adopted by the States.

Before 1787, the States had absolutely full and unlimited power to lay down any requirements which the people of the States, through the constitutions or legislatures of the States in their absolute discretion and judgment, desired in order to qualify anyone of their inhabitants to vote for members of the most numerous branch of the legislature.

There was no limitation whatsoever. The State had the power, either in its constitution or in its legislature as the case might be, to say to whom it desired to grant the vote for members of the legislature or from whom it desired to withhold the right, and when the people of the State had spoken in their constitution as to who should have the right to vote for members of the legislature, of course that was the last word.

You cannot get behind the people; and when the Convention of 1787 met, the people of nine States had spoken in their own States and fixed by their own constitutions the qualifications of those who should vote for members of their own legislature.

How could the Federal Convention get behind that action of the people of the States through their own constitutions? They did not attempt to meddle with the constitutions of the States in any explicit powers given in aricle I, section 2, and I can see no implied power under the necessary and proper clause which gave to the Congress the right to say to the people of the State who had already before devised and established their own constitutions, to say to the people of a State, "You shall not have the right to grant or to deny the right to vote for your own legislatures." Imagine that proposition put up to the members of the Federal Convention, that they were embodying in section 2, a denial to a State of its right through its own State constitution to establish the requirement of a State voter to vote for a member of a State legislature.

Why, it seems to me inconceivable, when you think of the jealousies of the States at that time and the extreme difficulty with which they were relinquishing any powers—and here they were not relinquishing specifically the power to qualify electors for the members of their own legislature. It is inconceivable that you can find an implied power under the necessary and proper clause to do that thing, to interfere with the sovereign right of the people to establish in their own constitution the right to vote for members of their own legislature.

In addition to that, of course, among the members of the Convention, if any such proposition as that had been advanced it certainly cannot be found in any of the debates whatsoever as they were recorded by James Madison or King or Yates or Lansing or any of them. And how unlikely it was that it would be advanced.

The members of that Convention had before them the actual restrictions which their State constitutions had put on the right of their State inhabitants to vote for members of the most numerous branch of their legislature. They had

before their eyes the fact that New Hampshire, in 1784, had a requirement for the payment of a poll tax. They had before them that in Massachusetts in 1780, its constitution required the possession of a freehold. They had the Constitution of 1777 of New York, which required that a man should possess an estate of 50 pounds. They had the Constitution of Pennsylvania of 1776, that a voter for the legislature should be a taxpayer. They had the Constitution of Maryland, which required that a voter for the State legislature should be a freeholder of 50 acres or the possessor of 50 pounds. They had the Constitution of North Carolina of 1776, that he should be a freeholder or a taxpayer, and so on. They had South Carolina and Georgia, which had similar requirements for voting in their State constitutions. The full provisions for voting in the States may be found in convenient tabular form in the appendix to my testimony. It is reproduced from the very valuable book, The Constitutional History of the American People, 1776–1850, by Francis Newton Thorpe (Harper Bros., New York, vol. I, pp. 93–971).

In addition to that, they had the fact that acting under these constitutions, several of the States had also statutes prescribing certain qualifications which were allowed by the legislatures. They had all that before them, and yet it is asked now, "Why didn't they describe what they meant by 'qualifications'? Why wasn't there some debate on the use of that term?"

Answer is, of course, that every delegate from every State knew what his State constitution meant by "qualifications" 'or what his State legislature meant by "qualifications," and they certainly were not giving power to this new Government to define what their own State constitutions meant or to define what the State legislatures meant.

That was a matter for the State exclusively. No legislature can define the meaning of a word in its constitution, no one can define except the people of the State or the State judiciary, as to everything in connection with the construction and interpretation of section 2. There is an absolute absence of any right granted to Congress to decide or define what a State by its constitution or legislature could demand of one of its inhabitants in order to qualify him to vote for a State legislature.

The absence of anything of that kind shows clearly to my mind that the members of the Federal Convention never had any idea that they were giving any power to Congress to interfere with a State constitution or the State legislature.

Senator MURDOCK. May I ask a question?

The CHAIRMAN. Senator Murdock.

Senator MURDOCK. If I have followed the judge's argument, it is this: That if Congress were in a position to say that a qualification fixed by a State statute or by the constitution of a State is unconstitutional, it would be exercising judicial power in the interpretation of a State law or a State constitution, and that the Congress has no such judicial power. Have I followed you correctly?

Mr. WARREN. Yes, sir.

Senator MURDOCK. I might say that that same suggestion was made a few days ago after the previous hearing by Senator McFarland, of Arizona. That was the first time that I had heard it made until you made it this morning.

Mr. WARREN. Yes; I am going to come to that a little later, but I am glad to answer that question now. At this point, perhaps I will just throw in a suggestion analogous to that.

Not only is it not within the power of Congress to interpret the legal meaning of that clause, but it must also be true, if one thinks of it a little more carefully than some statements that I have seen in the record would indicate—it must also be absolutely true that if you cannot interpret a clause of the Constitution through the exercise of congressional power, you certainly cannot insert something into the section. I notice—and this is said with all due deference because I suppose we are all entitled to differ, even with the Senators of the United States—I notice that Senator Pepper in his argument says that "qualifications" means "reasonable qualifications." Of course, if Congress can insert the word "reasonable," it can insert the words "except poll-tax requirements," or any other words that it desires. The idea that Congress has the power not only to define the meaning of a word in the Constitution but to insert some other words that do not exist there—to my mind, if that is the congressional power—I see no limit to the exercise of it, none whatever.

Senator OVERTON. May I ask a question?

The CHAIRMAN. Senator Overton.

Senator OVERTON. You made it very clear that section 2 of article I declares that the qualifications of the electors for the House of Representatives shall be the same qualifications as for electors for the most numerous branch of the State legislature. If the two go hand in hand, you cannot have a set of qualifications for electors for the most numerous branch of the State legislatures and another set of qualifications for electors of the House of Representatives, so if Congress should enact a bill that would prohibit the prepayment of a poll tax as a qualification to vote, it would go further than merely to prescribe the qualifications of electors of the House of Representatives, it would be prohibiting the State from prescribing the qualifications for the electors of the most numerous branch of the State legislature. Isn't that true?

Mr. WARREN. Unquestionably; and if it passed you would have to have at every polling booth two separate registers of electors.

Senator OVERTON. No; they would not. I beg your pardon, but you do not grasp my point. If the Congress of the United States can constitutionally prescribe any qualifications or can prohibit any qualifications for the House of Representatives, then the State must also make the same requirement with reference to the qualifications of electors for their legislature.

Mr. WARREN. I don't think Congress has the power to require the latter.

Senator OVERTON. I agree with you.

Mr. WARREN. And, therefore, I don't think it has the power to prescribe the former. I think unquestionably the two go hand in hand. If it has the power to do the former, it may have the power to do the latter. I don't suppose anybody in his wildest dreams would suppose that it had the power to restrict the States in prescribing qualifications for their own voters for their own legislatures.

Senator OVERTON. Just to repeat my thought again. I am reading from the Constitution: "The electors in each State shall have the qualifications requisite to electors for the most numerous branch of the legislature—" so if Congress does declare that the prepayment of a poll tax shall not be a requirement then it prohibits the State from fixing the prepayment of a poll tax as a qualification for electors of their own State legislature.

Mr. WARREN. Yes.

Senator HATCH. Judge Warren, while you are on the discussion of Senator Pepper, I am sure you are going to come to this, but it is a question I do want your answer to.

I do not think that the main contention of those who favor the legislation is that it must be a reasonable qualification, but rather, as I understand it, the contention is that the State cannot, under the guise of fixing a qualification, fix something which is not either in law or in fact a qualification and if it does, then the Congress is charged with a duty of enacting legislation prohibiting the fixing of whatever it might be which is not actually a qualification.

Mr. WARREN. Well, that is giving the Congress the power to define the word "qualification," which is purely a judicial function and power. To define a word, any word, in the Constitution of the United States is purely for the court. Congress can no more define a word than it can insert a word.

That is my contention, but Senator Pepper contended in the hearings in 1941 and 1942 that, "in prescribing the qualifications of a voter, they must be reasonable qualifications, subject to the rules of reasonableness." (See testimony, pp. 23, 24, 25.) Of course, that is simply inserting a word into this section 2 of article I of the Constitution and if the Congress has power to insert one word it has power to insert others.

Senator CONNALLY. On that point, may I ask you one question. I don't want to interfere. If Congress should have the power to say what a reasonable qualification was, would it not amount to turning over to the Federal Government the whole question of qualifications?

Mr. WARREN. Of course.

Senator CONNALLY. And instead of leaving it to the State, as we think the Constitution did, if you grant Congress had supervision and can oversee what the State does, then you are turning over to the Federal Government the absolute control of suffrage.

Mr. WARREN. In other words, it is defining what a State in its own State or in its own constitution can do in qualifying its voters for its own legislature.

Senator CONNALLY. Absolutely.

Mr. WARREN. I now want to go into a historical discussion because it is a very valuable illumination on this question. So far as I have been able to ascertain, from 1788 down to 1865, there is no statement of any court, in any law book, in

any legislative debate, or by any statesman that Congress had any such power to regulate suffrage in the States. Take the most extreme Federalist writer, for I suppose the man who made the largest claims for extension of Federal power was Mr. Justice Storey.

Mr. Justice Storey, in his Commentaries, written in 1833, describes this section—and discusses it very slightly because he says that there was no question that the States retained the full power over their own suffrage and, therefore, over the suffrage of their electors for Members of Congress. Storey's Commentaries (1833) states (vol. V, sec. 820), after treating at length in a number of sections, the subject of congressional power under article I, section 4, to regulate the "times, places, and manner" of holding elections for Senators and Representatives:

"There is no pretense to say that the power in the National Government can be used so as to exclude any State from its share in the representation in Congress. Nor can it be said with correctness that Congress can, in any way, alter the right or qualification of voters."

That was the situation down to the year 1865.

Then arose that very heated condition growing out of the situation at the end of the war, and if there was ever a time in our whole history, and especially in our whole legislative history, if there was ever a time that a claim should have been made during the debates over the civil-rights bill of 1866 and the debates on the fourteenth amendment in 1866. I want to read you, at the risk of trespassing a little on your patience and your time, the very emphatic statements made by the Senators at that time, not only the Senators of the North and East but the Senators of the West—of course, there were no Senators from the South. With the exception of one Senator, there was not a single Senator on the floor of the Senate who claimed or contended for 1 minute that the States did not have the full control of the suffrage.

The only exception to that statement was Senator Charles Sumner, of Massachusetts, and even he admitted that the State of Massachusetts had complete power to regulate suffrage with one exception; he did not think they had the power to deny suffrage to the Negro, but, with that exception—and how he worked out that exception is rather a mystery except that Senator Sumner used to insert the Negro into every bill that came along—but with that exception there was not a Senator who denied the full power of the State to regulate suffrage.

Let me recall to you who were the authors of that fourteenth amendment. When I said every Senator, north, west, and east, I meant to include every Senator—Republican and Democratic. Who were the authors of that fourteenth amendment?

First, it was constructed by a joint committee of 15 of the Senate and House, the Senate chairman of which was William Pitt Fessenden, of Maine, later President Lincoln's Secretary of the Treasury. The senior member and the man who took Senator Fessenden's place on the floor of the Senate when Fessenden was later ill was Jacob M. Howard, of Michigan, and then followed John Harris, of New York; James W. Grimes, of Iowa; Reverdy Johnson, of Maryland; and George H. Williams, of Oregon.

And the members of that joint committee on the House side were Roscoe Conkling, of New York; George M. Boutwell, of Massachusetts; Henry T. Blow, of Missouri; John A. Bingham, of Ohio, the author of the first section of the amendment; Justin S. Morrill, of Vermont; E. B. Washburne, of Illinois; and two others—I forget where they came from. I think Grider, of Kentucky, was one of the lone two Democrats on the committee of the House. That was a very distinguished committee, who gave a great deal of thought to this amendment and, therefore, their views at this excited period when, if ever, the most extreme claims of Federal power would have been made, should give you some pause in considering this question.

This amendment was considered twice. The first two sections were considered separately and then as separate resolutions for separate amendments, and then they were later joined together and made articles of one amendment, the fourteenth amendment, as it now appears.

When what is now the first section of the fourteenth amendment was reported to the House, it was drafted by John A. Bingham, a Republican Member of the House from Ohio, and in answering it on May 10, Mr. Bingham made these statements (this is on p. 2542 in the Congressional Globe if anyone wants to look it up). Mr. Bingham said:

"This amendment takes from no State any right that ever pertained to it. The amendment does not give, as the section shows, the power to Congress of regulating suffrage in the several States."

and in the second section—that was the section, you remember, that reduced the representation of the States in case they denied to any person the right of suffrage—Bingham said:

"The second section excludes the conclusion that by the first section suffrage is subjected to congressional law."

In the Senate, this first section was discussed by Senator Howard, who was heading the committee in the absence of Senator Fessenden; and he states (May 23, p. 3165 et seq.):

"The first section of the proposed amendment does not give to either of these classes the privilege of voting. The right of suffrage is not, in law, one of the privileges or immunities thus secured by the Constitution. It is merely the creature of law. It has always been regarded in this country as a result of positive local law."

As to section 2 (on p. 2766), Howard said:

"This section does not recognize the authority of the United States over the question of suffrage in the several States at all. Nor does it recognize much less secure the right of suffrage to the colored race. It leaves the right to regulate the elective franchise still with the States and does not meddle with that right."

In closing the debate, June 8, and just before the joint resolution was passed upon by the Senate, Senator Howard said (p. 3039):

"We know very well that the States retain the power which they have always possessed of regulating the right of suffrage. It is the theory of the Constitution. That right has never been taken away from them; no endeavor has ever been made to take it from them; and the theory of this whole amendment is to leave the power of regulating the suffrage with the people of legislatures of the States and not to assume to regulate it by any clause of the Constitution of the United States."

Senator DANAHER. Mr. Chairman, may I ask a question at this point?

The CHAIRMAN. Senator Danaher.

Senator DANAHER. Judge Warren, at the time that article I, section 2, was adopted as part of the Constitution, there was also a provision which read:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers which shall be determined by adding to the whole number of free persons including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons."

Obviously, that recognizes a distinction between what were known then as free persons and others?

Mr. WARREN. I did not catch that.

Senator DANAHER. Obviously recognizing a distinction between those who were then known as free persons and all others.

Mr. WARREN. Yes.

Senator DANAHER. That section was repealed by section 2 of article XIV.

Mr. WARREN. Yes.

Senator DANAHER. And amendment XIV says:

"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 a State being twenty-one years of age and citizens of the United States or in any way abridged except for participation in rebellion and other crime, the basis of representation therein shall be reduced in proportion that the number of such male citizens shall bear to the whole number of such male citizens twenty-one years of age in such State."

Do you doubt the power of Congress to enforce that section by appropriate legislation?

Mr. WARREN. It says, in effect, that if the State chose to deny the right to vote to any section of its inhabitants, it should have its representation to that extent lessened.

In fact, that was the whole basis on which that section 2 was finally adopted, that they recognized the right of the State to deny any person the right to vote but they said, "If you deny any such persons the right to vote, then that number of your electors and your representation shall, to that extent and in exactly that same proportion, be reduced."

Senator DANAHER. Do you not agree; sir, that by the fourteenth amendment, section 2, we specified qualifications as a basis upon which abridgment of apportionment could be predicated?

Mr. WARREN. No; I do not see that section 2 states anything about qualifications.

Senator DANAHER. It says they must be 21 years of age. Is that not a qualification?

Mr. WARREN. It says "denied to any person being twenty-one years of age and citizens of the United States."

Senator DANAHER. Are those not qualifications, Judge Warren?

Mr. WARREN. No.

Senator DANAHER. What are they?

Mr. WARREN. A woman is a citizen of the United States; a minor is a citizen of the United States; a pauper is a citizen of the United States. There are plenty of citizens of the United States who have not the right to vote in a State, under the State constitutions. It has nothing to do with the question of being a citizen of the United States.

Senator DANAHER. Would we have the power, in your judgment, to deny representation—let us take, for example, the State of Texas—by reducing the numbers of Representatives in the House of Representatives on the basis that the right to vote is abridged as against citizens who are 21 years of age?

Mr. WARREN. Yes. Certainly you have got it specifically granted to you, the right to reduce representation. That is specifically granted by section 2 of the fourteenth amendment.

Senator DANAHER. So that if we were to amend this bill to say that if there be, in any State, a requirement that a poll tax be paid as a prerequisite for the privilege of voting and the right of any citizen being 21 years of age is thus abridged, all numbers of such persons so denied the right to vote shall be excluded from the basis of apportionment of representatives allotted to that State?

Mr. WARREN. Unquestionably.

Senator DANAHER. It may be a good answer to this whole bill.

Mr. WARREN. Unquestionably. I am not discussing what Congress could do under some other power than that in section 2 of article 1 of the original Constitution. I hope you will not confine any illustration to the State of Texas because I notice that the Senator from the State is temporarily absent from the room.

Senator MURDOCK. This argument and the same discussion as the colloquy between Senator Danaher and yourself happened before the Judiciary Committee of the House when I was a member of that. The argument was made there that the second section of amendment 15 really contemplated that the States may abridge the right of certain people to vote, but that if such abridgement or denial did take place that Congress had a remedy by reducing the number of Representatives.

Mr. WARREN. And that was the only remedy at that time until the fifteenth amendment was passed. The fifteenth amendment was passed in order to get away from doing that thing and it was made a part of the Constiution that the Negro should not be excluded from voting.

Senator MURDOCK. You take the position, as I understand you, that under amendment 14, section 2, the exclusive remedy of Congress to meet such an abridgment by a State is the reduction of Representatives?

Mr. WARREN. And it is so stated. I was just going to read that.

Senator MURDOCK. Of course, the people who sponsor this anti-poll-tax law take the position that that is not the only remedy, that it is not exclusive.

Mr. WARREN. I would like now to pursue the statements made by the Senators who constructed the amendment because they are certainly very powerful. I think that the last quotation was from Senator Howard, who reported the amendment to the Senate.

(I think that Senator Danaher may be interested in this.) When they first took up the second section of the fourteenth amendment, Senator Fessenden, who was then recovered from a slight illness and was, as I say, the chairman of this joint committee, made this statement. He was controverting at the time, I think, Senator Sumner. On February 7, 1866, he said (p. 704):

"The power exists now at the present time in all these States to make just such class or caste distinctions as they please——"

Senator Sumner was claiming it was a class distinction to exclude the Negro:

"The power exists now at the present time in all these States to make just

such class or caste distinctions as they please. The Constitution does not limit them. The Constitution, in terms, gives us no power. It leaves to the States, as everybody knows, the perfect authority to regulate this matter of suffrage to suit themselves."

Later in his speech, he describes what the second section means in requiring the reduction and he said (p. 705):

"It says to all the people of the United States you shall be represented in Congress, but, as we fear you may be governed by narrow views, as we fear you will do injustice to a portion of the people under your charge * * * we say to you that you shall not have political power any further than you show by your actions that you are disposed to let your charges participate in it."

Senator Reverdy Johnson, of Maryland, a very distinguished—one of the most distinguished lawyers at the Supreme Court bar—and who was the lone Senate Democrat on this joint committee of 15 in the Senate, speaking of the fact that at that time this question of suffrage of the Negro was not a southern question entirely because of the fact that of the States of the North and East at that time there were only six who admitted the Negro to the right of suffrage for members of their own legislature. In other words, that the free Negro was not admitted to the right of suffrage in any of the States of the North and East except six, and Senator Johnson said, in pursuing that line of thought as to the complee power of the States at that time over the whole subject (p. 765):

"I suppose that even the honorable Member from Massachusetts (Senator Sumner) will not deny that it was for Massachusetts to regulate her suffrage before 1789, and if it was, she has the power still unless she has agreed to part with it by devolving it upon the General Government. Is there a word in the Constitution that intimates such a purpose? Who at that time, in 1787, denied that the State was clothed with the power of prescribing the qualifications for the most numerous branch of the State legislature? * * * The State and nobody else."

He then cited Federalist, No. 54:

"The right of choosing the allotted number in each State is to be exercised by such part of the inhabitants as the State itself may designate. Words could not have been adopted more obviously leading to the conclusion that, in the opinion of the writers of the Federalist, the States were to have the sole right of regulating the suffrage."

Then further down, he says:

"There is nothing innate in the right of suffrage. It depends wholly upon governmental regulation."

There was one other Democratic Senator not on the joint committee, but of considerable distinction, and I am citing these to show you that there was no difference of opinion between such prominent Republican Senators as Howard and Fessenden and the Democratic Senators, Reverdy Johnson and Senator Hendricks of Indiana. Senator Hendricks said (p. 880):

"I ask the Senators the question: Have the States, under the Constitution, the right to control the elective franchise? Does any Senator question that? The Senator from Massachusetts does. He thinks that Congress may control the right of suffrage in the State, but it has not been a question of dispute whether the State had control of elective franchise. It is absolute and perfect."

Then Senator Sumner got up and he denied the right of a State to deny the Negro suffrage, but he went on to say that the State had entire control over the right of suffrage and could deny it by reason of condition of age, residence, character, education, property, and the payment of taxes, but he claimed it could not be applicable to color. So you see, even Senator Sumner would have denied the right of Congress to pass the present bill.

Coming along in the debate, we find Senator Wilson, who was the colleague of Senator Sumner of Massachusetts, said (p. 1255):

"The men who framed the Constitution made those State constitutions * * * they well knew what the qualifications were. Every State constitution provides for electors, prescribes the qualification for suffrage. The laws of the States provided for qualifications of electors. Every State, from the adoption of the State constitution to this hour, has claimed the authority and exercised it to settle the questions pertaining to suffrage. They never supposed that the Federal Government had the power to change it. They never gave that power and they never intended to give that power."

That is the statement of Senator Wilson, afterwards Vice President of the United States.

Then in closing the early debate on that section, Senator Fessenden, who was chairman of the joint committee that drafted it, made this statement (p. 1278):

"If I understand the Constitution at all, it has always been considered that the clause which I have read——" That is, the second section of article I of the Constitution—"acknowledged the right of the States to regulate the question of suffrage. I do not think it has ever been disputed. * * * The States have a perfect right today and they may exercise it as they see fit to make such rules as suit them with regard to the qualifications of electors."

I won't weary you by any further citations.

When the fourteenth amendment was adopted, you will recall that it was claimed by some Republicans, I think by George H. Boutwell of Massachusetts, who later became Secretary of the Treasury, that the first section denying to the States the power to abridge the privileges and immunities of citizens of the United States—although the contrary had been stated time and time again during the debate on this amendment—it was claimed that that privilege and immunity clause of the citizens of the United States denied to the States the power to restrict the right of suffrage, and when, in 1868, the fifteenth amendment was under consideration, Mr. Boutwell and some others thought it was not necessary to pass the fifteenth amendment in order to give the Negro the right to vote because they said it could be done by a simple act of Congress under the privilege and immunity clause, that is, by an act of Congress enforcing the privilege and immunity clause. That attempt was soon dropped. That bill was debated in the House but it was soon dropped, and the fifteenth amendment was adopted in order to establish the power by the Constitution.

The fifteenth amendment was passed, I think, in 1869. The idea that the privileges and immunities of the citizens of the United States denied in some way the right of the States to control suffrage, that idea prevailed for a number of years until, in 1875, there came along the Slaughterhouse cases; and in those cases there was laid down, you remember, for the first time the distinction between the rights of a citizen and a State and the rights of a citizen of the United States, as such, that is, the rights which grew out of some peculiar relation of an inhabitant of a State to the United States Government.

Then, you remember, very shortly after the Slaughterhouse cases, there came the case which, in fact, applied the general proposition and the right of a citizen of the United States per se, to the specific right of a woman to vote. That was the case of *Mino* v. *Happerset* (21 Wallace 162). On March 29, 1875, in that case the extent of the distinction between the rights of a citizen of the United States and the rights of a citizen of a State with regard to voing was laid down and explained, and Chief Jusice Waite said that the—

"fact that the right of voting could not grow out of citizenship alone was clear when you considered who was a citizen of the United States; everybody born here was a citizen of the United States and, therefore, if voting depended on citizenship every child, every woman, every pauper, every criminal, every person born here would have the right to vote—"

and he concluded:

"Certainly, if the courts can consider any question settled, this is one. For nearly 90 years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage."

And using those same words here in the year 1943, I should suppose that if any question had been settled in 134 years, it was this question that the States alone possessed the right of control of suffrage.

Senator MURDOCK. Mr. Chairman, may I ask this question?

The CHAIRMAN. Senator Murdock.

Senator MURDOCK. Are you familiar with Public Law 712 of the Seventy-seventh Congress, which was approved September 16, 1942, with reference to soldiers voting?

Mr. WARREN. Yes. I know there was such a law.

Senator MURDOCK. Section 2 reads as follows:

"No person in military service at time of war shall be required, as a condition of voting in any election for President, Vice President, electorates for President or Vice President, or for Senator or Member of the House of Representatives, to pay poll tax or other tax or make any other payment to any State or political subdivision thereof."

I assume, from your statement here, that you would take the position that that section is unconstitutional?

Mr. WARREN. Personally, I should not have had any doubt about it, except for the fact that the war power has received such immense extensions in recent

years. Hence I should not now be at all certain as to how far it extended in that direction. Except for the war power, everything that I have said on the present bill, so far would certainly apply. I would have made precisely the same argument if I had appeared before this committee in connection with that bill in 1942, except that I would have frankly stated that I do not know in that respect how far the war power extends. I have about come to the conclusion that all my previous views regarding the extent of power of this Government in time of war must be canceled and, that, at the present moment, I do not know what there is which the Government cannot do if the war makes it necessary.

Now, I take up another branch of my argument. I dislike always in arguing before a court, for I think it is a very disagreeable thing for the court and I am sure it is for you gentlemen, to cite passages from cases; and yet, tracing this idea that Congress had no power to control the right of suffrage in the State down through the years and decades, I must show how far this statement comes down in decisions by the Supreme Court. I will only cite a few cases to show that it comes down all through the line.

The first case under the legislation that grew out of the fourteenth and fifteenth amendments was not decided by the Supreme Court until 1876. You remember there was a series of statutes purporting to enforce the fourteenth and fifteenth amendments. A large portion of those statutes were declared unconstitutional because of the effort of Congress to supply them directly to acts of individuals instead of to acts of States, but there was the Enforcement Act of May 31, 1870; there was, of course, the Ku Klux Act of April 20, 1870; and there was the Federal Election Act of June 10, 1872, and there was the Civil Rights Act of March 1, 1875; and they all came before the Supreme Court sooner or later. Under them, many cases involving constitutional rights of citizens arose.

The first case was that of *The United States* v. *Reese* (1876, 92 U. S. 214), decided in 1876. It involved the fifteenth amendment and the enforcement of it against persons who alleged the States to be discriminating in elections against them. The sections of the statute which were sought to be applied were held invalid because they were not appropriate legislation under the fifteenth amendment, but in the course of that case and decision Chief Justice Waite said that—

"Before the adoption of the fifteenth amendment, it was possible for a State to exclude a man from voting because of his race, color, or otherwise."

He said:

"Because its adoption, this could be done. It was then as much within the power of the State to exclude citizens of the United States from voting on account of race and so forth as it was on account of age, property, or education."

Then came the *Mino* v. *Happiset* decision, which held that a State might exclude women from voting. Then passing down a long list of cases, there is, of course, the statement in *Ex parte Yarbrough case in 1884* (110 U. S. 56), a case, I think, that was cited ten or a dozen times in the recent Classic case in which Judge Miller said:

"The States, in prescribing the qualification of voters for the most numerous branch of their own 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 the same persons shall vote for Members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for Members of Congress."

The CHAIRMAN. Judge Warren, if you desire, in the interest of conserving time, you can incorporate that in the record here as part of the record.

Mr. WARREN. I have only a few other citations. The decision in *Wiley* v. *Sinkler* (179 U. S. 58), in 1900, answers the question, I think, that Senator Murdock asked. In discussing the right to vote for Members of Congress, Judge Gray said:

"They define who are to vote for the popular branch of their own legislature and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for Members of Congress."

I call attention to a statement made in *Pope* v. *Williams* (193 U. S. 621), in 1904, which has some bearing upon one of the contentions made here by the proponents of the present bill. Justice Peckham says:

"A state, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that no one but native-born citizens shall be permitted to vote, as the Federal Constitution does not confer the right of suffrage

upon anyone, and the conditions under which that right is to be exercised are matters for the States alone to prescribe, subject to conditions of the Federal Constitution."

and I want to call to your attention the following words:

"The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one. * * * The right of a State to legislate upon the subject of the elective franchise as to it may seem good, subject, we believe, to the conditions already stated being as as unassailable, we think it plain that the statute in question violates this right."

We come down as late as 1915 to a decision in *Gwinn* v. *United States* (238 U. S. 347). That was the Oklahoma Constitution case which arose under the fifteenth amendment; and in it Chief Justice White stated:

"It is true also that the amendment——"

that is, the fifteenth amendment——,

"does not change, modify, or deprive the States of their full power as to suffrage except, of course, as to the subject with which the amendment deals——"

that is the subject of the Negro.

I want to call your attention, particularly to a passage in Chief Justice White's decision, in which he points out what was the contention of the Government of the United States at that time, made through its Solicitor General of the United States, Mr. John W. Davis.

"The United States says that State power to provide for suffrage is not disputed although, of course, the authority of the fifteenth amendment and the limit on their power that is insisted on—hence no assertion denying the right of a State to exert judgment and discretion in fixing the qualification of suffrage is advanced."

That is, the Government, through the Attorney General at that time, did not even pretend or contend that the judgment and discretion of the United States in fixing the qualification for suffrage existed.

I a not going to discuss the Classic case. It has been discussed, I think, in testimony rather ad nauseam. I had rather supposed—and before this question came up, I read that case a number of times—I had not supposed that the case and its decision had anything whatsoever to do with the question of the right of the State to control suffrage. It was simply concerned with whether a primary election was an election within the meaning of the term "manner" of regulating an election as used in this fourth section of article I of the Constitution. I searched in vain, I searched in vain to find a single word in that decision that has anything whatsoever to do with the question of the right of suffrage. But you gentlemen are quite as capable, and probably more capable than I am, of knowing what that decision decides. I simply say that, so far as I can see, it decides nothing whatsoever pertinent to this question I am now arguing; and I had not supposed that, except for the fact it held that a primary election might be included within the term "election" as used in the Constitution, except for that decision. I had not supposed there was a single proposition or dictum or expression in that case that differed in the slightest from what had been held in case after case for 50 years before it.

I have finished what I had to say.

Senator CONNALLY. I agree with you that the fourteenth amendment does not give any power such as asserted in this bill but there are those that do. There are those who assert that the Constitution gives some power to Congress But I want to call your attention to the fact in 1917, I believe it was, that in the seventeenth amendment for the popular vote for Senators, they reenacted, so far as the qualifications of Senators are concerned, the same clause as contained in section 2 of article I that—

"The Senate of the United States shall be composed of two Senators from each State elected by the people thereof for 6 years and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors for the most numerous branch of the State legislature."

I wanted to ask you whether or not there were any powers in the fourteenth amendment, if it would not, as far as Senators at least are concerned, be repealed by the subsequent insertion in the Constitution of the seventeenth amendment.

Mr. WAREN. Well, I should not have any doubt about that. I should say that when a word had been used in the original Constitution and at least silently construed, that is, no one ever claimed that the qualifications could not be decided

by the States, I should say that a word in the seventeenth amendment meant precisely what it meant in the original Constitution. Whether it had the effect of repealing anything in the fourteenth amendment I do not know. But I have frankly never given any consideration to that, believing so certainly and conclusively and impressively in the statements made by the Senators about the effect of the fourteenth amendment so I cannot see that there is anything relating to the State's right over suffrage to repeal.

Senator CONNALLY. What I meant was this: That since the seventeenth amendment is specific that it deals with a single thing, the qualification of electors for Senators, and the fourteenth amendment having general terms and things of that kind, with the seventeenth amendment being subsequent to the fourteenth amendment, if there was anything in the fourteenth amendment it would certainly have to yield to the seventeenth amendment and even granting the proponents' views, you would have to have two boxes, you have to have one for Congress and one for Senator and one for State officers, would you not?

Mr. WARREN. I should suppose so but I do not think it is necessary on the basis of my argument.

Senator CONNALLY. Thank you.

Mr. WARREN. Just 1 minute. I suppose you are going to adjourn very shortly. I had not intended to cover this whole subject, of course, and I understand one of the great contentions of the proponents of this bill is that even if section 2 of article I give no power, section 4, which authorizes Congress to adopt regulations as to time, place, and manner, gives the power to regulate the suffrage.

Of course, there is not a single decision of the United States courts from one end to the other that even intimates that "manner" of conducting an election includes the qualification of electors. But pass that by. If it does, what was the use of section 2? If the Constitution assumed to fix the qualifications of electors by section 2, why should it then pass section 4 and give Congress the right to change everything which it had already fixed in section 2? In other words, it is impossible that the two sections include the same subject matter, because by section 4, if it be true that "manner" includes fixing qualifications, then Congress has full power to do anything about qualifications and Congress has full power to override section 2. Is it conceivable that, having prescribed the qualifications for voting for Members of Congress in the Constitution itself by section 2, the Federal Convention then proceeded, only a day or two later, to adopt section 4, which, on the present theory, empowered Congress to alter or do away with any or all of the qualifications which the Convention had already established by the Constitution itself in section 2? It cannot be that the Convention, was adopting two sections, one of which absolutely nullified the other. That is all I have got to say on that subject. If that argument can be overcome, and the fact that no decision of the Supreme Court has ever intimated that "manner" included regulation of suffrage, if those two arguments can be overcome, I cannot make them any clearer or more forcible and I am not going to take them up.

I have confined my arguments purely to the meaning and construction and interpretation of section 2 of article I and, as I say, I cannot find in the legislative debates, in the courts, or in the writings of any lawyer, any attempt to assert that the States did not absolutely control the right of suffrage, until the question has arisen within the last few years and been encouraged by what some people think they find in the Classic case. If I am able to understand the English language, I cannot find there what they think they find; but I am not going into that because you gentlemen are fully competent to decide what you think the Classic case decides.

I wish to thank you gentlemen for your patience.

Senator CONNALLY. Mr. Chairman, I want to request the authority of the committee that the stenographer furnish Judge Warren a copy at the earliest practical moment, of his remarks here and that he be accorded the privilege of inserting in full any matter that he has or embellishing what he has said to make it a full and complete statement.

The CHAIRMAN. Without objection, it is so ordered, Senator Austin.

Senator AUSTIN. Mr. Chairman, I appreciate the opportunity to listen to Mr. Charles Warren on this subject. It has been a very illuminating discussion.

There is one point which, if he cares to talk on, I would like to hear his views on, and that is the use or definition of qualifications in the brief and in many arguments that have appeared in support of this proposal. The assertion appears that the requirement of the payments of a poll tax is not a "qualification" and that it is only a prerequisite or condition and that, therefore, this proposal does not offend the Constitution. Do you care to comment on that subject?

Mr. WARREN. When we go back before the Constitution, a qualification to vote meant whatever the State constitution or the State legislature required of a man in order to make him eligible to vote. Therefore, the "qualifications" which the Constitution speaks of, must mean what it meant in the States and what it meant in the States before 1787, i. e., such conditions, prerequisites or the existence of such other factors or conditions, as the States thought it necessary to require before granting to an inhabitant the right to vote. I cannot see how it could possibly mean anything other than that. They were not originating a language. They were adopting the requirements with which they were perfectly familiar, which included the requirement of paying a poll tax; the requirement of possessing so much wealth or so much money and so forth. It was a question for the States exclusively to decide, what they should require of a man before they should render him qualified to vote.

I cannot see it in any other way than that because if that is not so, then you must find a power of Congress to define a word in the Constitution and I look in vain for any such power. That is purely a judicial question. Congress has, as I said at the opening, no more power to define a word in the Constitution than it has to insert a word in the Constitution, in fact, to define a word would, in many cases, be to insert it. Just as I said, Senator Pepper wanted to prescribe "reasonable qualifications" which is certainly an insertion.

The CHAIRMAN. Senator McFarland?

Senator MCFARLAND. No questions.

The CHAIRMAN. Senator Connally?

Senator CONNALLY. I merely want to express my own appreciation and I am sure all the other members of the committee are grateful to you for this very illuminating and unselfish argument you have made on this subject.

Mr. WARREN. I hope I have cast a few rays of light.

The CHAIRMAN. Senator Murdock?

Senator MURDOCK. I have asked probably too many questions now. I do want to say I have thoroughly enjoyed the discussion.

The CHAIRMAN. Senator Revercomb?

Senator REVERCOMB. No questions.

The CHAIRMAN. Senator Danaher?

Senator DANAHER. I think you might inadvertently have been led into error in reply to Senator Connally's question. Surely you do not mean that the seventeenth amendment repealed the fourteenth amendment?

Mr. WARREN. Certainly not.

Senator CONNALLY. I did not make that qualification. It was as to suffrage only that the seventeenth amendment referred to.

Mr. WARREN. My answer was that I did not agree that the fourteenth amendment had anything to do with suffrage at all so I did not think the seventeenth would repeal it but if the fourteenth amendment did have anything to do with State rights over suffrage, then I should say the Senator was correct in thinking that the seventeenth amendment might have repealed it. I would not make that too definite, because, in a constitutional amendment, I am rather inclined to think that if you are going to repeal some previous constitutional amendment, you had better make it specific.

Senator DANAHER. One other question. Surely it is a fact that apportionment is still based upon the fourteenth amendment, section 2?

Mr. WARREN. Certainly. Apportionment of Representatives, you mean?

Senator DANAHER. Yes; and we have a census every 10 years for the purpose of counting the number of persons within the State upon which apportionment shall be predicated.

Mr. WARREN. Certainly.

Senator DANAHER. And when we passed the fourteenth amendment, we certainly repealed explicitly that portion of article I of the original Constitution which had prescribed a distinction between free persons and all others who were to be counted for apportionment purposes?

Mr. WARREN. Precisely. It is precisely the same subject—just as was the repeal of the prohibition amendment. You probably could not have repealed that amendment by implication merely.

Senator DANAHER. I have enjoyed your discussion very much and I have appreciated your contribution so greatly I would like to ask your opinion on a hypothetical point.

Mr. WARREN. My opinion on hypothetical points is usually not very valuable.

Senator DANAHER. It is at least as valuable as the expert witness, and I would like to have you comment, if you will, on this assumption.

Assume there were before us a bill which read as follows:

"Whenever any State, municipality, or other government or governmental subdivision, or any person whether or not acting under color of authority of the laws of any State or subdivision thereof, shall abridge in any way the right of any citizen, being 21 years of age, to vote in any primary or election for the choice of electors for President and Vice President of the United States, Representative in Congress, the executive and judicial officers of a State, or the members of the legislature thereof"—those words following exactly article XIV, section 2—"the number of Representatives from any such State wherein such abridgment exists, shall be reduced in the ratio that the number of such citizens whose right so to vote shall be abridged bears to the whole number of persons in any such State.

Mr. WARREN. I think I have explained to you what I believed section 2 of the fourteenth amendment permitted Congress to do. As to any particular bill, I must answer what I have several times answered to a similar question before the Supreme Court when they have asked me: Would you say that this law applies to such-and-such and such-and-such? I have invariably had to answer that I have enough difficulty in arguing this one case, and I certainly will argue the other cases when I come to them.

The CHAIRMAN. Thank you very much, Judge Warren.

The committee is adjourned.

(The letters from Mr. Charles Warren hereinbefore referred to by Senator Stennis are as follows:)

CHARLES WARREN, COUNSELOR AT LAW,
Washington, D. C., March 22, 1948.

Hon. TOM CONNALLY,
United States Senate,
Washington, D. C.

MY DEAR SENATOR: I had a conversation this morning with your assistant at the Capitol, Mr. Arthur Perry, and I have sent him references to my testimony and also to my correspondence with you in 1943 and 1944.

I am extremely sorry that I do not feel able to appear before your committee or the Rules Committee at the present time. I am going a little slow and not taking on anything extra, since I have recently passed my eightieth birthday.

I have not changed in the slightest the views which I entertained in 1943 and as to which I testified before the Judiciary Committee of the Senate on November 2, 1943. In fact, I am even firmer in my views. As I stated then, I am not in favor of State poll taxes. But, as a matter of congressional power, I regard any bill seeking to forbid the imposition by a State of a poll tax as an entirely invalid exercise by Congress of a power to prescribe qualifications over which the State legislatures alone have power under the United States Constitution.

I call your attention to a letter from me to you, dated May 10, 1944, answered by you under date of May 16, 1944, which letter of May 10 you had inserted in the Congressional Record of May 12, 1944. This letter was on the unconstitutionality of any act of Congress prescribing qualifications for State Presidential electors, (a provision for which was in the bill then under discussion). I do not know whether there is a similar provision in the pending bill, but, if so, my letter of May 10, 1944, would be equally applicable.

With high personal regards to you, I remain,

As ever, very cordially,

CHARLES WARREN.

CHARLES WARREN, COUNSELOR AT LAW,
Washington, D. C., March 22, 1948.

Hon. JOHN C. STENNIS,
United States Senate, Washington, D. C.

MY DEAR SENATOR: You called me on the telephone about a week or 10 days ago regarding my views on the constitutionality of the pending poll-tax bill. I stated then that I greatly regretted that I did not feel up to appearing as a witness before the Senate committee but that I had stated everything that I knew on the subject in great detail and after a long study in a formal statement before the Senate Judiciary Committee on November 2, 1943, at the request of my friend, Senator Tom Connally. As I stated to you over the telephone, I have not changed in any respect the views I expressed in 1943, and I have no further information on the subject. I said that I had no hesitation or objection to making this statement to you in writing, which I do herewith.

This morning Senator Connally's office called me up and I have made the same statement to him. As I stated in 1943, I am not in favor of State poll

taxes. But, as a matter of congressional power, I regard any bill seeking to forbid the imposition by a State of a poll tax, as an entirely invalid exercise by Congress of a power to prescribe qualifications over which the State legislatures alone have power under the United States Constitution.

I am extremely sorry that I do not feel able, as suggested by you and by Senator Connally, to appear before your committee or the Rules Committee at the present time. I am going a little slow and not taking on anything extra since I have recently passed my eightieth birthday.

With high personal regards, I remain,

Cordially yours,

CHARLES WARREN.

Senator STENNIS. Now you have already incorporated the statement of the Honorable Guy E. Williams, attorney general of Arkansas.

The CHAIRMAN. That is right.

Senator STENNIS. I have here a written statement submitted by Congressman Whitten, of Mississippi, with reference to the bill.

The CHAIRMAN. That may be included.

(The statement referred to is as follows:)

CONGRESSMAN JAMIE WHITTEN, MISSISSIPPI

Mr. Chairman, I appreciate the opportunity of appearing before this committee. I hope you will bear with me if I appear to be stirred up about this matter for I frankly believe this bill is a step along the road of eventual destruction of our great Nation.

Let us see about the poll tax in Mississippi. The poll tax was not passed for the purpose of keeping anybody from voting. In 1890, when it was first adopted, you people do not realize the poverty that it left in Mississippi. We had nothing which we could tax. Much of the property had been destroyed or gone into the hands of the scalawags and carpetbaggers who had come down there and ravished our land, taking away our wealth. We had to pass a poll tax, and every other type of tax, in order to raise the revenue to run that government.

The poll tax is levied on everyone, whether or not he ever votes. The only requirement in regard to voting is this: In order to vote a man must have paid that poll tax by the 1st of February of the year in which he offers to vote. Why did we do that? To keep the Negro from voting? No; to keep some irresponsible politician from coming along just before the election and paying poll taxes in order to control votes. That is the reason for it.

Those who have gone astray should come back and realize that we have not done and do not do what you have been led to believe.

When we were taken in as Members of this Congress we subscribed to an oath to support the Constitution of the United States. Each of you did that. How can Members shut their eyes to the Constitution and say, "I will leave it up to the Supreme Court"? I say to you that if you have studied the question and are in doubt, perhaps you have some reason to leave it to the Supreme Court, but if you shut your eyes and pay no attention to whether or not it is constitutional and then follow that course, you are liable to vote for some other law which will do just as much to your section as we think you are doing to the State governments in this Nation.

From the propaganda which reaches my office from certain labor unions and politicians in sections far removed from my State, most of whom have never been there, it appears to me that these folks are trying to use this so-called crusade against the seven Southern States not to improve the lot of the Negro in the South but to add to the Negro membership of their labor unions in the North and East, to appeal to the Negro vote in those sections, in other words to exploit him, to use him for their own purpose. They are not friends of the Negro of the South, nor really of the Nation. I know that those very persons come from sections where by the use of zoning ordinances and limitations on building permits they discriminate more against the Negro than has been thought of in the South. They do not like the Negro; they do not live with them, they do not permit the Negro to live in the white residential districts. Most of them are for Negroes in the abstract, but do not want anything to do with them personally, and privately will tell you so.

If it were truly the purpose of those behind this bill to benefit the Negro of the South, I can assure you that the approach here cannot and will not have that effect. There are some things which cannot be done by any law. The heart and mind of a people cannot be changed by law nor by force. Hitler tried this in Europe and we know it will not work. The Negro leaders sponsoring this measure are not interested in political equality; what they want is social equality or rather social intermingling—and you know it. Today the Negro of the South can place his social life on the highest plane he may desire. We of the white race merely believe in and demand that he may go his way and that we may go ours. We will have no part of social intermingling in the South.

I tell you this shall not take place in the South. After the Civil War we had turned loose in our midst hundreds of thousands of ex-slaves, wholly untrained in citizenship, then without perhaps intending to, the North sent sufficient carpetbaggers and sorry white men to make use of their votes and to exploit them and our country. Only in recent years has all this feeling engendered in our people completely died down.

We do not have now the racial strife which exists in Washington, Baltimore, Detroit, or Chicago. To be sure we prevent the Negro from forcing himself into the white man's home, his place of worship, and public places and accommodations which are limited to white trade. At the same time we provide separate accommodations for the Negro. What you do not see is that we protect the Negro from being disturbed by the white people of our section in his places of worship, in his home, and in public places which are exclusively for Negroes.

In Mound Bayou, Miss., an exclusively Negro town, we have a splendid example of how the Negro can get along if left to himself and that is what is desired by nearly all the southern Negroes. His social standards and life there compare favorably with that of any other race. The Negro has his own schools, officers, and social life, unmolested by white social reformers. The people of the town are happy, the section prosperous. The Negro of the South has come far since the War Between the States.

We have taxed ourselves greatly and now spend a much larger percentage of our State's income on education of the Negroes than any State from which come the people who intend to reform the South. There are two Negro colleges in my own district and many others in the State. We are spending more on the protection of the Negro's health and to improve his living conditions in proportion to our ability than any other section of the Nation. The Negro of the South is in better shape financially and economically than ever before.

To be candid, at this time we do not want the Negro to control our politics and our Government any more than the people of Detroit would want the Negro section of the city to select the officers of the entire city. We had a taste of that through the dark years following the Civil War. We know the scum, both white and black, that were selected and ruled our country. It has taken many years for us to recover from that blight and to overcome the antagonisms which were developed.

We will not have social intermingling. The white people of the South want separate accommodations and separate social life. The Negro of the South wants his separate accommodations and social life. We believe he should have them free from the meddling of white exploiters. Frankly, we expect to see that the two races remain segregated for the good of both. To force us to do otherwise would lead to civil strife the like of which has never before been seen.

If the agitators of this question continue their present tactics you shall have all the Negroes in the North. Then the Harlem district of New York will furnish the officers for that city. The Negro city of Detroit will control Michigan politics, and the Negroes of Chicago will furnish the officers for the State of Illinois. Then, when it is too late, you will learn what we learned during the terrible days of reconstruction.

If those in the North are opposed to discrimination, why is it you have not voted to abolish the discriminary freight rates which have been a hold-back to the South since the beginning of our Nation's transportation began? If they want to help the Negro of the South why have they opposed aid to education in the South? Why have they excluded the Negro from living in white residential sections of northern cities? Why is it that they do not have him in their homes and working for them in their offices? They may help him in any way they like, but they shall not cause our great Nation to be referred to as that great mongrel nation of the Western Hemisphere except over the opposition of the entire southland, both white and black.

Those of us who are opposed to this measure know it is unconstitutional. Many of those who support it are not interested, apparently, in whether it is con-

stitutional or not, believing that they have a Supreme Court which will find it so. When this bill was before us several years ago, full, and to me, unanswerable, briefs were filed showing this act to be unconstitutional. These briefs appear in the Congressional Record of September and November 1942. I shall not repeat them here, but earnestly request those conscientious Members of this Congress who would support this measure designed to disunite the people of the South from the Nation and to reach out the tentacles of an ever-growing central government so as to take away the last vestige of State government, to read those briefs.

Suffice it to say here, that prior to the adoption of the Federal Constitution, the country was composed of free and equal sovereign States loosely bound together by a confederation. When the Constitutional Convention was held, these sovereign States surrendered to the National Government as the central government certain rights and powers deemed by them necessary for the operation of the Federal Government, all of which are enumerated. All other powers were reserved to the States. Thus we have a Federal Government, intended by the States to have limited powers and considered a government of limited powers for 150 years. And, in regard to the franchise, held to be limited by the Congress no later than 1920, for then, when women were first permitted to vote, such change was brought about by amendment to the Federal Constitution, ratified by the States, and not as here suggested by act of Congress. In other words, the statesmen of that period did not for one moment believe that the Federal Government could remove the restrictive qualifications fixed by the States which prohibited women from voting, except by constitutional amendment as authorized under the Federal Constitution.

The provisions of the Federal Constitution, article I, section h, are 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."

Certainly, there is nothing in that provision which provides for its change by action of the Congress. That provision fixes the requirement for electors voting for Members of the House of Representatives. The writers of the Federal Constitution knew and accepted the fact that the various States fixed the qualifications for electors voting for the most numerous branch of their State legislature and the Federal Constitution by adopting such requirements as may be fixed by each State as the requirements for electors voting in national elections, can be changed only by amendment of the Federal Constitution.

This matter has been passed on many times by the Supreme Court of the United States and in each instance the Court has in no way stated that article I, section 2, can be changed except by amendment to the Constitution.

Voting has always been a privilege rather than a right. The right to vote comes from the grant of the privilege. We find this clearly stated in the case of *Breedlove* v. *Suttles* (302 U. S. 277), as follows:

"To make payment of poll taxes a prerequisite for voting is not to deny any privilege or immunity protected by the fourteenth amendment. Privilege of voting is not derived from the United States, but is conferred by the State, and save as restrained by the fifteenth and nineteenth amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate."

I call your attention further to the fact that when article I, section 2, was incorporated in the Federal Constitution, all States restricted the privilege of voting. That provision of the Federal Constitution was adopted with full knowledge that such restrictions were being exercised by the States, most of which had property qualifications, poll tax, and various educational requirements which must be met before the privilege of voting could be granted.

By amendments Nos. 14, 15, and 19, to the Federal Constitution, it was declared that State qualifications prerequisite for voting based on race, color, previous condition of servitude, and sex must no longer deny or abridge the right of citizens to vote. There, also, we find that it was recognized that the proper approach was by constitutional amendment.

So, in the present case, if the proponents of this measure want to get rid of the poll tax in the seven Southern States, the proper course is to have the Constitution amended so as to provide that payment of a poll tax shall not deny or abridge the right of a citizen to vote

Today, with war threatened on the battle fronts of the world, with a greater percentage of those boys in the last war coming from the South than from any other section, at a time when above any other we need the united efforts of all

our citizens, this bill is brought out to stir up the people of my section. Many of the group, particularly of the Democrats, which brought this matter up, are the very ones who represent districts dominated by labor unions, and this fact, together with the propaganda with which they flood our offices, leads one to the belief that the bill to some extent is aimed at the independent Members of Congress from the South who have consistently stood for the outlawing of strikes in war industries in time of war.

I say to you more is involved in this bill than the racial question. The very bedrock upon which our Nation was founded is involved. If the Federal Government can control the qualifications of electors and thus control elections, the State and the last vestige of State government is gone.

I say to you it is a serious matter to us. It is a serious matter to you, whether you realize it or not. You have seen the Federal Government, through pressure, gradually usurp practically every function of State government. By grants of money on condition, through the use of judicial construction, through the OPA, the WPA, and in every other conceivable way your States are losing control to a Federal Government with its board of economists, theoretical experts, long-haired dreamers and professors who have infested its departments and who cling on like leeches. I hate to believe that they and their actions are approved. I hate to believe you members of this committee are willing to tie another stone around the neck of State government, already having a struggle to exist. Do you not know that if by act of Congress you can remove the poll tax as a prerequisite for voting, that by the same token the Congress can pass restrictive provisions and some group interested in continued control of the Nation will do just that.

The governing body of the county in my State is the board of supervisors, some members of which have held to the belief that they can run the affairs of the county better than the citizenship. Some years ago I served in the State legislature of my State. I found there members who believed that they could run the counties better than any board of supervisors and the affairs of municipalities better than its officers, because they felt they knew more about it and the local officers could not be trusted. Since coming here to Congress I find that it is the idea and belief of many Members of Congress and of all appointed officials of the Federal Government that they know it all, that the State government cannot be trusted and that control had better be vested in the Federal Government, where the Federal departments can run the affairs of our people.

Frankly, I find that people differ very little. Each thinks his crowd can do better than any other. My State legislative body showed me little that would lead me to believe that they would in any way be an improvement over the local officers in running the affairs of our cities and counties, but frankly convinced me to the opposite. So it is here with all due deference to Congress and the various departments of the Federal Government. You have not shown me anything to indicate that the country will be better off run from Washington. Rather have I been further convinced that local government is the best. I am sold to the belief that local self-government, the people at home, without dictation from on high, will save the country, if given the opportunity. Not only in this instance of meddling with State control of elections are you interfering, but you are permitting it to be done every day. I hope the strong members of this committee, real Americans who believe in the original American form of government, who believe in the days when the Constitution meant something—and there are many—will wake up and force the return of the Government to the people. You can take a forward step along that line by voting against this bill.

Senator STENNIS. Now, Senator Connally sends the statement by Mr. Warren and also wishes to have incorporated in the record another letter from Mr. Warren to Senator Connally, which appears at page 4512 of the Congressional Record under date of Friday, May 12, 1944. I so request that it be incorporated, together with the introductory remarks by Senator Connally immediately therein preceding.

The CHAIRMAN. Without objection that will be incorporated.

(The matter referred to is as follows:)

Mr. CONNALLY. Mr. President, I ask unanimous consent to have printed in the Record a letter from Hon. Charles Warren, a very distinguished lawyer of this city, who is the author of the Supreme Court in United States History, as well as a great many other constitutional works. The letter has relation to some features of the pending bill. I therefore desire that it be printed in the body of

the Record, along with the debate. Judge Warren made a very profound and elaborate presentation of the entire subject before the Committee on the Judiciary, and his remarks there were printed in the minority views.

There being no objection, the letter was ordered to be printed in the Record as follows:

WASHINGTON, D. C., *May 10, 1944.*

Hon. TOM CONNALLY,
United States Senate,
Washington, D. C.

MY DEAR SENATOR: Will you kindly have sent to me, if there are any extra, copies of the majority and minority reports of the committee on the pending poll-tax bill?

I have read your argument in the Congressional Record of May 9 with interest. I note that it was concerned simply with article I, section 2, referring exclusively to election of Congressmen and not to election of electors for President. The pending bill, however, attempts to abolish the requirement for the poll tax as a prerequisite for voting for President, Vice President, electors for President and Vice President (as well as for Members of the House of Representatives), and the last portion of the amendment states that such requirement "is and shall be deemed an interference with the manner of holding primaries and other election for said national offices and a tax upon the right or privilege of voting for said national offices." Section 3 of the pending bill also refers to the "manner of selecting persons for national office."

I call to your attention that electors for President or Vice President are not national offices. They are State officers and it has been twice held by the Supreme Court of the United States that "the appointment and mode of appointment of electors belong exclusively to the States under the Constitution of the United States." See *Macpherson* v. *Blacker* (1892, 146 U. S. 1), as follows:

"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. Jusice Gray in *Re Green* (134 U. S. 377, 379 (33:951, 952)), 'no more officers or agents of the United States than are the 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."

There would, therefore, seem to be no authority given by the Constitution of the United States to legislate relative to the qualifications of State electors for President or as to the manner of their appointment.

Cordially yours,

CHARLES WARREN.

Senator STENNIS. Mr. Chairman, unless I have overlooked something, that is all.

The CHAIRMAN. If you have overlooked something, we will correct the record. I thank you again, gentlemen, for complying so faithfully with the rules.

Let me say to any others who may be here that the time for the proponents of this bill will be limited to 4 hours, the same as the opponents. If there are any witnesses here, I warn you now to get your written statements ready, and we may have to ask you to do just what we asked the Senators to do, and that is to confine your oral remarks to a very limited time.

As soon as I know how many witnesses wish to appear, we will be able to see that all of them will have a fair chance to have some part of oral testimony.

We will meet tomorrow morning at 10 o'clock.

(Whereupon at 12:10 p. m., the committee adjourned, to reconvene at 10 a. m., Wednesday, March 24, 1948.)

POLL TAX

WEDNESDAY, MARCH 24, 1948

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:05 o'clock a. m., in Room 104B, Senate Office Building, Senator C. Wayland Brooks (chairman) presiding.

Present: Senators Brooks (chairman) and Stennis.

The CHAIRMAN. Congressman, if you are ready, we will be glad to come to order and hear you.

Mr. BENDER. Thank you very much.

The CHAIRMAN. All right, Congressman Bender.

STATEMENT OF HON. GEORGE H. BENDER, CONGRESSMAN AT LARGE FROM THE STATE OF OHIO

Mr. BENDER. Mr. Chairman and members of the committee, as the author of the bill to abolish the poll tax in Federal elections, which has been passed by the House of Representatives with an overwhelming majority and is now before you for consideration, I want to thank you for your invitation for me to appear here this morning.

I do not feel, however, that it is necessary for me to discuss this legislation in any great detail. Three times the Senate Committee on the Judiciary, which in previous Congresses considered the poll tax restriction on the right to vote, favorably reported legislation for the abolition of the poll tax in Federal elections. I know that the thoroughgoing reports of a committee of the Senate, which examined all the arguments in regard to this legislation and recommended its passage, will carry far more weight with you in your consideration of it—and properly so—than will any words of a member of the other body. I would, therefore, like to submit copies of these three Senate reports to you now with the request that they be made a part of your record at this point. They are:

Senate Report 1662 of the Seventy-seventh Congress, second session, October 27, 1942.

Senate Report 530 of the Seventy-eighth Congress, first session, November 12, 1943.

Senator Report 625 of the Seventy-ninth Congress, first session, October 5, 1945.

The CHAIRMAN. Do you want them included as a part of your remarks?

Mr. BENDER. I would appreciate it if they were.

The CHAIRMAN. All right, they will be so made.
(The reports referred to are as follows:)

[S. Rept. 1602, 77th Cong., 2d sess., Calendar No. 1716]

AMENDING AN ACT TO PREVENT PERNICIOUS POLITICAL ACTIVITIES

The Committee on the Judiciary, to whom was referred H. R. 1024, an act to prevent pernicious political activities, begs leave to report thereon as follows:

At the same time the committee had under consideration H. R. 1024, the committee also had under consideration S. 1280, a bill concerning the qualification of voters or electors within the meaning of section 2, article I, of the Constitution, making unlawful the requirement of the payment of a poll tax as a prerequisite for voting in a primary or other election for national offices.

These two bills have the same object in view, to wit: Making unlawful the requirement for the payment of a poll tax as a prerequisite to vote in a primary, or other, election, for national offices.

Your committee recommends the passage of H. R. 1024 when amended as follows:

First. Amend the title so it will read "An act making unlawful the requirement for the payment of a poll tax as a rerequisite to voting in a primary or other election for national offices."

Second. The committee recommends that S. 1280 be amended as follows:

1. Strike out the preamble.
2. On page 2, after line 4, insert the word "other".
3. On the same page line 9, after the word "or" insert "other".
4. In line 10, strike out the words "of section 2 of article 1".
5. On the same page, in line 12, after the word "and" where it first appears in said line inserting the word "other".
6. On the same page, in line 17 after the word "or" insert the word "other".
7. On page 3, in line 3, after the word "or" insert the word "other".
8. On the same page, line 6 after the word "or" and preceding the word "election" insert the word "other."
9. On the same page, line 9, after the word "or" insert the word "other."
10. On the same page, line 14, after the word "or" and preceding the word "election" insert the word "other."
11. On the same page, line 23, after the word "or" insert the word "other."

The committee recommends that H. R. 1024 be further amended by striking out all after the enacting clause and inserting S. 1280 as thus amended. In this form your committee recommends the passage of H. R. 1024.

Practically the only question involved in this legislation is the constitutionality of the proposed legislation. The committee has reached the conclusion that the proposed legislation is constitutional and should therefore be enacted into law. Those who believe the proposed law is unconstitutional rely upon section 2, article I, of the Constitution, which reads 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."

The qualification of a voter is generally believed to have something to do with the capacity of a voter. We think it will be admitted by all that no State, or State legislature, would have the constitutional authority to disqualify a voter otherwise qualified to vote, by setting up a pretended "qualification" that in fact has nothing whatever to do with the real qualification of the voter. No one can claim that the provision of the Federal Constitution above quoted would give a legislature the right to say that no one should be entitled to vote unless, for instance, he had red hair, or had attained the age of 100 years, or any other artificial pretended qualification which, in fact, had nothing to do with the capacity or real qualification of the voter.

The evil that the legislation seeks to correct is in effect that in taking advantage of the constitutional provision regarding qualifications, the States have no right to set up a perfectly arbitrary and meaningless pretended qualification which, in fact, is no qualification whatever and is only a pretended qualification by which large numbers of citizens are prohibited from voting simply because they are poor. Can it be said, in view of the civilization of the present day that a man's poverty has anything to do with his qualification to vote? Can it be claimed that

a man is incapacitated from voting simply because he is not able to pay the fee which is required of him when he goes to vote? In other words, when States have prevented citizens from voting simply because they are not able to pay the amount of money which is stipulated shall be paid, can such a course be said to have anything to do with the real qualifications of the voter? Is it not a plain attempt to take advantage of this provision of the Constitution and prevent citizens from voting by setting up a pretended qualification which, in fact, is no qualification at all?

We believe there is no doubt but that the prerequisite of the payment of a poll tax in order to entitle a citizen to vote has nothing whatever to do with the qualifications of the voter, and that this method of disfranchising citizens is merely an artificial attempt to use the language of the Constitution, giving the State power to set up qualifications, by using other artificial means and methods which in fact have no relation whatever to qualifications.

However, the constitutionality in our opinion does not depend alone upon the language of the Constitution above quoted. There are other provisions in the Constitution and amendments to the Constitution to which we desire to call attention.

Section 4 of article I of the original Constitution reads 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."

The subcommittee to which this proposed legislation was referred has held rather extended hearings and has listened to very able and competent constitutional lawyers in the discussion of the constitutionality of the proposed legislation. These two provisions of the constitution above quoted have been discussed at great length and with great ability by some of the ablest constitutional lawyers in the country.

The pretended poll-tax qualification for voting has no place in any modern system of government. We believe it is only a means, illegal and unconstitutional in its nature, that is set up for the purpose of depriving thousands of citizens of the privilege of participating in governmental affairs by denying them a fundamental right—the right to vote.

The requiring of a citizen to pay a poll tax before he can vote is in effect the requiring of the payment of money to exercise the highest "qualification" of citizenship. It 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 and try, in this way, to come within the Federal Constitution by calling this a qualification.

In the *Yarbrough case*, decided in 110 U. S. 651, the Supreme Court of the United States said:

"The right to vote for Members of Congress is fundamentally based upon the Constitution of the United States and was not intended to be left within the exclusive control of the State."

Supreme Court Justice Miller in that case said:

"But it is not correct to say that the right to vote for a Member of Congress does not depend upon the Constitution of the United States."

In the *Classic case*, decided in 1941, Justice Stone of the Supreme Court said:

"The right of the people to choose, whatever its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by State action in conformity to the Constitution, is a right established and guaranteed by the Constitution."

Justice Stone said further:

"While in a loose sense, the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the State * * * this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'"

One might add that, since voting is one of the fundamental governmental rights, the right to tax this fundamental privilege by a State would be giving to the State the power to destroy the Federal Government. No State can tax any Federal function. This is a proposition which will have to be admitted by all and, if

this Federal function—the right to vote—can be taxed by a State, then the State has a right to destroy this Federal function which is, after all, the foundation of any government. As a matter of self-preservation, the Congress in order to save the Federal Government from possible destruction, must have the right to prevent any State authority from destroying this cornerstone of the Government itself.

The right to vote for Members of Congress is a right, as the Supreme Court has said, granted under the Constitution of the United States and, therefore, any law, constitutional or statutory, of a State which taxes this fundamental privilege is contrary to the provisions of the Federal Constitution. It could be said, of course, if these poll-tax laws are unconstitutional, they could be taken to the Supreme Court and there challenged directly and that a law of Congress is therefore unnecessary to protect this constitutional right. This is undoubtedly correct but it does not follow that, when the Congress of the United States has had brought to its attention these poll-tax laws by which millions of our citizens are in effect deprived of their right to vote, that it would not be the duty of Congress itself to pass the necessary legislation to nullify such unconstitutional State laws. Most of these people are deprived of their right to vote by these poll-tax laws which are a method of taxation. As a rule they are poor people and are unable to vote because they are poor. The very fact that it is this class of people whose rights are being taken away makes it clear that they could not rely upon their constitutional rights of carrying their cases to the Supreme Court of the United States. The expense would be absolutely prohibitive and it is therefore the duty of Congress to protect these millions of citizens in their most sacred right as citizens—the right to vote.

We think a careful examination of the so-called poll tax constitutional and statutory provisions, and an examination particularly of the constitutional conventions by which these amendments became a part of the State laws, will convince any disinterested person that the object of these State constitutional conventions, from which emanated mainly the poll-tax laws, were moved entirely and exclusively by a desire to exclude the Negro from voting. They attempted to do this in a constitutional way but, in order to follow such a course, they deemed it necessary to even prohibit the white voter the same as they did the colored voter and hence they devised the poll-tax method which applied to white and colored alike. In other words, the poll-tax laws were prohibitive to all people, regardless of color, who were poor and unable to pay the poll tax.

We desire to call attention to the Virginia constitutional convention which submitted an amendment which was afterward adopted to the Constitution of Virginia by which it was intended to disfranchise a very large number of Virginia citizens. We think this convention can be regarded as a fair sample of other conventions in other poll-tax States. Hon. Carter Glass was a member of that convention. Near the beginning of the convention Senator Glass made a speech in which he outlined in very forceful language what the object was, after all, of the convention. He did this in his usual commendatory method of getting at the real cream in the coconut. Near the beginning of the convention he made a speech in which he said:

"The chief purpose of this convention is to amend the suffrage clause of the existing constitution. It does not require much prescience to foretell that the alterations which we shall make will not apply to 'all persons and classes without distinction.' We were sent here to make distinctions. We expect to make distinctions. We will make distinctions."

Near the conclusion of the convention, Senator Glass delivered another address in which he referred to the work already performed by the convention. He said:

"I declared then (referring to the beginning of the convention and the debate on the oath) that no body of Virginia gentlemen could frame a constitution so obnoxious to my sense of right and morality that I would be willing to submit its fate to 146,000 ignorant Negro voters [great applause] whose capacity for self-government we have been challenging for 30 years past."

There is no doubt but what Senator Glass stated the real object the convention had in view. The fact that his remarks were received with great applause indicates that his fellow members of that convention agreed with him and that the real object they had in view, and which they believed they could accomplish, was disfranchising "146,000 ignorant Negro voters."

Under the circumstances, can there be any doubt when perhaps the greatest leader of all stated what the object was and what was expected to be accomplished by the so-called poll-tax laws? If we concede that this was the object of the law, then we admit it is unconstitutional because, if this was the effect of the law, it

in fact made an artificial qualification which, in itself, is illegal and unconstitutional, in order to come in under the qualification clause of section 2, article I, of the Constitution.

It ought to be borne in mind also that many, if not all of these constitutional amendments in the poll-tax States are in direct conflict with the statutes under which these States were readmitted to the Union under the act of Congress of June 26, 1870 (16 Stat. p. 62). The provision which refers to Virginia reads as follows:

"The Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they have been duly convicted under laws, equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution, prospective in its effort, may be made in regard to the time and place of residence of voters."

It therefore follows that these State poll tax constitutional amendments were in direct violation of this statute and therefore absoluetly unconstitutional.

It seems perfectly plain that the object of this poll-tax provision in the State constitutions was not to prevent discrimination among the citizens but to definitely provide for a discrimination by which hundreds of thousands of citizens were taxed for the privilege of voting and that, therefore, under section 2 of article I of the Constitution, it sems plain that such a provision in the State constitution, or State law, was simply a subterfuge to accomplish other aims by resorting to the so-called "qualification" clause in section 2 of article I of the Constitution. It is likewise equally plain that at the end of the War Between the States, when these States were readmitted to the Union, they were readmitted under a statute of Congress which provided explicitly that the constitutions of the States "shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote."

It is therefore plain, under all the circumstances, that the so-called poll-tax laws of the State bringing about such a disqualification to its citizens in the exercising of suffrage is in clear violation of the laws of Congress in addition to being a violation of the Constitution of the United States. It is a clear violation of the agreement made by the State, when it was readmitted, that it should not provide for such discriminatory amendments to the State constitutions. It follows therefore that the so-called poll-tax laws, bringing about the disfranchising of its citizens in the exercise of suffrage, are a clear violation of the laws of Congress in addition to being a violation of the Constitution of the United States.

Those who believe the proposed legislation is unconstitutional rely on the statement of a historic fact that, when the Constitution was adopted, all of the original States had property or tax qualifications. This ignores entirely the testimony of scholars which clearly demonstrates why that fact alone does not prove the right of Congress today to forbid such requirements for voting in Federal elections. It seems to us that this regulation is subject to the criticism which Mr. Justice Holmes leveled against the use of history when he said:

"It is revolting to have no better reason for a rule of law than that it is laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since and the rule persists from blind imitation of the past. (Holmes: The Path of the Law, in Collection Papers, p. 187.)"

We think also Justice Holmes was right when, in discussing the situation in *Missouri* v. *Holland* (252 U. S. 116, 433), he said:

"It (the Constitution) must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago."

The constitutional provision relied upon to strike down this legislation as unconstitutional must be considered with other constitutional provisions.

In section 4, article IV, of the Constitution of the United States, it is provided:

"The United States shall guarantee to every State in this Union a republican form of Government."

What does this mean in the light of the present-day civilization? 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 to be unconstitutional. 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.. If we tax this fundamental right, we are taxing a Federal privilege. We might just as well permit the States to tax Federal post offices throughout the United States.

Under the guise of a pretended qualification this provision of the Constitution, we believe, has been nullified every time a State has denied the right to vote to any of its citizens because they do not have the money to pay the State the fee set up as a pretended "qualification." We think that this fact has been fully demonstrated by requiring the payment of a poll tax for the right to vote.

It is conceded, we think, even by those who believe the proposed law is unconstitutional that, while the poll tax is comparatively small in amount, if any poll tax at all can be enforced so as to prohibit voting by those who do not have the fee, the principle involved would permit the State to fix a fee much higher than is usually fixed now, and it is not at all unlikely that, in carrying out the real provisions of the poll-tax laws, this amount could be increased so that the poll tax might be fixed at $10, $50, $100, or even greater. The constitutional right to fix any poll-tax fee concedes the right to fix that fee at any amount desired.

Section 1 of the fourteenth amendment to the Constitution of the United States reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is quite clear that the so-called poll-tax laws do abridge the privileges and immunities of the citizens of the United States. If citizens of the United States are required to pay a poll tax it is clearly an abridgement of their privileges and immunities.

It is said that section 2 provides an exclusive remedy for a violation of section 1 of the fourteenth amendment to the Constitution. Section 2 refers to the apportionment among the several States of representatives in Congress and provides for the reduction in the number of such representatives whenever the right to vote is denied. We do not think this remedy is an exclusive one. Section 1 of the fourteenth amendment to the Constitution is positive in its terms and says that no State shall make or enforce any law which is an abridgment of the privileges and immunities of citizens of the United States.

[S. Rept. 530, 78th Cong., 1st sess., Calendar No. 538]

POLL TAXES

The Committee on the Judiciary, to whom was referred the bill (H. R. 7) making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national officers, having considered the same, report favorably thereon and recommend that the bill do pass.

House bill 7 makes unlawful the requirement of the payment of a poll tax as a prerequisite to voting in a general or other election for national officers.

The principal question involved in this legislation is the constitutionality of the proposed legislation. The committee has reached the conclusion that the proposed legislation is constitutional and should be enacted into law. Those who believe it unconstitutional rely upon section 2, article I, of the Constitutional which reads 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."

The sponsors of the poll-tax laws do not admit that they have prevented anyone from voting. In fact these laws do not, on their face, directly prohibit any citizen from voting. The effect is brought about by the levying of a poll tax and providing that the citizen must pay this poll tax in order to vote. While he is not denied the right to vote, he is taxed for this privilege and, in case of

poverty, this results in a denial of the privilege of voting and thus directly interferes with the citizen's right to participate in governmental affairs. Section 1 of the fourteenth amendment to the Constitution says that this shall not be done and these laws therefore come in direct conflict with section 1 of the fourteenth amendment.

The fourteenth amendment to the Constitution has other sections referring to the right to hold office by a Senator or Representative in Congress and with reference to electors for President and Vice President. Section 4 of this amendment refers to the public debt of the United States and prohibits the United States or any State from assuming or paying any debt or obligation incurred in aid of insurrection or rebellion against the United States. Section 2, as above stated, refers to the apportionment of Representatives among the several States.

There is no more reason why section 2 should modify section 1 than there is that section 3 or section 4 should be considered in connection with section 1.

It is quite clear that the so-called poll-tax laws do abridge the privileges and immunities of citizens of the United States. If any citizen of the United States is deprived of the privilege of voting by any of these poll-tax laws, it seems a clear abridgment of the privileges of citizens of the United States. One of the greatest privileges, and a fundamental one, of every citizen of the United States is the right to vote. If he is deprived of this right, he is denied the right to participate in governmental affairs. Such a citizen becomes an outcast. He is subject to all the laws of the State. His citizenship is admitted and the burdens which rest upon him are the same as rest upon all other citizens. He can be drafted into the Army and be compelled to face the foe and give up his life to protect the lives of his fellow citizens. Yet he is deprived of the most sacred privilege of all—the right to vote. It is quite evident that all these poll-tax laws are in direct violation of section 1 of the fourteenth amendment to the Constitution as well as being in violation of other constitutional and Federal laws heretofore referred to.

The qualification of a voter is believed to have something to do with the capacity of a voter. No State would have the constitutional authority to disqualify a voter otherwise qualified to vote, by setting up a pretended "qualification" that in fact has nothing whatever to do with the real qualification of the voter. No one can claim that the provision of the Federal Constitution above-quoted would give a legislature the right to say that no one should be entitled to vote unless, for instance, he had red hair, or had attained the age of 100 years, or any other artificial pretended qualification which, in fact, had nothing to do with capacity or real qualification.

The evil that the legislation seeks to correct is in effect that in taking advantage of the constitutional provision regarding qualifications, the States have no right to set up a perfectly arbitrary and meaningless pretended qualification which, in fact, is no qualification whatever and is only a pretended qualification by which large numbers of citizens are prohibited from voting simply because they are poor. Can it be said, in view of the civilization of the present day, that a man's poverty has anything to do with his qualification to vote? Can it be claimed that a man is incapacitated from voting simply because he is not able to pay the fee which is required of him when he goes to vote? In other words, when the States have prevented citizens from voting simply because they are not able to pay the amount of money which is stipulated shall be paid, can such a course be said to have anything to do with the real qualifications of the voter? Is it not a plain attempt to take advantage of this provision of the Constitution and prevent citizens from voting by setting up a pretended qualification which, in fact, is no qualification at all?

We believe there is no doubt but that the prerequisite of the payment of a poll tax in order to entitle a citizen to vote has nothing whatever to do with the qualifications of the voter, and that this method of disfranchising citizens is merely an artificial attempt to use the language of the Constitution, giving the State power to set up qualifications, by using other artificial means and methods which in fact have no relation whatever to qualifications.

However, the constitutionality in our opinion does not depend alone upon the language of the Constitution above quoted. There are other provisions in the Constitution and amendments to the Constitution to which we desire to call attention.

Section 4 of article I of the original Constitution reads 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."

The subcommittee to which this proposed legislation was referred in the Seventy-seventh Congress held rather extended hearings and the full committee in this Congress has listened to very able and competent constitutional lawyers in the discussion of the constitutionality of the proposed legislation. These two provisions of the Constitution above quoted have been discussed at great length and with great ability by some of the ablest constitutional lawyers in the country.

The pretended poll-tax qualification for voting has no place in any modern system of government. We believe it is only a means, illegal and unconstitutional in its nature, that is set up for the purpose of depriving thousands of citizens of the privilege of participating in governmental affairs by denying them a fundamental right—the right to vote.

The requiring of a citizen to pay a poll tax before he can vote is in effect the requiring of the payment of money to exercise the highest "qualification" of citizenship. It 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 and try, in this way, to come within the Federal Constitution by calling this a qualification.

Since voting is one of the fundamental governmental rights, the right to tax this fundamental privilege by a State would be giving to the State the power to destroy the Federal Government. No State can tax any Federal function. This is a proposition which will have to be admitted by all and, if this Federal function—the right to vote—can be taxed by a State then the State has a right to destroy this Federal function which is, after all, the foundation of any government. As a matter of self-preservation, the Congress in order to save the Federal Government from possible destruction, must have the right to prevent any State authority from destroying this cornerstone of the Government itself.

The right to vote for Members of Congress is a right, as the Supreme Court has said, granted under the Constitution of the United States and, therefore, any law, constitutional or statutory, of a State which taxes this fundamental privilege is contrary to the provisions of the Federal Constitution. It could be said, of course, if these poll-tax laws are unconstitutional, they could be taken to the Supreme Court and there challenged directly and that a law of Congress is therefore unnecessary to protect this constitutional right. This is undoubtedly correct but it does not follow that, when the Congress of the United States has had brought to its attention these poll-tax laws by which millions of our citizens are in effect deprived of their right to vote, that it would not be the duty of Congress itself to pass the necessary legislation to nullify such unconstitutional State laws. Most of these people are deprived of their right to vote by these poll-tax laws which are a method of taxation. As a rule they are poor people and are unable to vote because they are poor. The very fact that it is this class of people whose rights are being taken away makes it clear that they could not rely upon their constitutional rights of carrying their cases to the Supreme Court of the United States. The expense would be absolutely prohibitive and it is therefore the duty of Congress to protect these millions of citizens in their most sacred right as citizens—the right to vote.

We think a careful examination of the so-called poll tax constitutional and statutory provisions, and an examination particularly of the constitutional conventions by which these amendments became a part of the State laws, will convince any disinterested person that the object of these State constitutional conventions, from which emanated mainly the poll-tax laws, were moved entirely and exclusively by a desire to exclude the Negro from voting. They attempted to do this in a constitutional way but, in order to follow such a course, they deemed it necessary to even prohibit the white voter the same as they did the colored voter and hence they devised the poll-tax method which applied to white and colored alike. In other words, the poll-tax laws were prohibitive to all people, regardless of color, who were poor and unable to pay the poll tax.

It ought to be borne in mind also that many, if not all, of these constitutional amendments in the poll-tax States are in direct conflict with the statutes under which these States were readmitted to the Union under the act of Congress of June 26, 1870 (16 Stat., p. 62). The provision which refers to Virginia reads as follows:

"The Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they have been duly convicted under laws, equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution, prospective in its effect, may be made in regard to the time and place of residence of voters."

It therefore follows that these State poll tax constitutional amendments were in direct violation of this statute and therefore absolutely unconstitutional.

It seems perfectly plain that the object of this poll-tax provision in the State constitutions was not to prevent discrimination among the citizens but to definitely provide for a discrimination by which hundreds of thousands of citizens were taxed for the privilege of voting and that, therefore, under section 2 of article I of the Constitution, it seems plain that such a provision in the State constitution, or State law, was simply a subterfuge to accomplish other aims by resorting to the so-called qualification clause in section 2, article I of the Constitution. It is likewise equally plain that at the end of the War Between the States, when these States were readmitted to the Union, they were readmitted under a statute of Congress which provided explicitly that the constitutions of the States—

"shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote."

It is therefore plain, under all the circumstances, that the so-called poll-tax laws of the State bringing about such a disqualification to its citizens in the exercising of suffrage is in clear violation of the laws of Congress in addition to being a violation of the Constitution of the United States. It is a clear violation of the agreement made by the State, when it was readmitted, that it should not provide for such discriminatory amendments to the State constitutions. It follows, therefore, that the so-called poll-tax laws, bringing about the disfranchising of its citizens in the exercise of suffrage, are a clear violation of the laws of Congress in addition to being a violation of the Constitution of the United States.

Those who believe the proposed legislation is unconstitutional rely on the statement of a historic fact that, when the Constitution was adopted, all of the original States had property or tax qualifications. This ignores entirely the testimony of scholars which clearly demonstrates why that fact alone does not prove the right of Congress today to forbid such requirements for voting in Federal elections. It seems to us that this regulation is subject to the criticism which Mr. Justice Holmes leveled against the use of history when he said:

"It is revolting to have no better reason for a rule of law than that it is laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since and the rule persists from blind imitation of the past. (Holmes: The Path of the Law, in Collection Papers, p. 187.)"

We think also Justice Holmes was right when, in discussing the situation in *Missouri* v. *Holland* (252 U. S. 416, 433), he said:

"It [the Constitution] must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago."

The constitutional provision relied upon to strike down this legislation as unconstitutional must be considered with other constitutional provisions.

In section 4, article IV, of the Constitution of the United States, it is provided:

"The United States shall guarantee to every State in this Union a Republican Form of Government * * *."

What does this mean in the light of the present-day civilization? 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 to be unconstitutional. 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 freemen. If it is not, then we do not have a republican form of government. If we tax this fundamental right, we are taxing a Federal privilege. We might just as well permit the States to tax Federal post offices throughout the United States.

Under the guise of a pretended qualification this provision of the Constitution, we believe, has been nullified every time a State has denied the right to vote to any of its citizens because they do not have the money to pay the State

the fee set up as a pretended "qualification." We think that this fact has been fully demonstrated by requiring the payment of a poll tax for the right to vote.

It is conceded, we think, even by those who believe the proposed law is unconstitutional that while the poll tax is comparatively small in amount, if any poll tax at all can be enforced so as to prohibit voting by those who do not have the fee, the principle involved would permit the State to fix a fee much higher than is usually fixed now, and it is not at all unlikely that, in carrying out the real provisions of the poll-tax laws, this amount could be increased so that the poll tax might be fixed at $10, $50, $100, or even greater. The constitutional right to fix any poll-tax fee concludes the right to fix that fee at any amount desired.

Section 1 of the fourteenth amendment to the Constitution of the United States reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

It is quite clear that the so-called poll-tax laws do abridge the privileges and immunities of the citizens of the United States. If citizens of the United States are required to pay a poll tax, it is clearly an abridgment of their privileges and immunities.

It is said that section 2 provides an exclusive remedy for a violation of section 1 of the fourteenth amendment to the Constitution. Section 2 refers to the apportionment among the several States of representatives in Congress and provides for the reduction in the number of such representatives whenever the right to vote is denied. We do not think this remedy is an exclusive one. Section 1 of the fourteenth amendment to the Constitution is positive in its terms and says that no State shall make or enforce any law which is an abridgment of the privileges and immunities of citizens of the United States.

The sponsors of the poll-tax laws do not admit that they have prevented anyone from voting. In fact these laws do not, on their face, directly prohibit any citizen from voting. The effect is brought about by the levying of a poll tax and providing that the citizen must pay this poll tax in order to vote. While he is not denied the right to vote, he is taxed for this privilege and, in case of poverty, this results in a denial of the privilege of voting and thus directly interferes with the citizen's right to participate in governmental affairs. Section 1 of the fourteenth amendment to the Constitution says that this shall not be done, and these laws, therefore, come in direct conflict with section 1 of the fourteenth amendment.

The fourteenth amendment to the Constitution has other sections referring to the right to hold office by a Senator or Representative in Congress and with reference to electors for President and Vice President. Section 4 of this amendment refers to the public debt of the United States and prohibits the United States or any State from assuming or paying any debt or obligation incurred in aid of insurrection or rebellion against the United States. Section 2, as above stated, refers to the apportionment of Representatives among the several States.

There is no more reason why section 2 should modify section 1 than there is that section 3 or section 4 should be considered in connection with section 1.

It is quite clear that the so-called poll-tax laws do abridge the privileges and immunities of citizens of the United States. If any citizen of the United States is deprived of the privilege of voting by any of these poll-tax laws, it seems a clear abridgment of the privileges of citizens of the United States. One of the greatest privileges, and a fundamental one, of every citizen of the United States is the right to vote. If he is deprived of this right, he is denied the right to participate in governmental affairs. Such a citizen becomes an outcast. He is subject to all the laws of the State. His citizenship is admitted and the burdens which rest upon him are the same as rest upon all other citizens. He can be drafted into the Army and be compelled to face the foe and give up his life to protect the lives of his fellow citizens. Yet he is deprived of the most sacred privilege of all—the right to vote. It is quite evident that all these poll-tax laws are in direct violation of section 1 of the fourteenth amendment to the Constitution as well as being in violation of other constitutional and Federal laws heretofore referred to.

[S. Rept. 625, 79th Cong., 1st sess., Calendar No. 628]

POLL TAXES

The Committee on the Judiciary, to whom was referred the bill (H. R. 7) making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national officers, having considered the same, report favorably thereon and recommend that the bill do pass.

The subcommittee to which H. R. 7 was referred in this Congress, reported it favorably to the full committee.

House bill 7 makes unlawful the requirement of the payment of a poll tax as a prerequisite to voting in a general or other election for national officers.

The principal question involved in this legislation is the constitutionality of the proposed legislation. The committee has reached the conclusion that the proposed legislation is constitutional and should be enacted into law. Those who believe it unconstitutional rely upon section 2, article I, of the Constitution which reads 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."

The qualification of a voter is believed to have something to do with the capacity of a voter. No State would have the constitutional authority to disqualify a voter otherwise qualified to vote, by setting up a pretended "qualification" that in fact has nothing whatever to do with the real qualification of the voter. No one can claim that the provision of the Federal Constitution above quoted would give a legislature the right to say that no one should be entitled to vote unless, for instance, he had red hair, or had attained the age of 100 years, or any other artificial pretended qualification which, in fact, had nothing to do with capacity or real qualification.

The evil that the legislation seeks to correct is in effect that in taking advantage of the constitutional provision regarding qualifications, the States have no right to set up a perfectly arbitrary and meaningless pretended qualification which in fact, is no qualification whatever and is only a pretended qualification by which large numbers of citizens are prohibited from voting simply because they are poor. Can it be said, in view of the civilization of the present day, that a man's poverty has anything to do with his qualification to vote? Can it be claimed that a man is incapacitated from voting simply because he is not able to pay the fee which is required of him when he goes to vote? In other words, when States have prevented citizens from voting simply because they are not able to pay the amount of money which is stipulated shall be paid, can such a course be said to have anything to do with the real qualifications of the voter? Is it not a plain attempt to take advantage of this provision of the Constitution and prevent citizens from voting by setting up a pretended qualification which, in fact, is no qualification at all?

We believe there is no doubt but that the prerequisite of the payment of a poll tax in order to entitle a citizen to vote has nothing whatever to do with the qualifications of the voter, and that this method of disfranchising citizens is merely an artificial attempt to use the language of the Constitution, giving the State power to set up qualifications, by using other artificial means and methods which in fact have no relation whatever to qualifications.

However, the constitutionality in our opinion does not depend alone upon the language of the Constitution above quoted. There are other provisions in the Constitution and amendments to the Constitution to which we desire to call attention.

Section 4 of article I of the original Constitution reads 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."

The subcommittee to which this proposed legislation was referred in the Seventy-seventh Congress and the full Judiciary Committee in the Seventy-eighth Congress held rather extended hearings and listened to very able and competent constitutional lawyers in the discussion of the constitutionality of the proposed legislation. These two provisions of the Constitution above quoted have been discussed at great length and with great ability by some of the ablest constitutional lawyers in the country.

The pretended poll-tax qualification for voting has no place in any modern system of government. We believe it is only a means, illegal and unconstitutional in its nature, that is set up for the purpose of depriving thousands of citizens of the privilege of participating in governmental affairs by denying them a fundamental right—the right to vote.

The requiring of a citizen to pay a poll tax before he can vote is in effect the requiring of the payment of money to exercise the highest "qualification" of citizenship. It 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 and try, in this way, to come within the Federal Constitution by calling this a qualification.

Since voting is one of the fundamental governmental rights, the right to tax this fundamental privilege by a State would be giving to the State the power to destroy the Federal Government. No State can tax any Federal function. This is a proposition which will have to be admitted by all and, if this Federal function—the right to vote—can be taxed by a State then the State has a right to destroy this Federal function which, is after all, the foundation of any government. As a matter of self-preservation, the Congress in order to save the Federal Government from possible destruction, must have the right to prevent any State authority from destroying this cornerstone of the Government itself.

The right to vote for Members of Congress is a right, as the Supreme Court has said, granted under the Constitution of the United States and, therefore, any law, constitutional or statutory, of a State which taxes this fundamental privilege is contrary to the provisions of the Federal Constitution. It could be said, of course, if these poll-tax laws are unconstitutional, they could be taken to the Supreme Court and there challenged directly and that a law of Congress is therefore unnecessary to protect this constitutional right. This is undoubtedly correct ,but it does not follow that, when the Congress of the United States has had brought to its attention these poll-tax laws by which millions of our citizens are in effect deprived of their right to vote, that it would not be the duty of Congress itself to pass the necessary legislation to nullify such unconstitutional State laws. Most of these people are deprived of their right to vote by these poll-tax laws which are a method of taxation. As a rule they are poor people and are unable to vote because they are poor. The very fact that it is this class of people whose rights are being taken away makes it clear that they could not rely upon their constitutional rights of carrying their cases to the Supreme Court of the United States. The expense would be absolutely prohibitive, and it is, therefore, the duty of Congress to protect these millions of citizens in their most sacred right as citizens—the right to vote.

We think a careful examination of the so-called poll-tax constitutional and statutory provisions, and an examination particularly of the constitutional conventions by which these amendments became a part of the State laws, will convince any disinterested person that the object of these State constitutional conventions, from which emanated mainly the poll-tax laws, were moved entirely and exclusively by a desire to exclude the Negro from voting. They attempted to do this in a constitutional way but, in order to follow such a course, they deemed it necessary to even prohibit the white voter the same as they did the colored voter and hence they devised the poll-tax method which applied to white and colored alike. In other words, the poll-tax laws were prohibitive to all people, regardless of color, who were poor and unable to pay the poll tax.

It ought to be borne in mind also that many, if not all, of these constitutional amendments in the poll-tax States are in direct conflict wtih the statutes under which these States were readmitted to the Union under the act of Congress of June 26, 1870 (16 Stat., p. 62). The provision which refers to Virginia reads as follows:

"The Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they have been duly convicted under laws, equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution, prospective in its effect, may be made in regard to the time and place of residence of voters."

It therefore follows that these State poll tax constitutional amendments were in direct violation of this statute and therefore absolutely unconstitutional.

It seems perfectly plain that the object of this poll-tax provision in the State constitutions was not to prevent discrimination among the citizens but to defi-

nitely provide for a discrimination by which hundreds of thousands of citizens were taxed for the privilege of voting and that, therefore, under section 2 of article I of the Constitution, it seems plain that such a provision in the State constitution, or State law, was simply a subterfuge to accomplish other aims by resorting to the so-called qualification clause in section 2 of article I of the Constitution. It is likewise equally plain that at the end of the War Between the States, when these States were readmitted to the Union, they were readmitted under a statute of Congress which provided explicitly that the constitutions of the States "shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote."

It is therefore plain, under all the circumstances, that the so-called poll-tax laws of the State bringing about such a disqualification to its citizens in the exercising of suffrage is in clear violation of the laws of Congress in addition to being a violation of the Constitution of the United States. It is a clear violation of the agreement made by the State, when it was readmitted, that it should not provide for such discriminatory amendments to the State constitutions. It follows therefore that the so-called poll-tax laws, bringing about the disfranchising of its citizens in the exercise of suffrage, are a clear violation of the laws of Congress in addition to being a violation of the Constitution of the United States.

Those who believe the proposed legislation is unconstitutional rely on the statement of a historic fact that, when the Constitution was adopted, all of the Original States had property or tax qualifications. This ignores entirely the testimony of scholars which clearly demonstrates why that fact alone does not prove the right of Congress today to forbid such requirements for voting in Federal elections. It seems to us that this regulation is subject to the criticism which Mr. Justice Holmes leveled against the use of history when he said:

"It is revolting to have no better reason for a rule of law than that it is laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since and the rule persists from blind imitation of the past." (Holmes: The Path of the Law, in Collection Papers, p. 187.)

We think, also, Justice Holmes was right when, in discussing the situation in *Missouri* v. *Holland* (252 U. S. 416, 433), he said:

"It [the Constitution] must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago."

The constitutional provision relied upon to strike down this legislation as unconstitutional must be considered with other constitutional provisions.

In section 4, article IV, of the Constitution of the United States, it is provided:

"The United States shall guarantee to every State in this Union a Republican Form of Government * * *."

What does this mean in the light of the present-day civilization? 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 to be unconstitutional. 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 freemen. If it is not, then we do not have a republican form of government. If we tax this fundamental right, we are taxing a Federal privilege. We might just as well permit the States to tax Federal post offices throughout the United States.

Under the guise of a pretended qualification this provision of the Constitution, we believe, has been nullified every time a State has denied the right to vote to any of its citizens because they do not have the money to pay the State the fee set up as a pretended "qualification." We think that this fact has been fully demonstrated by requiring the payment of a poll tax for the right to vote.

It is conceded, we think, even by those who believe the proposed law is unconstitutional that, while the poll tax is comparatively small in amount, if any poll tax at all can be enforced so as to prohibit voting by those who do not have the fee, the principle involved would permit the State to fix a fee much higher than is usually fixed now, and it is not at all unlikely that, in carrying out the real provisions of the poll-tax laws, this amount could be increased so that the poll tax might be fixed at $10, $50, $100, or even greater. The constitutional right to fix any poll-tax fee concedes the right to fix that fee at any amount desired.

Section 1 of the fourteenth amendment to the Constitution of the United States reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is quite clear that the so-called poll-tax laws do abridge the privileges and immunities of the citizens of the United States. If citizens of the United States are required to pay a poll tax, it is clearly an abridgment of their privileges and immunities.

It is said that section 2 provides an exclusive remedy for a violation of section 1 of the fourteenth amendment to the Constitution. Section 2 refers to the apportionment among the several States of representatives in Congress and provides for the reduction in the number of such representatives whenever the right to vote is denied. We do not think this remedy is an exclusive one. Section 1 of the fourteenth amendment to the Constitution is positive in its terms and says that no State shall make or enforce any law which is an abridgment of the privileges and immunities of citizens of the United States.

The sponsors of the poll-tax laws do not admit that they have prevented anyone from voting. In fact, these laws do not, on their face, directly prohibit any citizen from voting. The effect is brought about by the levying of a poll tax and providing that the citizen must pay this poll tax in order to vote. While he is not denied the right to vote, he is taxed for this privilege and, in case of poverty, this results in a denial of the privilege of voting and thus directly interferes with the citizen's right to participate in governmental affairs. Section 1 of the fourteenth amendment to the Constitution says that this shall not be done, and these laws, therefore, come in direct conflict with section 1 of the fourteenth amendment.

The fourteenth amendment to the Constitution has other sections referring to the right to hold office by a Senator or Representative in Congress and with reference to electors for President and Vice President. Section 4 of this amendment refers to the public debt of the United States and prohibits the United States or any State from assuming or paying any debt or obligation incurred in aid of insurrection or rebellion against the United States. Section 2, as above stated, refers to the apportionment of Representatives among the several States.

There is no more reason why section 2 should modify section 1 than there is that section 3 or section 4 should be considered in connection with section 1.

It is quite clear that the so-called poll-tax laws do abridge the privileges and immunities of citizens of the United States. If any citizen of the United States is deprived of the privilege of voting by any of these poll-tax laws, it seems a clear abridgment of the privileges of citizens of the United States. One of the greatest privileges, and a fundamental one, of every citizen of the United States is the right to vote. If he is deprived of this right, he is denied the right to participate in governmental affairs. Such a citizen becomes an outcast. He is subject to all the laws of the State. His citizenship is admitted and the burdens which rest upon him are the same as rest upon all other citizens. He can be drafted into the Army and be compelled to face the foe and give us his life to protect the lives of his fellow citizens. Yet he is deprived of the most sacred privilege of all—the right to vote. It is quite evident that all these poll-tax laws are in direct violation of section 1 of the fourteenth amendment to the Constitution as well as being in violation of other constitutional and Federal laws heretofore referred to.

Mr. BENDER. By now the facts about the poll tax are well known. It was designed to limit the vote. It does limit the vote. It is a denial of basic American rights. The Congress clearly has the right to abolish it as a restriction on the franchise in Federal elections. The time has now come for it to be abolished.

The fight to restore a free ballot to the citizens of the United States to whom it is denied by the poll tax has been a long fight. I am proud of my part in that fight. The House of Representatives has four times passed this legislation. Its passage was not an easy thing when

the Committee of the House which had jurisdiction of it was opposed to its consideration. In the Seventy-seventh, Seventy-eighth, and Seventy-ninth Congresses, I served as chairman of the group which forced the discharge of the bill from committee and steered its passage by the House. It was disappointing, I admit, to see our work nullified by the failure of the bill ever to be brought to a vote in the other body of the Congress. But the investment of time and energy will be well rewarded when the poll tax is finally abolished in Federal elections in the present Eightieth Congress. More important, hundreds of thousands of American citizens—Negro and white alike—will have an opportunity to cast a free ballot for the first time in their lives.

Those of you who come—as I do—from free voting States may find it difficult to realize the full extent of the disfranchisement in the poll-tax States. The actual figures are more eloquent than any amount of debate. There are 69 members of the House of Representatives from the seven poll-tax States. In the most recent congressional elections, according to the official election statistics published by the Clerk of the House of Representatives, the total vote cast for all 69 Members of the House from the poll-tax States—and for their opponents where they had any—was 1,244,000. Now I am elected at large from the State of Ohio—but it is just one State—and in the last election I received 1,281,000 votes. Consider those figures a moment. In the free-voting State of Ohio I received more votes than were cast for all 69 Members of the House from all of the poll-tax States. In addition, my opponent received 871,000 votes, so that in my election there were 900,000 more votes cast than in the whole poll-tax area from the Potomac to the Gulf of Mexico.

Where Federal officials are elected by 2 or 3 percent of the people, or even by 10 or 15 percent of the people as may be the case in a hotly contested primary election, it is not only the Negro citizen who does not get to the polls. The great majority of the people—Negro and white alike—do not vote in the poll-tax States.

This is precisely the result which the poll tax was designed to accomplish in the period of disfranchisement in the 1890's and 1900's. And let me emphasize the fact that the poll tax as it exists as a restriction on the right to vote today is no hangover from colonial times. Everywhere that it exists today it was put into effect within the memory of men now living. I would like the record to show the dates of the adoption of the poll tax as a restriction on the right to vote. The dates are: Mississippi, 1890; Tennessee 1890; South Carolina, 1895; Alabama, 1901; Virginia, 1901; Texas, 1903; Arkansas 1908.

There is no secret as to the purpose of these poll-tax restrictions when they were imposed. The state conventions which adopted them left no doubt that their purpose was to place the control of the government in the hands of a minority and to exclude the great majority of the citizens—Negro and White alike—from the polls. A delegate to the Virginia convention of 1901 said, as recorded in the proceedings of that convention:

> **There is a mass of vicious and incapable whites which must be debarred from the suffrage * * *. The general objection which I have heard to this system is that, along with many stupid and vicious whites, some worthy and good citizens will be disfranchised. This is doubtless true.**

How well these conventions accomplish the work of disfranchisement was shown by the immediate effect of the poll tax in reducing

the size of the electorate. In the State of Virginia, in the last Presidential election before the imposition of the poll tax, 266,000 persons voted. In the first Presidential election after the imposition of the poll tax the vote was cut to 136,000—an immediate reduction of 49 percent. In Mississippi, in the last Presidential election before the imposition of the poll tax, 117,000 persons voted. In the first Presidential election after the imposition of the poll tax the vote was cut to 52,000—an immediate reduction of 56 percent. There was a comparable situation in the other States. This reduced electorate has become a permanent characteristic of poll-tax elections. In the congressional elections of 1946, in the 41 States where free elections were held, an average of 47 percent of the potential voters cast their ballots. In the seven poll-tax States an average of 10 percent of the potential voters voted.

It has been said in defense of the poll tax in these hearings that the tax receipts are used for the support of public education. That is a worthy use of tax money. If any State in its wisdom wishes to raise revenue for public education, or for any other purpose, by means of a head tax that is certainly the prerogative of the State. It has been said that citizens who pay no other taxes may make a contribution to the State treasury through such a tax. That may well be true. Let me make it clear that I have no concern with the poll tax as a means of raising revenue. It is when the poll tax is made a restriction on the right to vote that it becomes a pernicious thing, and when it is used as a device to limit the franchise in Federal elections it becomes the concern of Congress.

I do not feel called upon here to inquire into the use of any State tax receipts. But since the matter of the poll tax as an aid to education has been advanced in defense of the poll tax, let me made one observation on it. It appears to me that public education would be far better served if the schools had been the benefit of some tax for the collection of which a more vigorous effort was made than appears to be the case with the poll tax where it is a restriction on the right to vote. In this connection permit me to quote from an editorial in the Bulletin of the Teachers Association of Birmingham, Ala.

It will mean more to education in Alabama—

and I am quoting—

It will mean more to education in Alabama to have the citizens we have trained take part in the settling of political questions than to receive the pittance from the tax and then see the vital matters of the State decided by only 10 to 30 percent of the people, many of whom have been prodded by political leaders to dig up the price of tax.

Mr. Chairman, during the past 2 days of testimony in opposition to this legislation the apologists for the poll tax have made very conflicting claims. Some of them have insisted that the poll tax does not disfranchise anyone. Others have admitted that it does but have contended that the remedy is in State action. Still others have contended that the remedy is through constitutional amendment. But there seems to be one thing on which they are agreed—and that is their opposition to the simple and effective abolition of the poll tax through the legislation now before you. I respectfully submit, Mr. Chairman, that the time has come for the Congress of the United States to remove the poll-tax restriction on the right to vote in Federal elections and to

restore a free ballot to the millions of American citizens who are now denied that right.

Here I would like to refer to an article I read in the New York Times this morning reporting your meeting of yesterday. The headline says, "Anti-poll-tax bill is stamped 'Red.' Virginians, led by Governor, also call it unconstitutional, violating States' rights." Now, I object to being referred to as a "Red." I happen to be a Republican from the State of Ohio. I have been nominated for Congress by the Republican Party five times and elected five times. Before that I was a State senator, nominated by the Republican Party and elected five times to that body. I was elected as an elder of the Presbyterian Church at the same time that I was elected a State senator, and frankly, there is not anything about the Republican Party or the Presbyterian Church that has anything in common with communism.

Mr. Chairman, the Governor of Virginia told your committee yesterday that the poll tax is a defense against communism. The only thing against which the poll tax protects the distinguished Governor of Virginia is the vote of the people of his State. Incidentally, practically all of my relatives, all of them live in Virginia, and I know something of the way in which Virginia politics are operated.

I happen to be Republican county chairman in Cleveland, and have been for the last 12 years, and frankly, I know something about the politics in our community—they are clean, the elections are clean, free elections.

The gentlemen who have never faced a free election in their political lives hate this measure the way the devil hates holy water. If the distinguished Governor believes that limiting the vote to 10 or 15 percent of the people in the interests of powerful political machines is a defense against communism, I would like to have his definition of Americanism. The cry of communism has been put to some strange uses from time to time, but never one more ridiculous than this.

The right of all the people to a free ballot is certainly a bedrock principle of American democracy. I do not know of a single reform that has ever come into being that has not been called "Red." I remember that when I was for woman suffrage in Ohio many years ago the cry was "socialism." Communism had not been heard of then. When I was fighting for the minimum-wage bill for women in Ohio, why immediately the cry went up "socialism." Every time you step on somebody's toes who is getting away with something he yells "communism" or "socialism," or "Red." It is perfectly absurd the extent to which this communist business is being used.

As a matter of fact, Mr. Chairman, communism is strong in Europe because the present administration and its immediate predecessor made it possible for the Communists to have control of Poland, Czechoslovakia, Yugoslavia, and Hungary, and other European countries. They turned it over to Mr. Stalin on a silver platter.

Mr. Chairman, in closing I should like to submit for the record a brief statement on the constitutional aspects of this legislation. The most compelling documents, of course, are the three reports of the Senate Committee on the Judiciary which I have already submitted for the record.

That committee of the Senate charged with the consideration of this legislation in previous Congresses, three times examined every

constitutional question involved and three times reported its firm conviction that the legislation is clearly constitutional, and that there is no merit in the constitutional arguments advanced against it.

I might add here, Mr. Chairman, that we have 435 Representatives on the other side. There are many able constitutional lawyers there from your own State, Mr. Chairman, from your State, sir, and there are constitutional lawyers from my State; and there are constitutional lawyers from every other State in the Union. This bill passed the House overwhelmingly; it went through the House like a cat goes through a dog show, and the constitutionality of a measure is always examined when a bill is considered. But the fact is that the hundred or more constitutional lawyers in the House of Representatives acted favorably on this bill.

Constitutional lawyers of the Judiciary Committee of the Senate, as indicated by the three reports which I submitted for the record, Mr. Chairman, have testified as to its constitutionality.

I would like also to submit one other statement on the constitutionality of this legislation.

The CHAIRMAN. What is the document, sir?

Mr. BENDER. It is a document entitled "Answers to Queries on Constitutionality of the Anti-Poll-Tax Bill," and it is submitted by some of the finest constitutional lawyers of the country. I am not a lawyer, Mr. Chairman, but these are lawyers whose names you will recognize as eminent authorities.

The CHAIRMAN. Without objection it will be admitted.

(The document referred to is as follows:)

ANSWERS TO QUERIES ON CONSTITUTIONALITY OF THE ANTI-POLL-TAX BILL

Query 1. "Whether or not the drafters of the Constitution adopted, for the Federal election of the House of Representatives, the qualifications that might be laid down, whatever they were, by the legislatures of the several States."

The answer is "Yes"; but such an affirmative reply leaves unresolved the crucial issues.

The basic issue is not whether the States have power to prescribe the qualifications for the Federal suffrage. The Constitution provides that to vote in congressional elections the voters shall have "the qualifications requisite for electors of the most numerous branch of the State legislature." The basic question is whether the payment of a poll tax is a "qualification" for voting in the constitutional sense.

The Constitution looks to the substance and not to the form. Cf. *Nixon* v. *Condon* (286 U. S. 73). The Constitution does not authorize the States, under the guise of prescribing voting qualifications, to impose, contrary to the laws of Congress regulating Federal elections, restrictions on the Federal franchise that have no reasonable relation to a citizen's qualification to vote. If the payment of a poll tax has no rational relationship to the citizen's capacity to participate in the choice of public officials, it need not be treated by the Congress as a qualification within the meaning of the Constitution. A poll-tax requirement imposes a restriction on the citizen's right to vote, but if it is not a qualification in the constitutional sense, then it is within the power of Congress in regulating Federal elections to override such a restriction on the right of a qualified citizen to vote. As Justice (now Chief Justice) Stone stated in *United States* v. *Classic* (313 U. S. 299, 315), "While, in a loose sense, the right to vote for representatives in Congress is sometime spoken of as a right derived from the States (citing cases), this statement is true only in the sense that the States are authorized by the Constitution, to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18 of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers'."

In *Edwards* v. *California* (314 U. S. 181), the Supreme Court unanimously held that a State could not deny entry to a citizen of the United States merely because he was indigent. The majority of the Court resting their decision upon the commerce clause rejected the suggestion that the State police power could be exercised, as California had attempted to exercise it, to discriminate against citizens because of their indigence. Four of the Justices were of the opinion that, apart from the commerce clause, such discrimination was in violation of the rights of national citizenship as guaranteed both under the original Constitution and the privileges and immunities clause of the fourteenth amendment. One of them, Mr. Justice Jackson, in his concurring opinion, stated broadly (314 U. S. 181, 184–185): "We should say now, and in no uncertain terms that a man's mere property status, without more, cannot be used by a State to test, qualify, or limit his rights as a citizen of the United States. * * * The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color. I agree with what I understand to be the holding of the Court that cases which may indicate the contrary are overruled." Whatever might have been true in times past, there is no doubt a serious question today how far property may properly be regarded as a reliable index of, or even a rough and ready guide for determining the educational qualification, civic worth or community loyalty of the citizens.

But a poll-tax requirement clearly has much less relationship to a citizen's capacity to perform the civic responsibility of voting than has a property test. The most shiftless of men may pay the tax because he found a $5 bill upon the street. The worthiest citizen may prefer to feed his family. In truth it is difficult today to establish any real or substantial relationship between the poll-tax requirement and the civic worth or capacity of the citizen. Until the Congress acts, the courts may hesitate to disturb State electoral practices because of their own views of the logical requirements of the Constitution. But any such hesitancy upon the part of the courts to upset State practices of doubtful constitutionality would be dispelled by congressional action. It would seem clear, therefore, that the poll-tax requirement need not be regarded by the Congress as an electoral qualification within the meaning of the Constitution giving the States the power to fix qualifications for the Federal suffrage. Cf. *Breedlove* v. *Suttles* (312 U. S. 277).

The Congress has affirmative power to regulate Federal elections to protect the rights of citizens under the Constitution and to guard against fraud and corruption in the exercise of the Federal franchise. The right of citizens to vote at congressional elections, subject only to such limitations as may be legally imposed by the State or Federal Government in conformity with the Constitution, is a right secured by the Constitution, which the Congress is empowered to protect by appropriate legislation (*United States* v. *Classic*, 313 U. S. 299, 314–315, 320). Otherwise the rights of qualified voters could be set at naught. Assuming that certain restrictions on the suffrage which are not genuine qualifications in the constitutional sense may be imposed by the States in the absence of congressional action, such restrictions do not escape the Federal power to preserve the integrity of Federal elections and to protect the rights of constitutionally qualified voters. In the exercise of its powers over Federal elections, it is altogether fitting and proper for the Congress to prohibit State poll-tax requirements if in the judgment of the Congress such requirements unduly restrict the rights of national citizenship and make for fraud and corruption in Federal elections.

It is unnecessary to consider in this memorandum whether the State poll taxes are invalid in the absence of Federal legislation on the ground that they violate the rights of national citizenship secured by the original Constitution or by the fourteenth amendment. It is sufficient to affirm the power of the Congress to nullify such State statutes in the exercise of its power to regulate Federal elections and to protect the rights of constitutionally qualified voters. It is sufficient to affirm that should the Congress exercise its power in the premises, the courts in our judgment would sustain and uphold the action of the Congress.

Query 2. "Does this section (art. I, sec. 4) recognize the right of the separate States to fix the qualifications of the electors by failure to make any reference whatsoever to those qualifications."

Answer: We may assume an affirmative answer to this query. The power of the States to fix qualifications, however, is limited, as explained in our answer to query 1, by (1) the inherent meaning of the word "qualifications" as used in the Constitution, and (2) the power of Congress to protect the integrity of Federal elections and the rights of constitutionally qualified voters.

Query 3. Relates to article II, section 1, clause 2 of the Constitution which provides that "Each State shall appoint in such manner as the legislature thereof may direct" the Presidential electors.

While Congress could not question the right of a State legislature to provide the manner of appointment of Presidential electors, a State legislature in exercising that right must exercise it in conformity with the requirements of the Constitution. If the legislature provides for the appointment to be made by the process of election, that election, like a primary election for congressional candidates, "involves a necessary step in the choice of candidates" for national office "which in the circumstances of this case controls that choice" (*United States* v. *Classic*, 313 U. S. 299, 320), and that choice must be made in a manner that does not offend the Constitution or such legislation as the Congress may reasonably deem appropriate to protect the rights of constitutionally qualified voters from discrimination and invasion. Article II, section 1, clause 2 of the Constitution does not authorize the State legislature to fix arbitrary conditions to the right to vote for Presidential electors which have no relation to the voter's worth or ability.

Query 4. Relates to the privileges and immunities clause of the fourteenth amendment; and to the effect of the nineteenth amendment upon its interpretation.

Answer: The right of a "qualified" voter to vote, subject to the limitations imposed by the Constitution, is a right secured by the Constitution itself prior to the adoption of the Fourteenth Amendment, and that right may be protected by appropriate Congressional legislation (*United States* v. *Classic*, 313 U. S. 299, 315, 320). That right has only been fortified and strengthened by the privileges and immunities clause of the fourteenth amendment. The imposition by the States of proper "qualifications" for voting does not abridge the rights of national citizenship, either under the original Constitution or the fourteenth amendment. But restrictions which are not qualifications in the constitutional sense cannot survive congressional action to protect the rights of national citizenship under the original Constitution or the fourteenth amendment. It is unnecessary to consider whether a poll-tax requirement or a property test is invalid under the Constitution or the fourteenth amendment in the absence of Federal legislation.

The nineteenth amendment merely took note of the fact that sex was historically recognized as an appropriate qualification. It decreed that thereafter the right to vote should not be denied on account of sex either by the United States or by the States. It applied to State as well as Federal suffrage. It certainly throws no light on whether a State poll-tax requirement should be regarded by the Congress as a qualification in the constitutional sense for voting at a Federal election. The nineteenth amendment, which was designed to broaden the suffrage, certainly was not intended to take away any power the Congress might otherwise have to protect the rights of national citizenship.

If the poll tax is not a legitimate qualification for the Federal suffrage in the constitutional sense, the Congress has the power to eliminate it and protect the rights of national citizenship. A constitutional amendment is not necessary to achieve a result within the existing power of the Congress.

GEORGE GORDON BATTLE.
WALTON HAMILTON.
MYRES S. MCDOUGAL.
LEON GREEN.
M. T. VAN HECKE.
ROBERT K. WETTACH.
LLOYD K. GARRISON.
EDWIN BORCHARD.
WALTER GELLHORN.
CHARLES BUNN.

Mr. BENDER. The gentlemen who signed this statement are George Gordon Battle of North Carolina, long a leading southern member of the New York bar; Walton Hamilton of Tennessee, now professor of constitutional law at Yale Law School; Myres S. McDougal of Mississippi, a member of the faculty of Yale Law School; Leon Green of Louisiana and Texas, now dean of Northwestern University Law School; M. T. Van Hecke, former dean of the Law School of North

Carolina; Robert K. Wettach, present dean of the Law School of North Carolina; Lloyd K. Garrison, former dean of the Wisconsin Law School; Edwin Borchard, professor at Yale Law School; Walter Gellhorn, member of the law faculty of Columbia University and Charles Bunn, of the University of Wisconsin Law School.

I do not believe there is a Harvard man here. They are all outstanding members of the bar and six of them are connected with the poll-tax States either by birth and education or by recent affiliation.

I would like also to present for the record, Mr. Chairman, two statements by leading clergymen. The first is from Paul B. Kern, resident bishop of the Methodist Church, Nashville, Tenn., and president of the Methodist Council of Bishops. He writes:

> The imposition of a poll tax upon an individual desiring to cast his vote is, in my judgment, a relic of a bygone day. The right to exercise the franchise should not be in any sense of the word dependent upon one's financial ability to meet this kind of tax. The practice has been used for the purposes of political corruption and partisan control, and it is high time that the right to express one's choice for those who shall rule over them in a democracy shall be open to all men and women upon a basis of absolute equality.

The other is from G. Bromley Oxnam, Methodist Bishop of the New York area, who says:

> One of the fundamental tenets of democracy is that government derives its just powers from the consent of the governed. Our civil liberties give the individual the right to express his opinion, but it is in the vote that consent is finally recorded. Limitations based upon economic circumstance, color, or religion have no place in a democracy. It is apparent that the poll tax does deny large numbers the right to vote. It is believed by many that the tax is designed to achieve this purpose. In the interests of the democratic way of life, and the fullest expression of democratic decision in the vote the poll tax ought to be abolished.

Now, Mr. Chairman, before I close, I would like to introduce to the committee a distinguished scholar whose testimony, I know, will be a valuable contribution to the record.

It is my pleasure to present Mr. Irving Brant. Mr. Brant is a recognized authority on the period of the framing of the Constitution. He is the author of a number of volumes and has had a long career as an editor. He served as editor of the Des Moines Register and Tribune; as editor of the editorial page of the St. Louis Star and for more than a decade he was editor of the editorial page of the St. Louis Star-Times.

For some time, Mr. Brant has been engaged in the writing of a definitive biography of James Madison, one of the fathers of the Constitution. The first volume of Mr. Brant's biography of Madison was published several years ago. The second volume was published this year. His work has been widely acclaimed as a distinguished contribution to American history and biography.

By the way, the new volume of this biography received a front-page review in a recent issue of the New York Herald Tribune book section, and I have seen other excellent reviews of this work. Mr. Brant is not just an everyday garden-variety fellow like myself. He has spent a number of years in the careful study of the Constitution and the men who drafted it. He will discuss the constitutionality of this bill.

The CHAIRMAN. Well, Congressman, we are going to hear Mr. Brant, but we are working under a pretty tight schedule here, so, if you will——

Mr. BENDER. I will close with that. I will be glad to have your questions.

The CHAIRMAN. Senator, do you have any questions?

Senator STENNIS. Mr. Chairman, I do not want to take up any unnecessary time, but there are a few points that this gentleman has brought out here that I think the record, in order to be complete, will require that I ask him a few questions, and I do it with great deference to his sincerity of purpose in being the author of the bill.

Mr. BENDER. I appreciate so being questioned.

Senator STENNIS. Now, Congressman, you referred to the election of the 69 Members of the House from the poll-tax States for whom a total of 117,000 votes were cast. You were taking those figures from the general elections in those States, were you not, the election that is held in November when a man is actually elected?

Mr. BENDER. That is true. However, I want to state in that connection that the same question was asked of me by a colleague of yours from Mississipi, Mr. Williams.

Senator STENNIS. Yes.

Mr. BENDER. A very distinguished Member of the House, who had quite a fight with Mr. McGehee in the primary election in Mississippi.

In that primary election the total vote was 8 percent of the population of the district—8 percent in that hotly contested primary election, between Mr. Williams and Mr. McGehee.

Senator STENNIS. I am sorry, but I did not get that. Your point was what?

Mr. BENDER. You were saying that I used election figures but that in Mississippi there is only one party voting in the election, and the contest is in the primary.

Senator STENNIS. Yes.

Mr. BENDER. Now I am giving primary figures.

Senator STENNIS. I understand. What were your figures?

Mr. BENDER. The total population in 1940 in the Seventh District of Mississippi was 470,781. The total vote cast in the primary election was 39,364, or 8 percent of the population. The total vote cast in the election was 10,345. The primary vote was almost four times the vote cast in the general election, but still only 8 percent of the population voted.

Senator STENNIS. Do you have the figures there as to the number that were eligible to vote in that same primary?

Mr. BENDER. I cannot give you the answer now, but I will be glad to submit it for the record.

Senator STENNIS. I wish you would do that, please.

Mr. BENDER. Yes, sir.

Senator STENNIS. You include the 69 Members from the House in the poll-tax States. Generally speaking, there are three to four or five or six voting in the primaries as there are in the general election, is that correct? I am not a witness here, and I will have to ask you the questions.

Mr. BENDER. Yes.

Senator STENNIS. Do you know about that?

Mr. BENDER. I am not altogether sure of that. I do not believe the number is that great. Here is the total vote cast in the Alabama First District, 19,000 in the primary election, 12,000 in the general election. Take the Eighth District of Alabama: 23,000 in the pri-

mary, 19,000 in the general election. Take any of these districts, the Second District, 22,000 in the primary, 17,000 in the general election.

Senator STENNIS. Do you have any figures showing those that are eligible to vote?

Mr. BENDER. I do not know how many there are who are eligible to vote. I do not have those figures.

Senator STENNIS. Mr. Williams, I happen to remember, was elected in what was called an off-election year, and there never are as many in off-election years as during the regular election years.

Mr. BENDER. In Presidential election years?

Senator STENNIS. Yes.

Mr. BENDER. That is true.

Senator STENNIS. How many votes did you say that there were polled when you were elected last time in Illinois?

The CHAIRMAN. Not in Illinois, in Ohio.

Senator STENNIS. In Ohio.

Mr. BENDER. In Ohio.

Senator STENNIS. I beg your pardon.

Mr. BENDER. I will give you the exact figure—I received 1,281,000 votes and my opponent received 871,000 votes.

Senator STENNIS. What is the population, approximately, of your State?

Mr. BENDER. The population of Ohio today is approximately 7,000,000.

Senator STENNIS. All right; thank you.

Mr. BENDER. That was an off-year election, too, by the way.

Senator STENNIS. You say you are not a lawyer?

Mr. BENDER. That is right.

Senator STENNIS. You propose a bill here for the Congress to pass, and it is a general rule that whenever a proposal is brought in that you have to have a constitutional base for it to rest on. That is the general rule, is it not?

Mr. BENDER. That is the general rule.

Senator STENNIS. Now, just specifically what section or paragraph or line of the Constitution do you rest your case on?

Mr. BENDER. My friend, you know I am not a lawyer, and will not undertake to go into the constitutional arguments.

Senator STENNIS. I just wanted to know.

Mr. BENDER. I will be glad to see that you get that information. Mr. Brant will discuss it in detail.

Senator STENNIS. All right. Now, you are not a lawyer—I am not going into that—but I want to make it specific here that I am calling for the authority, one section of the Constitution here says that each State shall appoint in such manner as the legislature thereof may direct a number of electors. That is referring to Presidential electors. I want to know now what section of the Constitution you have to offset that. What section do you base your bill on whereby you have a right to go into the matter of electing the President of the United States, when the Constitution specifically says that each State shall appoint in such manner as the legislature thereof may direct a number of electors who shall then elect the President of the United States.

The CHAIRMAN. Mr. Stennis, I do not quite get your question. What have those electors got to do with this bill?

Senator STENNIS. This bill provides that in casting votes for President of the United tSates, no poll tax shall be required. My point is this, that we do not elect a President of the United States by ballot. We elect electors and those electors have the sole authority to elect a President of the United States.

The CHAIRMAN. Do you have the name of the candidates on your ballot in your elections?

Senator STENNIS. We do not in our State, but I do not think that is material. I raise the point here that the people do not elect the President of the United States; that the people elect electors, and the electors select the President of the United States.

Mr. BENDER. I am sure the people of the United States will be glad to learn that they do not vote for the President. We do not have electors on the ballot in Ohio; we select electors but we vote for the man and the man who gets a majority of the vote is the man for whom the electors cast their ballots.

Senator, I do not mean to be facetious and I am not being facetious about this. But your colleagues, distinguished Members of this body, have three times passed on the constitutionality of this legislation in the Senate Judiciary Committee.

Senator STENNIS. Pardon me, Mr. Congressman, I think anyone has a right to call on the author of a bill for his specific legal authority upon which he rests his case and I am not being personal when I ask you to do that.

Mr. BENDER. Well, my legal authority is Everett Dirksen, of Illinois.

Senator STENNIS. All right. Now, I am really asking for information on this. You are familiar with the subject. Why do you, or the others interested, not bring a test case in the courts now? I am urged to go on and vote for this bill and let the court decide whether it is constitutional. Now, I just raise the point, if you know, why do not the proponents of this question, raise a test case in the court?

Mr. BENDER. Well, when the Senate votes on this bill, which I trust will be soon, and the President signs the bill—which I am sure he will because that is a part of his civil-rights program—I am sure that some gentleman will test the constitutionality of the law, as has been the case with practically every other piece of legislation.

Senator STENNIS. But, you understand this question could be raised and tested legally without any congressional act.

Mr. BENDER. Well, that is somebody else's business.

Senator STENNIS. You are not familiar with that?

Mr. BENDER. I am here to legislate and I am legislating against something that I consider an evil and something that I consider wholly out of line with our American way of life and free elections, and so I am sponsoring this legislation on that basis.

Senator STENNIS. What is your objection to proceeding by way of constitutional amendment about which there could be no contest as to the legal points?

Mr. BENDER. I think that is only a proposal for delay. There are so many decisive issues in the Congress determined by close votes, and since 69 Members of the House and 14 Members of the Senate come from these areas where only a small fraction of the persons can vote, I feel the urgency of passing this legislation now and not waiting on a

constitutional amendment. I do not believe that is the way. I think this is the best way, and I am sure that an overwhelming majority of your body——

Senator STENNIS. The question is whether or not you would proceed by constitutional amendment.

Mr. BENDER. I think this is the way to proceed, and the most effective way and most direct way, and we are in an emergency, and we should have Representatives in Congress who were elected as the Members are elected from 41 other States.

Senator STENNIS. We are not in any more of an emergency now than we were in 1944, are we, on these matters? The reason I ask that is—and I am not trying to be humorous nor cast any reflections on your party platform—I respect it; but do you recall that your party platform in 1944 says in effect that "We favor abolition of the poll tax, and we will present a constitutional amendment to remedy this evil."

Mr. BENDER. No; I am sure the platform does not say that. I was a delegate to the Republican National Convention, and Senator Taft was chairman of the resolutions committee.

Senator STENNIS. It has been introduced in the record here, Congressman, as to what it says. I think I have correctly stated its substance.

Mr. BENDER. I am sure the gentleman is mistaken about the language.

Senator STENNIS. Well, you rest your answer on the denial that it is in the platform, is that correct?

Mr. BENDER. I rest my answer on the fact that the Republican National Convention supported unanimously the abolition of the poll tax.

Senator STENNIS. Well, if it is in there, what would you say to that; if the provision is in there.

Mr. BENDER. I am sure it is not in there.

Senator STENNIS. All right.

The CHAIRMAN. I think my recollection is that the platform stated that "We favor"—it did not say we are going to—we said we favor the introduction. It did not preclude anything else. It said "We favor" that method.

Senator STENNIS. It is the enunciation of their policy of being opposed to the poll tax, and the remedy was a constitutional amendment.

The CHAIRMAN. It said "We favor that platform." It did not preclude anything else. I happen to know a little about it because I was on the committee that drafted it. You are talking about me.

Senator STENNIS. I am only talking about the words that appear in the platform.

The CHAIRMAN. I am sure the words are "We favor it." It did not say that we would, and did not preclude any other method.

Senator STENNIS. I will not take up any more of your time.

The CHAIRMAN. Thank you.

Senator STENNIS. Thank you, sir.

Mr. BENDER. Thank you.

The CHAIRMAN. think we had better announce to everyone that we are trying, and we will, to conclude this hearing at tomorrow's session, so I am going to ask everyone to be as considerate as they can about getting their statements in as quickly as they can. We may have to limit some of the oral testimony and let the record speak for itself by filing statements.

Mr. Brant, will you give the reporter your full name and residence?

STATEMENT OF IRVING BRANT, BIOGRAPHER OF JAMES MADISON, AUTHOR OF BOOKS ON THE CONSTITUTION

Mr. BRANT. My name is Irving Brant. My address at present is in Kissimmee, Fla.; but I am not a legal resident of that State. I am one of the disfranchised citizens of the District of Columbia.

In addition to what I have to present to the committee at this time I have filed a brief on constitutional points. What I have to say now is largely a discussion of the recent testimony presented to the committee and the testimony presented at the House hearing last year.

The CHAIRMAN. Well, your brief can be made a part of the record.

(The brief referred to follows:)

BRIEF SUBMITTED BY IRVING BRANT

An impression has been created in congressional hearings that while there may be a clear foundation for the power of Congress to abolish poll-tax prerequisites in the election of Senators and Representatives, no such foundation exists for a similar restraint in the election of Presidential and Vice Presidential electors.

This impression is due to concentrated attention upon the poll tax in congressional elections as the greater evil, and to the wider range of constitutional remedies. Those who uphold the validity of the anti-poll-tax bill are commonly accused of ignoring the portion of the bill dealing with Presidential electors, when in fact they have merely been absorbed in the more critical political problem.

In my brief, therefore, I shall lead off with a discussion of Presidential electors, the more readily because they have become an element of political controversy outside of, though partly because of, the struggle over the poll tax.

The Constitution provides in article II, section 2:

"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; but no Senator or Representative, or person holding an office of trust or profit under the United States shall be appointed an elector."

This section can be understood only through its background. It was proposed in the Virginia plan that the Executive be named by the National Legislature. Two days later, on June 1, 1787, as shown by Madison's notes of debates, James Wilson declared "in favor of an appointment by the people" as he wished both branches of Congress, and the Executive as well, to be "as independent as possible of each other, as well as of the States." He was invited to draft a plan, and produced one next day: the persons qualified to vote for the first branch of State legislatures should elect persons who were to be "electors of the executive magistracy."

The electoral plan was both rejected and approved while entangled in other questions. On July 19 the convention voted that the President "be chosen by electors appointed for that purpose by the legislatures of the several States. On the 23d this was reconsidered. On the 25th Madison protested against making the National Executive subservient either to State or National legislatures and concluded:

"The option before us then lay between an appointment by electors chosen by the people—and an immediate appointment by the people."

This was the fundamental choice before the Convention. In the final wording of the constitutional provision, the manner of appointing electors was turned over to the State legislatures, but the basic decision was in line with Madison's first declaration.

Observe his words: "an immediate appointment by the people." That wipes out of existence the superficial contention that a choice by the people could not have been intended because of the use of the word "appointed."

Note also the words "electors chosen by the people"—words not spoken in advocacy, but in explanation of the two choices before the Convention. The only question was whether the choice of a President by the people should be direct or indirect.

These words are not in the Constitution, but they throw light on the words that are there: "Each State shall appoint." What is the State? Time and again,

Madison pointed out in his writings that the State was not the State legislature. It was not the State government. It was the people in whom all sovereignty, both National and State, resides—the people as a body politic.

The question of congressional power now becomes simple. The States shall appoint. The people—the body politic—shall appoint the electors in such a manner as the legislature shall direct.

What does this require? It requires that the appointment of electors, whether by direct election or some other method, shall fulfill the will of the State in that election, and the will of the State is the will of the people.

This wipes out such nonsense as the idea that the legislature can direct the Governor to appoint the electors, or can delegate it to county dog catchers, or to a convention of party committeemen.

The choice must fulfill the will of the people.

Is this a new idea? Well, hardly, except to some Americans who have forgotten an older one. Read the words of Alexander Hamilton in Federalist No. 68, explaining, this section of the Constitution:

"It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, NOT TO ANY PRE-ESTABLISHED BODY, *but to men* CHOSEN BY THE PEOPLE FOR THE SPECIAL PURPOSE, AND AT THE PARTICULAR CONJUNCTURE."

That excludes a choice by the State legislature itself, even though such a course was followed in the first few Presidential elections. At that time the journals of the Federal Convention were unpublished, the debates were still secret. Nobody knew that the official record showed a rejection of a choice by legislatures, in advance of the grant of authority to "direct" the manner of appointment.

Rufus King, one of the great constitutional lawyers who helped frame the Constitution, cited this official record in 1823 to prove that State legislatures had no power to name electors. He could not cite it earlier because the Journals were not published until 1819 and the delegates were bound to secrecy. His letter to C. King on that subject is not available to me at this writing, but I shall endeavor to have it placed in the records of this hearing.

(Letter of Rufus King to C. King, September 29, 1823, is published in full in the oral testimony which follows this brief.)

Moreover, in this same letter King declared that the Federal Government had the power to "limit"—he used the word "limit"—the power of the States in directing the manner of election, and deny to the legislature the power of naming the delegates itself. There were, he said, two permissible methods—direct election of electors by the people. Or there could be an added step—the people could elect electors of the Presidential electors. And he saw this as a requirement—a limitation imposed by the Constitution.

King did not need to rely on the record which so fully proved his case. For with the basic constitutional authority established by the mandate, "Each State shall appoint," the supreme national prerogatives established in Ex parte Yarbrough come into full view. Congres has the power and a double duty: To require the States to fulfill the will of the people, and to protect the choice of Presidential electors against arbitrary or unreasonable qualifications such as the poll tax. As to the former, the Supreme Court needs no legislative sanction for striking down such perversions of the Constitution as a choice of electors by a governor or by constables or dog catchers. In the matter of qualifications, the power of Congress must be exerted. Nearly everything that can be said about the constitutional power of Congress to regulate elections of Senators and Representatives applies in the Presidential election. For the broadest specific source of power is the same—article I, section 8, clause 18, giving Congress power to enact "necessary and proper" laws to carry into effect the powers contained in the Constitution.

I turn, therefore, to the main part of the anti-poll-tax bill, the appropriate portions of which can be carried over to the subject of Presidential electors.

The 10-year effort in Congress to pass a bill outlawing the poll tax has had several definite effects. It has produced a general recognition that the poll-tax requirement for voting is a device deliberately used to disfranchise a large part of the electorate, and that the remedy lies in Congress.

All of the poll-tax requirements found in the constitutions of the poll-tax States were put there between 1890 and 1908, after a generation of universal suffrage. They were put there for two purposes. The first—the openly avowed one—was to disfranchise Negroes. The second was to destroy the Populist movement in the South by disfranchising the poor whites. This was done by raising such a hullaballoo about the Negroes that the whites were stampeded into disfran-

chising themselves. That was the case everywhere except in Virginia. In that State the purpose was the same. Listen to what Carter Glass said in the Virginia Constitutional Convention of 1901:

"We were sent here to make distinctions. We expect to make distinctions. We will make distinctions."

And again on the subject of ratification:

"No body of Virginia gentlemen could frame a constitution so obnoxious to my sense of right and morality that I would be willing to submit its fate to 146,000 ignorant Negro voters whose capacity for self-government we have been challenging for 30 years past."

Listen to the words of another delegate in that Virginia Convention:

"There is a mass of vicious and incapable whites which must be debarred from the suffrage * * *. The chief objection which I have heard to this system is that, along with many stupid and vicious whites, some worthy and good citizens will be disfranchised. This is doubtless true. * * *"

(Quoted by Representative Bender, House hearings, July 1, 1947.)

But the people of Virginia did not vote to disfranchise themselves. The convention did not dare submit the new constitution to a vote of the people, white or colored. It was put into effect by a decree of the convention itself, the same way constitutions are adopted in Fascist and Communist countries.

A study of the adoption of the Alabama poll-tax amendment, published in the Political Science Quarterly of March 1905, reported that it aimed at the instantaneous disfranchisement of Negroes by the annual poll-tax requirement, and ultimate disfranchisement of white voters (without their suspecting it in advance) by making the tax requirement cumulative up to a total of $36. That was exactly the way it worked. It worked the same way in other States, too, through various cumulative provisions, and through a myriad little tricks in the law—requirement that the tax be paid more than 9 months before the election, forbidding payment of the tax except in 2 or 3 months of the year, making it unlawful for tax collectors to make any effort to collect the poll tax, requiring the presentation of poll-tax receipts for two successive years, allowing mass purchase of poll-tax receipts by political machines. These things don't add up to a qualification of electors. They add up to arbitrary, tricky, vicious devices for taking away the constitutional rights of American citizens and of subverting the republican form of government into an oligarchy—that is to say, into government by the minority.

However, as knowledge has spread of what the poll tax is and what it does, the issue has narrowed. The poll tax no longer has defenders. It has only supporters and opponents. The supporters are the political machines which are kept in power by the poll tax, and certain property groups allied with them. The opponents are the millions of Americans—North, South, East, and West—who believe in democratic self-government and common decency. However, they can't eliminate this blight. The disfranchised millions living in those States are helpless. Having no vote, they cannot vote to regain the right to vote. The only remedy lies in Congress. Our National Legislature, it has been evident for some time, shares the general antipathy of the people to this denial of the rights of American citizens. The only question that exists today—outside of the issue of Government by filibuster—is whether Congress has constitutional power to prohibit the poll-tax requirement in Federal elections.

Three times, in 1942, 1943, and 1945, the Senate Committee on the Judiciary has reported to the Senate that Congress has this constitutional power. The House Committee on the Judiciary made a similar report last year, and that was followed by passage of the bill. The question now comes before your Committee on Rules and Administration.

Considering the almost plenary power of Congress in the field of congressional elections, nobody would question its authority to abolish this clog on the ballot except for one of the provisions of article I, section 2, of the Constitution, reading 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."

Those who deny the power of Congress to abolish the poll-tax requirement point to this section. They look upon it as an absolute—unaffected and unmodified by anything else in the Constitution. They say also that the right to vote for Federal officers is derived from the States, that it falls within the reserved powers of the States, and that the Federal Government has no power to say whether the

poll-tax requirement is or is not a genuine qualification within the meaning of the Constitution.

Congress rejected this view when it passed the soldiers voting law, which forbade the States to deny suffrage to any man in military service because of nonpayment of a poll tax. The opponents did not test that law in the courts. Presumably they thought it wise not to do so.

Three times the Judiciary Committee has reported that Congress has power to abolish the poll tax under article I, section 4, which authorizes Congress to regulate the times, places, and manner of electing its Members.

It has reported that the poll-tax requirement is not a qualification at all, but a meaningless pretended qualification which violates the "privileges and immunities" clause of the fourteenth amendment.

Finally, the Judiciary Committee has based its affirmation of the power of Congress upon article IV, section 4, of the Constitution, which provides that "The United States shall guarantee to every State in this Union a republican form of government."

Thus, in every majority report upon past bills, the Senate has been informed that article I, section 2, does not stand alone, but lies within the general scope of congressional power over elections comprehended by article I, section 4; article IV, section 4; the fourteenth amendment, and the eighteenth clause of article I, section 8—the "necessary and proper" clause.

In taking this stand, the Senators who have written these reports have placed themselves squarely in harmony with the now famous utterance of the late Chief Justice Stone in *U. S.* v. *Classic*. The Supreme Court in that case answered the contentions of those who say that the right to vote in Federal elections is derived from the States and that article I, section 2, is not restricted by other clauses of the Constitution. I quote from Justice Stone's opinion:

"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, 217-218); *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 section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution, 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.' See *Ex parte Siebold* (100 U. S. 37); *Ex parte Yarbrough*, *supra* (663, 664)," and other cases.

The Classic case did not involve poll taxes, but corruption in primaries. This statement about article I, section 2, was a dictum, inserted in the opinion because of its bearing on a previous case which did refer to the poll tax. I mean *Breedlove* v. *Suttles*, one of the four cases which Justice Stone cited with disapproval in the middle of his sentence.

In *Breedlove* v. *Suttles*, the Court refused to strike down the Georgia poll-tax law. No distinction was drawn in that case between State and Federal elections. The power of Congress to abolish the poll tax in Federal elections was not involved, because Congress had not legislated. The Court decided that the Court itself had no power to abolish the requirement. But Justice Butler, who wrote the Breedlove opinion, said in it that the privilege of voting was derived from the States, not from the United States, and the States could condition it as they deemed appropriate. It was that statement which the Court repudiated in the Classic case, and it did so in a way that was a clear invitation to Congress to legislate the poll-tax requirement out of Federal elections.

If you want to see how Justice Stone's opinion in the Classic case has upset the supporters of the poll tax, observe how it has been handled by their witnesses in previous Senate and House hearings. Look for instance at the testimony of Attorney General Staples, of Virginia, their most important spokesman in the 1942 hearings. He quoted Justice Stone's statement, as given above, but omitted the list of cases the court was criticizing—that is, the Breedlove case and those with it—omitted them without even an asterisk. But he cited the cases which followed the quotation—Ex parte Yarbrough and other cases which Justice Stone mentioned with approval. Then he took several pages of the record to prove that Justice Stone spoke without precision, that he must have meant something else than what he said, because there was no reference to article I, section 2, in the cited cases which followed the quotation. No, there wasn't, but it was referred to in the cases which the attorney general omitted from the middle of the quotation—the ones Justice Stone was condemning.

Now, observe this, the four cases the Court cited with condemnation, in this part of the opinion in the Classic case, are the very cases relied on most heavily by the opponents of poll-tax legislation, especially the Breedlove case and *McPherson* v. *Blacker*. The Classic case blew up their ammunition dump.

Now let us get to the heart of what the Court said in the Classic case. It is not the remark about the derivation of the right to vote that bothers the poll-tax defenders. It is this statement about voting for Representatives in Congress, which comes right in the middle of the passage I have just quoted:

"* * * the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power * * *" under the "necessary and proper" clause.

To get the full force of that, just substitute the actual authority given the States in article I, section 2, in place of the reference to it. You then get this result:

"* * * the States are authorized by the Constitution to fix qualifications for electors of Members of Congress to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections * * *."

You could hardly phrase a plainer public notice that abolition of the poll tax depends on the use by Congress of its constitutional powers of legislation.

As this fact has become evident, the supporters of the poll tax have made a desperate effort to prove that the Classic case has been overruled. And by what? By the Supreme Court's refusal, a few months later, to grant certiorari in the case of *Pirtle* v. *Brown*. Why should it have granted certiorari? In that case, as in the Breedlove case, the court was asked to strike down the poll tax by judicial action without the backing of a Federal law. That question had been decided. The Court had just given notice that an act of Congress was necessary to abolish the requirement. It didn't need to say so again.

What amazes me, though, is that prominent lawyers should come before congressional committees and say in all seriousness that an opinion of the Supreme Court has been overruled by a refusal to grant certiorari in a later case. Don't they know that certiorari may be denied because of failure to submit a statement of fact, or for any one of a dozen reasons? Don't they know that if there is the slightest chance that a later case will upset a prior one, certiorari will be granted for that very reason? If a lawyer appearing before the Supreme Court wants to stamp himself as an utter incompetent, I suggest that he tell the Court that its opinion in the Classic case was nullified by its refusal to issue a writ of certiorari in *Pirtle* v. *Brown*.

In this connection, I would remark that three justices who dissented in the Classic case have recently given it their emphatic approval. Furthermore, in their original dissent, they went as far as the majority in upholding the broad power of Congress in the electoral field. I quote from the dissenting opinion of Justice Douglas:

"The important consideration is that the Constitution should be interpreted broadly so as to give to the representatives of a free people abundant power to deal with all the exigencies of the electoral process. It means that the Constitution should be read so as to give Congress an expansive implied power to put beyond the pale acts which, in their direct or indirect effects, impair the integrity of congressional elections."

In this same opinion Justice Douglas quoted sections 2 and 4 of article I—the sections on qualifications of voters and regulation of elections, and he said:

"Those sections are an arsenal of power ample to protect congressional elections from any and all forms of pollution."

In saying this, he treated article I, section 2, as a grant of power to the Federal Government. That strikes at the basic contention of the poll-tax supporters, who claim that the election of Members of Congress falls within the reserved powers of the States. In this they are refuted not alone by the Classic case but by a long chain of opinions. The shortest and clearest of them is this statement by Justice Pitney in the Newberry case:

"For the election of Senators and Representatives in Congress is a Federal function; whatever the States do in the matter they do under authority derived from the Constitution of the United States."

Now I wish to discuss the purpose of the framers when they placed section 2 of article I in the Constitution. Let me read the first clause of that section:

"The House of Representatives shall be composed of Members chosen every second year by the people of the several States."

The House of Representatives was to be chosen by the people. That was the decision of the Constitutional Convention on May 31, 1787, less than a week after it began its work. A Massachusetts delegate, Elbridge Gerry, spoke against the proposal with this as the opening sentence of his speech: "The evils we experience flow from the excess of democracy"—the same thing that is feared by the advocates of the poll tax. His argument was rejected.

George Mason, of Virginia, replied to him. I quote from Madison's Notes of Debates:

"Mr. Mason argued strongly for an election of the larger branch by the people. It was to be the grand repository of the democratic principle of Government."

James Wilson, of Pennsylvania, followed. I quote:

"Mr. Wilson contended strenuously for drawing the most numerous branch of the legislature immediately from the people. He was for raising the Federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people."

Then came James Madison:

"Mr. Madison considered the popular election of one branch of the national legislature as essential to every plan of free government."

Those were the arguments—clear, definite declarations—which gave us the election of Representatives by the people, later extended to include Senators. Now, who were the people? That question came up when article I, section 2, was given its wording by the Committee of Detail in August. The people were to be those qualified to vote for the most numerous branch of the State legislatures. Gouverneur Morris objected to this and tried to strike it out. He wanted to limit the right to vote to the owners of land. Such a limitation would be popular at the time, he said, because nine-tenths of the people were freeholders, but he was looking ahead to the time when the country will "abound with mechanics and manufacturers"—he didn't mean the National Association of Manufacturers—"when this country will abound with mechanics and manufacturers who will receive their bread from their employers. Will such men be the secure and faithful guardians of liberty?"

A torrent of protest greeted Morris' motion. This is the way Delegate McHenry described the reply of Benjamin Franklin:

"The venerable Franklin opposed to this the natural rights of man, their right to an immediate voice in the general assembly of the whole Nation, or to a right of suffrage and representation."

McHenry quoted these actual words by Franklin:

"One British statute excluded a number of subjects from suffrage. These immediately became slaves."

Turn to Madison's notes, and this is what you find:

From Judge Ellsworth, of Connecticut:

"The people will not readily subscribe to the national Constitution if it should subject them to be disfranchised."

Mason, of Virginia: "Eight or nine States have extended the right of suffrage beyond the freeholders. What will the people there say, if they have been disfranchised?"

Butler of South Carolina: "There is no right of which are people are more jealous than that of suffrage. Abridgments of it tend to * * * a rank aristocracy."

All this was said in rejecting a restriction which, according to its author, would still have allowed nine-tenths of the people to vote.

So it was not to throw the whole matter into the hands of the States, it was not to open the way to restrictions on the right to vote, that State qualifications were adopted as Federal qualifications. The purpose was to forbid restrictions by Congress, avoid compulsory uniformity, and use the expanding suffrage of the States as the most effective guarantee of a broad democratic base for the Federal Government.

In 1787, the States which had taxpaying qualifications for voting did not look upon them as restrictions of suffrage. They were expansions of it—part of the evolution from the freehold requirement to universal suffrage. Even the freehold qualification, at the outset, was broadly democratic. In England, with its huge estates, freehold voting was part of the feudal system. In America, limitless free land gave it a totally different aspect. Land ownership was not a criterion of wealth, but of permanent attachment to the community. The freehold requirement excluded vagabonds, migrant settlers, and indentured servants. As the country filled up and more people became shopkeepers and mechanics,

the rights of suffrage were expanded by allowing taxpayers and the owners of personal property to vote. The Constitution was written in the midst of a steady progression from the freehold requirement to universal suffrage. Article 1, section 2 was looked upon as an automatic guarantee that the rights of national citizenship would be safeguarded by the devotion of the people to their rights as citizens of the individual States.

This is clearly revealed in what Madison wrote about this section of the Constitution in The Federalist:

"Who are to be the electors of the Federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States. They are the same who exercise the right in every State of electing the corresponding branch of the legislature of the State."

That statement can be repeated today in 41 States of the Union. In 7 it is no longer valid. And why not? Because Madison was mistaken when he said in The Federalist:

"It cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the Federal Constitution."

Well, some of them have done so, or their political machines have done it for them. In 7 States, the Members of Congress are no longer elected by the great body of the people, but by a small minority. The rest are disfranchised by what has been called, in three committee reports to the Senate, a pretended qualification which is not a qualification at all, but a device which has subverted the republican form of government.

What is the republican form of government? In terms of the world today, we think of it as the opposite of a military dictatorship, the opposite of fascism, the opposite of the political aspect of communism. In terms of American history, we are prone to think of it in contrast with monarchy, which our forefathers rejected and discarded in the War of the American Revolution. But monarchy was not what worried the men who wrote the Constitution. They were thinking of republicanism as the opposite of aristocracy, the opposite of oligarchy, the opposite of government by a minority.

The distinctive characters of the republican form of government, Madison wrote in The Federalist, No. 39, can only be found "by recurring to principles." He then offered this definition:

"We may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it."

And what happens when suffrage is cut down in a republic, so that government no longer is based on the great body of the people? Said Madison in the Constitutional Convention:

"A republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected as the number authorized to elect."

Finally, in the last years of his life, when the Father of the Constitution was too weak to hold a pen, he dictated in his Autobiography this statement of his final conviction on the subject:

"A government resting on a minority is an aristocracy, not a republic, and could not be safe with a numerical and physical force against it, without a standing army, an enslaved press, and a disarmed populace."

Nobody can accept these statements from the man who wrote the guarantee of republican government without recognizing that the republican form has been subverted by the poll tax into an aristocracy or oligarchy. Congress has the power and duty to correct it. If it does not choose to go the whole way and correct it in both State and Federal elections, it can still protect the choice of its own members from this form of subversion and pollution.

Now let us consider the power of Congress to regulate elections—the powers derived from sections 2 and 4 of article I. Section 4—the power over the times, places, and manner of holding elections—has been given a tremendously wide sweep by the Federal courts. It was given a similar wide sweep by the framers of the Constitution. Madison said of time, place, and manner: "These are words of great latitude." In the Virginia ratifying convention he stated their purpose, to prevent a dissolution of the Federal Government by failure to hold

elections and to prevent disfranchisement of the people by tricky or unfair control of the electoral process. These are his words:

"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."

That, of course, did not relate to the laying of qualifications. But it has a distinct bearing upon a misuse of the power over qualifications for the purpose of putting the election of Congressmen in the hands of a political machine or a special class of citizens or a minority of the people. Consider these words of Madison in the Constitutional Convention, when he was urging the adoption of this clause. Without it, he said, "Whenever the State legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed."

That is exactly what has been done by means of the poll tax. It has not been used a genuine qualification for voting but has been dragged into the electoral process—into the manner of election—for the specific purpose of favoring one set or class of candidates, and to establish and perpetuate the power of political machines.

When State law, as in Mississippi, requires a voter to carry two successive annual poll-tax receipts to the polls, that is part of the manner of election.

When election officials must keep separate poll-tax lists, white persons in one list, Negroes in another, as in Alabama, that is part of the manner of election.

When a poll-tax receipt is void for voting purposes unless it shows whether the recipient is white or colored, as in Arkansas, that is part of the manner of election.

When a poll-tax receipt used in a November election must bear a date prior to February, as in Texas, that is part of the manner of election.

When a poll-tax receipt must bear a date 6 months prior to any general or primary election, as in Virginia, that is part of the manner of election.

When, lawfully in some States, unlawfully in others, political machines buy up great quantities of poll-tax receipts and pass them out to their followers, that is part of the manner of election.

In reply to all this the defenders of the poll tax build a barricade around article I, section 2, leaving outside of it the power of Congress to protect the integrity of Federal elections. Inside the barricade, they say that a qualification is whatever the States say it is. The word "qualification," they say, means only a "condition precedent" to voting, and bears no necessary reference to fitness. That was not the view taken by the Supreme Court in *Cummings* v. *Missouri*, when it struck down a State requirement that officeholders, teachers, and preachers must take oath that they had never been disloyal or evaded the draft. Said the Court:

"The qualifications relate to the fitness or capacity of the party for a particular pursuit or profession. It is evident from the nature of the pursuits or the professions of the parties placed under disability of the Constitution of Missouri, many of the acts from the taint of which they must purge themselves have no possible relation to their fitness for those pursuits and professions" (*Cummings* v. *Missouri*, 4 Wall. 277).

So qualifications must relate to fitness. As a matter of fact, the poll-tax defenders have admitted both the need for rationality in qualifications, and the bearing of other parts of the Constitution upon article I, section 2, even while they were denying both. For instance, in connection with the claim that any qualification valid in 1787 must be valid today, Attorney General Staples of Virginia was confronted with the question whether a religious qualification could be reimposed by the States. This was his answer before the Senate Judiciary Committee:

"Such arbitrary action would be an obvious denial of the equal protection of the laws (fourteenth amendment), and the courts would undoubtedly so hold."

Was a religious qualification arbitrary and unconstitutional in the eighteenth century, when it existed in the constitutions of several of the States? If not, what makes it arbitrary and unconstitutional today? Just one thing: an altered conception of the rights of American citizens, an evolutionary development of their privileges and immunities. That which was a valid qualification in 1787 may be invalid today, because of changed ideas of right and wrong.

It is my opinion that if our democracy is to survive the attacks upon it from fascism on one side and communism on the other, it can only do so through inner strength growing out of our fidelity to it. I am tired of hearing that voting is a privilege, not a right; that it is a privilege which can be granted or taken away by legislative action, but is not a privilege protected by the "privilege and

immunity" clause of the United States Constitution. I am tired of hearing that the constitutional right to vote is a right extending only to those, be they few or many, to whom the States may choose to extend the privilege of voting.

Have we come to the day when the right to vote, in Europe, is so sacred a right that we talk about sending another army across the ocean to enforce it, while in America it is merely a privilege which State governments can extend or take away at their pleasure? The best way to save democracy in Europe is to restore it at home. Every blow to democracy in other parts of the world should make us more determined to save our own precious heritage, not for the world's sake, but for our own. The first and longest step in that direction is to put an end to the outrageous and arbitrary misuse of State power over qualifications. Congress can do that by exercising its power to guarantee the republican form of government. It can do it by its power to regulate elections. It can do it by its power to enforce the "privileges and immunities" clause of the fourteenth amendment by appropriate legislation.

Finally, I want to point out another matter, directly concerned with article I, section 2, which says that the electors of Federal representatives shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. The Supreme Court has said that this does not stand alone, but can be restricted by Congress under other sections of the Constitution. Suppose, for a moment, that we disregard these other clauses, and look at this section as an absolute—standing apart from all other clauses about elections or the rights of citizens.

The State of Nebraska has a one-house legislature of 43 members, established experimentally a few years ago. Suppose that in another experiment, the people of Nebraska should create a second chamber, to be elected by the first, and to consist of 45 members. Or suppose that in Virginia, where anything can happen, the Byrd-Tuck machine should decide that the House of Delegates ought to be chosen by the fine old system of an electoral college. In one State, then, the electors of the most numerous branch of the State legislature would be the members of the other branch. In the other State they would be the members of an electoral college.

Under the provisions of article I, section 2, taking that clause the way the poll-tax defenders say it must be taken, as an untouchable absolute, it would then be mandatory that the Nebraska congressional delegation be chosen by the 43 members of the first branch of the Nebraska Legislature, and that the Virginia congressional delegation be chosen by an electoral college.

Do you think that such a construction of the Constitution would be followed? No. I'll tell you what would happen. We would all read article I, section 2, more carefully. We would notice its first clause:

"The House of Representatives shall be composed of Members chosen every year by the people of the several States."

We would read the opening clause of the seventeenth amendment:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof."

There, we would say, there is the commandment, there is the positive power. Senators and Representatives shall be elected by the people. That is commanded by the Constitution. And where is the power to enforce the commandment? It is in clause 18, section 8, of this same article of the Constitution:

"The Congress shall have power * * * 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."

Under that power Congress would find, and Congress and the courts would enforce the finding, that the words "the most numerous branch of the State legislature" were meant to designate the popular branch, the branch chosen by the larger electorate. Thus the literal words of article I, section 2, would give way to the meaning and purpose of it, not by a strained or artificial extension of the legislative power of Congress, but by the compulsive force of the constitutional declaration that Senators and Representatives shall be elected by the people.

Apply that principle to the disqualification of millions of voters by perverted misuse of the power to fix qualification, and the poll tax can be swept out of existence without a resort to any other section of the Constitution except the "necessary and proper" clause. In seven States, Senators and Representatives are not being elected by the people. The mandate of article I, section 2, is not being carried out. Congress has the power, the duty, and, I believe, the will and

intention to enforce this requirement. In doing so, it will restore the constitutional rights of disfranchised American citizens and fortify democratic government against assault from abroad and corruption at home.

Mr. BRANT. For the past 10 years my time has been devoted almost entirely to writing a biography of James Madison, the Father of the Constitution. That has entailed an almost continuous study of the background of the Constitution, the principles expressed in it, the genesis of its provisions, and the proceedings of the convention in which it was framed.

Sitting in this room during the 2 days of testimony by supporters of the poll tax, I have been impressed and disturbed by two almost incredible facts. One is the amazing contrast between the spirit of the men who wrote a constitution broadly devoted to the political rights of the people, and the spirit of these witnesses who would use the Constitution to debar American citizens from voting.

The second surprising impression made by this hearing is the way the very mild regard of the framers for a subordinate State sovereignty has been built up in this modern day into a fanatic devotion to the allegedly sovereign States. There was none of this primary devotion to State sovereignty in the great majority of the delegates who wrote the Constitution.

If James Madison had had his way, every State law fixing the qualifications of voters for both State and Federal officers would have been subject to a congressional veto. I don't mean that he had such a specific idea in his mind. He didn't. But that would have been the situation if the convention had adopted his proposal that Congress be given a negative over State laws "in all cases whatsoever." The convention rejected both that and his more moderate proposal that Congress have power to veto State laws in conflict with the Federal Constitution. Instead, it declared the supremacy of the Constitution and Federal laws and set up the system of judicial review. But Madison continued to hold to his belief in a Federal veto "in all cases whatsoever." He wrote to Jefferson after the convention adjourned that failure to put this in the Constitution was a possibly fatal defect which would leave the States free to continue their encroachments.

I wrote that without specifically looking up what he said, and I would like to have the privilege of correcting the language, if I have not stated it correctly.

The CHAIRMAN. Very well.

Mr. BRANT. I mention this, not to indorse Madison's position, but to point out that he was not primarily devoted to State sovereignty. Nor were his colleagues. Not many would have said that Gouverneur Morris did about the States, that "If we cannot annihilate, we may at least pull the teet hof the serpents." But they did not join in the tooth-pulling.

On the other hand, it would be incorrect to say that the framers were primarily devoted to the National Government. They saw it as an instrument of national union, a force to control and resist the centrifugal tendencies in the individual States, and the violent injustices of the State laws of that period. It must, therefore, have power to curb the States. But the devotion of the framers was to the people of the United States. The delegates were sent to Philadelphia as the representatives of the people of the individual States. They were sent by the State legislatures, but they recognized the people as their con-

stituents, as shown by the decision, which violated the Articles of Confederation, to refer the Constitution to conventions of the people for ratification.

The Constitution they drafted was not for the people of the individual States, however. It was for the people of the Nation, and it still is.

From this perspective let us turn to the one question before this committee, the power of Congress to prohibit the poll tax as a prerequisite to voting for Federal officers. Article I, section 2, has been quoted about 99 times. Here is the hundredth:

> 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.

Every defender of the poll tax points to that section and makes two assertions about it. First, that it is an absolute—standing apart from every other section of the Constitution except the amendments forbidding qualifications of race or sex. Second, they argue that a qualification is whatever the States say it is, and Congress has no right to override them.

Now, after making these claims, the opponents of H. R. 29 have practically thrown away both of them. Governor Tuck was asked on Tuesday by Senator Green whether he thought the States could require a hundred thousand dollar property qualification for voting. His answer was—the words may not be exact, but this is substantially his answer—"That's carrying it a little too far." Senator Green asked once more whether the States had the power to make such a requirement, and the Virginia Governor replied: "I think that would be unreasonable."

Now that exact point was raised in 1947 House hearings, whether there was any necessity that a qualification be reasonable. Governor Tuck threw away the contention of the poll-tax defenders in the House that no matter how unreasonable a qualification might be, the Federal Government could do nothing about it.

Well, after he finished, the new Attorney General Almond undertook to repair the damage. He said that an unreasonable qualification could be abolished only by a constitutional amendment. Unfortunately, Mr. Almond had not paid sufficient attention to the 1942 testimony of former Attorney General Staples of Virginia, whose general statement on the poll tax he so nicely paraphrased on Tuesday. Mr. Staples had a similar question before him—whether, if everything that was a proper qualification in the eighteenth century is a proper qualification today, the States could reimpose a religious test for voting. This was what he said to the Senate Judiciary Committee:

> Such arbitrary action would be an obvious denial of the equal protection of the laws (fourteenth amendment) and the courts would undoubtedly so hold.

That smashes the contention that qualifications with which the framers of the Constitution were familiar must be valid today. It establishes a rule of reason, and gives constitutional force to changing concepts of the rights of citizens. Finally, it smashes no less completely the claim that article I, section 2, stands apart from other sections of the Constitution dealing with the rights of citizens or the control of elections.

However, this claim has been abandoned by the poll-tax defenders in another way. Three times, the Senate Committee on the Judiciary has reported to the Senate that the poll-tax requirement can be abolished by Congress under article IV, section 4 of the Constitution, which reads:

The United States shall guarantee to every State in this Union a republican form of government.

Among the supporters of anti-poll-tax legislation, witness after witness cited this section as a source of the power of Congress to act. Three times a committee of the Senate has cited it. What has been the reply of the poll tax defenders? Silence. Not one witness before this committee, Monday or Tuesday, so much as mentioned it. You can search the committee hearings from 1942 onward, and find never a word of denial, never a word of rebuttal. Just silence. Three Senate reports have been ignored, reports which quote the guarantee of republican government, and contain these words about it. This is from one of these Senate reports.

What does this mean in the light of the present-day civilization? 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 to be unconstitutional. 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 freemen. If it is not, then we do not have a republican form of government.

It would be hard to use words which more perfectly reflect the meaning of republican government as it was understood by the framers of the Constitution. Read what Madison said in The Federalist, No. 39:

We may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is "essential"—

he italicized "essential"—

to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it.

And what happens when suffrage is cut down in a republic, so that government no longer is based on the great body of the people? Said Madison in the Constitutional Convention:

A republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected as the number authorized to elect.

Finally, in the last years of his life, when the Father of the Constitution was too weak to hold a pen, he dictated in his autobiography this statement of his final conviction on the subject of the subversion of republican government:

A government resting on a minority is an aristocracy, not a republic, and could not be safe with a numerical and physical force against it, without a standing army, an enslaved press, and a disarmed populace.

Reading Madison's statement on the republican form of government, reading the Senate's reports on the same subject, we can understand why the southern attorneys general and the New York lawyers are

silent on the guaranty of republican government. When no answer can be given, better say nothing.

I noticed that the poll-tax lawyers who appeared before this committee were very silent, also, about the plain invitation which the Supreme Court gave to Congress, in the famous 1941 case of *United States* v. *Classic*, to legislate the poll-tax requirement out of existence. Not one of them referred to it, though I think that Mr. Orton, whose courage is not bounded by discretion, would have done so if he had had more time.

What I refer to is this quotation from the opinion of Justice Stone, later Chief Justice:

> While in a loose sense the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the States (citing *Minor* v. *Happersett*, *United States* v. *Reese*, *McPherson* v. *Blacker*, *Breedlove* v. *Suttles*) this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4, and its more general power under article I, section 8, clause 18 of the Constitution "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." (Citing Ex parte Siebold, Ex parte Yarbrough, and other cases.)

Now just notice the wording of the central part of that statement by the Supreme Court: "the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article I"—that is, the States are authorized to fix qualifications—"to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections."

The reason for putting that dictum into the opinion is clear enough. There had been an attempt—Mr. Orton smiles; he says it is not a dictum.

Mr. ORTON. I smiled because you admitted it was a dictum.

Mr. BRANT. No; I say it was a dictum. The reason for putting that dictum into the opinion is clear enough. There had been an attempt in the Breedlove case to persuade the Supreme Court to knock out the poll tax by judicial power alone, without an act of Congress. The Court was letting it be known that this was a job for the congressional lawmakers.

In the 1942 hearings, Attorney General Staples of Virginia essayed the task of erasing this declaration by the Supreme Court. It was evident, he said, that Justice Stone was not being precise, because the cases cited at the end of the statement were irrelevant to it. Mr. Staples, however, in quoting this part of the Classic opinion, had totally omitted the cases cited in the middle of the sentence—the ones against which the Court was directing its fire. He omitted them the more readily because the statements in these cases which the Court repudiated, especially the Breedlove case, were the very ones that the poll-tax defenders rely on, and quote interminably, to show the position of the Court. They quote, that is, the precise portions of earlier opinions which the Court rejected in 1941. To avoid going into this at greater length, I ask permission to incorporate in my statement a letter which I wrote to the New York Times, published in its issue of May 28, 1944, on this attempt to prove that Chief Justice Stone did not know what he was saying.

The CHAIRMAN. Without objection, it will be received.

(The letter referred to is as follows:)

NO AMENDMENT NEEDED—CONGRESS HELD TO POSSESS POWER TO VOID POLL TAX

To the EDITOR OF THE NEW YORK TIMES:

Your belief, expressed editorially, that the poll tax can easily be eliminated from Federal elections by a constitutional amendment, seems to me overoptimistic and based on needless uncertainty as to the power of Congress.

To act by legislation it is necessary to defeat the Senate filibuster by a two-thirds vote to limit debate and then pass the bill by a simple majority.

To act by constitutional amendment it is necessary to defeat a Senate filibuster by a two-thirds vote to limit debate, then obtain a two-thirds majority in both Houses of Congress, and after that, secure ratification by the legislatures of three-fourths of the States.

A filibuster against an amendment is just as certain as against a bill and as certain to succeed unless stopped by the same weapon—cloture. Aside from the red herring of unconstitutionality, every argument advanced against cloture during the poll-tax debate, and still more the secret reasons operating against it, would be just as potent to prevent limitation of debate on a constitutional amendment. Republican Senators who sabotaged the anti-poll-tax bill by voting against cloture, and then made a bid for support of the anti-poll-tax people by offering a constitutional amendment, would have the same reason to sabotage the amendment by failing to end a filibuster against it—the partisan advantage of seeing Northern and Southern Democrats arrayed against each other and the latter rousing several million voters to anger by their conduct.

AN EXAMPLE CITED

Suppose it should be submitted. Before we assume that ratification of so salutary an amendment is certain, let us remember what happened to the child-labor amendment, doomed by a false invocation of religious prejudice. The theory that all except the eight poll-tax States would promptly ratify the amendment takes no account of the fictitious scare already raised in New Mexico and other States about the possible effect upon "Indians not taxed," nor of the historic hostility of Vermont to all Federal controls, nor of the vested interest which Republican States have in prolonging a cause of turmoil in the Democratic Party, to say nothing of perpetuating a southern Democratic appendage to the Republican Party in Congress.

But why an amendment? Why amend the Constitution to give Congress power which it almost certainly possessed now? Surely when such authorities on constitutional law as Professors Hamilton, Borchard, and McDougall of the Yale Law School; Dean Garrison of the University of Wisconsin Law School; Dean Katz of the Chicago University Law School; Dean Greene of Northwestern, and Dean Wettach of North Carolina, all agree that the anti-poll-tax bill is constitutional, there need be little hesitancy in letting the Supreme Court decide whether it is or not.

ANTIS OBFUSCATED

I have followed the debate on the constitutionality of the anti-poll-tax bill rather closely, and was myself a witness on the subject before the Senate Judiciary Committee, chiefly on historical phases. It appears to me that the arguments of the antis in Congress have been largely obfuscation, while on the radio they have consisted of unfounded dogmatic assertions. But the defenders of its constitutionality have been no less at fault in failing to put their case clearly and understandingly before the public.

I would not ask for the space needed to cover this issue, with all its ramifications into the relationship of republican government to majority government, the power of the National Government to preserve itself from debauched elections, and the rights of citizens. Little space is needed, however, to clarify one important aspect of it—the indicated attitude of the Supreme Court.

The statement has been made over and over that the Supreme Court has denied the power of Congress to outlaw the poll-tax restriction. That is not true. The Court in two cases (*Breedlove* v. *Suttles*, and, by refusing certiorari, *Pirtle* v. *Brown*) has declined to strike down the poll tax by judicial edict, without an act of Congress. It has never denied the power of Congress to do so.

CONGRESS POWER UPHELD

On the contrary, it has strongly and very recently suggested that Congress has this power—the Court's attitude in that regard representing a return to the general trend of decisions following the Civil War, affirming Federal power, after a movement in the contrary direction beginning with the Newberry case in 1921.

This suggestion of congressional power to deal with the poll tax is found in the 1941 case of *United States* v. *Classic*, a Louisiana election-fraud case not involving the poll tax, but involving the clauses of the Constitution pertinent to it.

Writing the Court's opinion in that case, Chief Justice Stone warned against loose statements concerning the right to vote which he said were to be found in the Breedlove case, *Minor* v. *Happersett*, *United States* v. *Reese*, and *McPherson* v. *Blacker*—the four cases chiefly relied on by the anti-poll-tax forces. He then went on to knock out their whole position by saying that the power of the States under article I, section 2, could be restricted by the power of Congress under section 4 and other clauses. I quote the words of the Chief Justice:

"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, 217–8); *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 section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18 of the Constitution, 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'"

Accept the plain meaning of those words, and the argument that the anti-poll-tax bill is unconstitutional vanishes into thin air. That argument is based entirely on the supposition that section 2 is not limited by section 4 or other clauses, but stands by itself, unaffected by the general power of Congress over elections. The Supreme Court has declared to the contrary.

How is that statement by the Supreme Court answered by those who continue to claim that Congress has no such power? They say that the Chief Justice did not know what he was saying. The usual remark, made by the poll-tax minority of the Judiciary Committee, is that his language was "unfortunate." One Senator told me he had heard that word a dozen times in executive session. It is based on an attempt by the chief anti-poll-tax witness, Attorney General Staples of Virginia, to prove that the Chief Justice did not intend to say what he said.

Quoting the words I have cited from the Classic case, the Virginia attorney general testified (p. 367 of the 1942 hearings): "In using the language italicized, it is obvious that the Chief Justice was not being precise." He then stated that section 4 of article I allows the States to make election regulations which, under the same section, can be altered by Congress.

ARGUMENT CALLED EXTRAORDINARY

He concluded that Chief Justice Stone did not intend to say that section 2 could be restricted by section 4, but that the State powers in section 4 could be restricted by the Federal powers in section 4. This must be the meaning, he said, because the four cases cited by the Chief Justice to support his statement did not refer to section 2, but to section 4.

This is certainly one of the most extraordinary arguments for the unconstitutionality of a bill that has ever been offered to Congress—the argument that the Chief Justice of the United States did not know what he was saying when he wrote one of his most important opinions.

But it is less extraordinary than the evidence offered to support the charge. For in presenting the quotation from the Classic case, Attorney General Staples omitted the four cases cited by Justice Stone in the middle of the sentence—omitted them without even an asterisk—and used instead four other cases (ex parte Yarbrough and others) which followed the quotations. The four cases thus omitted—the four the Chief Justice was talking about—all bore on section 2, not on section 4.

It is by such methods that the fiction has been built up that Congress has no power to legislate on the subject of the poll tax.

Mr. BRANT. Now, how did Constitutional Lawyer Charles Warren deal with this part of the Classis case opinion? He told the Senate

Judiciary Committee in 1948 that he had heard of it until he was nauseated. He said it had nothing to do with the case, which related to primary elections. Consequently, it was not a decision, and not binding. And who said it was part of the decision? Nobody. But it was and remains part of the opinion—a clear indication of the Court's belief that Congress can use section 4, the power to regulate the manner of elections and the "necessary and proper" clause, to prevent the misuse by the States of their power to fix qualifications.

Proceed now to New York Lawyer Jesse Orton. How does he dispose of Chief Justice Stone and the Court? In his first brief, published by Frank Gannett's Committee for Constitutional Government in 1944 and presented by him last Monday for inclusion in these hearings, he was rather charitable toward the Chief Justice. The Court, he says, did not actually say that Congress had power under section 4 to restrict State actions on qualifications.

I quote from Mr. Orton:

> There is no more than an implication that Congress might have such power—very likely the result of inadvertence.

Just an inadvertence. Harlan Fiske Stone didn't know what he was saying. Well, the brave Mr. Orton sent his brief to the Chief Justice and got a reply. He told the Committee on House Administration last year that Mr. Stone's letter was just a thank you, and noncommittal. However, something made Mr. Orton conclude that Justice Stone did not make an accidental misuse of words in the Classic case, for when he testified before the House committee last vear he quoted this same passage from the Classic case and this is what he said about it:

> Justice Stone, after making that statement which I have said is untrue, and I stated in my letter to him that it was incorrect, he added on this, that the Constitution gave power in section 2 to the States to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4, and its more general power under article I, section 8, clause 18 of the Constitution: "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."
>
> That is an incorrect addition to an incorrect statement.

That, gentlemen, is the way a New York lawyer wipes the United States Supreme Court off the map. Incidentally, it makes me feel flattered. Mr. Orton said 19 times in his second brief, filed with your committee, that I am incompetent to discuss the constitutionality of the anti-poll-tax bill. I mean, he mentioned my name 19 times, each time with either the direct statement or the implication that I don't know anything about it. I feel tremendously flattered that a man who can knock out the entire Supreme Court at one blow should have to hit me 19 times, though I am not quite sure, in either case, whether he was leading with his fist or his jaw.

I notice also that it took Mr. Orton only one blow to knock out eight professors of law and law deans who signed a joint brief declaring that Congress has power to abolish the poll-tax requirement. He just sent them a copy of his own 1944 brief on the subject. This was the result, as he described it in the 1947 House hearing:

> I do not know about all of these professors who signed it, but I had a letter from four of them after receiving it, in which they thought my argument was pretty good but something where there was a but after it.

He didn't present the letters for the record so the committee didn't learn what sort of a "but," the law professors saw appended to Mr. Orton's argument. Fortunately, I have one of those letters to Mr. Orton, written by Leon Green, dean of the law school, Northwestern University. I quote two sentences from it:

In other words, the poll tax is an attempt on the part of certain States to devise a means to prevent certain classes of citizens from exercising the most fundamental right of a citizen, and is therefore opposed both to the letter and the spirit of the Constitution * * * So far as I have been able to discover, it is merely a device cut out of the same cloth as the "white" primary, and it is my belief that it deserves and will receive the same fate.

Now, let us go to the reasoning behind the Supreme Court's statement in the Classic case that article I, section 2, can be restricted by the congressional power to regulate elections—that is, under article I, section 4, the power to regulate the times, places, and manner of holding elections, and the "necessary and proper" clause.

Observe the first part of section 2:

The House of Representatives shall be composed of members chosen every second year by the people of the several States.

To be chosen "by the people." Who were the people, as the framers thought of them? Madison and Hamilton gave the same answer. The people meant the great body of the people, the great majority.

America was then in transition between the old limitation of suffrage to freeholders, and a democratic expansion which continued for more than half a century until universal suffrage was achieved. Tax requirements for voting, in that day, were expansions of suffrage. They were set up to allow more people to vote.

The problem in the convention was to insure a broad suffrage, convince the people that Congress could not take away their right to vote, and yet not interfere with the differing requirements in the various States. So the remainder of section 2 came into being: The electors of the Federal representatives were to be those having qualifications requisite for electors of the most numerous branch of the State legislatures.

Primarily that was intended as a protection against disfranchisement. Listen to the words of delegates when a proposal was made, instead, to limit the right of voting to freeholders:

BENJAMIN FRANKLIN. One British statute excluded a number of subjects from a suffrage. These immediately became slaves.

OLIVER ELLSWORTH, later Chief Justice. The people will not readily subscribe to the national Constitution if it should subject them to be disfranchised.

And many others in like vein.

So they undertook to insure a broad suffrage by adopting State qualifications as Federal qualifications. This was thought to make these rights secure. Madison in the Federalist told why:

It cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the Federal Constitution.

No, the framers didn't fear that, but they were mistaken. Those rights are abridged in seven States, and we have two lines of thought about what can be done about it. We have the statement of the Supreme Court that Congress can restrict State qualifications by its own power to regulate elections. We have the statements of the poll-

tax attorneys general that Congress cannot do this, that article I, section 2, stands alone, unmodified by anything else in the Constitution, and to be interpreted solely according to State laws.

Now, I want to test the rigid application of section 2 by a hypothetical case. Nebraska has a 1-house legislature of 43 members. Suppose a second house should be established, consisting of just 45 members, to be elected by the first house. The most numerous branch of the legislature would then be chosen by 43 persons, whose requisite qualifications would be membership in the less numerous branch. Would the Nebraska congressional delegation thenceforward be chosen by the smaller house of the legislature, because it was made up of electors of the most numerous branch?

Or consider Virginia, where the Byrd has just "Tucked" the President under his wing. Suppose the Byrd-Tuck machine should decide that the house of delegates should be elected by an electoral college. Would the members of that electoral college thereafter elect the Virginia congressional delegation?

Of course not. It would suddenly be discovered that the supreme binding mandate of article I, section 2 is that Members of Congress be elected by the people. The most numerous branch would be construed to mean the branch with the most numerous electorate. The words of the Constitution would be interpreted in harmony with the spirit of the Constitution. That is exactly what H. R. 29 asks Congress to do in the abolition of an unreasonable, pretended qualification which vitiates the purpose of the clause under which it is defended.

The CHAIRMAN. Do you have any questions? Do you have any questions, Senator Stennis?

Senator STENNIS. Just a few, Mr. Chairman.

Mr. Brant, are you a lawyer?

Mr. BRANT. No, sir.

Senator STENNIS. You are not?

Mr. BRANT. No, sir.

Senator STENNIS. Well, I beg your pardon, I understood that you were.

Mr. BRANT. Neither was James Madison, by the way.

Senator STENNIS. You understand I am not asking you personal questions.

Mr. BRANT. You will find the statement in the dictionary of American biographers that he was a lawyer, but that is incorrect.

Senator STENNIS. Well, I am just trying to let the record reflect here your professional background and learning. I think it will have some bearing upon how much weight different members would want to give to your interpretation of the Constitution, and I say that with all personal respect to you, of course.

Mr. BRANT. Well, my preference would be that my words should speak for themselves. But just go ahead.

Senator STENNIS. You made a statement here that we have a statement of the Supreme Court that Congress may pass such laws regulating the qualifications of electors.

Mr. BRANT. No; that was not what I said, but go ahead.

Senator STENNIS. Well, you asked the hypothetical question there that we have two lines of thought. One is the Supreme Court——

Mr. BRANT. Oh, yes.

Senator STENNIS. Which says that the Congress may pass such laws concerning the qualification of electors.

Mr. BRANT. It was a little more indirect than that.

Senator STENNIS. Well, were you referring to the Classic case?

Mr. BRANT. Yes, sir.

Senator STENNIS. The Classic case reference you made to it is what you yourself called obiter dictum.

Mr. BRANT. Yes, sir.

Senator STENNIS. Is that correct?

Mr. BRANT. Yes, sir.

Senator STENNIS. And that expression "obiter dictum" means that it is not law; it is just the man talking.

Mr. BRANT. It cannot be cited as a precedent for future judicial construction.

Senator STENNIS. It means it is not law, does it not?

Mr. BRANT. Well, I do not know to what extent precedent is law any more.

Senator STENNIS. All right, that brings us down to the main question. What section——

Mr. BRANT. Law is what Congress enacts, I should say.

Senator STENNIS. Is that your definition of law?

Mr. BRANT. Basically.

Senator STENNIS. Basically your definition of law.

Mr. BRANT. That is upheld by the Supreme Court.

Senator STENNIS. Let us get your answer.

Mr. BRANT. Basically, I should say it is legislation by Congress which is in accord with the Constitution as interpreted by the Supreme Court.

Senator STENNIS. All right. Getting down now to the specific question, what section, clause, or paragraph of the Constitution of the United States do you rest your contention here for the passage of the law? Now, I would appreciate your giving the number and direct reference to it.

Mr. BRANT. To begin with, I should say the same ones that were cited by Justice Stone as in the explanation of his implication that Congress has that right, that is——

Senator STENNIS. Let us not talk about implications, if I think the question is proper.

Mr. BRANT. I wanted to make it a very moderate statement. I did not want to make it anything that you could challenge or wished to challenge.

Senator STENNIS. I think that every citizen in the United States has the right to know on what you bottom your case, giving the section or the clause.

Mr. BRANT. That is what I am planning to do.

Senator STENNIS. All right, what is your answer?

Mr. BRANT. I will say that by coincidence the first three sections that I would cite are those cited by Chief Justice Stone in the Classic case, that is article I, section 2, and article I, section 4 of the Constitution; and article I, section 8, clause 18, the "necessary and proper clause." I would add in addition to that article IV of section 4, the guaranty of republican government. It is very natural that the Supreme Court should not have cited that section in support of the

statement in the Classic case, because it has been the consistent position of the Supreme Court that the enforcement of the guaranty of republican government is a political question, not a judicial question.

There has been, incidentally, the inference drawn from that that the Supreme Court would refuse to review the constitutionality of any act of Congress which was said specifically by the Congress to be a measure to enforce that guaranty.

I do not think that would be the case in the way it is presented in this instance—that is, with the guarantee of the republican form of government, cited in the Senate reports as the basis for that action; I do not think that would debar judicial review. I think that the Court would consider the validity of the Congress basing its action on that section just as it should, and I believe would, base its decision upon the validity of a qualification established for electors by the states.

Senator STENNIS. Do you mean that you are resting your case here——

Mr. BRANT. I would add here, not entirely on that. I believe that the fourteenth amendment is also applicable, not the section that was cited in the clause that was cited in regard to a religious qualification; that it is a denial of equal protection of the laws, I do not think the Court would hold that in the case of the poll-tax amendment.

But I believe that there is a progression of thought in regard to the constitutional rights of citizens which, at least, make it possible that the Court would apply the privileges and immunity clause in support of this bill.

I know that there are no cases in the history of the Court which indicate that that is the case. I merely mention it because of the tendency in that direction, and the accompanying tendencies not to be bound by decisions and opinions of a hundred or forty years ago.

Senator STENNIS. All right. Thank you for that answer.

You refer here to the republican form of government.

Mr. BRANT. Yes, sir.

Senator STENNIS. What do you mean when you use that term, "republican form of government"?

Mr. BRANT. Well, I mean the same thing that Madison did, that is, a government whose nature, he said, could only be determined by recurring to principles. Those were the words he used as a preliminary to what I quoted from the Federalist.

Senator STENNIS. Do you think that the ones who made the Constitution, do you think they created a republican form of government?

Mr. BRANT. Yes, sir; I do.

Senator STENNIS. Right there, they were sitting there at the time looking at these poll-tax requirements, and these property-tax requirements which were right before them and they created a republican form of government and left those taxes right where they found them, did they not?

Mr. BRANT. Yes, sir; I agree with that.

Senator STENNIS. All right.

Mr. BRANT. Yes.

Senator STENNIS. I admire your frankness, sir, and you may extend your answer, if you wish, of course.

Mr. BRANT. Well, the freeholder requirement of that period was imported from England. In England it had been a part of the feudal

system whereby, on account of the great concentration of real estate holdings, it disfranchised a very large percentage of the people. But, when it was brought over to the United States it produced at once almost universal suffrage because of the illimitable amount of lands and the cheapness of the land, and anybody could become a freeholder and anybody did, practically.

Also the freeholder requirement of that period was not a test of net worth. The £60 requirement, for instance, in Massachusetts, that amounted to about $300—about $240, I think—$250. And that could be entirely covered by a mortgage. There could be a mortgage exceeding it, in fact, so that a man could be worth nothing net, but still he had the right to vote, and there was practically universal suffrage in Massachusetts, to such an extent that Shays' Rebellion was conducted by freeholders, principally veterans who were being dispossessed of their land by the moneylenders and who were being thrown into jail for debt, and in the ensuing election, after General Lincoln had been sent up there with an army to disperse them, these same freeholders turned around and defeated the state administration. They elected a, what you would call, a left-wing Communist government; that is, it would be called a Communist government now, carrying backward our principles. The Governor they chose was Governor Hancock, the first man to sign the Declaration of Independence.

As Madison expressed it, he had become tainted with Shays' doctrine.

Well, in Pennsylvania, Gouverneur Morris, according to him—but not limiting his remarks to Pennsylvania, the freeholder requirement admitted nine-tenths of the people to suffrage; that was on account of the great amount of free land in the western part of Pennsylvania.

In Virginia—I have not the figures for Virginia—but the tendency there was to show some restriction. It still admitted a great majority of the people to suffrage, and the same was true in South Carolina, on account of the immigration into the Piedmont.

Well, as the land became more settled and prices rose, and as the population increased so that there was an increase in the manufacturing and mechanical work, there was a shift to the commercial work and manufacturing, shopkeeping and so on, artisanry, and there was a progressive exclusion of the people from the franchise, so that these tax requirements were adopted not to narrow the construction, not to narrow the suffrage, but to widen it, and it had that effect. That was their only purpose.

In New Hampshire, as I believe has been brought out before, the poll tax requirement was a device for extending the suffrage.

In South Carolina they had had, up to about the time the Constitution was written, the freeholder requirement entirely. Then, they adopted a provision that anybody could vote who paid an annual tax of 3 shillings. I do not know what the pound was worth in South Carolina, but if it was the same as in Virginia, it would amount to three and a third dollars, so that 3 shillings would be one-fifth of a dollar, which would amount to 18 pennies. If that seems kind of queer figuring, that one-fifth is 18, why it is the result of their using the Spanish dollar, which was divided into nintieths.

Well, you can get the effect of that South Carolina extension in the remark of Pierce Butler in the Constitutional Convention on this subject of the property qualification of limiting it to freeholders.

Now, Pierce Butler was a very stout defender of slavery; that was his chief interest. But he also would be called a Communist under modern usage of the term, because he said in the Constitutional Convention that speculators were blood-suckers.

Well, Pierce Butler was, I think, the only man on the South Carolina delegation who was devoted to broad suffrage. The others were not. The Pinkneys did not want the people to vote at all. But Butler said in the Constitutional Convention on this subject of restraining the ballot to freeholders, that there was no right about which the citizens were more jealous than the right of suffrage.

He said that abridgements of it tend—as in Holland—to a rank aristocracy.

Now, you see, you had that process of extension of the suffrage through the use of these tax qualifications.

Now, I have discussed that so long that perhaps I have digressed from your original question, and if I can come back to it by repetition of it——

Senator STENNIS. That is all right. I was answered in the facts that you just recited there.

I have one more question, Mr. Chairman. I want to call your attention now, and you may not be a lawyer, but you are familiar with these sections of the Constitution.

Mr. BRANT. I have read them.

Senator STENNIS. Yes, you are familiar with them. I want to call your attention now to one that you failed to mention.

Mr. BRANT. Yes, sir.

Senator STENNIS. Article II, section 1, the second sentence of it reads this way—it is the third sentence:

"Each State shall appoint in such manner as the legislature thereof may direct a number of electors"—it goes on talking about how many there shall be—that is on page 455 in this book. Now, we turn here to page 468 of this book, and read from the twelfth amendment, and it says:

> The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom at least shall not be an inhabitant of the same State with himself.

That is the Constitution of the United States providing the way for the President to be elected.

Mr. BRANT. That is right.

Senator STENNIS. By the electors, not by the people. I call your attention to the fact that it says "each State shall appoint a number of electors," each State, now.

In the face of those plain words of the Constitution, what part of the Constitution do you base that part of your bill on which provides that Congress may say who is qualified to vote for the President of the United States?

Mr. BRANT. Well, Senator, may I correct one impression? That is not my bill.

Senator STENNIS. Well, the bill——

Mr. BRANT. Yes, sir. I think that that brings in the purpose of that section. I think that the States, in the first place, do not have to elect their electors. There is no obligation in the Constitution that they shall resort to election by the people in choosing their electors. But

there is an element of Federal authority in the fact that the provision for the choice in the manner of selection is in the Constitution.

The first question that would come up in that connection is whether the legislature itself can appoint them. Now, in the first election, five legislatures appointed their own electors. The system was new at this time, and there was no thought given to the words "the legislatures shall appoint in such manner as they shall direct," and the journal and debates of the Constitutional Convention had not been published, and nothing was known about the manner in which that came into the Constitution.

But, in 1823, in a political controversy slightly resembling the southern revolt of today, that question came up of whether the State legislatures could appoint the electors, the Presidential electors, and Rufus King who, at that time, was one of, I think, three surviving framers of the Constitution, wrote to his brother that he remembered clearly the circumstances under which that article was put in the Constitution, and that in his opinion, the legislature had no authority to make the appointment, and I should like permission to obtain Rufus King's letter and incorporate it at this point.

The CHAIRMAN. Without objection, it will be so done.

(The letter referred to is as follows:)

RUFUS KING TO C. KING, SEPTEMBER 29, 1823 [1]

To prove that your construction of the Constitution respecting the appointment of electors is correct, it may be observed that according to the printed Journal of the Convention, it is evident that the choice of the President was a subject of great difficulty; and the more so, as the practice of the States was at that period dissimilar in the elections of Governor, or the State executives. In all the States except New Jersey, east of Maryland, the choice of Governor was made by the people; in New Jersey and the five Southern States, the Governor was chosen by the several State legislatures. The members of the Convention in settling the manner of electing the Executive of the United States seem to have been prejudiced in favor of the manner, to which they were accustomed, in the election of the Governor of their respective States.

According to the Journal, on the 19th of July, the Convention resolved that the President should be chosen by Electors appointed, "by the Legislatures of the States"; On the 23d of July, they reconsidered this vote, and on the next day resolved that the President should be chosen "by the National Legislature."

This appears to have been unsatisfactory, and to have given occasion to much discussion and to different projects; the subject was referred to a large committee, which rejected the choice by the National Legislature, and reported the provision which is contained in the Constitution, viz; that the President shall be chosen by electors to be appointed in such manner as the legislature of each State may direct.

Comparing this established mode of choosing the President with that which was adopted on the 19th of July, recollecting the immediate reconsideration of that mode, and the deliberate adoption of the mode of choosing, which is provided by the Constitution, it is reasonable to infer that the power to direct the manner in which electors may be chosen, does not give the legislature of each State the power by which they themselves may make such appointment of the electors.

As the language of the Constitution on this subject differs from the language of the first resolution, which gave the appointment of electors to the State legislatures, in like manner as the Constitution gives the power to appoint Senators, it is not only reasonable, but almost necessary to give the provision of the Constitution a different interpretation, and to limit the same, so that the State legislature made by law designate those who may appoint the electors although they themselves may not appoint them.

[1] From the Records of the Federal Convention of 1787, edited by Max Farrand., vol. III, New Haven, Yale University Press, 1937, p. 460.

Again the Constitution provides that Representatives shall be chosen *by the People;* Senators *by the Legislature of* each State and Electors *in such manner as the Legislature of each State may direct.* The Legislature may direct that Electors may be chosen by the people, by a genl. ticket in each State, or by districts; they may authorize the persons qualified to vote for the most numerous branch of the State Legislature, to vote for the Electors; or they may confine the choice to free-holders, as in the case in Virginia; or they may direct that the people shall in the several States, by ballot, or viva voce, choose Electors, with power to appoint the Electors of the President; in this way the Senate of Maryland is appointed; and it appears by the printed Journal of the Convention, that General Hamilton proposed this very mode of choosing the Electors of the President. As the language of the Constitution on this subject differs from the language of the first Resolution, which gave the appointment of Electors to the State Legislature, in like manner as the Constitution gives the power to appoint Senators, it is not only reasonable, but almost necessary to give the provision of the Constitution a different interpretation, and to limit the same, so that the State Legislature may by law designate those who may appoint the Electors although they themselves may not appoint them.

This course of thinking has occurred to me, I suggest it to you; the facts are correct as I state them.

Mr. BRANT. He said that there had been a controversy in the Convention over the question of whether the presidential electors should be chosen by the legislatures or by the people or whether they should have the system of election by the Congress itself. The decision was for electors. That was to prevent too close a tie-up between the Federal Government and the State legislatures.

Now, Madison, for instance, and James Wilson of Pennsylvania were very strongly against state influence in the choice of a president. Both of them advocated election by the people by way of a system of electors. Wilson was the man who originated the proposal. He said, in bringing it up, he was going to make a suggestion which he thought would be startling to the Convention, and that is that the President should be chosen by the people.

Well, it was startling to them. But, they took to it fairly well, and they said to him, "Well, now, we will put this over until the future, and in the meantime you prepare a plan."

So, a day or two later, Wilson presented his plan, which was a system of presidential electors. Now, he called that a system of election by the people not immediately but mediately through the electoral college, and that was finally adopted.

The manner of appointment was left to the State legislatures, because they did not want to compel a direct election, and they were willing to allow a very wide discretion to the legislature in the matter.

It is my opinion that when the legislature elects to choose presidential electors by a vote of the people, then it is within the power of Congress, under article I, section 8, clause 18, to enforce a requirement essential to the preservation of the American Government, that the qualifications of the electors shall not be arbitrary or utterly unreasonable.

Senator STENNIS. But, at the same time you would agree that if the legislature saw fit, they could themselves appoint electors, and Congress could not do a thing about it.

Mr. BRANT. No, sir.

Senator STENNIS. You do not think they could?

Mr. BRANT. Not under Rufus King's statement.

Senator STENNIS. That is the point. Do you rest the authority for that part of your bill with reference to voting for the President on the Rufus King letter?

Mr. BRANT. On that in connection with the debates in the Constitutional Convention. More specifically, of course, on the debates.

Senator STENNIS. So, you rest on the debates and on a letter that was written when there were only three members of the Convention left living? You rest it on that rather than the words of the Constitution?

Mr. BRANT. Oh, no. I rest it also on the words of the Constitution, those which I just cited.

Senator STENNIS. Now, you show a familiarity with those cases. I have one other question. You quoted Rufus King. I want to read you here now a quotation from Chief Justice Fuller of the United States Supreme Court, speaking in *McPherson* v. *Blacker* (146 U. S. 1):

> In short, the appointment and mode of appointment of electors belong exclusively to the States under the Constitution of the United States. 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.

Mr. BRANT. You will notice in what I quoted from the Classic case, that *McPherson* v. *Blacker* was one of the cases which the Supreme Court discredited in that quotation.

Senator STENNIS. What do you mean "discredited", now?

Mr. BRANT. It was cited.

Senator STENNIS. It did not overrule it.

Mr. BRANT. No, not overrule it; no, sir. I should say that the validity of what you have quoted today would depend upon the facts presented to the Court.

Senator STENNIS. Thank you.

The CHAIRMAN. Thank you.

Mr. BRANT. Thank you very much.

The CHAIRMAN. Is Mr. Perry here? Mr. Perry, will you give your name and whom you represent to the reporter, please.

STATEMENT OF LESLIE S. PERRY, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. PERRY. My name is Leslie S. Perry, and I represent the National Association for the Advancement of Colored People. I appear on behalf of the National Association for the Advancement of Colored People in support of H. R. 29 and all other identical bills before your committee to make unlawful the requirement of the payment of a poll tax as a prerequisite to registering or voting in primary or other elections for Federal officers.

The association has 1,620 branches, youth councils, and college chapters in 43 States with a paid membership of nearly 600,000.

For a number of years our membership has manifested deep concern over improper restrictions on voting which various southern states have imposed on their citizens. Large sections of their population are shamelessly disfranchised by means of poll-tax requirements, so-called white Democratic primaries, prejudicially administered literacy tests, intimidation, force and violence. On April 3, 1944, in the case of *Smith* v. *Allwright*, the Supreme Court of the United States declared

unconstitutional one of these restrictions: the "white" Democratic primary. Through the courts attempts are being made to strike down some of the other impediments to an unfettered vote.

Our only hope, however, for the elimination, nationally, of the odious poll-tax requirement is in the Congress. In recognition of this plain fact, the thirty-eighth annual conference of the NAACP which met in Washington last June adopted the following resolution:

> The right of franchise is the most important tenet of American democracy and should not be restricted by a poll tax. We urge passage of an anti-poll-tax bill.

The poll tax contributes to the effective disfranchisement of approximately 10,000,000 American citizens, black and white alike, residing in Alabama, Arkansas, Mississippi, South Carolina, Tennessee, Texas, and Virginia. It is generally claimed by the proponents of poll taxes that a dollar or two is little enough to pay for the great privilege of voting. Actually, it is a trifling sum—if you have it. But the South has always had the lowest per capita income in the Nation. That was true during the depression of the thirties; it was true at the peak of war employment, and it is true today.

Studies made by the United States Department of Labor throw light on this question. In 1933 the per capita income in Mississippi amounted to $123 a year as compared with $368 for the Nation as a whole. In other words, the average Mississippian had only 33 percent of the income of other Americans. Increased industrial activity growing out of the war effort improved economic conditions in poll-tax States. But even in 1945 the average citizen of Mississippi had 52 percent less income than the average American since he received only $556 per capita while the receipts of the average citizen amounted to $1,156 per year.

Mr. Chairman, there is set out the per capita income payments for the poll-tax States from 1929 to 1945 for the seven States which have poll-tax requirements.

Per capita income payments for poll-tax States

	1929	1933	1939	1941	1945		1929	1933	1939	1941	1945
United States	$680	$368	$539	$639	$1,150	Alabama	$305	$154	$242	$359	$700
Virginia	422	266	402	565	993	Mississippi	273	123	201	283	556
South Carolina	252	167	261	354	663	Arkansas	305	152	246	332	654
Tennessee	349	190	295	413	813	Texas	465	257	401	497	917

Source: Derived from Monthly Labor Review, October 1946, p. 497.

To be more specific, a survey of all economic groups in Sumter, S. C., in many respects a typical county in a poll-tax State, was made jointly by the Sumter Chamber of Commerce and Department of Economics and Rural Sociology of Clemson Agricultural College in 1945. This study showed that in 1944, at the height of the manpower shortage when workers were theoretically receiving high wages, 25.9 percent of all Negro families in Sumter and 2.1 percent of all white families had an income of less than $500 per year. Another 38.8 percent of the Negro families and 4.3 percent of the white families earned less than $1,000 per annum. With wages at levels such as these during an abnormally high average income period, it is clear to everyone that

a tax on the right to vote constitutes an effective bar to a large number of citizens in the poll-tax States.

The effect of these mass disfranchisements permeates our entire national life and sickens it like a gangrenous sore. I have no desire to discuss personalities in this hearing, but it is common knowledge that most of the Representatives and Senators from the poll-tax States have been able to return to Congress year after year to oppose vociferously sound social and civil rights legislation only because the overwhelming majority of their constituents are completely disfranchised.

In the 1946 general election for Senator in Mississippi 46,747 persons voted out of a population of 2,183,796. The total Minnesota vote, on the other hand, was 878,731 out of 2,724,274. In the race for the House that year the staggering total of 5,429 persons out of 263,367, or 2.1 percent, voted in the general election in the First Congressional District of Mississippi. Compare this with the First District of Minnesota, a non-poll-tax State, where 30 percent of the population went to the polls and freely exercised their great democratic privilege of casting a ballot for the Representative of their choice.

I set out here, Mr. Chairman, the vote by congressional districts in Mississippi and in Minnesota, and I want to point out that in the Third Congressional District of Mississippi only 1 percent of the total population of that district voted in the 1946 elections.

Votes cast in Mississippi and Minnesota in 1946 congressional elections

	Population, 1940, by congressional districts	Total vote cast, 1946 election	Percent of population voting in election
MISSISSIPPI			
1. Rankin	263,367	5,429	2.1
2. Whitten	231,701	6,491	2.8
3. Whittington	435,530	4,185	1.0
4. Abernethy	201,316	10,017	5.0
5. Winstead	261,460	7,122	2.7
6. Colmer	319,635	6,448	2.0
7. Williams	470,781	10,345	2.2
MINNESOTA			
1. Andresen	318,154	96,345	30
2. O'Hara	305,559	91,434	29
3. MacKinnon	321,987	111,519	34
4. Devitt	309,935	88,702	28
5. Judd	321,859	114,614	35
6. Knutson	334,781	96,548	28
7. Andersen	305,139	88,536	29
8. Blatnik	261,041	109,065	37
9. Hagen	283,845	78,242	27

Just as we do not believe that race, or color, or religion has anything whatever to do with the rights of persons to vote in a democratic society—so we do not believe that a man's wealth or poverty should constitute a qualification or disqualification. We find it very difficult to see how the United States can in good conscience insist on democracy in Europe and China, while at home she continues to permit unscrupulous politicians in seven Southern States to nullify democracy through the exaction of a poll tax.

We urge the Congress to abolish the poll tax.

The CHAIRMAN. Thank you very much. Are there any questions, Senator?

Senator STENNIS. No questions.

The CHAIRMAN. Thank you, sir.

Now, is the lady from the Methodist Church here?

Mrs. MORGAN. Yes, I am here, Mr. Chairman.

The CHAIRMAN. You are testifying for the Woman's Society of Christian Service of the Methodist Church?

STATEMENT OF MRS. JOY ELMER MORGAN, WOMAN'S SOCIETY OF CHRISTIAN SERVICE OF THE METHODIST CHURCH

Mrs. MORGAN. Mr. Chairman, I am representing the policy-making body of the Woman's Division of Christian Service of the Methodist Church. This is an organization with a membership of about a million and a half women.

No piece of legislation has been supported by Methodist women more consistently than legislation calling for the repeal of the poll tax. At the annual meeting of the Woman's Division of Christian Service held at Buck Hill Falls, Pa., in December of 1946, the following statement was made regarding the poll tax:

I quote—

We shall work for group security by seeking to secure a wider use of the ballot and by abolishing the poll tax as a prerequisite to voting.

The statement was reaffirmed at the annual meeting in December 1947.

We repudiate the idea of superior and inferior races as scientifically unsound, morally indefensible, and contrary to the basic teachings of religion. No section of our woman's division supports this belief with more vigorous action than the women from the poll-tax States.

In a resolution passed at the annual meeting of the woman's division of Christian service of the southeastern jurisdiction in Orlando, Fla., on March 8, 1948, it was suggested that Methodist women recommend the following as specific and immediate steps in the task of making Christian principles live in the Nation:

1. That every effort be made to make the South, the Nation as a whole, and the world know that the Christian women of the South oppose any effort to block progressive moves toward the achievement of civil rights for all people in this Nation, including millions of citizens of this Southland.

2. That Methodist women work for Federal legislation to guarantee civil rights to the people of this Nation.

One of the most pressing reasons for the urgent demand on the part of Methodist women for the repeal of the poll tax as well as for the enactment of other civil rights is the attitude of our missionaries in the field. They have done much to make us aware as churchwomen of the glaring inconsistencies between our professions and our practice regarding race. They tell us it is becoming increasingly difficult to gain the respect of native peoples for our church because of this dualism and they urge us to make our practices Christian.

Furthermore, they tell us that our own Government comes under heavy censure because of the gap between profession and practice in democracy. Not only do our missionaries desire the people they work with to accept Christianity, but being loyal Americans and loving their country, they are grieved when severe criticisms are leveled at it because of its racial discriminations.

The very real desire on the part of our members to have the poll tax removed stems, therefore, in no small measure from our missionaries who have fired us with the desire to implement the belief, "He has made of one blood all nations."

I cannot urge too strongly the desire of the Woman's Division of Christian Service of the Methodist Church for the passage of H. R. 29.

The CHAIRMAN. Thank you, Mrs. Morgan. Are there any questions, Senator?

Senator STENNIS. No.

The CHAIRMAN. I guess that concludes our list of witnesses this morning. We will recess until 10 o'clock tomorrow morning.

(Whereupon, at 11:55 a. m., the committee adjourned, to reconvene at 10 a. m., Thursday, March 25, 1948.)

POLL TAX

THURSDAY, MARCH 25, 1948

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:10 a. m., in in room 104B, Senate Office Building, Senator C. Wayland Brooks (chairman) presiding.

Present: Senators Brooks (chairman), Stennis, and Hayden.

The CHAIRMAN. The committee will come to order. I see that Senator Pepper is here now, and if you will, Senator, we will be very glad to have your testimony.

Senator PEPPER. This is not as bad as it looks, Mr. Chairman.

The CHAIRMAN. All right, Senator.

STATEMENT OF HON. CLAUDE PEPPER, MEMBER OF THE UNITED STATES SENATE FROM THE STATE OF FLORIDA

Senator PEPPER. Mr. Chairman, I apologize for my tardiness.

The CHAIRMAN. Let me explain our situation to you, Senator. We have got this bill which has passed the House, as you know. It was unanimously approved by and reported by the subcommittee of this committee. Subsequent to that, there was a request for hearings, and the committee ordered that we have 2 days of hearings.

Now, the opposition presented its case in two morning sessions, and we have agreed to close this in two morning sessions.

Senator PEPPER. I am not going to take very long.

The CHAIRMAN. I wish you would be guided by that.

Senator PEPPER. Mr. Chairman, I am very grateful for this opportunity to speak briefly on S. 94 and H. R. 29, which would make unlawful the requirement of the payment of a poll tax as a prerequisite for voting in a primary or general, or other election for national officers. My appearance here is not an endorsement of the other parts of the so-called President's civil-rights program. I shall deal with those individually as the issues thereof arise in the future.

Mr. Chairman, since I have been in the Senate, I have introduced bills on this subject four times. My views on the power and authority of Congress to legislate on the subject matter of my proposal have been fully presented in a statement which I made through a subcommittee of this committee on S. 1280 on July 19, 1941, which appears on pages 3 through 32 of the printed record of the hearings on that bill.

I do not want to take the time of the committee to repeat them in full here; and I am, therefore, asking the committee to incorporate that statement as part of the record of the committee on S. 94.

The CHAIRMAN. I will be so ordered, without objection.
(The statement referred to follows:)

STATEMENT OF THE HONORABLE CLAUDE PEPPER, A UNITED STATES SENATOR FROM THE STATE OF FLORIDA

Senator PEPPER. Mr. Chairman, and members of the committee, the proponents of this bill are very grateful for the opportunity this morning of presenting the merits of the measure and to have an opportunity to try to lay the predicate for fuller consideration of the bill by the committee.

I will say, only by way of a preliminary statement, that I know of no more important matter that the Congress could consider at this time than the question of protecting the integrity of the ballot and franchise in the United States and removing restrictions upon the enjoyment of a privilege which we have come to think of as inherent in the citizenship of mankind.

The bill itself contains certain provisions. In the first place, it provides "that the requirement that a poll tax be paid as a prerequisite to voting or registering to vote at primaries or elections for the President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, is not and shall not be deemed a qualification of voters or electors voting or registering to vote at primaries or elections for said officers, within the meaning of section 2 of article I of the Constitution, but is and shall be deemed an interference with the manner of holding primaries and elections for said national officers and a tax upon the right or privilege of voting for said national officers."

In section 2 it is made "unlawful for any State, municipality, or other Governmental subdivision to prevent any person from voting or registering to vote in any primary or (general) election for President, Vice President" and other Federal officers on the ground that the person proposing to vote has not paid a poll tax, and it definitely provides that any such requirement that such poll tax be paid is invalid and null and void, and provides, in section 3, that "It shall be unlawful for any State, municipality, or other governmental subdivision to interfere with the manner of selecting persons for national office by requiring the payment of a poll tax as a prerequisite for voting or registering to vote in any primary or election for" such officers.

In section 4 it is made "unlawful for any person, whether or not acting under the cover of authority of the laws of any State or subdivision thereof, to require the payment of a poll tax as a prerequisite for voting or registering to vote in any primary or general election" for any of the enumerated Federal officers.

Now, may it please the members of the committee, we shall endeavor to show, first, that there are two cases—primarily, *Breedlove* v. *Suttles*, and the *Pirtle* v. *Brown* case—which are of importance primarily for their language; at least, that is true in the Breedlove case, because of the confusion which has developed quite naturally about the power of the Congress to legislate with respect to the prohibition of poll tax as a condition precedent for voting for Federal officers, or as an alleged qualification of the right to vote for the enumerated Federal officers.

In the second place, we shall show that the subsequent case, of the *United States of America* v. *Classic*, decided the 26th day of May 1941, and taken up in the October term—it is No. 618—distinctly clears up that confusion and defines very clearly and very distinctly the nature of the right of the citizen to vote for Federal officers, shows the source of that right and the character of it and whose duty it is, namely, the Congress, to protect the enjoyment of that right.

In the third place, we shall endeavor to show the committee that there is no doubt about the power of Congress to act in this premise, but at most, there is no more than a doubt; that there are now six Justices of the Supreme Court who were not members of the Supreme Court—two-thirds of the entire membership when the Breedlove case was decided, December 6, 1937; that the Breedlove case related to a State constitution and the statutory provisions governing qualifications for State election of State officers and not an election for Federal officers and has no connection with the issue which is presented by the bill in question. The proponents of the measure therefore feel justified in asking Congress to pass upon the merits of the measure, and if, in the wisdom of the Congress, the merit of the bill is such as to obtain approval of the Congress, then any legal doubt, particularly under the circumstances mentioned, should be removed in favor of allowing the presently constituted Court to pass upon the specific question presented by this bill.

Senator O'MAHONEY. Are you suggesting that the change in the personnel of the Court might change the decision?

Senator PEPPER. I am suggesting, Mr. Chairman, that just as a court will take judicial notice of certain legislative circumstances, the legislative branch of the Government may take legislative notice of change in judicial conditions.

Now, Mr. Chairman and members of the committee, I think it proper to notice, for a moment, the case of *Breedlove* v. *Suttles* (302 U. S. 277), the opinion being rendered in December—on December 6, 1937, and the facts of the case being summed up on page 280 of 302 United States, as follows:

"The pertinent facts alleged in the petition are these: March 16, 1936, appellant, a white male citizen 28 year old, applied to appellee to register him for voting for Federal and State officers at primary and general elections. He informed appellee he had neither made poll-tax returns nor paid any poll taxes and had not registered to vote because a receipt for poll taxes and an oath that he had paid them are prerequisites to registration. He demanded that appellee administer the oath, omitting the part declaring payment of poll taxes, and allow him to register. Appellee refused."

The action was brought, therefore, to determine whether or not the appellee, the State officials, had acted unlawfully or illegally in the refusal mentioned. The case came before the United States Supreme Court, and in the opinion, it is stated as follows:

"The action of the State official is held to have been proper" and therefore the appeal failed. The adverse decision of the lower court was affirmed by the United States Supreme Court.

The vice of the case is not the decision, but the dicta that appear in the decision. The case itself was perfectly properly decided, because we shall certainly not contend that the several States do not have the power to prescribe their own qualifications for voters in an election of their own officers.

The fault of appellant in this case is that he demanded of the State official that he qualify him to vote in a State election also without his meeting the State requirements. The opinion of the Court, therefore, was perfectly proper, in that it did not allow the invasion of these definitely admitted rights of the several States. This was not a specific election at which this man endeavored to vote; but he endeavored to qualify himself to vote in all elections, State and Federal.

It is an entirely different case, therefore, from the *Pirtle case*, which I will come to in a moment, where the appellant presented himself and showed that he possessed qualifications required by the State and that he sought only to vote in a Federal election, that is, for the election of a Member of the House of Representatives, a Member of Congress, and that he met every requirement of the State except the payment of poll tax.

Senator O'MAHONEY. Do you contend that a person might be qualified to vote in a Federal election and would be entitled to vote in a Federal election although he might not be qualified to vote in a State election?

Senator PEPPER. Entirely so, Mr. Chairman.

Now then, as I say, in considering the decision in the *Breedlove case*, I may say that I have no quarrel with the Court although the Court quarrels with itself in a subsequent case, that is, with the language in the *Breedlove case*, because the Court's language confuses the whole nature of the right of the citizen of a State of the United States of America to vote for a Federal official.

I will quote now from page 282 of 302 U. S.:

"Payment as a prerequisite is not required for the purpose of denying or abridging the privilege of voting."

I am quoting now from the opinion in this case by Mr. Justice Butler:

"It does not limit the tax to electors; aliens are not there permitted to vote, but the tax is laid upon them, if within the defined class. It is not laid upon persons 60 or more years old, whether electors or not. Exaction of payment before registration undoubtedly serves to aid collection from electors desiring to vote, but that use of the State's power is not prevented by the Federal Constitution. Compare *Magnano Co.* v. *Hamilton* (292 U. S. 40, 44)."

I continue to quote on page 283:

"To make payment of poll taxes a prerequisite of voting is not to deny privilege or immunity protected by the fourteenth amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the fifteenth and nineteenth amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate."

Then certain cases are cited, and the Court continues:

"The privileges and immunities protected are only those that arise from the Constitution and laws of the United States and not those that spring from other sources."

Now, there is the vice of this whole decision. In that language lies the original fallacy which crept into the consideration of this subject.

Mr. Chairman and members of the committee, in this case the effects then are that the State of Georgia levied a poll tax upon certain classes of people, beginning at a certain age, 21, and running up to a certain age, 60, exempted women, and applied the poll tax to everybody within the enumerated ages—I should say, applied a poll tax to everybody else except those specifically exempted by age or sex, including aliens.

The Court pointed out here that that was a revenue measure, the income going to the public-school system of the State, but the State conditioned the right to vote upon the payment of that poll tax and it did not differentiate with respect to voting for State officers and voting for Federal officers, but laid down a blanket provision that you could not vote unless you paid that tax. So that it became very apparent from the facts that it was the whole concept of the State of Georgia that they could use the franchise of voting as a means of collecting a tax which they imposed on certain people within their jurisdiction, and in this language here the United States Supreme Court said that is perfectly proper, that it has been customary for a long time to condition the enjoyment of the franchise upon the payment of a poll tax, and therefore it is all right in this case.

Now, the reason the Court was able to arrive at this erroneous conclusion, may it please the committee, was because the Court erroneously judged the nature of the right to vote for Federal officials. The Court thought that the nature of the right, or the source of the right to vote for even a Federal official was the State itself. It would seem that a statement of the concept would have shown the error of it, because surely the State is not the one to grant a Federal privilege, and it is rather striking that the Court actually fell into such an obvious error regarding the "privilege of voting."

Now, the Court does not limit its statement to voting for State officers. They say the "privilege of voting," by implication and inference meaning for Federal officials as well as for State officials, although the facts do not necessarily require them to pass on the question of whether it is a Federal or State election, when they say, "Privilege of voting is not derived from the United States, but is conferred by the State."

Senator O'MAHONEY. May I interrupt a moment?

Senator PEPPER. Yes, sir.

Senator O'MAHONEY. Have you made a study of the qualifications of voters in the several States, from the beginning of the Constitution?

Senator PEPPER. I have made some study, Mr. Chairman, and one of the reasons why we desire this preliminary hurdle of presumptive power of Congress to be passed upon favorably is so that subsequently we can go into all of the data bearing on the merits of whether Congress has this necessary power.

Senator O'MAHONEY. There was a time when there was a property qualification.

Senator PEPPER. I shall advert to that, Mr. Chairman, although there has been no property qualification for some time past in our history.

Now, then, on account of the case of *Breedlove* v. *Suttles*, it was in the minds of the public generally, that the Court had upheld the poll tax—the requirement, rather, that a poll tax be paid as a condition precedent to voting in a Federal election, although there was not any evidence at the time that the man was trying to vote in a Federal election, and the Court was justified in sustaining the refusal of the State official to declare the man qualified to vote in all elections when he had not qualified as a voter in the State, according to the terms of the State's own constitution and laws.

To show a strange application of the *Breedlove case* I will go to the case of *Pirtle* v. *Brown*, Circuit Court of Appeals, Sixth Circuit (118 Fed. (2d) 218), decided March 8, 1941, and remember the *Breedlove case* was decided in 1937, December 6.

In the *Pirtle case* the question was squarely presented as to whether or not the State could condition the right of a citizen to vote for a Congressman in an election, not the primary, but a special election called to elect a Member of the House of Representatives, because that citizen had not complied, or had failed to pay a poll tax, thus allowing him to vote. Notice that this was not for a State election nor any primary and that it was admitted that he had done everything to qualify but pay the poll tax.

Senator O'MAHONEY. Met all the requirements of registration?
Senator PEPPER. All of them.
Senator O'MAHONEY. And he had registered?
Senator PEPPER. Yes; he had done everything except pay the poll tax.
Now, the constitution of Tennessee fixed the qualifications of voting as follows:
"Every male person of the age of 21 years, being a citizen of the United States, and a resident of this State for 12 months, and of the county wherein he may offer his vote for 6 months next preceding the day of election, shall be entitled to vote for members of the general assembly, and other civil officers for the county or district in which he resides; and there shall be no qualification attached to the right of suffrage, except that each voter shall give to the judges of election, where he offers to vote, satisfactory evidence that he has paid the poll taxes assessed against him for such preceding period as the legislature shall prescribe, and at such time as may be prescribed, by law, without which his vote cannot be received."
That is the constitutional provision. Now, then, further on, that Tennessee code provides:
"Every person in this State, who is otherwise a qualified voter under the constitution and laws, shall, as condition precedent to the exercise of voting, furnish to the judges of election satisfactory evidence that he has paid the poll tax, if any, assessed against him for the year next preceding the election, not later than 60 days prior to the day of said election, without which his vote shall not be received."
Now, then, as I said, in this case this voter who was otherwise qualified presented himself to vote in this election and was denied the right to vote in this election for a Congressman because he had not satisfied the election officials that he had previously, as the State required, paid a poll tax.
The Court says:
"It is clear enough that these provisions do not levy or assess a poll tax upon 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 who are deaf, dumb, blind, incapacitated for labor, or over 50 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."
The committee will thus notice the poll tax is a tax measure levied by the local law.
"Again, it is worthy of note that the tax is levied by that section of the Tennessee constitution dealing with taxation, while the disqualification of the voter for failure to pay it is found in that section dealing with the qualification of voters."
This is on page 220 (118 Fed. (2d)):
"The collection of the poll tax has always been attended with difficulty because the assessment falls upon many more people, but the State has earnestly insisted upon the collection."
The committee will notice that, please.
"As an illustration, the property taxpayer is not permitted to pay his tax without paying his poll tax at the same time, and by the same section every tax collector who permits a violation thereof is held liable for all poll taxes which thus become delinquent."
And again, going on:
"The collection of the poll tax is stressed because when collected it becomes part of an educational fund which the State, impoverished by war, began to build up, cherish, and protect as a governmental policy, imbedded in the Constitution itself.
"Upon the whole, we think it is reasonable to conclude that the provisions requiring the payment of the tax as a prerequisite to voting do not so much connote a levy and assessment as they do an effective method of collection. They do not levy a poll tax upon any voter. They give due recognition to the poll-tax assessment law hereinbefore quoted. They do not disturb any voter who is over 50 years of age, or deaf, dumb, blind, or incapacitated. They have their foundation in the idea that the normal voter will protect his franchise by paying his poll tax if it has been assessed against him. We think this is at least a permissible construction which we should adopt if any constitutional objection may thereby be foreclosed."

I will pause in the quotation, may it please the committee, to say that it is apparent, therefore, that the State levied the tax and set up the method of collection of the tax, having had difficulty in getting it collected, and they have determined to burden the exercise of the franchise with the duty to pay that tax, as a method of collecting it. It was therefore a condition precedent, or prerequisite, that they have imposed upon the exercise of the franchise so that is a qualification of a voter, a condition precedent to the exercise of the right to vote, and that will become more apparent here later.

"But, in any event," continued the court, "we are not dealing with the question whether the payment of a poll tax as a prerequisite to voting violates some natural right or fancied political right. The inquiry is, whether such provision denied any privileges or immunities protected by the Federal Constitution. We have already seen that article I, section 2, of the Constitution of the United States guarantees to the elector for Members of Congress no other privileges than those accorded him by the State as an elector for the most numerous branch of the State legislature. But appellant goes beyond this. He urges that the quoted provision of article IV, section 1, of the Constitution of Tennessee and section 2027 of the code violate the 'privileges and immunities' clause of the fourteenth amendment; that his right to vote for a Member of Congress is not taxable, regardless of whether the amount of tax imposed is trifling or substantial. We need not labor the point. It has been conclusively decided against the appellant in *Breedlove* v. *Suttlers*, supra (302 U. S., p. 283), where the Court said:

"'2. To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the fourteenth amendment. Privilege of voting is not derived from the United States, but is conferred by the State, and, save as restrained by the fifteenth and nineteenth amendments.'"

I pause in that quotation to say that the committee will note that here the circuit court of appeals is dealing with a congressional election and they are quoting from a Georgia decision which applied to all elections "but is conferred by the State * * *."

Behold the suggestion that the right to vote for a Member of Congress of the United States, the President of the United States, the Vice President, or the electors, are conditioned by the State upon such terms as the State wants to impose; that the right "is conferred by the State and, save as restrained by the fifteenth and nineteenth amendments" regarding race, color, or previous conditions of servitude "and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate."

That is to say, the State may lay down a proposition that you must have done everything that the caprice of the State may require or desire you to do before you can enjoy the right to vote for a Federal official. For example that you must have paid all public debts or paid all private creditors; you must have not engaged in any activity that the State may choose to frown upon, such as reckless driving or things of that sort, before you can vote for a Member of Congress.

The "privileges and immunities" protected are only those that arise from the Constitution and laws of the United States and not those that spring from other sources. The court held: "The decree appealed from is affirmed."

So that in that case the Circuit Court of Appeals, Sixth Circuit, held that the State still had the right to condition the exercise of the franchise in any way it wanted to do so.

Senator O'MAHONEY. Was there any dissent in that case?

Senator PEPPER. No; it was a unanimous decision of three judges, and now it appears that there is a writ of certiorari pending before the Supreme Court relative to that case, and I venture to predict that that petition for certiorari will be granted and I do not expect that decision to stand.

Senator NORRIS. Now, in the broad language there that is used by the court, assuming that the State had made the same qualification to vote for the most numerous branch of the legislature of the State—what is wrong with it? Is not that based on the Constitution of the United States?

Senator PEPPER. Would the Senator allow me to defer my answer until a little later?

Senator NORRIS. Certainly.

Senator PEPPER. Now, the matter I submit to the committee has been very clearly determined and decided. The Breedlove case is distinctly distinguished in the case of *United States* v. *Classic*, which was decided May 28, 1941, No. 618, and the principal opinion was delivered by Mr. Justice Stone——

Senator O'MAHONEY (interposing). Where did that originate?

Senator PEPPER. In Louisiana. Mr. Justice Stone, in delivering the opinion for the Court, says:

"Two counts of an indictment found in a Federal district court charged that appellees, commissioners of election conducting a primary election under Louisiana law, to nominate a candidate of the Democratic Party for Representative in Congress, willfully altered and falsely counted and certified the ballots of voters cast in the primary election. 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' within the meaning of sections 19 and 20 of the Criminal Code, and whether the acts of appellees charged in the indictment violate those sections."

The charge was that these election officials—and this is my statement—the charge was that these election officials had violated section 19 of the Criminal Code, and I am reading also from a page of the advance sheet of this decision—and that section condemns as a criminal offense any injury to a citizen in the exercise of his rights or privileges secured to him by the Constitution or laws of the United States.

Now, then, the election officials were charged with having changed certain ballots and having marked the ballots of certain voters up for a candidate in that race for whom they were not cast, and they were indicted for having violated section 19 of the Criminal Code in that they had, together, conspired to injure a citizen in the exercise of the rights or privileges secured to him by the Constitution or laws of the United States.

That raised the question of whether the right of a qualified voter to vote in a Louisiana primary—and to vote and to have the ballot counted—is a right secured by the Federal Constitution because the statute itself said that the offense constituted a conspiracy to deprive or injure him in the exercise of the rights granted by the Constitution or laws of the United States.

Now, I will read again from the Court's decision:

"The district court sustained a demurrer to counts 1 and 2 on the ground that sections 19 and 20 of the Criminal Code under which the indictment was drawn do not apply to the state of facts disclosed by the indictment and that, if applied to these facts, sections 19 and 20 are without constitutional sanction * * *."

I am reading again from the opinion.

"Article I, section 2, of the Constitution, commands that '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.' By section 4 of the same article 'The times, places, and manner of holding elections for Senators and Representaitves 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 choosing Senators.' Such right as is secured by the Constitution to qualified voters to choose members of the House of Representatives is thus to be exercised in conformity to the requirements of State law subject to the restrictions prescribed by section 2 (of art. I of the Constitution) and to the authority conferred on Congress by section 4, to regulate the times, places, and manner of holding elections for representatives."

Quoting again on page 4 of the advance sheet:

"Pursuant to the authority given by section 2 of article I of the Constitution, and subject to the legislative power of Congress under section 4 of article I, and other pertinent provisions of the Constitution," regulating times, places, and manner—and I am interpolating here now—"subject to the legislative power of Congress under section 4 of article I and other pertinent provisions of the Constitution, the States are given, and in fact exercise a wide discretion in the formulation of a system for the choice by the people of represenatives in Congress."

I continue to quote on page 6: "We come then to the question whether that right is one secured by the Constitution. Section 2 of article I commands that Congressmen shall be chosen by the people of the several States by electors, the qualifications of which it prescribes."

Now, in that case, the right of the citizen to vote in a primary election, which this was—a primary election, and to have his vote honestly counted—whether that right or those rights were those rights secured by the Federal Constitution should be borne in mind, but it says:

, "Section 2 of article I commands that Congressmen shall be chosen by the people of the several States by electors, the qualifications of which it prescribes."

Possibly I may interpolate there, and the committee will notice that the Court is there saying that section 2 of article I commands that Congressmen shall be chosen by the people of the several States by electors, the qualifications of which it prescribes, that is, the Federal Constitution prescribes the qualifications of

the electors, and there is a period there; it does not say that a State shall prescribe, it says the Federal Constitution shall prescribe the qualifications of voters.

Now to continue:

"The right of the people to choose, whatever its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by State action in conformity to the Constitution, is a right established and guaranteed by the Constitution and hence is one secured by it to those citizens and inhabitants of the State entitled to exercise the right. *Ex parte Yarbrough* (110 U. S. 651); *United States* v. *Mosley* (238 U. S. 383). And see *Hague* v. *C. I. O.* (307 U. S. 496, 508, 513, 526, 527, 529), giving the same interpretation to the like phrase 'rights' 'secured by the Constitution' appearing in section 1 of the Civil Rights Act of 1871 (17 Stat. 13). 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, 217–218); *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 section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18 of the Constitution, 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.' See *Ex parte Siebold* (100 U. S. 37); *Ex parte Yarbough*, *supra* (663, 6634);" and other cases are cited.

"Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a State to cast their ballots and have them counted at congressional elections. This Court has consistently held that this is a right secured by the Constitution. * * * And since the constitutional command is without restriction or limitation, the right unlike those guaranteed by the fourteenth and fifteenth amendments, is secured against the action of individuals as well as of States. *Ex parte Yarbrough*, supra; *Logan* v. *United States*, supra."

I continue to quote:

"But we are now concerned with the question whether the right to choose at a primary election, a candidate for election as Representative, is embraced in the right to choose Representatives secured by article I, section 2. We may assume that the framers of the Constitution"—and now, here I venture to suggest to the committee, is about to be stated by the Court the principle which should be the one in the light of which the whole matter should be regarded, and I quote, again, from the opinion of the Court:

"We may assume that the framers of the Constitution in adopting that section (sec. 2, art. I) did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph, and wireless communication which are concededly within it. But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for an 'indefinite' future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses. Hence we read its words, not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of government. * * * If we remember just 'it is a Constitution we are expounding,' we cannot rightly prefer, of the possible meanings of its words, that which will defeat rather than effectuate the Constitutional purpose.

"That the free choice by the people of Representatives in Congress, subject only to the restrictions to be found in sections 2 and 4 of article I and elsewhere in the Constitution, was one of the great purposes of our constitutional scheme of Government cannot be doubted. We cannot regard it as any the less the constitutional purpose or its words as any the less guaranteeing the integrity of that choice when a State, exercising its privilege in the absence of congressional action, changes the mode of choice from a single step, a general election, to two, of which the first is the choice at a primary of those candidates from whom as a second step, the Representative in Congress is to be chosen at the election.

"Nor can we say that that choice which the Constitution protects is restricted to the second step because section 4 of article I, as a means of securing a free

choice of Representative by the people, has authorized Congress to regulate the manner of elections, without making any mention of primary elections. For we think that the authority of Congress, given by section 5, includes the authority to regulate"—

I ask the committee to notice this section particularly (continuing): "includes the authority to regulate primary elections when, as in this case, they are a step in the exercise by the people of their choice of Representatives in Congress. The point whether the power conferred by section 4 includes in any circumstances the power to regulate primary elections was reserved in *United States* v. *Gradwell*, supra, 487."

Then the Court goes on to discuss the *Newberry case*, and the advance decision continues:

"In *Newberry* v. *United States*, supra, four Justices of this Court were of opinion that the term 'elections' in section 4 of article I did not embrace a primary election since the procedure was unknown to the framers. A fifth Justice who with them pronounced the judgment of the Court, was of the opinion that a primary law enacted before the adoption of the seventeenth amendment, for the nomination of candidates for Senator, was not an election within the meaning of section 4 of article I of the Constitution, presumably because the choice of the primary imposed no legal restrictions on the election of Senators by the State legislatures to which their election had been committed by article I, section 3. The remaining four Justices were of the opinion that a primary election for the choice of candidates for Senator or Representative were elections subject to regulation by Congress within the meaning of section 4 of article I. The question then has not been prejudged by any decision of this Court.

"To decide it we turn to the words of the Constitution read in their historical setting as revealing the purpose of its framers, and in search for admissible meanings of its words which, in the circumstances of their application, will effectuate those purposes. As we have said, a dominant purpose of section 2, so far as the selection of Representatives in Congress is concerned, was to secure to the people the right to choose Representatives by the designated electors, that is to say, by some form of election. * * *

"Long before the adoption of the Constitution the form and mode of that expression had changed from time to time. There is no historical warrant for supposing that the framers were under the illusion that the method of effecting the choice of the electors would never change or that if it did, the change was for that reason to be permitted to defeat the right of the people to choose Representatives for Congress which the Constitution had guaranteed."

Then, on page 10, I quote:

"Unless the constitutional protection of the integrity of 'elections' extends to primary elections, Congress is left powerless to effect the constitutional purpose, and the popular choice of Representatives is stripped of its constitutional protection save only as Congress, by taking over the control of State elections, may exclude from them the influence of State primaries. Such an expedient would end that State autonomy with respect to elections which the Constitution contemplated that Congress should be free to leave undisturbed, subject only to such minimum regulation as it should find necessary to insure the freedom and integrity of the choice. Words, especially those of a constitution, are not to be read with such stultifying narrowness."

Now, I drop down and continue to quote again:

"Not only does section 4 of article I authorize Congress to regulate the manner of holding elections, but by article I, section 8, clause 18, Congress is given authority '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 any department or officer thereof.' This provision leaves to the Congress the choice of means by which its constitutional powers are to be carried into execution. 'Let the end be legitimate; let it be within the scope of the Constitution, and all means which are appropriate which are plainly adapted to that end which are not prohibited but consist of the letter and spirit of the Constitution, are constitutional.' * * * That principal has been consistently adhered to and liberally applied, and extends to the congressional power by appropriate legislation to safeguard the right of choice by the people of Representatives in Congress secured by section 2 of article I."

And then it cites *Ex parte Yarbrough*, and other cases.

If the committee please, I will turn to page 12 and quote there:

"In *Ex parte Yarbrough*, supra, and in *United States* v. *Mosley*, supra, as we have seen, it was held that the right to vote in a congressional election is a right secured by the Constitution, and that a conspiracy to prevent the citizen from voting or to prevent the official count of his ballot when cast, is a conspiracy to injure and oppress the citizen in the free exercise of a right secured by the Constitution within the meaning of section 19. In reaching this conclusion the Court found no uncertainty or ambiguity in the statutory language, obviously devised to protect the citizen 'in the free exercise of any right or privilege secured to him by the Constitution,' and concerned itself with the question whether the right to participate in choosing a representative is so secured. Such is our function here. Conspiracy to prevent the official count of a citizen's ballot, held in *United States* v. *Mosley*, supra, to be a violation of section 19 in the case of a congressional election, is equally a conspiracy to injure and oppress the citizen when the ballots are cast in a primary election prerequisite to the choice of party candidates for a congressional election."

Now, I quote again on page 13:

"At least since *Ex parte Yarbrough*, supra, and no member of the Court seems ever to have questioned it, the right to participate in the choice of representatives in Congress has been recognized as a right protected by article I, sections 2 and 4 of the Constitution."

Meaning, of course, the Federal Constitution.

I quote again on page 15:

"The right of the voters at the primary to have their votes counted, as we have stated, a right or privilege secured by the Constitution * * *."

Now, the decision of that case was that the decision of the lower court sustaining the demurrer to the indictment was reversed, and it was held that what these State election officials had done was subject to prosecution under section 19 of the Criminal Code, because the right which they had deprived the citizen of was in violation of a right secured by the Constitution and laws of the United States of America.

Now, before I comment further, let me turn to the dissenting opinion of Mr. Justice Douglas. The Court, in that case, had three dissenting members, who were Mr. Justice Douglas, Mr. Justice Black, and Mr. Justice Murphy, but Mr. Justice Douglas was the only one who wrote an opinion, and I shall quote from his dissenting opinion certain short statements bearing on the question:

"Free and honest elections are the very foundation of our republican form of government. Hence, any attempt to defile the sanctity of the ballot cannot be viewed with equanimity. As stated by Mr. Justice Miller in *Ex parte Yarbrough* (110 U. S. 651, 666), 'the temptations to control these elections by violence and corruption' have been a constant source of danger in the history of all republics. The acts here charged, if proven, are of a kind which carries that threat and are highly offensive. Since they corrupt the process of congressional elections, they transcend mere local concern and extend a contaminating influence into the national domain.

"I think Congress has ample power to deal with them."

Then he says:

"That is to say I disagree with *Newberry* v. *United States* (256 U. S. 232), to the extent that it holds Congress has no power to control primary elections."

Then he quotes from section 2 of article I of the Constitution and, further, he says—and I quote again:

"And article I, section 8, clause 18, gives Congress the power '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.' Those sections are an arsenal of power ample to protect congressional elections from any and all forms of pollution. The fact that a particular form of pollution has only an indirect effect on the final election is immaterial."

I will skip some and drop down, and Mr. Justice Douglas continues:

"It means that the Constitution should be read so as to give Congress an expansive implied power to place beyond the pale acts which, in their direct or indirect effect, impair the integrity of congressional elections. For when corruption enters, the election is no longer free, the choice of the people is affected. To hold that Congress is powerless to control these primaries would indeed be a narrow construction of the Constitution inconsistent with the view that that instrument of Government was designed not only for contemporary needs but for the vicissitudes of time.

"So I agree with most of the views expressed in the opinion of the Court. And it is with diffidence that I dissent from the result there reached."

He adds that:

"The disagreement centers on the meaning of section 19 of the Criminal Code which protects every right secured by the Constitution. The right to vote at a final congressional election and the right to have one's vote counted in such an election has been held to be protected by section 19. *Ex parte Yarbrough, supra; United States* v. *Mosley* (238 U. S. 383)."

Now, may it please the members of the committee, it becomes apparent that the *Breedlove case* has been definitely extinguished by a later decision of the United States Supreme Court. It becomes very apparent that the United States Supreme Court has not definitely lodged and defined the right to vote for Federal officials, particularly Members of Congress; they have put that right squarely in the concept of the Constitution: in the first place, in the very nature of our Government; in the second place, in section 2, article I, of the Constitution; and in the third place, in the general power the Constitution gives Congress to protect constitutional rights.

Now, what else does the Court do in this *Classic case?* The Court says that the Congress has two definite grants of power: the first is a specific grant of power, that is the grant conferred in section 4 of article I, "Congress may regulate the times, places, and manner of holding elections," or "the Congress may alter any provision that the States may make on that subject, except as to the places of choosing Senators."

Now, aside from the choosing of Senators, Congress has complete power to regulate the times, places, and manner of holding elections affecting Federal officials.

Now, may it please the committee, it can be established here by reference to Yarbrough——

Senator O'MAHONEY (interposing). Is it your intention, Senator, to develop the power, that mentioned power of Congress?

Senator PEPPER. That is it exactly, Senator O'Mahoney.

Now, and I read here, may it please the committee, excerpts from the *Yarbrough case*:

"The clause of the Constitution under which the power of Congress, as well as that of the State legislatures, to regulate the election of Senators and Representatives arises, is as follows (quoting the provisions of art. I, sec. 4, of the United States Constitution):

"'If Congress does not interfere, of course, they may be made wholly by the State; but if it chooses to interfere, there is nothing in the words to prevent its doing so, either wholly or partially.'"

Senator O'MAHONEY. What are you reading from?

Senator PEPPER. I am reading from the *Yarbrough case* (continuing):

"On the contrary, their necessary implication is that it may do either. It may either make the regulations, or it may alter them. If it only alters, leaving, as manifest convenience requires, the general organization of the polls to the State, there results a necessary cooperation of the two governments in regulating the subject. But no repugnance in the system of regulations can arise thence; for the power of Congress over the subject is paramount. It may be exercised as and when Congress sees fit to exercise it. When exercised, the action of Congress, so far as it extends and conflicts with the regulations of the State, necessarily supersedes them. This is implied in the power to 'make or alter.'

"The State laws which Congress sees no occasion to alter, but which it allows to stand, are in effect adopted by Congress.

Senator O'MAHONEY. May I ak this qustion?

Since section 4 of article I gives, according to your argument, the power to Congress to make or alter the regulations with respect to the times, places, and manner, is there any provision which gives Congress the right to fix the qualifications?

Senator PEPPER. I am coming to that in a few minutes, if you please.

Now, what is the meaning of section 4 of article I? That is the power specifically prescribed in the Constitution and conferred on Congress, as is said further:

"Congress can by law protect the act of voting for Members of Congress, the place where it is done, and the man who votes, from personal violence or intimidation, and the election itself from corruption and fraud."

That is the opinion in the *Yarbrough case*. And it is said further:

"The right to vote for Members of Congress is fundamentally based upon the Constitution of the United States, and was not intended to be left within the exclusive control of the States."

This is quoting from the opinion of Mr. Justice Miller in the *Yarbrough case*, where the Court said:

"This proposition answers also another objection to the constitutionality of the laws under consideration, namely: That the right to vote for a Member of Congress is not dependent upon the Constitution or laws of the United States, but is governed by the law of each State, respectively."

It was this same law that was involved in the *Louisiana case*, the *Classic case*, and, continuing to quote:

"If this were conceded, the importance to the general Government of having the actual election, the voting for those Members, free from force and fraud is not diminished by the circumstances that the qualification of the voter is determined by the law of the State where he votes. It equally affects the Government; it is as indispensible to the proper discharge of the great function of legislating for that Government, that those who are to control this legislation shall not owe their election to bribery or violence, whether the class of persons who shall vote is determined by the law of the State, or by the law of the United States, or by their united result.

"But it is not correct to say that the right to vote for a Member of Congress does not depend on the Constitution of the United States.

"The office, if it be properly called an office, is created by that Constitution and by that alone. It also declares how it shall be filled, namely, by election.

"Its language in '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 same qualifications requisite for electors of the most numerous branch of the State legislature,' article I, section 2. The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualification for voters for those eo nomine. They define who are to vote for the popular branch of their own legislature, and the same Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualifications thus furnished as the qualification of its own electors for Members of Congress."

Now, may it please the committee, that is a part of the language of this thing, and there is the true interpretation. It is significant that that language exactly bears out what I quoted from the opinion of the now Chief Justice in the Classic case—you will remember that I said, in quoting section 2 of article I:

"Section 2 of article I commands that Congressmen shall be chosen by the people of the several States by electors, the qualifications of which it prescribes."

Now, there is in existence an opinion by the Court with reference to the fact that the Federal Constitution prescribes the qualifications of Federal electors. Well, you say, how is that to be reconciled with the power that is conferred upon the States to prescribe the qualifications of the voter? This way, may it please the committee:

The Federal Constitution merely adopts, Mr. Justice Miller says, in his Federal qualification—the qualifications which are prescribed for the electors for the most numerous branch of their own legislature, but—and here is where I come to a point in question: Does it say that the States have a right to prescribe conditions precedent to the exercise of the Federal franchise, because we are incorporating by reference the qualifications for our voters, the standards for voting, the qualifications going to the merit of the voter, the fitness of the individual—does that mean that we confer upon the State legislature the power, by any caprice, any condition precedent which they may desire—to impose upon the voter—in other words, to allow the State to burden the exercise of the Federal franchise by the collection of its own taxes? And that is where we get to the heart of this thing.

Now, may it please the committee, we consider the specific grant of power conferred upon Congress to regulate time, manner, and place of holding Federal elections, in section 4 of article I. In regard to that, Mr. Chief Justice Stone, however, does not stop there at all; he says that Congress has got two powers: to supplant the power to regulate Federal elections, first, in section 4, article I; and second is, in section 8, clause 18, of article I—and I will read:

"While in a loose sense the right to vote for representatives in Congress is sometimes spoken of as a right derived from the State, the States are authorized

by the Constitution to legislate on the subject as provided for by section 2 of article I," though it is understood that Congress has not restricted the State by the exercise of its power to regulate elections under section 4, and the more general power to do what?—to regulate elections for Federal officers under article I, section 8, clause 18 of the Constitution. Then it quotes that language, so, for the first time, we have got this thing down by the decision of this Court to a clearly discoverable authority of Congress in the Constitution. Heretofore, proponents of the fourteenth and fifteenth amendments talked about equal protection clauses and talked about certain other amendments, while here, Chief Justice Stone says that the power for Congress to regulate these elections for Federal officials is found in two places in the Constitution and it exists in two respects in the Constitution: First, the right to vote is specifically conferred in section 2 of article I, and the right to vote is inherent in the very nature of the document itself.

Senator O'MAHONEY. Now, if I understand your argument, Senator——

Senator PEPPER (interposing). Pardon me if I continue, here—

So that there is considerable authority as to the right of voters and the powers of Congress to protect that right.

Senator O'MAHONEY. If I understand your argument, it boils down to this:

That while the States have the authority to fix the qualifications of electors of the most numerous branch of the State legislatures, to fix the qualifications of electors of Representative in Congress, and though they may have the power to prescribe prerequisites for voting of such electors in State elections and for State officials, they may not apply prerequisites to the voting of such qualified electors in Federal elections.

Senator PEPPER. That is exactly what I have been trying to say.

In other words, as in *McCulloch* v. *Maryland*, it would allow every State to burden the exercise of the Federal privilege with the necessity of paying up State obligations. You can readily imagine, Mr. Chairman, the State's using the enjoyment of a Federal franchise as a means to coerce a citizen into paying taxes. In these two cases—that is the question—it came into the *Pirtle case*, and it comes down to this, and I am referring here to the Federalist, No. LII, by either Mr. Hamilton or Mr. Madison, where it says:

"The first view to be taken of this part of the Government relates to the qualifications of the electors and the elected.

"Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason, and for the additional reason that it would have rendered too dependent on the State governments that branch of the Federal Government which ought to be dependent on the people alone. To have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention. The provision made by the convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State, because it is conformable to the standard already established, or which may be established, by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitution in such a manner as to abridge the rights secured to them by the Federal Constitution."

Now, that simply shows, first, that the convention had in mind that, although it had incorporated the qualifications under State regulation, that after all it was prescribing them in the Constitution, itself, and the second thing was that it recognized clearly that the right to vote for a Federal official is a Federal right, because they particularly recognized that fact.

Now, we come to the final conclusion, may it please the committee, and that is that there is in the Federalist, in regard to conduct of elections for Federal officials, the part where it says, "in which the States, through their constitutions and legislatures, may properly act, there is a field in regard to the same subject in respect to which the Congress may properly act."

It is, like all other matters of degree—it is a question of the reconciliation, a question of the reasonableness, a question of the fairness and appropriateness

of the principle to the fact. It is a question of deciding the cases according to the facts and circumstances in each particular case, but to say that the Congress cannot enter this field to strike down any violation of the privilege of participating in the election of Federal officials is to deny the power which is expressly conferred under section 4 of article I, and clause 18 of section 18 of article I. Therefore, we come to the assumption that there is no case, and with confidence I say that no effort on the part of anybody can show such case—there is no case that holds that this principle or this measure which is now before this honorable committee violates any clause or phrase or part of the Constitution.

In other words, there is no Federal decision by the Supreme Court which stands in the way of the passage of this bill. Nobody has struck down as being invalid the effort of the Congress to exercise the power conferred in these two places where I have referred to them as being proper, in protecting the rights of the electors, and about the enjoyment of the franchise in the vote for Federal officials. That has never been done, and on the contrary, the latest decision of the United States Supreme Court is in accordance with the spirit of the times in that we are looking at the substance and not the form of things. But, even supposing, may it please the committee, that there was a doubt about this power of Congress—what would be the duty of the committee and the Congress? Would you let even a doubt about the matter, in view of the fact that the specific question has never been squarely presented, in view of the fact that the new justices have never passed on any of the questions involved, and in view of what we hope subsequent hearings will show as to the substantial merits of the question—of why the Congress should act—should you let any doubt, however serious, about the constitutionality of the statute, defer you from passing this on for further study?

For instance, if you take the substance of the Guffey Coal Act—at the time the Guffey Coal Act was passed, hardly a lawyer would have advised any proponent that it would have been declared anything other than unconstitutional by the United States Supreme Court, and yet, in view of all those facts, when it was passed, it was upheld.

Senator O'MAHONEY. The Supreme Court sometimes, Senator, is in error.

I never had any doubt in my own mind that the original Triple A Act was constitutional.

Senator PEPPER. I agree.

Senator O'MAHONEY. And it was my belief at the time when a decision was rendered by the Court in a particular case which considered only a very narrow portion of the field in which the Triple A Act operated, Congress might very well have reenacted that law just as it was.

Senator PEPPER. You are right in that.

Senator NORRIS. Senator Pepper, when you get to that Triple A case, I was on the committee that prepared the bill and the committee that drew up the second bill, the one held constitutional—and it always seemed to me, and I said so at the time, that if the Court was to adhere to its first decision, as I saw it, they could not uphold the second law we passed, and in the hearings in that case one of the attorneys representing the Government, or perhaps a branch of the Government that was asking us to pass the second one, appeared before the committee as a witness—he is now a member of the Supreme Court—Justice Reed; and I distinctly remember when he appeared, I asked him the question that, assuming the Court was going to stand by its decision, how in the world it could uphold the second act, I could not see quite how that was possible, if the first act was unconstitutional, then it seemed to me that the second was unconstitutional also.

Senator PEPPER. That is correct.

Senator NORRIS. Of course I never thought the first one was unconstitutional and I did not think the second was, but at the same time, here was a great lawyer appearing on behalf of the second Agricultural Adjustment Act we passed, and when I asked him that question I think the record will show that he did not answer it.

Senator PEPPER. Senator, that is exactly analogous with a case that occurred with respect to the wages and hours bill where the Attorney General, or Solicitor General of the United States, now Mr. Justice Jackson of the Supreme Court, came before the Education and Labor Committee, which was passing on the wages and hours bill, of which I happen to be a member, and which was sitting at that time jointly with the House Labor Committee. He distinctly admitted that certain provisions of the wages and hours bill conflicted with *Hammer* v. *Dagenhart*—he stated that he did not think that decision would stand up. It

was generally held here that the new Court would not sustain the decision in *Hammer* v. *Dagenhart*.

Senator O'MAHONEY. That is something we have all experienced on the committee here.

Senator PEPPER. Well, experience proved that it was well founded.

Senator O'MAHONEY. True, but what you are urging upon the committee now is, as I see it, wholly different from these other cases.

Now, with respect to *Hammer* v. *Dagenhart*, I never had the slightest doubt that the majority of the Court was utterly wrong in that case; I always held with the minority in their opinion, and I think the Court erred; and after that decision I would never have had the slightest hesitation in voting again for exactly the same sort of law as that decision attempted to overthrow, because it must be remembered that a decision of the Supreme Court is merely a decision in a case and it has no real effect to invalidate a law. Other cases might arise under the same law which might conceivably be decided in the other way, but members of the Senate and members of the House are under oath to support, protect, and defend the Constitution, and if a member of the Senate feels that a bill which is introduced contravenes the Constitution, then it seems to me that under that oath he has no recourse except to vote against it.

Senator PEPPER. Mr. Chairman, the chairman, of course, will recognize that, according to the theory of our Government, we are supposed to say and believe that the Constitution means what the United States Supreme Court in all its applicable decisions says it means.

Senator O'MAHONEY. No; I never have agreed to that, because I believe, I think it was Jefferson who indicated, while he was President of the United States, that the three branches of the Government are coordinated; the President is entitled to his opinion as to what is constitutional, the legislature or Congress is entitled to its opinion as to what is constitutional, and the opinion and power of the Supreme Court to determine constitutionality extend not to the legislative functions at all, but to the determination of rights that are raised in cases which come before it, and it never should be overlooked that when a constitutional case comes before the Supreme Court, it comes before the Court only upon the presentation of arguments which are presented by contending parties in a particular case, but when Congress passes a law, it, presumably at least, ought to have in mind the whole public interest; it is not confined to the narrow issues that are presented in a single case.

Now, in the case of the triple A, which resulted in the abandonment of the original law, there was only a very narrow field under investigation by the Court, and the arguments were confined to that narrow issue. Congress was looking at it from a broad position.

Senator PEPPER. Mr. Chairman, I am just as clear in my opinion and in my mind as I have ever been about anything, that the United States Supreme Court as it is now constituted would not fail to sustain the validity of this act if it came to it involving only Federal elections.

Senator O'MAHONEY. We are very glad to have your prophecy, Senator.

Senator PEPPER. Well, the principle laid down in the *Classic case* makes it very clear that if the facts show that the poll tax has unduly hampered the voting for Federal officials, if it is shown that under some State legislation it has resulted in the disenfranchisement of a great number of people and has been a source of pernicious political activity, and if it can be shown that it has been the basis of corruption and pollution in elections for Federal officials, if the integrity of the ballot and the electoral franchise has been besmirched and destroyed as a result of this requirement of the several States—and there are now only eight that continue to impose such restrictions—then if it appears that the States are simply trying to burden unduly the exercise of the Federal franchise for State purposes which are not legitimate requirements as a prerequisite for voting, then, in that case, the Congress would have power to limit such things or strike down all the violations of its rights.

Senator O'MAHONEY. Let me ask you this question:

Regarding the State legislature, may it not pass a law which says a qualified elector for the most numerous branch of the legislature of this State shall be a person who has reached the age of 21, who shall have lived in the precinct in which he offers to vote for not less than 1 year, or who shall have paid a tax upon real property within the State during such year, or shall have been liable for such a tax—now, would any State have a right to fix such qualifications for electors in State elections, in your opinion?

Senator PEPPER. And make those conditions precedent to the right to vote for Federal offices?

Senator O'MAHONEY. Observe the way I try to state the qualifications, A, B, and C.

Senator PEPPER. Now, Mr. Chairman, the answer to that question in my opinion is a matter of degree. If the chairman means to pose the question as to whether or not the State may legislate and prescribe a property qualification as one of the qualifications for a voter, I will say that that depends upon what the case might show as to the number of people who would be disfranchised by the amount of the property qualification—in other words, the reasonableness and the effect of it.

Now, I say that, and I leave some doubt on the question, because right here is something that applies, article I, section 2, of the Constitution—Gouverneur Morris, in speaking of the virtue of the requirement or qualification for voting, in regard to one's being a freeholder, distinctly says that 9 out of 10 of the people were freeholders at the time the Constitution was adopted, 90 percent of the people were qualified to vote, or were freeholders.

Now, what their qualifications would have to be, is something that should be considered in the light of the number affected. Suppose I state it this way:

If the facts and records showed that only 1 percent of the people were freeholders, I would say that would not be a valid qualification and would have the effect of disfranchisement, and the same thing would apply if it were 2 percent or 5 percent or 15 percent.

Senator O'MAHONEY. In other words, the question is this:

When would the Federal Congress have the right, by law, to say of a particular State in which the franchise was confined to freeholders: "You may not require that qualification of voters in Federal elections?"

That, I think, is the question.

Senator PEPPER. I would say that would be based upon a number of things, but that Congress would have that power, congressional exercise of power to limit or prohibit the exercise of this power by the States where proven to be an excessive burden on the citizens concerned.

I do not believe it is possible to categorically answer that question.

Senator NORRIS. May I ask a question, Senator?

Senator PEPPER. Yes, sir.

Senator NORRIS. If the objection sought to be overcome, in this particular case, poll tax, is held by the Supreme Court to be one of the functions of Congress under that provision of the Constitution that it can fix the time, place, and manner of holding elections, then this proposed bill, if it comes within any of those categories, would be clearly constitutional. If, however, it is held that this bill prescribes a qualification for a voter, would it not have to come under the provision of the Constitution which says that the qualifications of a voter shall be those qualifications that permit him to vote for the most numerous branch of the legislature of that State?

Senator PEPPER. I appreciate your asking that question and I am glad to have the opportunity of addressing myself to that specific point.

The answer is "No," if I may say so, and the reason is this:

Congress acts in this bill, if it is adopted, not to prescribe the qualifications of voters, but to strike down the effort of a State to prescribe, in the first place, something by not as a qualification, but as a condition precedent, and in the second place, to prescribe something as a qualification which is not a qualification.

Now, you will see the difference.

Senator NORRIS. I see it, as you put it.

Senator PEPPER. Now, that gets me back to article I, section 8, clause 18, which gives Congress the power to strike down any shackles which the State, under any proper theory, or improper objective, attempts to impose in the prescription of qualifications.

Now, I will admit, gladly, that the States have the right to prescribe reasonable qualifications for voters, and when those qualifications by the State are reasonable and proper, then they become Federal qualifications, but if the Federal Government through the Congress decides that a State has imposed as a qualification something that is not a qualification but is a condition precedent, that under the guise of a qualification they have attempted to limit the Federal franchise and the enjoyment thereof, then the Federal Government has a right to say that this power that you have endeavored to assert is not a proper power.

That comes under the power to prescribe.

Senator NORRIS. I think I see the point you are making; but, Senator, after all it comes down, it seems to me, to this: That Congress is going to decide whether this is a proper qualification and you are going to ask the courts to hold that it is not a qualification. Suppose, then, that the State prescribes a qualification that a man, in order to vote for a member of the most numerous branch of the legislature of that State—that the man should live in the precinct where he attempted to vote for 1 year. Would you contend that Congress could change that and say that it should only be 6 months?

Senator PEPPER. No, Senator; all I would say in that particular case is just that the power of Congress is not illimitable and uncontrollable, and neither is the power of the State illimitable, and let me pose a question: Would it be fair to the committee——

Senator O'MAHONEY (interposing). That may be unfair for you to ask questions of the committee.

Senator NORRIS. I do not have any objection.

Senator PEPPER. Then I will put this hypothetical case:

Suppose that the States say that those participating in the election to the most numerous branch of the legislature shall be only those who voted Democratic in previous elections.

Senator NORRIS. Would you hold, at the start, that that proposition had any reason behind it? Would it not show on the face that it is unreasonable or unconstitutional, or otherwise?

Senator PEPPER. That is just the point that I am trying to make. If the State does do something—although you may call it a qualification—unreasonable and not proper or justified, there is some power so that that extreme thing cannot be effectuated.

Senator NORRIS. Yes; that backs up against the constitutional provision that distinctly says that the qualifications shall be the exact qualifications for voting for election to the most numerous branch of the legislature, and whether it is unreasonable, whether it is wrong, whether it could be made better, is not within the scope of Congress to pass on, nor a court to pass on. If the Constitution does something of that kind, we would have to abide by it anyway; would we not?

Senator PEPPER. No; and I say that for this reason: The Constitution does not give an uncontrollable power to the State to prescribe qualifications of voters. It is given to them through their constitutions, and their legislatures are amenable to the rules of reasonableness, rules of appropriateness, just as we are subject, in the exercise of our powers or the powers of Congress, given over to legislatures in certain cases, but that does not mean that we have an uncontrollable power to legislate.

Now, if the opponents of this bill say we are trying to assert a power that is not ours, then the thing should be forced to a logical conclusion of saying that Congress is utterly powerless in the premises and the States are utterly uncontrollable in the exercise of those powers.

Now, that is not the law. The States surely can have some restraint and the rules of reasonableness apply to what they do.

Senator O'MAHONEY. May I interrupt to point out that——

Senator PEPPER (continuing). That is to say that the Congress does have the power to enter the field when the prescription goes outside the bounds of reasonableness, in an endeavor to burden the exercise of the Federal franchise by conditions that are not qualifications, according to the standards that a court would lay down and uphold. The Congress has the right to say something. It is not an unlimited right, but it has some right.

Senator O'MAHONEY. Now, as outlined, if I heard you correctly, the situation in Tennessee which you described was that the qualifications of the electors were determined in one statute, and that in another statute it was provided that qualified electors could not vote if they had not paid the poll tax.

Senator PEPPER. That is correct.

Senator O'MAHONEY. So that a poll tax thereby clearly becomes a State prerequisite on top of the qualifications, and not a qualification at all?

Senator PEPPER. That is correct.

Senator O'MAHONEY. So the question I asked a moment ago with respect to the property qualification was prompted by the fact that a property qualification remained upon the statute books of that State, did it not, until this century, and was removed comparatively recently by this legislature?

Suppose that State had left that property qualification, would it be your judgment that the Congress would have a right to say to such a State that that is an

improper qualification which you may not be permitted to maintain? Then, the question would immediately follow, if it be held that a State has a right to impose a property qualification as such, and not as a prerequisite that you shall have paid a poll tax before you vote, but that shall be freeholders or property holders, so that that would not be a prerequisite, if it be held that the State has a right to prescribe that, as was true in the State of Rhode Island for many years and under the history of this Government that was regarded as a proper qualification—then, does it not follow that a State would have the right to include in its qualifications of electors the payment of a poll tax?

Senator O'MAHONEY (interposing). Now, do you think that——

Senator PEPPER. I want to answer that, and I appreciate the chairman's asking that question.

In the first place, I can properly say—I thought I deduced from what the chairman said that you are taking the specific case, the Georgia case, and particularly the Tennessee case—that it was not clear that they were not qualifications but conditions precedent.

I must say that, in prescribing the qualifications of a voter, they should be reasonable qualifications and not in any sense conditions precedent. Further, if a condition which was a burden were placed upon the exercise of a franchise, then you would not have, in the strictest sense, a definition of qualification, but that burden or heavy condition would be a condition precedent to qualification.

Now, I said a while ago that that would be a difficult question; that would be a question which would depend, in its eventual decision, upon the facts and circumstances of the particular case and particularly upon the reasonableness of the prescription of the qualifications and the way it operated and the way it worked.

Now, here is why I say it is a little more difficult in the poll-tax question, and we all admit that the property qualification was a qualification holding at the time of the adoption of the Constitution, we come to the debate on what has since become section 2 of article I of the Constitution; Gouverneur Morris said, regarding the necessity of being a freeholder as a proper qualification, that 9 out of every 10 citizens were freeholders, so that that was the historical background that existed at that time, and it was a fair and proper qualification of the right to vote, to require one to be a freeholder.

Senator NORRIS. I was going to say that it does not appear to me that that would stand, if 90 percent were freeholders. What about the other 10 percent? Under the Constitution they should have the same rights.

Senator PEPPER. I am simply saying, Senator, that such a thing now would not be proper, but at that time they grew up and became justified in the light of the times as they then existed, so it was not an improper qualification for voting at the time of the adoption of the Constitution.

Senator NORRIS. I think that is true, and I think it was a Federal judge in the State of Maryland, from the bench, either in commenting on the case tried before him or in a lecture that usually is given to the grand jury—anyway, he said from the bench that there was growing up a sentiment in the country to permit people to vote without a property qualification, and then he gave a description of what he thought would be the menace to the Government itself if that kind of thing were to get into our law.

Senator PEPPER. That is right.

Senator NORRIS. I have no doubt that he was perfectly honest and perfectly conscientious, but today if any member of the bench were to say that, even if he were not more than 80 years old, he would be deemed rather an imbecile.

Senator PEPPER. If he were as distinguished a statesman as some who are 80 years old, then he would be a very distinguished jurist.

Senator NORRIS. Permit me to say that I am in entire sympathy with this bill. I think the poll-tax provisions are out of date. They are a denial of a right, it seems to me, that every democracy ought to give to its citizens to vote. I have expressed myself lots of times that way. I was glad when you introduced this bill, but I commenced to think about it and looked at the Constitution, and I confess I got into the field of doubt, and the more I looked into it the more it seemed to me that under the Constitution we have no right to pass this kind of a law, and I am in that attitude now.

I would like to be convinced to favor this bill; if I had any doubt about it, I will construe that doubt in favor of the bill and vote for it. Many of the things you have said about it, of the evils that come from this poll-tax method of depriving people of the right to vote, appeal to me very greatly.

I know they are true, but I still do not want to fly in the face of the Constitution of the United States. If it even led to unreasonable things—and I feel more and more that if we have got such a condition—that we ought to meet it under the Constitution.

Let me ask you now, suppose that we had passed an amendment depriving the colored man of his right to vote and that the States should fix a qualification of that sort. Do you think that we would have a right to pass a law amending that or knocking it out or knocking it down, or would you say that that was an unreasonable qualification?

Senator PEPPER. You mean in reference to amendments 14 and 15?

Senator NORRIS. Would it be better, under our form of government, as we have the right under our Constitution to do it, to strike out the law, to strike it down, even though it meant going contrary to the spirit, or do you think that we ought to follow the Constitution and amend it like we did do in this case?

Senator PEPPER. Senator, in my opinion we do not have to amend the Constitution or go outside to get power that we have under the Constitution to enact laws to protect the public from fraud, neither do we have to go outside the Constitution to protect the people in their right to vote for Members of Congress. That is already in the Federal statutes.

Senator NORRIS. We have a part of the Constitution of the United States which says that the qualifications to vote for Members of Congress shall be the same as the qualifications for voting for members of the most numerous branch of the legislature of the States.

Senator PEPPER. That brings us back to what comes within the definition of "qualification;" anything that is not a qualification—and I am not saying that Congress——

Senator NORRIS. You have very ably met the situation, as far as the Tennessee case is concerned, because you have shown what really has been made a condition precedent, but that is only a matter of form. The question has to be met of where they would not make it a qualification, they could easily find some other way to do it. The could reword it in some way so that he could vote as soon as his taxes were paid.

Senator PEPPER. Well, that is a matter for final decision by the Court, as to whether or not it is or can be a proper qualification for voting. The payment of the poll tax has nothing to do with intelligence, nothing to do with sanity, integrity of the voter. Can the requirement that you pay a sum of money be said to be a proper criterion of a voter's fitness to vote?

Senator NORRIS. Well, take the case of the colored man or the Negro, who may have lived in a district or precinct long enough to qualify himself as a citizen, but if he happened to be of a certain color he could not vote. Now, I think that the way to remedy that would be to amend the Constitution, and we proceeded to do it.

Senator PEPPER. It does not mean that that was the only way it could be done, but, Senator, it means that the fourteenth amendment simply forbade discrimination, and the fifteenth amendment conferred an affirmative right, not only with respect to Federal offices, but with respect to voting in every State, and the Senator will keep in mind that nobody will contend that the Congress would have given an effective right to vote in the States, and that is what the Government wanted to do when they adopted it, and, Senator, if considered carefully, it is more than merely looking at the fourteenth and fifteenth amendments; it says that neither the United States nor a State shall deprive any citizen of his right to vote, regardless of his race, color, or previous condition of servitude, and that prohibition was not applied only to the Federal elections but it applied to the several States as well.

Senator NORRIS. Senator, you would not contend that a State could not fix as a proper qualification of the right to vote, the payment of taxes—that is, in the election within a State for its own officials?

Senator PEPPER. I would not deny the State has that right; no, sir.

Senator NORRIS. Assuming that to be true, Senator, and that certain States undertook to do that in regard to their own officials, and you admitted they have the right to do that——

Senator PEPPER. Right.

Senator NORRIS. What would prohibit a citizen who had been denied the right to vote because he had not paid a poll tax—for a Member of Congress—to refer to that other provision of the Constitution that says the Government of the United States assures a republican form of government, then could it not be argued

that, under that republican form of government, it could not be limited by saying that its voters should first pay any tax before they be allowed to vote and therefore he was denied protection under the Constitution of the United States?

Senator PEPPER. Senator, some proponents of legislation such as is proposed here have made the argument, and I made the argument myself in the beginning, and there is a certain amount of color in the argument which can be made in favor of that proposition, but frankly I know that the courts have refused to define that as a condition precedent and they have generally not so interpreted that provision of the Constitution as to sustain it.

Now, there is another good argument that can be made that that is a political matter that has to be determined under a republican form of government within the several States, that it is not a matter to be taken up in the Congress, and hence the requirements of the republican form of government might have been denied by the action of the several States.

No; as I say, something can be said, a creditable argument can be made, but, Senator, I do not believe now, with the United States Supreme Court constituted as it now is, that they would uphold the validity of a State statute imposing property qualifications as a condition precedent to the right to vote in the Federal election—I go back to what the honorable Senator said when he asked if the 10 percent of the citizens were not entitled to protection of their rights, the people of worthy character, just as this *Classic case* has shown our concept relative to suffrage and relative to the enjoyment of the privilege of the franchise, and notice that they have observed the substance and not the form, and that has led the United States Supreme Court, in just this last few weeks, to say that a statute was framed for the purpose of applying to elections, and the framers of which never thought about primary elections, and that is now applicable to primary elections and people may have their vested rights secured by the Constitution under that statute, the violation of which can be prosecuted.

So, in my opinion, do I believe that the substance of this matter of voting, that at a time when the whole world is being rent by a mortal struggle, and that that right should not be denied any man or woman adult—the privilege of voting at a time like this should not be denied and adult person of sound mind, good character, not a criminal—the exercise of that franchise should be granted to them, and we should not allow it to be taken away by any caprice of any individual State by any unjust qualification or allow it to be destroyed by circumstances which we can control. Senator, what I am asking the committee to do is to resolve any doubt that they might eventually have and to let it go on to the hearing of testimony to show what has been the effect of the pool tax, how it has created pollution and graft and how it has disfranchised whites as well as colored, and how in seven or eight States of this country in most cases it intentionally imposes such restrictions or qualifications as to disfranchise the underprivileged and how it constitutes a burden and those people are not able to bear it, and the whole effect of this thing is contrary to the general principles of modern life and strikes at the very heart of things. I say that in our world today, it is inconsistent with the trend of the time to say that if you are an adult, if you are intelligent, if you are of good character, you cannot vote for the President and the Congressmen simply because you have not paid a certain tax. That is out of harmony with our way of life today and that is the reason why this Court, in May of this year, extended this statute to the primaries which had never been mentioned in the original statute, the founders of which had never thought of it—to get at the substance of the thing.

Senator NORRIS. When the Constitution was drawn and adopted, nobody knew anything about a primary. I think the argument of Mr. Justice Stone which you read is unanswerable, but I do not think that question is presented here. Here is a constitutional provision, and I always thought the decision in the *Newberry case* was absolutely wrong, in fact it was practically a decision between those who upheld the law and those who held it was unconstitutional, but in the Constitution there is nothing said about a primary, and in this case there is the statement about the qualifications of the voter.

Senator PEPPER. That is right, Senator.

Senator NORRIS. But under the Constitution, it seems to me that it has been delineated as the qualifications of the electors who vote for the more numerous branch of the legislature.

Senator PEPPER. But that does not say that the Congress has given the States the power to make anything a qualification that the States might want to devise.

Senator NORRIS. No, it does not.

Senator PEPPER. It does not allow the unreasonable to be placed among the qualifications.

Senator NORRIS. If it was to be unreasonable, then it could not be considered a qualification.

Senator PEPPER. That is right.

Senator NORRIS. That would be different.

Senator PEPPER. I ask you to let it be opened up as to whether or not this is an unreasonable exercise of power on the part of the States under the guise of attempting to define qualifications; if you once admitted that there is any qualification that a State could make that Congress could strike down, then all that I ask is that you give the Congress the right to consider the matter, and if it thinks that the case is so bad that it should be struck down, that then the courts be given an opportunity to determine whether Congress in that case has exceeded its authority or not. We do not mean to conclude that Congress would be utterly without power to protct the citizens against any exercise of authority on the part of the State which was unreasonable.

Senator O'MAHONEY. May I say, Senator Pepper, that I hesitate to put myself in the position of conceding legislative authority to the Court. The Court does not have that authority. I believe that it is the function of Congress to determine what the law should be, and it is the judge, in passing upon laws, of determining whether or not they are constitutional.

Now, I want to suggest to you and those others who may be here today and who are interested in the objective to be attained here, namely, the cleaning up of legislation and the prevention of abuse. I want to suggest the thought that possibly in this bill you have approached the problem from the wrong point of view, under the wrong method.

Now, there are two sections in articleI which seem to be of great importance when considering this question; I mean of greater importance than any other section in the Constitution. First in section 2 of article I, which clearly seems to me, and as the Yarborough case indicated, with the approval afterward of Justice Stone, that the framers of the Constitution adopted the qualifications which the State legislatures imposed. Now, in this bill you seek to impose upon the judgment of the legislatures, which the Constitution recognized, the judgment of Congress as to what the qualifications should be, and it is that effort to impose our judgment with respect to what the qualifications are that raises the question in the minds of Senator Norris and myself.

With respect to section 4 of article I, however, you have a very different situation. There the Constitution has clearly granted to the Congress the power to fix the rules and regulations governing the time and place and manner of conducting Federal elections, save only that there is an exclusion with respect to elections of Senators, except as to the places of choosing Senators, and with that sole exception, Congress clearly has constitutional power to make rules and regulations governing the time, place, and manner, and, therefore, I ask you: Have you considered the possibility of providing for the introduction of a bill which would provide that it shall be unlawful for any person, directly or indirectly, to pay or to offer the poll tax of any other person for the purpose of qualifying that person to vote in any Federal election?

Senator PEPPER. I think that would be constitutionally valid, but that would not get the whole question. That would only get to the small number of cases of fraud, but it would not get at the heart of the question.

Senator O'MAHONEY. Of course, it is possible that the further study of section 4 of article I might suggest to you the means of going a little bit further than that suggestion.

Senator PEPPER. Senator, let me clear up a misapprehension in that my theory was not to ask Congress to substitute its judgment for that of the legislatures as to what constituted the qualifications. I am afraid I have not made myself too clear, if that is the impression I left.

What I do say is that the legislatures of the several States, through the Constitution, have a right to prescribe the qualifications for the voters in elections. Noboy doubts that fact. The Constitution says that we adopt as a qualification of the voters participating in Federal elections the qualifications prescribed by the States for election of their own State officials. Now, possibly I have not cleared the meaning of the word "qualification" sufficiently; that does not say that the Federal Government says that the State must say what person should have the right to vote in a State election. The power of the State to provide or prescribe its own qualifications, or the qualifications for voters for offices to be held within

the State, lies clearly within the power of that State legislature, and that is something that may be made, of necessity, without any limitation at all or any power to examine it or review it; but as to conditions precedent to the exercise of the Federal franchise, I say that the Congress has the right, under the premises, and indeed also the duty to preserve the rights of the votera in Federal elections.

Now, then, the Congress has the duty to regulate the time and place and manner of election under section 4 of article I, and I think as a matter of fact that a case can be made where the Congress has the power to strike down the poll tax under that section, because in reading this last case, the Classic case, and some of the later cases, you will understand that the Court now holds that the power to regulate the time, place, and manner is a much broader power in regard to the elections than merely the little routine in connection with the number of Representatives in a particular State or technical routine of that character. I think the Court has gone far enough to hold that that provision justifies Congress in going into the larger subject of the time, place, and manner of holding elections by a hearing.

In the decisions from which I read a while ago, not only reading from just one of them, section 4 of article I authorizes Congress to regulate the manner of holding elections, and under article I, section 8, clause 18, Congress is given authority to make all laws which may be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government and any department thereof. It was left to Congress the way by which constitutional power can be obtained to carry into execution the constitutional duties of protecting the ballot and the voter in his enjoyment of the right. The means that Congress may exercise or adopt in accomplishing that purpose is left to the Congress. It is said:

"Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but conscious of the letter and spirit of the Constitution, are constitutional."

Now, I say, therefore, that the Congress has the duty to protect the enjoyment of the franchise, of the right to exercise that franchise, and Congress may strike down pernicious political activities. It is done in the Hatch Act, it has——

Senator O'MAHONEY (interposing). There was a Florida case within the month, I believe, in which certain persons were indicted for offenses presumably against the Hatch Act, but which are dismissed because the court, in that case, pointed out that Congress had removed all reference to the primary in enacting the act.

Senator PEPPER. But the chairman will see, when you go into it carefully, as Mr. Justice Stone clearly indicates, that now we can regulate this matter and there would not be any question about that.

The power of Congress in section 4, article I, is to regulate the time, place, and manner of holding elections. Now, that is a very broad power and there has never been a case that was not divided affirmatively that Congress could not protect the franchise in Federal elections, and the poll-tax question would come under pernicious political activity.

It is probably true that the Hatch Act itself comes under that section 4 of article I, but there is another very great clause—Congress can do anything under article I, section 8, clause 18, which may be reasonable and appropriate to protect those rights.

Now, I am saying that we can make the case on the merits of the question of whether the qualification that a poll tax be paid has imposed an unreasonable burden as a condition precedent upon the exercise of the franchise. It has caused discrimination against and denial to voters in Louisiana and is an essential element of politics. For example, statistics show that only 7 percent of the people of Georgia who are qualified to vote have voted in the last few elections, and it has been shown statistically that in the States, from 8 percent to 24 percent of the people, and the average I should say would be about 24 percent of the people who would otherwise be eligible, were unable to vote where there was a poll tax, and 74 percent of the people voted where there was no poll tax, which shows what a large part of the population is discriminated against. It is undoubtedly so and can be proven so, that in some of the cases the poll tax is retained for the express purpose of limiting the vote.

Now, then, I say to the committee that Congress is not powerless in the premises, the Court may hold that the Congress is, in any particular case, going outside of the legislative scope of its authority, but nobody dealing with this subject along its broad, general lines would maintain that view over the

entire field covered, and I say that I believe that if you will give Congress a chance to legislate on the subject, that you will find that Congress has not gone outside the scope of its power in striking down this kind of a burden, should it be imposed in the nature of a qualification.

Senator O'MAHONEY. I think that you have made your position quite clear, Senator Pepper.

Now, it is almost 1 o'clock and I think probably the committee will take a half holiday, but the hearing will go on later because I know there are some other witnesses that are here that want to be heard.

Mr. GEYER. My name is Hubert Geyer and I am secretary to Congressman Geyer, of California, who is ill, and he has asked me to read just a short, one-page statement.

Senator O'MAHONEY. Wait just a minute, if you please.

Are there any others present who desire to be heard?

Senator PEPPER. Senator, there is a lady here who has come here for the purpose of saying a few words, if you will be so kind.

Senator O'MAHONEY. Very well.

Senator PEPPER. Her name is Bontecou.

Senator PEPPER. Furthermore, since this committee so admirably presented such sound reasoning and justification with respect to the constitutional powers of the Congress on this matter in Senate Report 1662, Seventy-seventh Congress, second session, I also ask the committee to consider that report as part of its record on my bill.

The CHAIRMAN. Without objection, those will be included.

(The report referred to follows:)

[S. Rept. 1662, 77th Cong., 2d sess., Calendar No. 1716]

AMENDING AN ACT TO PREVENT PERNICIOUS POLITICAL ACTIVITIES

The Committee on the Judiciary, to whom was referred H. R. 1024, an act to prevent pernicious political activities, begs leave to report thereon as follows:

At the same time the committee had under consideration H. R. 1024, the committee also had under consideration S. 1280, a bill concerning the qualification of voters or electors within the meaning of section 2, article I, of the Constitution, making unlawful the requirement of the payment of a poll tax as a prerequisite for voting in a primary or other election for national offices.

These two bills have the same object in view, to wit: Making unlawful the requirement for the payment of a poll tax as a prerequisite to vote in a primary, or other, election, for national offices.

Your committee recommends the passage of H. R. 1024 when amended as follows: First. Amend the title so it will read "An act making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national offices."

Second. The committee recommends that S. 1280 be amended as follows:

1. Strike out the preamble.
2. On page 2, after line 4, insert the word "other".
3. On the same page, line 9, after the word "or" insert "other".
4. In line 10, strike out the words "of section 2 of article 1".
5. On the same page, in line 12, after the word "and" where it first appears in said line inserting the word "other".
6. On the same page, in line 17 after the word "or" insert the word "other".
7. On page 3, in line 3, after the word "or" insert the word "other".
8. On the same page, line 6 after the word "or" and preceding the word "election" insert the word "other".
9. On the same page, line 9, after the word "or" insert the word "other".
10. On the same page, line 14, after the word "or" and preceding the word "election" insert the word "other".
11. On the same page, line 23, after the word "or" insert the word "other".

The committee recommends that H. R. 1024 be further amended by striking out all after the enacting clause and inserting S. 1280 as thus amended. In this form your committee recommends the passage of H. R. 1024.

Practically the only question involved in this legislation is the constitutionality of the proposed legislation. The committee has reached the conclusion that the proposed legislation is constitutional and should therefore be enacted into law.

Those who believe the proposed law is unconstitutional rely upon section 2, article I, of the Constitution which reads 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."

The qualification of a voter is generally believed to have something to do with the capacity of a voter. We think it will be admitted by all that no State, or State legislature, would have the constitutional authority to disqualify a voter otherwise qualified to vote, by setting up a pretended "qualification" that in fact has nothing whatever to do with the real qualification of the voter. No one can claim that the provision of the Federal Constitution above quoted would give a legislature the right to say that no one should be entitled to vote unless, for instance, he had red hair, or had attained the age of 100 years, or any other artificial pretended qualification which, in fact had nothing to do with the capacity or real qualification of the voter.

The evil that the legislation seeks to correct is in effect that in taking advantage of the constitutional provision regarding qualifications, the States have no right to set up a perfectly arbitrary and meaningless pretended qualification which, in fact, is no qualification whatever and is only a pretended qualification by which large numbers of citizens are prohibited from voting simply because they are poor. Can it be said, in view of the civilization of the present day that a man's poverty, has anything to do with his qualification to vote? Can it be claimed that a man is incapacitated from voting simply because he is not able to pay the fee which is required of him when he goes to vote? In other words, when States have prevented citizens from voting simply because they are not able to pay the amount of money which is stipulated shall be paid, can such a course be said to have anything to do with the real qualifications of the voter? Is it not a plain attempt to take advantage of this provision of the Constitution and prevent citizens from voting by setting up a pretended qualification which, in fact, is no qualification at all?

We believe there is no doubt but that the prerequisite of the payment of a poll tax in order to entitle a citizen to vote has nothing whatever to do with the qualifications of the voter, and that this method of disfranchising citizens is merely an artificial attempt to use the language of the Constitution, giving the State power to set up qualifications, by using other artificial means and methods which in fact have no relation whatever to qualifications.

However, the constitutionality in our opinion does not depend alone upon the language of the Constitution above quoted. There are other provisions in the Constitution and amendments to the Constitution to which we desire to call attention.

Section 4 of article I of the original Constitution reads 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."

The subcommittee to which this proposed legislation was referred has held rather extended hearings and has listened to very able and competent constitutional lawyers in the discussion of the constitutionality of the proposed legislation. These two provisions of the Constitution above quoted have been discussed at great length and with great ability by some of the ablest constitutional lawyers in the country.

The pretended poll-tax qualification for voting has no place in any modern system of government. We believe it is only a means, illegal and unconstitutional in its nature, that is set up for the purpose of depriving thousands of citizens of the privilege of participating in governmental affairs by denying them a fundamental right—the right to vote.

The requiring of a citizen to pay a poll tax before he can vote is in effect the requiring of the payment of money to exercise the highest "qualification" of citizenship. It 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 and try, in this way, to come within the Federal Constitution by calling this a qualification.

In the Yarbrough case decided in 110 U. S. 651, the Supreme Court of the United States said:

"The right to vote for Members of Congress is fundamentally based upon the Constitution of the United States, and was not intended to be left within the exclusive control of the State."

Supreme Court Justice Miller in that case said:

"But it is not correct to say that the right to vote for a Member of Congress does not depend upon the Constitution of the United States."

In the Classic case, decided in 1941, Justice Stone of the Supreme Court said:

"The right of the people to choose, whatever its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by State action in conformity to the Constitution, is a right established and guaranteed by the Constitution."

Justice Stone said further:

"While in a loose sense, the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the State * * * this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article 1, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'"

One might add that, since voting is one of the fundamental governmental rights, the right to tax this fundamental privileges by a State would be giving to the State the power to destroy the Federal Government. No State can tax any Federal function. This is a proposition which will have to be admitted by all and, if this Federal function—the right to vote—can be taxed by a State, then the State has a right to destroy this Federal function which is, after all, the foundation of any government. As a matter of self-preservation, the Congress in order to save the Federal Government from possible destruction, must have the right to prevent any State authority from destroying this cornerstone of the Government itself.

The right to vote for Members of Congress is a right, as the Supreme Court has said, granted under the Constitution of the United States and, therefore, any law, constitutional or statutory, of a State which taxes this fundamental privilege is contrary to the provisions of the Federal Constitution. It could be said, of course, if these poll-tax laws are unconstitutional, they could be taken to the Supreme Court and there challenged directly and that a law of Congress is therefore unnecessary to protect this constitutional right. This is undoubtedly correct but it does not follow that, when the Congress of the United States has had brought to its attention these poll-tax laws by which millions of our citizens are in effect deprived of their right to vote, that it would not be the duty of Congress itself to pass the necessary legislation to nullify such unconstitutional State laws. Most of these people are deprived of their right to vote by these poll-tax laws which are a method of taxation. As a rule they are poor people and are unable to vote because they are poor. The very fact that it is this class of people whose rights are being taken away makes it clear that they could not rely upon their constitutional rights of carrying their cases to the Supreme Court of the United States. The expense would be absolutely prohibitive and it is therefore the duty of Congress to protect these millions of citizens in their most sacred right as citizens—the right to vote.

We think a careful examination of the so-called poll tax constitutional and statutory provisions, and an examination particularly of the constitutional conventions by which these amendments became a part of the State laws, will convince any disinterested person that the object of these State constitutional conventions, from which emanated mainly the poll-tax laws, were moved entirely and exclusively by a desire to exclude the Negro from voting. They attempted to do this in a constitutional way but, in order to follow such a course, they deemed it necessary to even prohibit the white voter the same as they did the colored voter and hence they devised the poll-tax method which applied to white and colored alike. In other words, the poll-tax laws were prohibitive to all people, regardless of color, who were poor and unable to pay the poll tax.

We desire to call attention to the Virginia constitutional convention which submitted an amendment which was afterward adopted to the Constitution of Virginia by which it was intended to disfranchise a very large number of Virginia citizens. We think this convention can be regarded as a fair sample of other conventions in other poll-tax States. Hon. Carter Glass was a member of that convention. Near the beginning of the convention Senator Glass made a speech in which he outlined in very forceful language what the object was, after all, of the

convention. He did this in his usual commendatory method of getting at the real cream in the coconut. Near the beginning of the convention he made a speech in which he said:

"The chief purpose of this convention is to amend the suffrage clause of the existing constitution. It does not require much prescience to foretell that the alterations which we shall make will not apply to 'all persons and classes without distinction.' We were sent here to make distinctions. We expect to make distinctions. We will make distinctions."

Near the conclusion of the convention, Senator Glass delivered another address in which he referred to the work already performed by the convention. He said:

"I declared then (referring to the beginning of the convention and the debate on the oath) that no body of Virginia gentlemen could frame a constitution so obnoxious to my sense of right and morality that I would be willing to submit its fate to 146,000 ignorant Negro voters [great applause] whose capacity for self-government we have been challenging for 30 years past."

There is no doubt but what Senator Glass stated the real object the convention had in view. The fact that his remarks were received with great applause indicates that his fellow members of that convention agreed with him and that the real object they had in view, and which they believed they could accomplish, was disfranchising "146,000 ignorant Negro voters."

Under the circumstances, can there be any doubt when perhaps the greatest leader of all stated what the object was and what was expected to be accomplished by the so-called poll-tax laws? If we concede that this was the object of the law, then we admit it is unconstitutional because, if this was the effect of the law, it in fact made an artificial qualification which, in itself, is illegal and unconstitutional, in order to come in under the qualification clause of section 2, article I, of the Constitution.

It ought to be borne in mind also that many, if not all, of these constitutional amendments in the poll-tax States are in direct conflict with the statutes under which these States were readmitted to the Union under the act of Congress of June 26, 1870 (16 Stat., p. 62). The provision which refers to Virginia reads as follows:

"The Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they have been duly convicted under laws, equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution, prospective in its effect, may be made in regard to the time and place of residence of voters."

It therefore follows that these State poll tax constitutional amendments were in direct violation of this statute and therefore absolutely unconstitutional.

It seems perfectly plain that the object of this poll-tax provision in the State constitutions was not to prevent discrimination among the citizens but to definitely provide for a discrimination by which hundreds of thousands of citizens were taxed for the privilege of voting and that, therefore, under section 2 of article I of the Constitution, it seems plain that such a provision in the State constitution, or State law, was simply a subterfuge to accomplish other aims by resorting to the so-called "qualification" clause in section 2 of article I of the Constitution. It is likewise equally plain that at the end of the War between the States, when these States were readmitted to the Union, they were readmitted under a statute of Congress which provided explicitly that the constitutions of the States "shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote."

It is therefore plain, under all the circumstances, that the so-called poll-tax laws of the State bringing about such a disqualification to its citizens in the exercising of suffrage is in clear violation of the laws of Congress in addition to being a violation of the Constitution of the United States. It is a clear violation of the agreement made by the State, when it was readmitted, that it should not provide for such discriminatory amendments to the State constitutions. It follows therefore that the so-called poll-tax laws, bringing about the disfranchising of its citizens in the exercise of suffrage, are a clear violation of the laws of Congress in addition to being a violation of the Constitution of the United States.

Those who believe the proposed legislation is unconstitutional rely on the statement of a historic fact that, when the Constitution was adopted, all of the original States had property or tax qualifications. This ignores entirely the testimony of scholars which clearly demonstrates why that fact alone does not prove the right of Congress today to forbid such requirements for voting in Federal elections.

It seems to us that this regulation is subject to the criticism which Mr. Justice Holmes leveled against the use of history when he said:

"It is revolting to have no better reason for a rule of law than that it is laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since and the rule persists from blind imitation of the past." Holmes: The Path of the Law, in Collection Papers, p. 187.)

We think also Justice Holmes was right when, in discussing the situation in *Missouri* v. *Holland* (252 U. S. 416, 433), he said:

"It (the Constitution) must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago."

The constitutional provision relied upon to strike down this legislation as unconstitutional must be considered with other constitutional provisions.

In section 4, article IV, of the Constitution of the United States, it is provided:

"The United States shall guarantee to every State in this Union a republican form of Government."

What does this mean in the light of the present-day civilization? 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 to be unconstitutional. 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. If we tax this fundamental right, we are taxing a Federal privilege. We might just as well permit the States to tax Federal post offices throughout the United States.

Under the guise of a pretended qualification this provision of the Constitution, we believe, has been nullified every time a State has denied the right to vote to any of its citizens because they do not have the money to pay the State the fee set up as a pretended "qualification." We think that this fact has been fully demonstrated by requiring the payment of a poll tax for the right to vote.

It is conceded, we think, even by those who believe the proposed law is unconstitutional that, while the poll tax is comparatively small in amount, if any poll tax at all can be enforced so as to prohibit voting by those who do not have the fee, the principle involved would permit the State to fix a fee much higher than is usually fixed now, and it is not at all unlikely that, in carrying out the real provisions of the poll-tax laws, this amount could be increased so that the poll tax might be fixed at $10, $50, $100, or even greater. The constitutional right to fix any poll-tax fee concedes the right to fix that fee at any amount desired.

Section 1 of the fourteenth amendment to the Constitution of the United States reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is quite clear that the so-called poll-tax laws do abridge the privileges and immunities of the citizens of the United States. If citizens of the United States are required to pay a poll tax it is clearly an abridgment of their privileges and immunities.

It is said that section 2 provides an exclusive remedy for a violation of section 1 of the fourteenth amendment to the Constitution. Section 2 refers to the apportionment among the several States of representatives in Congress and provides for the reduction in the number of such representatives whenever the right to vote is denied. We do not think this remedy is an exclusive one. Section 1 of the fourteenth amendment to the Constitution is positive in its terms and says that no State shall make or enforce any law which is an abridgement of the privileges and immunities of citizens of the United States.

The sponsors of the poll-tax laws do not admit that they have prevented anyone from voting. In fact these laws do not, on their face, directly prohibit any citizen from voting. The effect is brought about by the levying of a poll tax and providing that the citizen must pay this poll tax in order to vote. While he is not denied the right to vote, he is taxed for this privilege and, in case of poverty, this results in a denial of the privilege of voting and thus directly interferes with the citizen's right to participate in governmental affairs. Section 1 of the fourteenth amend-

ment to the Constitution says that this shall not be done and these laws therefore come in direct conflict with section 1 of the fourteenth amendment.

The fourteenth amendment to the Constitution has other sections referring to the right to hold office by a Senator or Representative in Congress and with reference to electors for President and Vice President. Section 4 of this amendment refers to the public debt of the United States and prohibits the United States or any State from assuming or paying any debt or obligation incurred in aid of insurrection or rebellion against the United States. Section 2, as above stated, refers to the apportionment of Representatives among the several States.

There is no more reason why section 2 should modify section 1 than there is that section 3 or section 4 should be considered in connection with section 1.

It is quite clear that the so-called poll-tax laws do abridge the privileges and immunities of citizens of the United States. If any citizen of the United States is deprived of the privilege of voting by any of these poll-tax laws, it seems a clear abridgment of the privileges of citizens of the United States. One of the greatest privileges, and a fundamental one, of every citizen of the United States is the right to vote. If he is deprived of this right, he is denied the right to participate in governmental affairs. Such a citizen becomes an outcast. He is subject to all the laws of the State. His citizenship is admitted and the burdens which rest upon him are the same as rest upon all other citizens. He can be drafted into the Army and be compelled to face the foe and give up his life to protect the lives of his fellow citizens. Yet he is deprived of the most sacred privilege of all—the right to vote. It is quite evident that all these poll-tax laws are in direct violation of section 1 of the fourteenth amendment to the Constitution as well as being in violation of other constitutional and Federal laws heretofore referred to.

Senator PEPPER. Thank you, Mr. Chairman. I think the question before us is simply whether the Congress of the United States is going to protect the purity of Congressional elections, and I may say the essential democracy of our Federal system of government, and to protect the right of the people of this Nation to enjoy the opportunity of voting for members of their Congress and Presidential and Vice Presidential electors who, in turn, determine their destiny, and particularly today in these trying times, their lives.

We all know that in the early days of our history, State constitutions set forth qualifications of electors, including age, residence, property, taxes, including poll taxes, religion, sex, race, birth or naturalization.

Over the years, almost all of the States gradually removed those qualifications, so-called which we now consider to be obnoxious, but about 11 States reinstated the poll-tax requirements between the 1880's and the early 1900's.

I do not deny that the States have the power and authority to set up qualifications for voting, but we do not give to them such right and power without any restraint, or otherwise they would have with such power the possibility of unlimited abuse. They might otherwise impose whatever caprice the State legislature may require as a condition precedent to the enjoyment of a franchise to vote in national elections.

I believe that the Congress has the right and the power to apply, and I will add, Mr. Chairman, the duty, wherever the States fail to act, as they should, in the first instance, to apply the principle or reasonableness in determining whether it should pass a law to restrict or eliminate any State requirement or condition of a voter in a Federal election which might violate his fundamental rights under the Constitution of the United States.

The necessity of paying a sum of money to a State is no longer a reasonable prescription of a condition or a qualification to vote for members of Congress or for electors of the President or the Vice President of the United States.

Paraphrasing the words of Governer Russell of Massachusetts, in recommending the abolition of the poll tax in that state in 1891, I say, "It has outlived its usefulness and is obnoxious to our modern concept of democracy."

Mr. Chairman, in my statement on S. 1280, to which I referred above, I maintained:

1. That sections 4 and 8, clause 18, of article I of the Constitution authorize this bill.

2. That the privilege of voting for national officers is protected by the fourteenth amendment from abridgments by the States.

3. That the requirement that poll taxes be paid as a prerequisite to exercise the right of participation in Federal elections violates the fourteenth amendment.

I affirm once again the strong convictions I have that my bill will meet any constitutional test in the Supreme Court of the United States.

The amount of the poll tax may seem to be small, but to the poorer citizen of the seven States—Alabama, Arkansas, Mississippi, South Carolina, Tennessee, Texas, and Virginia—which are among the 10 States with the lowest per capita income in the United States, the payment of even a dollar, much less the many additional accumulations that so readily seem to attach, Mr. Chairman, making the amount far in excess of a dollar ofttimes, would mean depriving himself of some essential of life.

The very nature of this requirement, let alone the requirement that the money must be paid, is such as to deter the average untutored citizen from making such payments and qualifying as a practical matter to vote.

The data which I submit for insertion in the record clearly shows what has happened in the southern States. The evidence is simple and clear. When the poll tax is on the statute books of a State, many, if not most, citizens of that State just do not vote. When the poll tax is removed and the citizens of that State become cognizant of the significance of such removal, they then learn to exercise their prerogative under the Constitution, and become a part of a living democracy.

I recall, Mr. Chairman, during the debate on the bill which granted the right to vote by absentee ballot to members of our armed forces, who, because of the war, could not get home to vote, that the opponents of the poll tax spread the rumor that a poll-tax exemption in the bill would kill that bill.

The record shows that these opponents were unable to prevent the inclusion of a prohibition of a poll-tax requirement, which I proposed, and which was proposed, I believe, by the able chairman now presiding and both had amendments. It was the amendment offered by the able chairman now presiding which was adopted because they knew that such a course would place them in a bad light. They knew they could not deny to these brave men and women fighting for democracy the enjoyment of such right. Surely, we should not deny such right to any other citizen.

Last week, the President of the United States spoke with great gravity about the crisis facing the democratic nations. He spoke of the need to preserve democracy in a world, and of America's crusade against the forces of communism.

Mr. Chairman, I know of no issue of democracy greater than that represented by the subject matter of S. 94. Balance, if you will,

between the right of a State to perpetuate a wrong, such as that which is reflected by the poll-tax requirement, and our holding forth to the nations of the world that we are trying to save democracy, to preach it—not only trying to save democracy, to preach it, but no practice it here at home. Are we not vulnerable while certain parts of our country still require a citizen to have the money to be able to buy his right to enjoy democracy?

Mr. Chairman, on the floor of the Senate yesterday, after a debate of only a few hours, I heard that body approve a bill granting several hundred million dollars to provide military aid to Greece and Turkey in their struggle which the proponents of that measure claim to be a fight to save democracy in those two countries. Yet, 10 years have elapsed since the fight in the Congress to remove the poll tax really got under way, and in that time only one State has removed the poll tax. In that time nothing has transpired in the Congress.

All I am asking the committee and the Congress to do in approving my bill is to make democracy work at home. All we are trying to do is to prevent a sovereign State from imposing conditions which are a burden upon the constitutionally accorded privileges of our citizens.

If my bill should pass, millions of our poorer citizens will be added to the electorate of the seven southern States which now have a poll-tax requirement. It is the poor people of the South for whom I am appealing. I believe so much in the principle of democracy that I do not want to see it denied to those less fortunate people.

I have just a few words more, Mr. Chairman. I speak throughout here of my bill, and I shall insert in the record, Mr. Chairman, a more particular chronology. I insert here now, Mr. Chairman, for the benefit of the record, a chronology of the way the bills have come up in the Congress.

Now, I have here a chronology of how these bills have originated from time to time, in which House and by whom.

I mention this, Mr. Chairman, not because I wish to claim any pride of authorship in the particular bill now pending, but because I want it known that my advocacy of the abolition of the poll tax as a qualification to one to vote for electors for President and Vice President, and for members of the Senate and House, did not originate with any Presidential message. It did not originate in 1948. It originated in 1941, when I introduced in the Senate the bill which is the bill which has passed the House three times, and is the bill now pending before this committee.

The first bill introduced was introduced August 5, 1939, by Congressman Geyer of California, that is H. R. 7534, introduced in the House.

The House, March 6, 1940—the House Judiciary Committee had hearings on H. R. 7534, and in the same year the bill died in the committee.

January 3, 1941, the second Geyer bill, H. R. 1024 which was identical to H. R. 7534 was introduced in the House. Then on the 31st of March 1941, S. 1280, which was my bill, was introduced in the Senate. That bill included primaries for the first time.

On July 19, 1941, hearings on S. 1280 in the subcommittee of the Senate Judiciary Committee began and continued at intervals until the fall of 1942.

Then, in 1942, the House discharge petition was completed on H. R. 1024. In 1942 the House passed H. R. 1024 by a vote of 252 to 84. The Senate Judiciary Committee reported favorably S. 1280 in October 1942.

Now, that subcommittee, Mr. Chairman, was headed by the venerable Senator Norris, as the Senator will no doubt recall, and they took my original bill of March 31, 1941, and made certain amendments in it with respect to which I was consulted, and to which I agreed, and that has become the bill which, since that time, has been the bill that has passed the House of Representatives twice, and has been approved by the Senate Judiciary Committee, which is my bill today, leaving out the whereases and preamble, and one reference to the place in the Constitution where the constitutional authority was asserted to rest, and is exactly the same bill as the bill of Congressman Bender, which passed the House of Representatives and is now also before this committee.

Cloture vote on the Geyer-Pepper bill in the Senate was defeated, after a 10-day filibuster in 1942 by a vote of 37 yeas to 41 nays.

In 1943 H. R. 7 was introduced in the House, and that became my bill, as amended by the Judiciary Subcommittee, to which I referred.

In 1943 a discharge motion passed in the House on H. R. 7. In 1943 the House passed H. R. 7 by a vote of 265 to 110.

I will put the rest of it in the record, but there have been three times that this bill has been passed, which is my bill, in the sense that I was the first one to introduce it, and was, therefore, the initiator of this particular approach to it.

You see, Mr. Chairman and gentlemen, the two Geyer bills that preceded mine, approached this matter as an amendment to the Corrupt Practices Act. My bill S. 1280 was the first one that asserted the right of Congress to strike down any State condition or any unreasonable State qualification, limiting the privilege of a citizen to vote for Presidential or Vice Presidential electors, and to vote for the Senate and members of the House of Representatives.

So, I say, three times it has been passed in the House, and it has been killed on filibuster in the Senate, and I also want it noted in the record that all three times I voted for cloture.

I participated in an antilynching filibuster in 1937, the first real year of my tenure in the Senate.

I then became convinced that it was wrong to filibuster. Although in many instances it served a useful purpose, I became convinced that, if a democracy was to function in this dangerous world, a minority of the membership in one body in a bicameral legislature should not have the authority to thwart the functioning power of the Government of the United States and, therefore, along with other Senators I offered amendments to the rules, and have appeared here, I believe, Mr. Chairman, to support my own version of what I thought a proper amendment to the Senate rules would be to give a majority of that body the privilege to determine what its legislative calendar should be, and when it should vote upon pending issues.

I did suggest that at least 2 weeks, I thought, under my proposed rule, should be required to elapse before there should be a closing of the debate, and if anybody wanted it a longer period, I would be

agreeable to consider that. But I wanted a majority sometime to have authority to dispose of an issue pending, even if it should be an obnoxious proposal, even if it should be a wrong and erroneous proposal, the legislative body had a right to act. I believed the legislative body had a right to act, I thought, eventually.

So, I say, three times by filibustering in the Senate with respect to which each time I have voted for cloture, it has been killed; it has been passed by the House again, and it is now here pending.

Mr. Chairman, I offer for the record, if I may, that chronology.

(The chronology referred to follows:)

CHRONOLOGY OF ANTI POLL-TAX LEGISLATION IN CONGRESS

SEVENTY-SIXTH CONGRESS

August 5, 1939: First Geyer bill (H. R. 7534) introduced in House.

March 6, April 3, April 10, and May 17, 1940: House Judiciary hearings on H. R. 7534. Not published. Bill died in committee.

SEVENTY-SEVENTH CONGRESS

January 3, 1941: Second Geyer bill (H. R. 1024) introduced in House.

March 31, 1941: Pepper bill (S. 1280) introduced in Senate. Included primaries for first time.

July 10, 1941; March 12, 13, 14, July 30, September 22, 23, October 13, 1942: Hearings on S. 1280 in subcommittee of Senate Judiciary Committee.

September, 1942: House discharge petition completed on H. R. 1024.

October 12, 1942: House passed H. R. 1024 by vote of 252–84.

October, 1942: Senate Judiciary Committee reported favorably S. 1280.

November 23, 1942: Cloture vote on Geyer-Pepper bill in Senate defeated after 10-day filibuster. Vote 37 yeas to 41 nays.

SEVENTY-EIGHTH CONGRESS

January, 1943: H. R. 7 introduced in House.

May 24, 1943: Discharge motion passed in House on H. R. 7.

May 25, 1943: House passed H. R. 7 by vote of 265 to 110.

October 25, 26, November 2, 1943: Hearings on H. R. 7 before subcommittee of Senate Judiciary Committee.

November 12, 1943: H. R. 7 reported favorably by Senate Judiciary Committee.

May 15, 1944: Cloture vote on H. R. 7 in Senate defeated after 5 days filibuster. Vote 36 yeas to 44 nays.

SEVENTY-NINTH CONGRESS

January, 1945: H. R. 7 again introduced in House.

May 29, 1945: Discharge petition in House completed on H. R. 7.

June 12, 1945: House passed H. R. 7 by vote of 251 to 105.

September 24, 1945: H. R. 7 reported favorably by Senate Judiciary Subcommittee without hearings.

October 5, 1945: H. R. 7 reported favorably by Senate Judiciary Committee.

July 29, 1946: H. R. 7 brought up in Senate with immediate filing of cloture petition and no debate.

July 31, 1946: Cloture motion on H. R. 7 in Senate defeated after "months' silent filibuster" by vote of 39 yeas to 33 nays.

EIGHTIETH CONGRESS

January 8, 1947: S. 1947, S. 94, Pepper bill introduced in Senate.

January 1947: H. R. 29, Bender bill introduced in House.

July 1, 2, 3, 7, 8, 9, 10, 11, 14, 15, 1947: Hearings before Subcommittee of Elections, House Committee on Administration.

July 16, 1947: House Committee reported H. R. 29 favorably without amendments (H. Rept. 947, 80th Cong.).

July 21, 1947: House approved H. R. 29.

Senator PEPPER. I also offer for the record to succeed that, a statement of the content of the three bills, showing that that is my original bill.

The CHAIRMAN. It will be received, without objection.
(The statement referred to follows:)

COMPARISON OF H. R. 7534 AND 1024 WITH S. 1280 AND S. 94

H. R. 7534, the first Geyer anti-poll-tax bill was introduced August 5, 1939, as a bill to amend the act to prevent pernicious political activities. It provided for abolition of the poll tax in general elections for Federal officers "to insure the honesty of such elections."

H. R. 1024, the second Geyer anti-poll-tax bill, introduced January 3, 1941 was identical with H. R. 7534.

S. 1280, introduced by Senator Pepper on March 31, 1941, was a completely new bill—"Concerning the qualification of voters or electors within the meaning of (section 2, article I of)[1] the Constitution * * *." It prohibited the use of a poll tax as a prerequisite for voting in Federal elections on the basis that payment of a poll tax should not be deemed a qualification of voters within the meaning of the above-quoted section of the Constitution. For the first time it applied the prohibition to primary as well as general elections. With the exception of the preamble and a specific citation to the Constitution this bill has been used as the anti-poll-tax bill in each subsequent Congress and in S. 94.

Senator PEPPER. I also offer a statement, if I may, of the early history of the poll tax in this country. I pay the highest tribute to North Carolina, which repealed the poll tax in 1920, to Louisiana—all these good Southern States—which repealed the poll tax in 1934; in my State of Florida—and I am proud that it was my friend, with my counsel and cooperation in the Legislature of Florida, that repealed the poll tax in my State in 1937.

The great State of Georgia repealed its poll tax in 1945, and also reduced the voting age to 18.

The Tennessee Legislature repealed the poll tax, but the supreme court of that State held, by a 3 to 2 vote that the constitution required the poll tax, and the legislature did not have authority to repeal it.

The CHAIRMAN. The statement you refer to will be received, without objection.

(The statement on the early history referred to follows:)

EARLY HISTORY

1. In 1776 (and other States in subsequent years) Pennsylvania substituted a tax payment for a real-property qualification and as a result increased the number of voters. The reason for this change was the change from an agricultural economy to an industrial economy which reduced the relative number of eligible property owners.

2. In 1791 and 1792 Vermont and Kentucky respectively entered the Union with free manhood suffrage and in 1792 New Hampshire abandoned its poll tax.

3. By 1860 every Southern State except Georgia and North Carolina abolished the tax requirement on voting.

4. In 1870 Wyoming approved woman suffrage.

5. Between 1889 and 1908 11 States had enacted again a poll-tax requirement.

6. Virginia history shows that Virginia had free suffrage for years before the Civil War. In 1896 a general assembly resolution for a State constitutional convention was defeated by 83,000 to 38,000, but in 1901 the poll-tax requirement was enacted without submission to the citizens of Virginia for approval.

Senator PEPPER. Now, I said a while ago, Mr. Chairman, of course, it should be the prerogative of the State to repeal the tax first, but where the State year in and year out declines to do it, and where millions of citizens have an impediment upon their voting by virtue of this condition of this unreasonable qualification, at least the Congress of the United States has not only the right, but the duty, to see

[1] This is left out of S. 94 and the preamble of S. 1280 is left out S. 94.

to it that in respect to the power they can exercise, they do strike down such burdensome limitations or qualificatoins.

I offer also, Mr. Chairman, a statement of how much the poll tax is in the various States, and some pertinent facts relative thereto.

The CHAIRMAN. Without objection that will be received.

(The statement referred to follows:)

POLL-TAX PROVISIONS OF STATE LAW

1. The seven poll-tax States are Alabama (1901), Arkansas (1908), Mississippi (1890), South Carolina (1885), Tennessee (1890), Texas (1903), Virginia (1901),

2. The rates per year are: Alabama, $1.50; Arkansas, $1; Mississippi, $2; Virginia, $1.50; South Carolina, $1; Tennessee, $1 in some counties, and $2 in 72 others; Texas, $1.75.

3. The maximum in Alabama is $36 for citizens 45 and over who previously never were able to pay; in South Carolina there is a penalty of $2.12 if in arrears above $1; Mississippi, the tax is cumulative up to $6; in Virginia the maximum is $5 per taxpayer who is in arrears as much as 3 years.

4. Most of the people technically are now in arrears. A husband and wife in Virginia may have to pay as much as $10 if they fall behind for 3 years. In recent years, the textile workers' union in Danville, Va., campaigned among their members until each one in arrears saved the $5 necessary to pay the taxes (a total of 3,000 paid this amount). The union members in Madison City, Ala., saved money for years until they paid on the average $12 to $21.

5. Alabama, Arkansas, Mississippi, South Carolina, Texas, Virginia, and Tennessee must amend their State constitutions to repeal the State poll-tax requirements. In view of the fact that between 1909 and 1948 only four states have actually repealed or removed the requirement, the odds are strongly against removing it in the seven States in the next few years in view of the arduous procedure necessary to amend the respective State constitutions.

6. In Mississippi, the poll tax can be a lien against assessable property. Everybody is liable to pay it and condemnation proceedings may be taken against such property.

Senator PEPPER. Now, I am nearing the conclusion here. I also offer, Mr. Chairman, a statement showing the way the vote in the several States declined as soon as the poll tax was imposed, and also the way the vote in the several States increased as soon as the poll tax was taken off.

In my State of Florida in a white primary in 1938, 100,000 more citizens voted in my senatorial race than voted 2 years before in 1936, the last election preceding the abolition of the poll tax, and I have here another—I have it in the data that I will not detail to this committee, because I am sure others have presented such information. Let us take the State of Louisiana, and I am talking here about white primaries. In Louisiana, the total number of registered voters increased by 44.5 percent after the poll tax was removed. The women's vote—the women's vote in a white primary increased by 77 percent, and the votes cast in two gubernatorial white primaries increased 64 percent over the averages over the two preceding ones, and the one senatorial primary, which was also a white primary after repeal, showed a 90-percent increase in the number of registered voters. So, I am putting this, Mr. Chairman, not upon any reference to any class or any section or any religion or any nationality or national origin: I am putting this upon the basic principles of democracy. It affects men and women, and as far as that is concerned, it adversely affects far more white people than it does colored people, if you want to get down to a distinction, as between the two.

I have already mentioned Florida, and I shall not repeat that. I will just give one other illustration. Now, here is the State of Florida

in the Presidential vote in 1936 before the repeal of the poll tax, it was 328,000; the Presidential vote in 1940, voting for the same President, but after the poll tax was removed, 485,000.

Now, we did not have any such population increase as that, Mr. Chairman. There was a 48-percent increase in the decade between 1930 and 1940; we had a 29-percent population increase. Yet we have got a 48-percent increase in the vote in the Presidential election in Florida since after the removal of the poll tax whereas—I will take just another State at random—the other States, Alabama increased only 7 percent; Arkansas increased only 13 percent; Georgia increased only 7 percent; Mississippi only 9 percent; South Carolina decreased 16 percent; Tennessee, 10 percent—I mean Tennessee increased 10 percent; Texas increased 23 percent; and Virginia increased 4 percent. If I may, Mr. Chairman, I offer that data for the record.

The CHAIRMAN. Without objection it will be received.

(The statements referred to follow:)

EFFECT OF POLL TAX REPEAL IN INCREASING VOTING—FLORIDA AN EXAMPLE

Florida repealed the poll tax in 1937. The following table contrasts the increase in the vote in Florida between the 1936 Presidential election and the 1940 Presidential election (that is the Presidential election immediately before and immediately after repeal) to the change in the vote in the remaining poll-tax States in the same elections.

State	Presidential vote, 1936	Presidential vote, 1940	Percent increase
Florida	328	485	48
Alabama	276	294	7
Arkansas	179	202	13
Georgia	293	313	7
Mississippi	162	176	9
South Carolina	115	97	[1] 16
Tennessee	476	523	10
Texas	843	1,041	23
Virginia	355	347	4

[1] Decrease.
All figures rounded to nearest 1,000.

Source: World Almanac, 1948, pp. 251-278

Statistics

Voting State	Year tax adopted	Record of vote		Percent reduction
		Before adoption	After adoption	
		1888	*1892*	
Florida	1889	66,000	35,000	47
Mississippi	1890	117,000	52,000	56
Tennessee	1890	304,000	265,000	13
		1892	*1900*	
South Carolina	1895	70,000	51,000	28
		1896	*1900*	
Louisiana	1898	101,000	68,000	33
		1900	*1904*	
North Carolina	1900	292,000	207,000	29
Alabama	1901	165,000	102,000	34
Virginia	1901	266,000	136,000	49
Texas	1903	401,000	221,000	45
Arkansas	1908	151,000	115,000	24

During this period there was an average increase of one-third of the population.

Louisiana repealed its poll tax in 1934. The voters in 1932 were 268,000 and in 1940 were 372,000 or a 36-percent increase.

North Carolina repealed its tax in 1920. Between 1920 and 1928, the vote rose from 538,000 to 3,630,000 or 18 percent.

Florida repealed its poll tax in 1937. Between 1936 and 1940 the vote rose by 46 percent from 327,000 to 485,000.

In 1940, there were in the 8 States, including Georgia, 13,000,000 eligible persons and only 3,000,000 or 22 percent paid the poll tax; 10,000,000 citizens of voting age did not vote. In 1942 the poll-tax vote fell to 820,000 or 6 percent of the eligible population.

A comparison of adjoining States for 1944 is illuminating. In 1944 North Carolina had 21 percent of its eligible population voting and South Carolina with a poll tax only 5 percent. In 1946 West Virginia with no poll tax had 542,000 persons voting and Virginia with a much larger population had only half as many voting.

In 1946 less than 9 percent of the eligible population voted in the seven poll-tax States in comparison with 13 percent for the four States which repealed the tax requirement in recent years and 47 percent for the non-poll-tax States.

In Louisiana the total number of registered voters increased by 44.5 percent the women's vote increased by 77 percent and the votes cast in two gubernatorial primaries increased 64 percent over the average for the two preceding ones and the one senatorial primary showed a 90-percent increase, after repeal.

In Florida the average number of votes cast in two senatorial primaries increased by 140 percent over the average for the four preceding ones and the one gubernatorial primary showed an increase of 91 percent over the four preceding.

Senator PEPPER. Now then, a last word on the question of constitutionality. The Breedlove case is justifiable on two bases. First, the one who sought qualification without paying the poll tax sought the vote not only for Members of Congress, but for State officials as well, and he demanded that he be generally qualified to vote in all elections, State as well as Federal.

The State did have a right, I suspect, to condition the exercise of its privilege upon the payment of a fee that it required because it was the State which conferred the right to vote for those State officials.

But the second basis of the decision, which was an erroneous predicate, and I can show that, was that the right to vote for even Members of Congress was a right accorded by the States. That is erroneous, Mr. Chairman, even if it was set by the United States Supreme Court, and the error was detected and corrected in the subsequent case of *United States* v. *Classic* (313 U. S. 299), where Justice Stone, speaking for 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 (cites cases), this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by section 2, of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

Now, Mr. Chairman, as far back as the Yarbrough case, the Supreme Court of the United States had said that the right to vote for a Member of Congress is a right conferred by the Constitution of the United States. So, the Breedlove case was in contradiction to an earlier decision of the United States Supreme Court which somehow seems to have been overlooked.

But the essential differences in the decisions of the past and between what is now proposed is this: Let us assume that the Supreme Court in these cases, the Supreme Court of the United States, has so far in

the Breedlove case and in the case of Pirtle against Brown in the Court of Appeals for the Sixth Circuit, decided March 8, 1941, and certiorari denied by the Supreme Court, the Court has decided that, in the absence of congressional action, a State may impose a poll tax as a condition to voting not only for State officials but for Members of Congress. I have not seen nor have I heard of nor have I any belief that such a decision exists any case that holds that the Congress of the United States, as these bills propose that it shall do, has not the power to strike down an unreasonable condition, for example, a poll tax if Congress finds that is an unreasonable condition or an unreasonable qualification, if Congress finds that is an unreasonable qualification to vote for Presidential or Vice Presidential electors and Members of the Congress of the United States.

So, Mr. Chairman, we come squarely under the Classic case decided in 1941 by the Supreme Court of the United States. In the Classic case Justice Douglas went on further to say:

> The important consideration is that the Constitution should be interpreted broadly so as to give the representatives of a free people abundant power to deal with all the exigencies of the electoral process. That means that the Constitution should be read so as 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.

In the case of *Edwards* v. *California*, Mr. Justice Jackson said:

> We should say now and in no uncertain terms that a man's mere property status, without more, cannot be used by a State to test, qualify, or limit his rights as a citizen of the United States.

So, it seems to me, Mr. Chairman, that we stand squarely under the Constitution of the United States, with the references I have given, and under the decision of the Classic case decided by the United States Supreme Court in 1941, and we ask Congress to exercise the authority which the Supreme Court has said under the Constitution it may exercise to protect the integrity of Federal elections.

The CHAIRMAN. Without objection, the exhibits will be included. Do you want to put that last one in your citations?

Senator PEPPER. Yes.

The CHAIRMAN. It will be received.

(The statement referred to follows:)

CONSTITUTIONALITY

1. *Breedlove* v. *Suttles* (302 U. S. 277), decided December 6, 1937: This action was brought to determine whether or not the appellees, the State officials, had acted unlawfully or illegally by refusing to register a white man aged 28 for voting for Federal and State officers at primary and general elections because he had made neither poll-tax returns nor paid any poll taxes. The opinion of the Court was perfectly proper in view of the fact that the appellant demanded the State official to qualify him to vote in a State election as well as a Federal election.

The Court arrived at this erroneous conclusion because it had erroneously judged the nature of the right to vote for Federal officials. The Court thought the nature of the right or the source of the right for a Federal official was the State itself. Surely, the State is not the one to grant a Federal privilege. The Court said "Privilege of voting is not derived from the United States, but is conferred by the State."

2. *Pittle* v. *Brown* (Circuit Court of Appeals, Sixth Circuit (118 Fed. (2d) 218)) decided March 8, 1941, and certiorari denied by the Supreme Court: The issue in this case was whether the State could condition a right to vote for a Congressman in an election, not a primary, because the citizen had not complied, or had failed to pay a poll tax. It was not a State election and not a primary and the

citizen had qualified in every way except pay the tax. The State levied the tax and set up the method of collection, having had difficulty in getting it collected, they burdened the franchise with the duty to pay the tax, as a method of collecting. It was therefore a condition precedent to the exercise of the right to vote. The court held that the right to vote in a national election is conditioned on such terms as the State wants to impose, and using the Breedlove case as a precedent about the right conferred by the State, said such right was conferred save as restrained by the fifteenth and nineteenth amendments on race, color or previous condition of servitude and other provisions of the Constitution. (Unanimous opinion of three judges.)

3. *United States* v. *Classic* (313 U. S. 299), decided May 28, 1941: In this case the charge was that election officials had violated section 19 and 20 of the Criminal Code by willfully altering and falsely counting and certifying the ballots cast in a primary in Louisiana for a Representative of Congress. The questions for decision were whether the rights of qualified voters to vote in Louisiana and to have their ballots counted is a right secured by the Constitution and whether the appellees violated the sections of the code. Stone said, after citing cases going back to *Ex Parte Yarbrough* (110 U. S. 651) that the right of the people to choose their elective officers is a right "established and guaranteed by the Constitution and hence is one secured by it to those citizens and inhabitants of the State entitled to exercise the right."

He continued: "While, in a loose sense, the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the States (cites cases), this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by Section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution, 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'"

Section 4 authorizes Congress to regulate the times, places, and manner of electing representatives in *United States* v. *Mumford* (16 Fed. 223, C. C., Virginia, 1883).

The court said there is little regarding an election that is not included in the terms "time," "place," and "manner" and that Congress could legislate generally in respect to general elections.

In the Classic case, Justice Douglas went further on to say: "The important consideration is that the Constitution should be interpreted broadly so as to give the representatives of a free people abundant power to deal with all the exigencies of the electoral process. It means that the Constitution should be read so as 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.

In the California "okie" case, Justice Jackson in a concurring opinion (*Edwards* v. *California*, 314 U. S. 181): "We should say now, and in no uncertain terms that a man's mere property status, without more, cannot be used by a State to test, qualify, or limit his rights as a citizen of the United States."

The Breedlove case does not distinguish between rights of citizens as State or Federal electors, and the Pittle case is an effort to strike down the poll-tax restriction in Federal elections by judicial reasoning without the exercise of Congress of its power to regulate such elections.

In the Classic case Douglas went on to say that sections 2 and 4 of article I are an arsenal of power ample to protect congressional elections from any and all forms of pollution.

The CHAIRMAN. Senator Stennis, do you have any questions?

Senator STENNIS. Senator, I want to ask you a few questions on the legal phase of this matter.

Senator PEPPER. Yes, sir.

Senator STENNIS. Now, as I understood your testimony, you say that the Breedlove case, cited by the Supreme Court, holds against your position here today.

Senator PEPPER. No, Senator; I did not intend to say that. I said that the Breedlove case—I am willing to assume that the Supreme Court of the United States has thus far decided that in the absence of congressional authority or congressional action, a poll tax imposed

by a State as a condition to a citizen's voting for officials of that State, or as a condition of voting for a Member of Congress, has been upheld. But I say, Senator, that the Breedlove case, in the first place, proceeded upon an erroneous concept—well, I say, in the first place, that the Breedlove case is justified on the facts. The Senator is an able jurist. That voter claimed the right to vote, not only in the Federal elections without paying a poll tax, but the right to vote in State elections which, as I deem it, he had no right to demand.

Senator STENNIS. Did they make that distinction?

Senator PEPPER. They did not make that distinction. But every case, as the Senator as an able judge knows, must stand upon its own facts, and that is the distinguishing feature of that case. The other error in that case was ignoring the previous statement and holding of the Yarbrough case that the right to vote for Member of Congress is not a State-conferred right, but a federally conferred right under the Federal Constitution.

Senator STENNIS. Let me refresh your recollection now just for two sentences here from the Breedlove case, wherein the Court said:

> To make payment of poll taxes a prerequisite for voting, is not to deny any privilege or immunity protected by the fourteenth amendment. The privilege of voting is not derived from the United States. But is conferred by the State, and save as restrained by the fifteenth and nineteenth amendments, and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate.

Senator PEPPER. Now, Senator, in addition to what I have already said to distinguish the Breedlove case, it carries another distinction in the language you just read. It says, "in the absence of the right"—that is, conferred by the right to vote—"being conferred by the State, save as restrained"——

Senator STENNIS. That is right.

Senator PEPPER (continued). "By the fifteenth and nineteenth amendments, and other provisions of the Federal Constitution, the State may condition suffrage."

Now, in the Classic case, the United States Supreme Court held that other provisions of the Federal Constitution gave the Congress the right to limit the right of that power by the State, and that is what Congress is asked to do by our legislation.

Senator STENNIS. Now, you say the Classic case then overrules the Breedlove case?

Senator PEPPER. I would not say it overrules it. The two cases are distinguishable, Senator, very clearly distinguishable on their facts. One of them was the act of Congress—in the Classic case there was the act of Congress under consideration, the Civil Rights Act, and the question was whether the right that had been allegedly violated was a federally conferred right or not. It had to be a federally conferred right or the defendants could not be convicted under that statute, and so, the Court had to pass upon that statute as to what was the source and origin of the right to vote for Members of Congress.

Senator STENNIS. What you are saying is that the Classic case, so far as the poll tax is concerned, is pure dictum, is it not?

Senator PEPPER. I do not think so, Senator. I think the necessary holding of that decision is that Congress has the power to regulate the elections for Members of Congress, and I think the same thing

would apply to electors for President and Vice President, although it was not up in that case.

Senator STENNIS. I have a quotation here, if you do not mind my refreshing your recollection on that, from the Classic case:

> The questions for decision are whether——

this is the Court speaking——

> 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 within the meaning of sections 19 and 20 of the Criminal Code, and whether the acts of the appellees charged in the indictment violate those sections.

In other words, assuming there that they qualified as voters, that is, what the Court says is the question, the question is whether the right of qualified voters to vote in the Louisiana primary had been violated. In other words it assumes that they were qualified voters, is that correct:

Senator PEPPER. In that particular case the qualification of the voter was not involved.

Senator STENNIS. Yes.

Senator PEPPER. But the essential question in that case, Senator, was whether or not that right to vote was a federally conferred right, conferred by the Constitution of the United States, or whether it was not. If it were not a federally conferred right under the United States Constitution, the statute alleged to have been violated did not apply because that statute only applied to offenses committed by those who deprived citizens of the United States of their rights under the Constitution of the United States.

Now, if this dicta, if the early dicta in the Breedlove case had been made the basis of the Classic case, the defendants could not have been convicted in that case because they would not have been depriving these people of a fair election in the proper counting of their ballots and so forth. They would not have been violating a Federal right that they had, only a State right, and that would have been only prosecutable in the State courts.

Senator STENNIS. I do not dispute that it is a Federal right. I think it is a Federal right. The point involved here in my question is, who has the power to pass on this person being a qualified elector; and I may ask you the further question, if I may, if the Classic case does not fail entirely to go into that question as to who is a qualified elector.

Senator PEPPER. The Classic case was not based upon the specific question of the qualification of electors. But the Classic case passed directly and squarely on whether or not in primary and in general elections the Congress of the United States had authority to regulate when the persons elected or to be elected were members of Congress of the United States, and the Classic case is an obvious attempt to clarify the law on this subject, and especially, the decision to bring the Breedlove dicta into line with the Yarbrough decision.

Now, the Court could not have been meaninglessly or intentionally speaking in vain and futile terms, Senator, when it used this language going to the very heart of this question. When the Senator, a moment ago, said he now admitted that the right to vote is conferred by the Constitution of the United States, he is taking exact issue with what the Court said in the Breedlove case. They said it was inherent only

from the State authority. I think the Senator is right, and the dicta in the Breedlove case must be taken in its context, and the decision must be taken upon its facts.

But now, here again, what could be clearer than this:

"While in a loose sense, the right to vote for representatives in congress is sometimes spoken of as a right derived from the States—this statement is true only"—now, Senator, let me pause and say, if the right to vote for Congressman and Senator is conferred by the Federal Constitution, surely the Senator could not contend that the federally conferred right can be limited, at least, in an unreasonable way by a State. Surely a Federal right——

Senator STENNIS. I did not say it was conferred by the Government on everyone. I stated that it is the right of a qualified elector to vote in a Federal election. No one contends that the Federal Government or any government confers the right on everyone to vote. You do not contend that, do you?

Senator PEPPER. The Federal Government confers a right upon everyone to vote, subject to limitation by the States only as to proper limitations—only to the extent that they may impose proper limitations.

Senator STENNIS. And you are going to let Congress say what is proper?

Senator PEPPER. That is right. The Congress of the United States has a right to say what exceeds the power of the State properly to limit the exercise of that franchise.

May I finish this?

While in a loose sense the right to vote for representatives in Congress is sometimes spoken of as a right derived from the States, this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject—

"to legislate"—now, that only means to legislate on the subject as provided by section 2 of article I.

Section 2 of article I, Senator, is the very language the Senator relies on for the State to define the qualifications, and the Supreme Court of the United States, speaking through its Chief Justice, is saying the right of a State to regulate the subject of voting for Members of Congress by determining the qualifications is granted only to the extent that Congress has not restricted the State's right—I interpolate—to prescribe qualifications by the exercise of its powers, which are also concurrent powers and I add, to regulate under section 4 and—

"to its more general powers under article I, section 8, clause 18, of the Constitution "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

In other words, the Supreme Court of the United States says that just as the citizen is a subject of two sovereigns under our Constitution, the State and the Federal Government, both of those authorities have the power to act in prescribing the qualifications of electors to vote for Members of Congress, but it says clearly and flatly, that the State cannot go beyond a standard that the Congress of the United States might approve, and when it does, it exceeds its power and it runs into a superior authority, which may impose limitations upon the exercise of its power.

Senator STENNIS. Now, that is the Classic case you are relying on?

Senator PEPPER. That is right.

Senator STENNIS. So, after all, you bottom your case on the Classic case, you bottom your law——

Senator PEPPER. I think that is the latest and most decisive case on the subject where a Federal act was involved, and the Senator will recall that I am distinguishing a case where the Congress steps in and limits the qualifications that a State may impose, and a case where Congress does not step in and the matter before the Federal court is a qualification laid down by the State, in the absence of a Federal statute to the contrary.

Senator STENNIS. And, Senator, without the Classic case you really have no legal basis for this bill, do you?

Senator PEPPER. Well, I think, Senator——

Senator STENNIS. No proper legal basis, I will put it that way.

Senator PEPPER. No, Senator, I would not say that. I would say that the Yarbrough case is decisive of the principle, when it said that the right to vote for a Member of Congress is conferred by the Constitution of the United States. I think as far back as that, the basic principle, once you make the point that the Senator made a moment ago, that this is a federally conferred right——

Senator STENNIS. To qualified electors. That is my point. It is a federally conferred right to qualified electors.

Senator PEPPER. That is the difference between the Senator and myself. I say this is a right that is conferred by the Constitution of the United States to vote. That while that right may be limited, I say, that the origin of that right is in the Constitution of the United States, and the Supreme Court says so in the Yarbrough case and in the Classic case. It is conferred by the Constitution of the United States.

Now, although it is a Federally conferred right, it may be limited by the State. It may be dealt with by the States, but not in an unreasonable way, and not in a way that the Congress of the United States may deem burdensome.

Now, Senator, let me state that I wish to cite other cases. I think in *United States* v. *Mumford* (16 Fed. 223), in 1883, is also pertinent, as well as the Classic case. But, Senator, let me make two analogies. Let us take the power to regulate commerce. It is not an exact analogy, but it is suggestive of the point involved here.

The States have the power to regulate commerce upon navigable streams, but not when the Congress steps in and not contrary to the action of Congress. If Congress does not act, the States can act in the regulation of commerce upon navigable streams, but once the Federal power has been asserted upon that subject, wherein it is superior, the State powers cannot be exercised in contradiction to the Federal power.

One other case, in the rate cases, States may regulate rates and tariffs engaged in intrastate commerce, or where the rate does not burden interstate commerce, but once the Congress has acted, the States are powerless to act in that field where, under the Federal Constitution, the preeminent authority is conferred upon the Congress under the Federal Constitution.

Senator STENNIS. I want to ask you a few more questions here with reference to these cases.

You have gone back here to the Yarbrough case. Let me refresh your recollection with one quotation from that, Senator, reading these words by the Court:

> The States, in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualifications for voters for those concomine. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State.

Now, let me call that to your special attention:

> The Constitution of the United States says the same persons shall vote for Members of Congress in that State.

Quoting further:

> It adopts the qualifications thus furnished as the qualifications of its own electors for Members of Congress.

Senator PEPPER. Senator, I would say two things to that. The first is, in the same case also appears the following language, which was quoted in the formal report of this distinguished committee:

> The right to vote for Members of Congress is fundamental, based upon the Constitution of the United States, and was not intended to be left within the exclusive control of the States.

I repeat: "within the exclusive control of the States."

Yes; the State, as I said a moment ago, has the prima facie right, although it is a federally conferred right, to prescribe the qualification, that is, the conditions under which that federally conferred right may be exercised. But it does not say that it has the exclusive right. It denies that the State has the exclusive right.

The second thing is that the Supreme Court has said in the Classic case that not only does it not have the exclusive right, but that the Congress has a concurrent right, and the Congress has the authority to prescribe the limitations of the conditions and the reasonableness of the conditions which the States may impose.

It is undoubtedly true, Senator, that as a general rule the States may prescribe the qualifications. Maybe it was never deemed probable that they would burden the right to vote, since they would not want to burden the right to vote for the members of their own lower houses. Maybe our forefathers did not contemplate that there would ever come a time that anybody would want to burden their own electors, or they might have contemplated that that would be a State authority.

But, at the same time, the Constitution means what the highest court says it means, Senator, and the highest court of the United States, in the Yarbrough case, said the States do not have the exclusive right to regulate.

The Senator is forced to the conclusion that the States have exclusive rights, which means that Congress has no right. I only say that the States do have the primary right; but, as the Yarbrough case says, they do not have the exclusive right as against the Congress, and, as the Classic case says, they do not have the exclusive right.

Senator STENNIS. I think we have gotten our contention as to these cases in the record, and I do not want to prolong this. I want to ask the Senator one question, and I think he is qualified to pass on this question.

If this law should be passed, if this bill should be passed, and some State should still want to keep the poll tax for the election of State officers, she would be within her rights, would she not?

Senator PEPPER. Senator, I am not prepared at this time to deny that right. As I said a minute ago, under the decisions of the United States courts so far decided, it would seem to me that the States have that right, I say, under the present decisions of the United States Supreme Court, and I am addressing myself, I want it clear for the record and I am glad the Senator gave me a chance to clarify it, I want it very clear for the record that I am speaking only about elections and electors for President and Vice President and for Senators and Representatives in Congress of the United States, and in no sense do I nor does my bill attempt to interfere with what the States do with respect to their own State and county and local offices.

Senator STENNIS. So, if they did retain that tax, we would have two lists of qualified electors, would we not? We would have one list voting for Congress and another list voting for the members of the lower, most numerous branch of the State legislatures.

Senator PEPPER. We would have two.

Senator STENNIS. Does not the Constitution of the United States expressly say we shall have one list?

Senator PEPPER. I do not know whether the Constitution of the United States says that.

Senator STENNIS. Well, article I, section 2——

Senator PEPPER. I have never seen a thing about one list before.

Senator STENNIS. Well, it says—that is the old reliable one, section 2 of article I that we all cite—

> The House of Representatives shall be composed of Members chosen every second year by the people, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

Senator PEPPER. But it does not say anything about one list. They shall have the qualifications, but it means—that must be read in the light of the interpretation by the Supreme Court therein, and that says that if they impose qualifications which the Congress of the United States deems unreasonable for Members of Congress, then, of necessity, there would have to be two lists. That does not say anything about a list.

Senator STENNIS. You are reading that into the Constitution.

Senator PEPPER. Well, the Senator is the one reading that into the Constitution. The Constitution does not say anything about a list in section 2, article I. If the State, I regret to say, if the State, by the imposition of a burden, which the Congress of the United States says is unreasonable upon the exercise of the right to vote, should make it necessary to have two lists, it would be the State that would require the two lists, and not the Federal Government, it would seem to me.

Senator STENNIS. Have you directed your attention in that connection to that provision "that each State shall appoint in such manner as the legislature thereof may direct a number of electors," and then the further provision that those electors elect the President of the United States? What is your comment on that?

Senator PEPPER. Well, my comment is this, Senator, that the same principle would apply. That while the States have the authority under the section the Senator has read to provide the method for the

appointment, as I believe it says there, for the appointment of electors, there again, the method that the legislature may prescribe must not transcend any limitation that Congress might put up in the same sense as here with respect to Members of Congress being elected.

If the States prescribe qualifications for electors, that is voters, to vote for electors for President and Vice President which included the payment of a poll tax under present law, as interpreted by the highest court of the land, that would be a permissible charge until and unless the Congress of the United States should say, as we seek to do in this bill, that is an unreasonable qualification, and that—

you cannot impose an unreasonable burden upon the people who are seeking to vote for electors for President and Vice President of the United States.

In other words, the same principle of reasonableness as to the State's prescription of qualifications in the face of a superior act of Congress limiting the exercise of their authority, must apply to the elector cases.

Senator STENNIS. Do you not think that under that section, Senator, the Legislature of the State of Mississippi could itself appoint these electors or provide that the Governor should appoint them?

Senator PEPPER. Senator, I have not examined that subject.

Senator STENNIS. And could the Congress do anything about that?

Senator PEPPER. I have not myself examined carefully and thoroughly into that subject. I will say, if the Senator will read the language of the Constitution again, it says that the legislature shall provide——

Senator STENNIS. It says "appoint."

Senator PEPPER. Does it say "appoint"? I thought it said something about providing. But I will say that whatever the language is, I have had occasion to speak—will the Senator read the exact language again?

Senator STENNIS. Yes.

Senator PEPPER. Did it not say "shall provide for the appointment"?

Senator STENNIS. That is article II, it is on page 455, "each State shall appoint"—just go ahead and read it yourself, article II, Senator.

Senator PEPPER. "Each State shall appoint"—it does not say the legislature shall appoint, Senator. It says "Each State shall appoint." The State is not the legislature; the State is the legislative, the executive, and the judicial branch of the government. The State is the entity.

Senator STENNIS. Go ahead and read the rest of it.

Senator PEPPER. "Each State shall appoint in such manner"——

Senator STENNIS. All right.

Senator PEPPER. "Each State shall appoint in such manner as the legislature thereof may direct."

Senator STENNIS. That is right.

Senator PEPPER. That looks like the legislature is going to lay down the rules.

Senator STENNIS. That is right.

Senator PEPPER. That will determine the manner of their selection, but I do not see anything in there——

Senator STENNIS. But, I say, could they not say that the governor shall appoint them—the legislature pass a law that this time the electors shall be appointed by the governor. Would that not be legal?

Senator PEPPER. Senator, it says "Each State shall appoint in such manner as the legislature thereof may direct a number of electors equal to the whole number"—I would not say that the governor is denied—I mean that the legislature might not provide that the Governor shall appoint the electors without any reference to the people, although I will say this: that it is my information, and I just had a word or two of comment about this with Mr. Brant, whose knowledge of the Constitutional Convention and the history of the country, I accord the highest respect and esteem to—he says that the legislatures, as I recall it, never did make these appointments, and I think it is pretty largely—I mean except in the early days, maybe in two instances or something of that sort, and certainly it has been the long-time history of this country that these electors are not appointed by the governor, but are elected by the people, and I wonder if that has not as a practice become so rooted in our democratic system of government that there would be some serious question as to whether the legislature had authority to take away from the people the right to vote for the President and the Vice President of the United States. That is what that would amount to. I have serious question about that, and may I add this, Senator, if it were, and the Governor were to prescribe eligibility standards which excluded everybody who paid no poll tax, I have no doubt but what that kind of provision would be stricken down by the courts as contrary to our democratic institutions. It is like the elector system that has grown up, and while under the Constitution you have got a technical right, for over a century the people have been recognized as having the authority to vote for President and Vice President of the United States.

Senator STENNIS. I am not advocating that it be done that way, you understand, but my point is that they have the power to do it, and under certain circumstances it would be preferable rather than to submit to what you think is an unjust, unfair, unconstitutional law.

Senator PEPPER. I will say this: that, if the legislature did provide that the governor should appoint the electors of the given State to vote for President and Vice President, and if that legislature limited the choice of the governor to those who had paid a poll tax and not to those who had not paid a poll tax, that that would certainly be a burdensome condition, which the Congress of the United States would clearly have authority to strike down—and I think a duty.

The CHAIRMAN. Thank you, Senator.

Senator PEPPER. Thank you very much.

Thank you, Senator, and thank you, Mr. Chairman. You have been very kind.

The CHAIRMAN. All right, Mr. Carey, we will hear you now.

STATEMENT OF JAMES B. CAREY, SECRETARY-TREASURER, CONGRESS OF INDUSTRIAL ORGANIZATIONS, AND CHAIRMAN, CIO COMMITTEE TO ABOLISH DISCRIMINATION

Mr. CAREY. I am James B. Carey, secretary-treasurer of the Congress of Industrial Organizations.

Mr. Chairman and members of the committee, in appearing on behalf of the Congress of Industrial Organizations before this Committee on Rules and Administration in favor of H. R. 29, a bill designed

to abolish the poll tax as a requirement for voting in Federal elections, I do so with a long-standing mandate from our organization.

From the time of its first constitutional convention in November 1938 through its ninth convention held last October, the CIO has gone on record in favor of the passage of such legislation by Congress.

The present requirements in the seven States of the Union that a poll tax be paid as a prerequisite to voting has deprived many millions of American citizens who live in these States the right to vote for Federal officers.

The purposes of and the methods employed in the application of the poll-tax laws as enforced today should not be confused with those of poll-tax laws passed prior to 1888. In the early colonial days the right to vote was generally restricted to landowners. Land was cheap and landowners comprised a majority; as the population increased and the number of tradespeople and artisans increased, the ownership of land as a qualification was dropped and some form of tax payment calculated to increase the number of persons eligible to vote was substituted. Rapidly, the personal-property requirements yielded to a poll-tax requirement as a qualification to vote which resulted in broadening the base of our democratic system. This pattern served to further spread the right of suffrage among the people as the population increased. Even in the early days of our Nation, there were those like Benjamin Franklin who advocated free manhood suffrage as best fitted to give the largest number of people a voice and a stake in our Government.

By 1860 every one of the seven States that now set up payment of the poll tax as a voting requirement, except Georgia, had either failed to adopt or had repealed the poll-tax law as a prerequisite to voting. Between 1889 and 1908, with the avowed intention and specific purpose of restricting large numbers of "poor whites" and Negro citizens in the exercise of their right to vote, 10 States adopted laws making the payment of a poll tax a prerequisite to the right to vote. Georgia constituted the eleventh poll-tax State in the Union.

By reason of the amount of the poll tax, the time of notice, the cumulative features in some States and increased penalties in others, and the economic statute of large groups of citizens affected thereby, it was made practically impossible for millions of otherwise qualified voters in these States to meet the requirements of the poll-tax law.

Florida adopted the vote tax in 1889, and sloughed off half its electorate. Mississippi and Tennessee taxed the vote in 1890, South Carolina in 1895, Louisiana in 1898, North Carolina in 1900, Alabama and Virginia in 1901, Texas in 1903, and Araknsas in 1908. Georgia, an exception among the Southern States, even in the free suffrage era of the Nineteenth century, had required the payment of all taxes, including the poll tax, as a condition precedent to voting, since before the Civil War.

The price affixed to the suffrage by this device varied from one to two dollars, but in some States could be much more because the tax was cumulative and penalities and interest were added for delinquency. In Virginia, my own State, where the tax was cumulative for 3 years, the vote could cost $5; in Alabama the tax was cumulative upon the citizen between the ages of 21 and 45 and the vote could cost $36. Therefore, in Alabama a would-be voter of 45 who had not previously paid his poll taxes would find the price of admission at the ballot box

$36—and if he did not pay it he would be refused the right of participating in the selection of men who would govern him—a pretty high price to pay to exercise a right guaranteed by the Constitution.

The results of such a tax can be seen to have an immediate and definite effect in the disfranchisement of large numbers of citizens. Four of the eleven States—North Carolina, Florida, Georgia, and Louisiana—have repealed their poll-tax laws.

The efficacy of the present poll-tax laws as a means of disfranchisement can be more clearly shown by the increase in people voting in the State of Georgia after the poll-tax law was repealed, as compared with the number of persons voting before its repeal. In the 1942 congressional election in Georgia before the poll tax was repealed, 61,875 citizens voted; however, in the 1946 congressional election, after the poll tax was eliminated, 164,577 citizens participated.

An additional fact of significance in favor of the abolition of the tax flows out of the fact that with large numbers of people—approximately 6,000,000 whites and 4,000,000 Negroes—in the seven poll-tax States disfranchised because of inability to pay, a small percentage of the citizens in those States elect a disproportionate number of Congressmen and Senators to the Federal Congress, which passes laws that affect the whole population of the United States.

For example, in the 1946 congressional elections, in the seven poll-tax States, the percentage of potential voters who exercised their right of franchise was 9.58 percent, and in one State, South Carolina, the percentage was as low as 3 percent.

On the other hand, in States where the poll tax has been repealed by State action, the percentage of potential voters who case their votes was 13 percent, and in States which in recent years had no poll tax, the percentage was 47 percent. This means that Congressmen and Senators from the poll-tax States actually represent a much smaller electorate than do a similar number of Congressmen and Senators from non-poll-tax States, and therefore they exercise an undue influence on national legislation, while these same poll-tax States reap all the benefits of Federal grants-in-aid to the States for welfare and other purposes.

It is sometimes argued that such legislation as this committee is now considering is unconstitutional. These arguments are, in our judgment, without foundation. We would like, with the permission of the chairman, to submit a legal brief on this question before the conclusion of these hearings.

However, I would like to refer the attention of this committee to the October 27, 1942, report of the Senate Judiciary Committee on this subject. With your permission, we would like to file that.

The CHAIRMAN. Do you have the brief there?

Mr. CAREY. Yes, sir.

The CHAIRMAN. It may be made a part of your remarks.

(The brief referred to is as follows:)

STATEMENT OF LEGAL DEPARTMENT, CIO BEFORE THE COMMITTEE ON RULES AND ADMINISTRATION IN SUPPORT OF THE CONSTUTIONALITY OF FEDERAL ANTI-POLL-TAX BILLS MARCH 25, 1948

Mr. Chairman and members of the committee, the issue before your committee in regard to the constitutionality of the various anti-poll-tax bills under consideration can be stated as follows:

Seven States within our Union require a tax to be paid by citizens of the United States before such citizens, who are otherwise eligible and qualified, may cast their

ballot in primary or other elections for Federal officers. As a result of this poll tax it is conservatively estimated that approximately 10,000,000 Americans are now disfranchised.

On the basis of the fundamental principles which underly our democracy and Republic, does Congress have the right to prohibit such disfranchisement or is there some technical constitutional provision that prevents Congress from enacting the proposed legislation?

Hearings on this and similar bills have been conducted by committees of Congress in many previous sessions. In addition to witnesses who presented all available facts both in support and in opposition to the proposed congressional legislation, there appeared before these committees a wealth of legal talent. Probably no bill ever pending before Congress has ever received the searching inquiry, both from a factual and constitutional basis, that this proposed legislation has had.

I concede that the issue involved in anti-poll-tax legislation goes to the very roots of our Constitution and the form of government therein prescribed. But I doubt that any substantial constitutional doubt can be sustained by logic or legal analysis in opposition to the legislation.

The legal arguments that have been arrayed against congressional enactment of anti-poll-tax legislation can be summarized as follows:

(1) Article I, section 2, of the United States Constitution provides that—"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."

Article I, section 4, provides that—"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 choosing Senators."

The seventeenth amendment to the Constitution establishes the same procedure for the election of Senators.

It is urged that these sections indicate, first, that the right to vote for national officers stems not from the Constitution, but rather is a privilege conferred by the States; and second, that while Congress may legislate as to the time, place, and manner of holding elections for national officers, the power of Congress has been expressly limited insofar as the qualifications of electors are concerned.

It is suggested that this point is sustained by virtue of article II, section 1, of the Constitution which provides that "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 gress. * * *"

The electors spoken of being Presidential electors.

(2) It is further argued that where it was sought to prevent States from denying citizens of the United States the right to vote for specific reasons, constitutional amendments were adopted, namely, the fifteenth and nineteenth amendments. I assume this argument is intended to claim that States may deny or abridge citizens of the United States their right to vote as long as it is not because of race, color, previous condition of servitude, or on account of sex.

These are the only arguments that have ever been made against the constitutionality of the proposed anti-poll-tax legislation. They are thoroughly invalid and specious. They are thoroughly inconsistent with the expressions of the framers of our Constitution, obnoxious to the entire framework and underlying principles of our Constitution, and are completely belied by the most recent decisions of the United States Supreme Court.

The constitutionality of Federal anti-poll-tax legislation rests upon this analysis: The right to vote for Federal officers is a right protected by the United States Constitution; it is a privilege and immunity of citizens of the United States protected by the Constitution; it is not a privilege to be conferred or withdrawn at the whim of any State. For this reason Congress has the obligation to protect the exercise of this fundamental right. In discharging this duty, Congress cannot be restricted by any narrow and stultifying interpretation which would prevent adequate protection being afforded to citizens in the exercise of their right to vote. Therefore a State has no constitutional license to impose such conditions upon the exercise of the right to vote for Federal officers as to disenfranchise citizens of the United States by the simple subterfuge of calling such condition precedent a "qualification" for electors.

In support of this conclusion I offer the following points:

I. The United States Supreme Court in a recent case has determined that the right of American citizens to vote for Federal officers is a right protected by the United States Constitution; that it is a privilege and immunity of citizens of the United States to be protected under the Constitution.

This doctrine was enunciated in the case of *United States* v. *Classic* (313 U. S. 299). The facts of the case were these:

Section 19 of the Criminal Code makes it a criminal offense to "engage in a conspiracy to injure a citizen in the exercise of any right or privilege secured to him by the Constitution and the laws of the United States." Section 20 makes it a penal offense for anyone who, "acting under color of any law * * * willfully subjects or causes to be subjected any inhabitant of any State * * * to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and the laws of the United States in a primary election for a national officer." The ballots of certain citizens were nullified and not counted through fraudulent practices on the part of State officials. These officials were indicted and prosecuted under sections 19 and 20 of the Criminal Code. The United States Supreme Court upheld the indictment. A minority opinion expressly confirmed the rights of Congress to enact legislation directed against the fraudulent practices in question but simply denied that sections 19 and 20 of the Criminal Code expressly covered the situation. For our purposes it may therefore be assumed that there is unanimous opinion on the issue relevant to our discussion.

The Court had these interesting comments to make:

"The right of qualified voters to vote at congressional primaries in Louisiana and to have their ballots counted is thus the right to participate in that choice.

"We come then to the question whether that right is one secured by the Constitution. Section 2 of article I commands that Congressmen shall be chosen by the people of the several States by electors, the qualifications of which it prescribes. The right of the people to choose, whatever its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by State action in conformity to the Constitution, is a right established and guaranteed by the Constitution and hence is one secured by it to those citizens and inhabitants of the State entitled to exercise the right.

"While in a loose sense the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the States * * * this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers' " (*U. S.* v. *Classic*, 313 U. S. 299).

II. Since the right of American citizens to vote for Federal officers is protected by the Constitution of the United States, Congress has the clear authority to protect the integrity and the free exercise of such a right.

The Classic case raised this very issue. It was contended in that situation that Congress could only determine the time, place, and manner of the final elections, which did not include any authority over primaries. In other words, the attempt was made to limit the authority of Congress as against the so-called all-embracing sovereignty of the States to legislate regarding Federal elections.

The United States Supreme Court dismissed this argument and held that the Constitution of the United States, which created this basic and fundamental right for American citizens and delegated to Congress the authority to protect such right, could not be interpreted in such a narrow fashion. To this point the Court made the following interesting comments:

"We may assume that the framers of the Constitution, in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph, and wireless communication which are concededly within it. But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses. Hence we read its words not as

we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of government."

"That the free choice by the people of the Representatives in Congress, subject only to the restrictions to be found in sections 2 and 4 of article I and elsewhere in the Constitution, was one of the great purposes of our constitutional scheme of Government cannot be doubted. We cannot regard it as any the less the constitutional purpose or its words as any the less guaranteeing the integrity of that choice when a State, exercising its privilege in the absence of congressional action, changes the mode of choice from a single step, a general election, to two, of which the first is the choice at a primary of those candidates from whom, as a second step, the Representative in Congress is to be chosen at the election."

"Unless the constitutional protection of the integrity of 'elections' extends to primary elections, Congress is left powerless to effect the constitutional purpose, and the popular choice of Representatives is stripped of its constitutional protection save only as Congress, by taking over the control of State elections, may exclude from them the influence of State primaries. Such an expedient would end that State autonomy with respect to elections which the Constitution contemplated that Congress should be free to leave undisturbed, subject only to such minimum regulation as it should find necessary to insure the freedom and integrity of the choice. Words, especially those of a constitution, are not to be read with such stultifying narrowness."

III. Congress has ample power to pass an anti-poll-tax bill. This power is available to Congress regardless whether the poll-tax statutes of the various States are unconstitutional or not.

In the Classic decision the Supreme Court pointed to two separate sources in the Constitution for congressional power. The Supreme Court quoted in full article I, section 8, clause 18, which gives Congress authority—

"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 and in any department or office thereof."

In addition and as a separate source of congressional power, the Court quoted from article I, section 4, of the Constitution, 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 choosing Senators."

The Court said with reference to the broad congressional power in clause 18 of section 8 of article I that "This provision leaves to the Congress the choice of means by which these constitutional powers are to be carried into execution."

After quoting the affirmation of this same principle in the historic decision in the case of *McCulloch* v. *Maryland*, the Court went on to conclude that "That principle has been consistently adhered to and literally applied and extends to the congressional power by appropriate legislation to safeguard the right of choice by the people of Representatives in Congress secured by section 2 of article I" (citing *Ex Parte Yarbrough* (110 U. S. 657), and a host of other decisions).

Since there must be agreement therefore that the right to vote arises out of and is protected by the Constitution, and since there must be agreement that Congress may enact legislation to protect the constitutionally guaranteed right to vote, the sole issue in connection with the enactment of a bill such as that now before this committee, is whether or not that bill is in fact a measure related to the protection of the constitutionally guaranteed right to vote. In other words, is Congress powerless, when it perceives a practice which in fact impedes and interferes with the proper exercise of the right, to take action to remedy the situation?

To answer that question, as I have stated above, it is not necessary to argue whether or not State action—the poll tax—in the absence of Federal legislation, is unconstitutional. The Members of Congress are familiar with the many fields in which States may constitutionally act but must yield to Federal action. The case books are filled with instances where there is no question as to the constitutionality of State legislation until a Federal statute is passed. Once Congress has seen an evil and has determined that its removal is required for the effectuation of Federal powers, Congress may act with respect to that evil and thereafter inconsistent State legislation must fall.

The Supreme Court has repeatedly faced such situations in considering the exercise of the Federal commerce power:

State safety regulations affecting railroads were in existence until the Federal Government in the exercise of its commerce power found it necessary to take action in the field. In enacting Federal legislation it was not necessary to doubt the constitutionality of the prior state action. It was enough that the Federal action was necessary in the proper exercise of Federal power.

I could continue citing these instances.

The doctrine is too familiar to require elaboration. The simple conclusion, however, must be emphasized since it apparently has been lost sight of in connection with this statute. The conclusion is that the power of Congress to enact this bill does not depend necessarily on the constitutionality of the poll-tax law. As in many other instances, the State poll tax may or may not be constitutional but Congress may nevertheless ascertain whether the existence of the poll tax presents an evil falling within congressional remedial power and if Congress so finds and acts on that finding, any inconsistent State legislation will fall.

Does the poll tax then present to Congress a situation in which there exists an evil within the power of Congress to remedy and which affects Federal rights in such a way as to require congressional action? It is not an answer to say that the poll tax is simply a qualification prescribed by the State within the meaning of article I, section 2, and that therefore Congress must find in the poll tax any evil consequences which require congressional action.

I shall address myself later to the constitutional proposition as to whether or not the poll tax can be said to be a qualification. But we need not, as I have repeatedly emphasized, debate that question at this point because whether or not it is a qualification, that is not the answer to the question of congressional power.

By the same token it might well be contended that a State practice which promotes fraudulent counting of the ballots is beyond congressional power of action. Or it may be contended that a State law which in effect prescribes discriminatory admission to the ballot box is beyond congressional power of action. Such a doctrine in effect says that the Constitution takes away from Congress in one section what it has granted to Congress in another section. Such a proposition in effect negates the doctrine enunciated by the Supreme Court in the Classic case—negates the proposition that the franchise does flow from the Constitution itself.

The proposition which would have these consequences has been amply answered by history, by Congress and by the courts. In the Federal Corrupt Practices Act enacted in 1925, and even then superseding a much older statute enacted in 1910, Congress has properly taken action to remove obstacles to the proper exercise of the constitutional right to vote. The taking of such action did not require a determination by Congress as to whether corruption within a State was per se unconstitutional. By the same token, in undertaking to prescribe safety devices on railroads engaged in interstate commerce, Congress was not making any determination as to whether contrary practices of railroads theretofore and State legislation which had theretofore permitted or directed these contrary practices was unconstitutional. In the railroad situation, as in the voting rights situation Congress takes affirmative action to eliminate practices which it finds to have been impeding the operation of constitutionally protected operations, in the one instance, interstate commerce and in the other, the right to vote for Federal officials.

The Federal power of affirmative action being thus clear, the sole determination that this committee has to make is a factual one: Does the poll tax produce consequences which in effect impede the proper exercise of the constitutionally guaranteed right to vote?

I am not going to attempt to answer that factual question. Every piece of evidence that I have heard on the issue of the poll tax and every rational consideration which has ever been advanced with respect to it seems to point to an affirmative answer to the question. Certainly the fraudulent practices which are encouraged by the very existence of the poll tax themselves indicate that congressional action against the poll tax falls exactly within the very category as congressional action against corrupt election practices. In the case of the poll tax Congress would simply be going closer to a root of the evil.

The answer to the factual question, I repeat, is one that flows from the data presented to this committee by many other witnesses. From the legal point of view, the only point which I emphasize is that if this committee answers that factual question in the affirmative, Congress has ample power to take action to remove the effects of the poll tax by this bill. And in so doing, the committee need make no determination as to whether the poll tax is constitutional or not.

IV. The States do not have any authority to impose any and all types of conditions upon the exercise of the right of American citizens to vote for Federal officers merely by terming such conditions "qualifications" of electors. Where such conditions actually have no reasonable relationship to the qualifications for discharging the obligation of citizenship by voting, Congress may, in the interest of protecting the integrity of the Federal constitutional right veto such conditions.

There are those who urge that article I, section 2, leaves entirely in the hands of the States the uncontrolled power and discretion to decide who may or may not vote. It is true that the State may prescribe qualifications but in this connection it should be recalled that the basic right to vote for Federal officers is one which is given by the Constitution of the United States.

What, then, is the scope of the States' power to prescribe "qualifications"? Is the States' power in this respect completely without limitation? May the State, for example, declare that only named persons may vote? Has section 2 of article I in fact negated any constitutionally guaranteed right to vote? The answer of the Classic case is clearly in the negative. The Court in the Classic case said that the right to vote does flow from the Constitution. That statement would be inconsistent with any construction of section 2 of article I which would in fact declare that the State has an absolute and unlimited right to grant or deny access to the ballot box.

Then if the State were to sanction fraud in the grant or denial of access to the ballot box, this view that the State power is absolute would affirm the constitutionality of such action. The fact is that the Supreme Court has negated that position. The obvious grounds for the Court's position are that a fraudulent limitation on the right to vote cannot come under the head of "qualification" to vote because the State may not make bribery a "qualification." Such a situation would clearly defeat the basic purpose of the constitutional guaranty of the right to vote.

We must come to the conclusion then that the term "qualification" does have limits—limits determined by the proper definition of the word. The restriction which the State seeks to place upon the right to vote must be a restriction which can reasonably be determined a qualification of a voter.

I doubt that any serious contention would be advanced that the ability to pay the amount prescribed by the poll-tax statutes is related to the voter's qualification. Certainly no such contention has been advanced.

Can it be said that the payment of a poll tax is a proper qualification for a State to impose where it results in the disfranchisement of 10,000,000 American citizens?

Can it be said that the payment of a poll tax is a proper qualification for a State to impose where it results in the election of Congressmen through the vote of only 1 percent of the people in the congressional districts?

The poll tax is not a revenue measure: it has no relationship to the qualifications that American citizens should have before exercising their right to vote, but is simply a legal trickery to favor a particular class of candidates in elections. As such it not only can be but must be condemned by Congress if the integrity of the constitutional right to vote is to be protected.

V. The fifteenth and nineteenth amendments of the Constitution do not establish any precedent that States may be prohibited from creating qualifications for electors only through such constitutional amendments.

These amendments merely took note of the fact that the conditions such as race, color, or previous condition of servitude and sex had been historically recognized as appropriate qualifications. The amendments decreed that thereafter the right to vote should not be denied on account of these conditions, either by the United States or by the States.

But these amendments do not in any way take away any power the Congress might otherwise have to protect the rights of national citizenship. If the poll tax, as we claim, is clearly an abridgement of the constitutional right of citizens of the United States to vote for Federal officers, then Congress can clearly legislate to protect the Federal right. If the poll tax is not a legitimate qualification for Federal suffrage in the constitutional sense, Congress has the power to protect the rights of national citizenships. A constitutional amendment is not necessary to achieve a result within the existing power of Congress.

VI. The record of the constitutional debates and subsequent statements of the framers of our Constitution demonstrate conclusively that the Federal government was vested with the supreme authority to protect the all-important Federal right of suffrage. Further, these records disclose that the very issue now under discussion had been considered and disposed of in a manner as to assure Federal protection against arbitrary action by States to deny the people their right of suffrage.

Testimony has been presented to this committee in support of both these bills and previous bills by way of quotations from constitutional debates and from statements of many of those who participated in the framing of our Constitution.

I shall only attempt to cite just a few of these quotations to illustrate the clarity of thinking of those who drafted our Constitution with this problem in mind.

Mr. James Madison, in No. 57 of the Federalist, had this to say:

"Who are to be the electors of the Federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States."

Can we say that this objective has been achieved in the face of poll-tax legislation which denies the right to vote to 10,000,000 American citizens?

Mr. Alexander Hamilton, in Federalist Nos. 59 and 60, made the following comments:

"Nothing can be more evident than exclusive power of regulating election for the National Government, in the hands of the State legislatures, would leave the existence to the Union entirely in their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say that a neglect or omission of its kind would not be likely to take place. The constitutional possibility of the thing without an equivalent for the risk is an unanswerable objection. Nor has any satisfactory reason been yet assigned for incurring that risk."

Haven't we practically come to the point where the seven poll-tax States are threatening the existence of our Federal Government and our republican form of government when they disfranchise 10,000,000 American citizens from voting for national officers?

VII. Congress has recognized its authority to legislate regarding the qualifications of electors for Federal officers in recent enactments.

On September 16, 1942, Congress passed a statute which provided that:

"No person in military service in time of war shall be required, as a condition of voting in any election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, to pay any poll tax or other tax or make any other payment to any State or political subdivision thereof."

It would be interesting to hear from one who challenges the constitutionality of the proposed bill as to how Congress had the authority to enact H. R. 7476 which contained the quoted provision.

CONCLUSION

One final thought should be presented to this committee on this question of constitutionality. Neither this committee nor Congress can usurp the powers of the courts of this Nation. It is the duty of Congress to enact legislation in accordance with the policy necessary for the welfare of the Nation. Congress must act within the scope of its constitutional power. But it is for the Supreme Court and not for Congress to decide close questions as to constitutionality. Had Congress usurped the powers of the Supreme Court to the extent of never enacting any legislation as to which there was any constitutional doubt there are many statutes which would not today be on the books of the country. Had Congress been swayed by the views of some 58 prominent names in the legal profession, Congress would have concluded that it had no power to enact the National Labor Relations Act. The Supreme Court, acting within the scope of its functions, later made the final determination.

It should not be necessary for this committee to be convinced beyond a shadow of doubt that Congress has the power to enact this legislation. It is legislation which is a vital necessity. There is a constitutional basis for it which I am convinced and which the authorities indicate is impeccable.

But whether the committee will agree completely on this proposition or not, the members of the committee must agree that there is far more than a reasonable foundation for believing that the Supreme Court would uphold congressional power to enact this statute. That being so, it is the duty of this Congress to act in the light of the Nation's needs and to leave to the Supreme Court the final determination, a determination which I am convinced would be favorable to this legislation.

Mr. CAREY. After hearing the arguments as to the constitutionality of legislation of this description, the committee arrived at the conclu-

sions that it was not only constitutional, but the poll-tax restriction is not a qualification, but is a tax on the right to vote, a clog on the ballot, and an unconstitutional discrimination between rightful voters. The fact that this report was written by Senator George W. Norris, of Nebraska, is of particular significance because when this Senator first sat as a member of the Judiciary subcommittee on this bill in the summer of 1941, he expressed himself as being worried about the constitutionality of this measure. But after carefully listening to all the arguments presented on its constitutionality he became convinced and led the fight for its passage in the Seventy-eighth Congress.

Even those who raise the constitutional issue must concede that their point is highly debatable, in view of the Congress' recognizing its authority to legislate regarding the qualifications of electors for Federal officers.

On September 16, 1942, Congress passed a statute which provided that:

> No person in military service in time of war shall be required, as a condition of voting in any election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, to pay any poll tax or other tax or make any other payment to any State or political subdivision thereof.

Though I am not a lawyer, or authority on the Constitution, it would be interesting to hear from one who challenges the constitutionality of the proposed bill as to how Congress had the authority to enact H. R. 7416, which contained the aforementioned quoted provision. I may qualify my disclaimer of authority on legal matters, since I hold a degree of doctor of laws from a southern college, Rollins College in Florida.

It seems highly inappropriate to urge Congress to take unto itself the duties of the Supreme Court and, on the basis of controvertible legal issue, refuse to consider desirable legislation, conceived for the purpose of protecting fundamental constitutional rights. The people of the Nation, nay, the people of the world cannot help but note the contrast between that view, on the one hand, as applied to civil rights protection and, on the other hand, the attitude evidenced in the passage of the Taft-Hartley bill. There, too, serious issue as to the constitutionality of various provisions were pointed out without in any way reducing the enthusiasm of those who preferred to vote its passage, and let the courts rule on its validity.

Interference with the right of American citizens to vote locally cannot today remain a local problem. An American diplomat cannot forcefully argue for free elections in foreign lands without meeting the challenge that in many sections of America qualified voters do not have free access to the polls.

But, more important, the poll tax requirement represents a brake on America's long struggle to increase the number of persons eligible to vote. The most sacred right in our democratic form of government is the right to vote. It is a fundamental that that right should not be denied unless there are valid reasons therefor. It must be exercised freely by freemen. If it is not, then we do not have a democratic form of government. If we permit this fundamental right to be taxed, we are allowing a Federal privilege to be taxed by a State. Congress might just as well permit the States, in order to raise revenue, to tax Federal post offices throughout the United States.

The Congress of Industrial Organizations is strongly of the opinion that the so-called poll-tax laws do abridge the privileges and immunities of citizens of the United States. One of the greatest privileges, and a fundamental one, of every citizen of the United States is the right to vote. If he is deprived of this right, he is denied the right to participate in Government affairs. Such a citizen becomes an outcast. He is subject to all the laws of the State. His citizenship is admitted and the burdens which rest upon him are the same as those that rest upon all other citizens. He can be drafted into the Army and be compelled to face the foe and give up his life to protect the lives of his fellow citizens. Yet he is deprived of the most sacred privilege of all—the right to vote, because of his poverty.

Democracy is an affirmative doctrine rather than merely a negative one. The Constitution of our land rests upon the fundamental proposition of the integrity of the individual; and that the Government's prime responsibility is to promote and to protect and to defend the integrity and dignity of the individual. Government will be fulfilling this high responsibility by removing the dollar sign off the right to vote.

We find ourselves in complete agreement with the President's Committee on Civil Rights who found:

> The right of all qualified citizens to vote is today considered axiomatic by most Americans. To achieve universal adult suffrage we have carried on vigorous political crusades since the earliest days of the Republic. In theory the aim has been achieved, but in fact there are many backwaters in our political life where the right to vote is not assured to every qualified citizen. The franchise is barred to some citizens because of race; to others by institutions or procedures which impede free access to the polls. Still other Americans are in substance disfranchised whenever electoral irregularities or corrupt practices dissipate their votes or distort their intended purpose. Some citizens—permanent residents of the District of Columbia—are excluded from political representation and the right to vote as a result of outmoded national traditions. As a result of such restrictions, all of these citizens are limited, in varying degrees, in their opportunities to seek office and to influence the conduct of Government on an equal plane with other American citizens.
>
> Therefore, the Congress of Industrial Organizations strongly urges the passage of H. R. 29 by the Senate of the United States.

The CHAIRMAN. Thank you, Mr. Carey.

Mr. CAREY. Thank you.

The CHAIRMAN. Do you have any questions, Senator?

Senator STENNIS. Very briefly. You refer there to the disproportionate representation in the Congress by the so-called poll-tax States, and you cite figures there to back that up. Your figures are based on the general elections, those who vote in the general elections, are they not?

Mr. CAREY. By and large, yes, sir.

Senator STENNIS. Well, do you not know that in those States, and in many other States in the South, that the general election is a mere formality, and people take no interest therein, because there is no contest?

Mr. CAREY. Perhaps, Senator, one reason there is no contest is because of the restrictions placed upon a large majority of the people in the Southern States that are qualified as to age, but denied access to the polling booths by other restrictions.

Senator STENNIS. Let's get back to the rights. I want to bring out as a fact, if you know it. Do you not know, as a matter of general

information, that in the South in the general elections under the one-party system, most frequently there is no contest over the offices at the general election and, therefore, no one turns out to vote?

Mr. CAREY. Senator, we do not subscribe to the one-party system. We do not look upon——

Senator STENNIS. Well, the party system does not have any part in this bill, I do not think. I am just trying to get at the facts, that it is true in the States that you call the poll-tax States, that they have a one-party system.

Mr. CAREY. Unfortunately, it is true.

Senator STENNIS. And at the general elections, there is no contest over most of the offices and, therefore, no turnout at the polls; is that not correct?

Mr. CARLY. I think, Senator, you will agree it is unfortunate in a democracy.

Senator STENNIS. It is true, is it not?

Mr. CAREY. It may be true, yes, sir.

Senator STENNIS. Well; that is your information that it is true, is it not?

Mr. CAREY. Yes; it is.

Senator STENNIS. That would, therefore, partly explain the small vote, would it not?

Mr. CAREY. I would say that the restrictions placed upon people who are qualified as to age to participating in the ballot, is the root cause of the lack of the larger vote, larger participation by more people in the political decisions that so affect them.

Senator STENNIS. I will give you an illustration. I have been a candidate myself in the general election down there, and would not even go to the general election and vote. There was no contest in it. I was the only name on the particular ticket for that office.

Mr. CAREY. Sir, I am a participant as a voter in a poll-tax State, and I vote, and I am not too sure that there is too much of a contest in the State in which I vote. I still think it is important, however, that we do perfect our means of having people participate so that there would be a contest.

Senator STENNIS. I am trying to get at your figures now. You cite figures there from Georgia about a great increase in the vote after the poll tax was repealed. At the same time, they lowered the voting age to 18; is that not correct?

Mr. CAREY. They did, sir; but I think the increase was much greater than the number of 18- to 21-year-old people, which would indicate that the repeal of that restriction, as to age, or the reduction in that qualification as to age, was a very desirable thing, if our purpose is to get as many people as possible to participate in the political decisions.

Senator STENNIS. Well, now, I want to ask you one more question here about these figures.

The two Senators from South Carolina stated here at this hearing that the poll tax originated in their State in 1703. You place it at 1895. What is the source of your information on that?

Mr. CAREY. We just referred to what we consider historical authorities on the subject, and I will bow to the Senators from the State as being better qualified on their history of their own State.

Senator STENNIS. I think you or any citizen has a full right to appear on any bill, and I do not want to detract from that one bit. But when you say here that you represent the CIO, we have some chapters of the CIO in Mississippi. I myself personally know a good many of these members, a good number of those members, who are very fine citizens, but do you appear here for them at their express direction? I am just asking for information.

Mr. CAREY. Yes, sir.

Senator STENNIS. You have a resolution for these CIO units in Mississippi?

Mr. CAREY. Yes, sir.

Senator STENNIS. Would you mind putting them in the record?

Mr. CAREY. I can do that. I do not have them at the moment, but those resolutions were adopted, as I stated, at each and every convention of the CIO, since its first convention in 1938.

Senator STENNIS. Do you mean State conventions?

Mr. CAREY. They are State and national conventions. I am referring here to the democratic process of the organization in which the views of the locals, as reported direct to the national convention through the delegates in attendance from all States of the Union, where the CIO has a membership—and I might say, Senator, that these resolutions were adopted by unanimous vote. We have never had opposition to it.

Senator STENNIS. What are you talking about, a State convention in Mississippi or the national convention?

Mr. CAREY. We do not have as many locals in Mississippi as we would like to, but we have no objection from any of the locals in Mississippi or any other State to the policy that was brought about through the democratic process within our organization, being in complete opposition to any restrictions.

Senator STENNIS. My question is, do you have any authority from the CIO units in Mississippi——

Mr. CAREY. Yes, sir.

Senator STENNIS. Just a minute, you do not know what my question is going to be.

Mr. CAREY. I thought your question was, Do we have any authority from the CIO members in Mississippi.

Senator STENNIS. Do you have any express authority from the CIO units in Mississippi to appear here in opposition to this tax?

Mr. CAREY. Yes, sir.

Senator STENNIS. You have? That was a State convention?

Mr. CAREY. That was by direction of the local unions through their representatives at our conventions, both State and national conventions.

Senator STENNIS. I would like for you to present those resolutions, if you can.

The CHAIRMAN. That will be included in the record, if he presents them.

Mr. CAREY. We will be delighted to do that, and, would you like, Senator, the resolutions adopted by the State locals and local unions in the other Southern States?

Senator STENNIS. Well, it would be all right, if you wish. That is all I have, Mr. Chairman.

The CHAIRMAN. Those will be received. Thank you, Mr. Carey.

Mr. CAREY. Thank you very much, sir.

Mr. CHAIRMAN. Mr. Sands.

STATEMENT OF CHARLES E. SANDS, LEGISLATIVE REPRESENTATIVE, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION

Mr. SANDS. Mr. Chairman, Mr. Hushing, chairman of the national legislative committee of the American Federation of Labor, instructs me to read this into the record, which is addressed to you, with your permission.

The CHAIRMAN. Do you wish to just place it in the record or do you wish to read it?

Mr. SANDS. I wish to read it.

The CHAIRMAN. All right, sir.

Mr. SANDS (reading):

MARCH 24, 1948.

Hon. C. WAYLAND BROOKS,
Chairman, Senate Committee on Rules and Administration,
Senate Office Building, Washington, D. C.

MY DEAR MR. CHAIRMAN: For a number of years the American Federation of Labor, by convention action, has approved of legislation designed to eliminate the poll tax.

At our 1947 convention, held in San Francisco on October 6 to 16, inclusive, the executive council recommended to the convention:

"* * * increased effort to secure the enactment of legislation to abolish the poll tax, to enact antilynching legislation, and fair-employment-practices legislation, and further recommends that endeavors be made to bring these three matters up for debate early in the next session, so that their passage will not be jeopardized by filibusters in the closing days of Congress."

The convention unanimously adopted the executive council's recommendation.

In addition to this action, the convention unanimously adopted resolution No. 49, reading as follows:

"Whereas the Sixty-fifth Convention of the American Federation of Labor, held in Chicago, Ill., 1946, went on record as supporting a Federal anti-poll-tax law: Therefore, be it

"*Resolved*, That the American Federation of Labor go on record in the sixty-sixth convention at San Francisco as favoring the enactment of an anti-poll-tax law to remove the unjust, unfair, and un-American discrimination against Negro and white workers in denying them the exercise of their right of suffrage."

It is respectfully requested that this communication be laid before your committee and incorporated in the hearings on the proposed anti-poll-tax legislation.

Sincerely yours,

W. C. HUSHING,
Chairman, National Legislative Committee,
American Federation of Labor.

Mr. Chairman, if I may be permitted, I have just a short statement from the organization that I represent.

The CHAIRMAN. All right.

Mr. SANDS. My name is Charles E. Sands, 4211 Second Street NW., Washington 11, D. C., legislative representative for the Hotel and Restaurant Employees and Bartenders International Union which is affiliated with the American Federation of Labor, and with the Railway Labor Executives Association.

Our membership is made up of over 400,000 members who are in over 800 local unions within the United States of America.

I appear here in favor of abolishing the poll tax as a prerequisite to voting in Federal elections, by direction of our convention which was held in Milwaukee, Wis., the week of April 13, 1947.

At this convention the delegates—some 1,200 from all sections of our country—unanimously voted that the legislative committee be instructed to appear before the committees of the Congress favoring the abolishment of the poll tax.

For me to cite our many reasons is not, I believe, necessary. It would no doubt be a repetition and waste time.

Our membership is vitally interested and respectfully requests that H. R. 29 be favorably reported.

We endorse fully the statement made before this committee by the representatives of the American Federation of Labor.

I thank the committee for the time allotted, and out of gratitude I have made my remarks brief.

Thank you, sir.

The CHAIRMAN. Thank you, sir.

Mr. SANDS. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is Mrs. Robinson.

STATEMENT OF DOROTHY ROBINSON, UNITED STATES SECTION, THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

Mrs. ROBINSON. Thank you, Mr. Chairman.

The CHAIRMAN. Will you give your name and your position.

Mrs. ROBINSON. My name is Mrs. Dorothy Robinson, 1615 Decatur Street NW., Washington, D. C. I appear for the Women's International League for Peace and Freedom, United States section.

The CHAIRMAN. All right, you may proceed.

Mrs. ROBINSON. Mr. Chairman, United States section of the Women's International League for Peace and Freedom was organized soon after the First World War for the purpose of bringing together women without distinction of race or political and religious opinion to study, make known, and abolish the political, social, economic, and psychological causes of war, and to work by peaceful means for permanent peace. This statement of the United States section of the organization was modeled after that of the international organization set up at The Hague in 1915 under the leadership of Miss Jane Addams.

Nothing shows the long-time interest of this organization regarding the extension of political democracy more clearly than a resolution passed in 1919. I quote:

> We believe that no human being should be deprived of an education, prevented from earning a living, debarred from any legitimate pursuit in which he wishes to engage, or be subject to any humiliation, on account of race or color. We recommend that Members of this Congress should do everything in their power to abrogate laws and change customs which lead to discrimination against human beings on account of race or color.

It was inevitable that American women holding such convictions would at once interest themselves in the elimination of the poll tax. Thus, since the early twenties our interest and attention has been focused on this issue.

We hold that the only way to safeguard democracy is to extend it. Only those who actually share in the process of political democracy are fully aware of its worth and only as it is participated in by all does it become the precious heritage of all. In the 1946 elections voting was made impossible, too difficult, or too inconvenient for approximately 10,000,000 potential voters. The continuance of such a situation is unthinkable. We contend that it is more than an economic situation which puts the poll-tax States at the bottom of every health, housing, and education standards list and for us there is great significance in the fact that the mass of people who would benefit from change lack the voting power to bring about change.

Being an organization with a rather long experience in the international field, we are interested in the reactions of our coworkers from different countries on this question. In August of 1946, our organization held its ninth international congress in Luxemburg. There was no subject concerning the United States which interested the delegates from the 23 countries represented quite as much as the civil rights of our minority groups. The three Negro women who were a part of the American delegation were continually being taken aside to be asked searching questions about their life in our country. This was the summer of 1946 but this was only a repetition of what had taken place at our international congresses over and over again.

It is quite true that we have found this interest in civil rights heightened since the United States became so interested in the political freedoms of other nations. Our members in Asia, Africa, South America, and Europe show keen interest in every action that is taken by the United States section regarding this part of our work. We are convinced, Mr. Chairman, that our country cannot pull "motes" out of the eyes of others without having others point to the "beam" they see in our eye. Since it is impossible to preach with any sincerity about something which we ourselves fail to practice over a large area we are put in an indefensible position if we insist on free elections for Italy, Bulgaria, or China and fail to make sure that our own elections are free. They are not free as long as only 9½ percent of the potential voters in seven of our States exercise the right of suffrage.

We believe that our experience in the international field is symbolic of the degree of interest felt by the rest of the world in our own extension of democracy and we further believe that no single act would do more to raise the confidence of the peoples of the world in the moral integrity of the people of our own country than the passage of H. R. 29.

The CHAIRMAN. Thank you. Do you have any questions, Senator?

Senator STENNIS. Mr. Chairman, the lady makes some reference there to poll-tax States being at the bottom of all of the lists for health and housing and education. I hear that said so often that I do not like to see it go unchallenged. I don't know whether it is pertinent to this bill, but I want to ask her just a few questions about her own information on that.

I respect you very highly in your right to appear here. I do not question that at all. Have you visited any of these poll-tax States?

Mrs. ROBINSON. Yes, sir, I have.

Senator STENNIS. Now, talking about being at the bottom of the list, did you know that Mississippi spends the largest percentage of its tax dollar on education, larger than any State in the Union? Did you know that?

Mrs. ROBINSON. Yes, sir, I do. I have seen it——

Senator STENNIS. So that puts them at the top of that list, does it not?

Mrs. ROBINSON. I do not think so, sir.

Senator STENNIS. Their willingness—now, here is the point: They spend the largest percent of their tax dollar for education than any other State in the Union; so that puts them at the top of the list in being willing to give a large portion of their tax dollar for education, does it not?

Mrs. ROBINSON. Well, I believe you give the largest portion of your tax dollar to some of your children, do you not?

Senator STENNIS. To education.

Mrs. ROBINSON. But you discriminate as to whom you give it, do you not?

Senator STENNIS. There are some differences on that, that is correct.

Mrs. ROBINSON. So that those you do not give it to, pull down the standards of the ones that you do give it to.

Senator STENNIS. Well, I am talking about, I am inquiring about the ability and willingness to do something about it, on the part of the people down in Mississippi; and that is a fact, that they give the highest percentage of their tax dollar toward education, of any other State; is that not correct?

Mrs. ROBINSON. That is correct.

Senator STENNIS. You have to bring that fact out to get the picture. Is it not true in a number of those counties down there that they have county health units, and that all the people are treated exactly alike about it, and that all the people have attention? Do you know about those things?

Mrs. ROBINSON. I do not know that all the people are treated alike.

Senator STENNIS. Your testimony is based upon some statistics that you got somewhere, is it not?

Mrs. ROBINSON. They are based on statistics compiled by the Poll-Tax Committee, which I think are very interested in having correct statistics.

Senator STENNIS. I am sure you are and they are, but still your testimony is just based on those statistics. You do not know the practical part of it and have not looked into the other side, we will say, of the matter.

Mrs. ROBINSON. Well, we will say the statistics compiled by the State governments.

Senator STENNIS. The poll-tax States?

Mrs. ROBINSON. I am sure the Poll Tax Committee would be delighted to have you furnish statistics to them so that they might know these other angles.

Senator STENNIS. You understand, I am just asking you now about your sources of information so that we can evaluate our opinion; that is what we are getting at.

Now, you bring up, as do others, something about the colored people in the South. Are you a social worker? Do you have experience along those lines?

Mrs. ROBINSON. Yes, I have.

Senator STENNIS. Do you live here in Washington?

Mrs. ROBINSON. I do.

Senator STENNIS. Well, do you go out among our colored neighbors at times of sickness and when there is death in the family and try to comfort them?

Have you done that? I have.

Mrs. ROBINSON. Sir, some of my dearest friends are Negroes.

Senator STENNIS. Well, I say, I have visited them in their homes in time of trouble.

Mrs. ROBINSON. I try to do everything I can for my friends.

Senator STENNIS. At the time of a death in their family.

Do you do that?

Mrs. ROBINSON. Yes. I do whatever I can for my friends.

Senator STENNIS. I go to the funerals, do you?

Mrs. ROBINSON. I have been many times to Negro funerals.

Senator STENNIS. I am not a man of means at all, but I have loaned colored people money to go to school with. Do you know about that side of those things?

Mrs. ROBINSON. Yes, I do.

Senator STENNIS. Do you know there are many people in the South that do that?

Mrs. ROBINSON. I understand. I have lived in the South, Senator.

Senator STENNIS. Well, the reason I bring this up—I do not think the matter has any color line, but many whites who come here, they throw in the facts here that discredit the Southern States, and I merely bring these points out to emphasize some of the matters in connection therewith.

All right, that is all.

The CHAIRMAN. Thank you, Mrs. Robinson.

Now, Senator, I have some 19 different statements.

In trying to adjust our time, I asked these people not to insist on an appearance. I think we will agree that they have been very cooperative with us.

Senator STENNIS. Yes, they certainly have.

The CHAIRMAN. And I have these 19 statements from different organizations.

It starts with a resolution of the Massachusetts State Legislature memorializing the Congress of the United States to enact legislation eliminating the payment of poll tax as a prerequisite to voting.

Senator Lodge requested that the resolution be included in the record of the hearings.

I have a telegram from Mr. Russell Smith, legislative secretary, National Farmers' Union.

I have a resolution submitted by the Human Relations Commission of the Protestant Council of the City of New York.

I have a statement of Nelle Morton, general secretary, Fellowship of Southern Churchmen.

I have statements submitted by the American Jewish Congress; a statement of the American Unitarian Youth; a statement of Moss A. Plunkett, attorney, Roanoke, Va.

I have a statement of the American Veterans Committee; a statement of Mr. Lee Pressman, and I think he represents, a member of the New York Bar and the Federal Bar.

I have a statement submitted by Robert J. Silberstein, executive secretary of the National Lawyers' Guild, together with a brief on the constitutionality of the Geyer bill, Seventy-seventh Congress.

I have a statement of Americans for Democratic Action; a statement of Albert J. Fitzgerald, president, United Electrical, Radio, and Machine Workers of America, CIO; a statement of the National Federation of Settlements, Inc., of New York City; a statement by Jennings Perry in behalf of the National Committee To Abolish the Poll Tax.

I have a memorandum on the constitutionality of H. R. 29, submitted by the American Civil Liberties Union; a statement of George W. Hardin, Greenville, Tenn.; a statement of the Civil Rights Congress; a statement of Walter Reuther, president, United Automobile Workers, CIO; a statement by John W. Edelman, Washington representative, Textile Workers Union of America, CIO.

Without objection, these will be made a part of the record.

(The documents referred to are as follows:)

THE COMMONWEALTH OF MASSACHUSETTS,
OFFICE OF THE SECRETARY,
Boston, Mass.

RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION ELIMINATING THE PAYMENT OF A POLL TAX AS A PREREQUISITE TO VOTING

Whereas, article XV of the amendments to the Constitution of the United States provides that "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"; and

Whereas the Constitution further provides that the Congress shall have power to enforce said article by appropriate legislation; and

Whereas the poll tax is now being used by some of the States as an instrument to defeat the constitutional guaranties and in denying citizens the right to vote because of race and color; Therefore be it

Resolved, That the General Court of Massachusetts memorializes the Congress of the United States to enact appropriate legislation whereby payment of a poll tax will be eliminated as a requirement of voting; and be it further

Resolved, That copies of these resolutions be transmitted forthwith by the State secretary to the President of the United States, to the presiding officer of each branch of Congress, and to the members thereof from this Commonwealth.

In House of Representatives, adopted, March 1, 1948.

LAWRENCE R. GROVE, *Clerk.*

In Senate, adopted, in concurrence, March 4, 1948.

IRVING N. HAYDEN, *Clerk.*

A true copy. Attest:

F. W. COOK,
Secretary of the Commonwealth.

WASHINGTON, D. C., March 16, 1948.

SEN. C. WAYLAND BROOKS,
Chairman Senate Rules and Administration Committee,
Senate Office Building, Washington, D. C.:

The National Farmers Union unqualifiedly endorses H. R. 29, the Bender bill providing for the elimination of the poll tax as a requirement for voting in the election of Federal officials. Our organization always has opposed this obstruction to the free working of democratic processes. We should appreciate it very much if you would let this statement of our view appear in the record of the hearings of your committee beginning next week.

RUSSELL SMITH,
Legislative Secretary, National Farmers Union.

THE PROTESTANT COUNCIL OF THE CITY OF NEW YORK,
New York 10, N. Y., March 24, 1948.

THE HONORABLE C. WAYLAND BROOKS,
Chairman, Committee on Rules and Administration,
United States Senate, Washington, D. C.

DEAR SENATOR BROOKS: This commission at its last meeting endorsed legislation to end the poll tax as a requirement for voting.

Its members took this action, convinced that citizenship places undue burden on those who have no voice in the conduct of public affairs but must bear the full responsibilities nonetheless. The basic concept of democracy requires that each individual person shall be able to express his opinion and participate in government. In addition, the representatives chosen by a selected group in a population speak not only on behalf of their own districts but for the entire Nation.

The poll tax, if it were a legitimate measure, would merely provide revenue. However, actual experience has proved that it limits voting privileges, as the amount required is prohibitive in most cases to large numbers of people.

We feel that H. R. 29, introduced in the current session of Congress, would go a long way to help establish justice in a critical sector of this Nation, and we urge that you report this bill out favorably for consideration by the Senate during the present session.

May we request also that our resolution be incorporated in the records of the hearings being conducted by your committee.

Very sincerely yours,

ROBERT W. SEARLE, *Executive Secretary.*

HUMAN RELATIONS COMMISSION,
THE PROTESTANT COUNCIL OF THE CITY OF NEW YORK,
New York 10, N. Y.

RESOLUTION ON ANTI POLL-TAX LEGISLATION, MARCH 1948

The Human Relations Commission of the Protestant Council of the City of New York affirms its belief in the necessity for Federal legislation prohibiting a poll tax. The commission has a twofold concern in taking this action.

First, it is concerned with the indignity and with the denial of the most fundamental political right to citizens in our American democracy which result from the poll tax.

Second, it is concerned because among those who are elected in States in which the poll tax is required are Members of the Congress of the United States whose voice and vote are exercised in decisions affecting us all.

We believe that the poll tax establishes an economic basis of citizenship entirely inconsistent with American principles.

The disfranchisement which the poll tax imposed upon a numerous group of financially underprivileged citizens denies them any voice in government while holding them subject to other forms of taxation as well as to the full responsibilities of citizenship. "Governments," according to a basic principle of democracy as expressed in the Declaration of Independence, "derive their just powers from the consent of the governed." Where, as in some States, a large body of citizens is disqualified, democracy is distorted into a form of economic aristocracy.

The ability to pay a poll tax can in no way be considered a measure of loyalty, of moral worthiness, or of the other deepest and most desirable qualities of citizenship.

This commission therefore urges upon our representatives in Congress the support of Federal anti-poll-tax legislation.

THE FELLOWSHIP OF SOUTHERN CHURCHMEN,
Chapel Hill, N. C., March 22, 1948.

Senator C. WAYLAND BROOKS,
Chairman, Committee on Rules and Administration,
Washington, D. C.

DEAR SENATOR BROOKS: The Fellowship of Southern Churchmen, a group of church leaders from all denominations committed to the application of the

resources of the Christian faith to southern social problems, urgently requests the immediate passage of the anti-poll-tax bill.

We favor the passage of H. R. 29 to abolish poll tax as a qualification for voting in seven Southern States for the following reasons:

The poll tax as a qualification for voting is an abridgement of the democratic principles on which our Nation was founded, in that millions of citizens, both Negro and white, are denied full privileges of citizenship.

We believe that the Senators and Representatives who have consistently opposed this measure have not been speaking for the South nor in the best interests of southern people.

We believe that the sense of justice and integrity of rural and working groups can be appealed to as successfully as can their prejudices be played upon.

If put to a popular vote in the South, we believe the southern people would vote for freedom and justice against the poll tax.

The monopolistic economic interests, both in and outside the South, are fighting to maintain the poll tax because they desire representation in Congress favorable to their selfish interests.

Democracy is not merely a concern of the South, but must be guarded and expanded by people from all sections of our Nation.

The legality of a poll-tax requirement for voting in national elections is indefensible and should be challenged. What right has a State to prevent a citizen of the United States from voting in a national election?

The moral principles of both Christianity and democracy support no measures which prevent individuals from exercising their rights as citizens.

Most sincerely yours,

NELLE MORTON,
Fellowship of Southern Churchmen.

STATEMENT OF AMERICAN JEWISH CONGRESS, NEW YORK, N. Y., MARCH 22, 1948

The American Jewish Congress was organized in part "* * * to help secure and maintain equality of opportunity for Jews everywhere, and to safeguard the civil, political, economic, and religious rights of Jews everywhere." Our movement recognizes fully that these aims can be truly secured only in a genuinely democratic society.

The bill which this committee is now considering, H. R. 29, passed by the House of Representatives on July 21, 1947, by a vote of 290 to 112, is designed to eliminate a substantial obstacle to realization of complete democracy in this country. As long as poll taxes continue to limit the number of American citizens who participate in selecting our Government, it will be impossible to square our electoral practices with our profession of democracy. The American Jewish Congress believes that every citizen having the proper mental and moral qualifications should have the right to vote. For that reason, it supports H. R. 29 and urges this committee to recommend to the Committee on Rules and Administration that it report the bill favorably to the Senate.

Seven States (Alabama, Arkansas, Mississippi, South Carolina, Tennessee, Texas, and Virginia) still impose poll taxes as a prerequisite for voting. These barriers to the exercise of the franchise were erected between 1889 and 1908. The circumstances surrounding their enactment, as well as direct evidence of the intention of their sponsors, show that the purpose of these taxes was to disenfranchise Negroes. They were enacted shortly after the Supreme Court invalidated the previously used disenfranchisement device, known as the "Grandfather" clause.

The poll tax today disenfranchises 10,000,000 white and Negro low-income citizens. This disenfranchisement is accomplished not merely by the imposition of a small annual fee; accompanying provisions aid in accomplishing the purpose of restricting the vote. Usually taxes must be paid months in advance of election day. For example, for the November 1946 elections in Mississippi the tax had to be paid by February 1, 1945. Unpaid taxes are frequently cumulative from year to year; in Alabama, up to $36; and in Georgia, up to $47.47. Little attempt is made to collect these taxes, since such an attempt would increase the electorate. In some States it is actually unlawful to encourage people to pay poll taxes.

Combined with a one-party system, the poll tax diminishes the total vote and restricts political rights to a small self-perpetuating group. Only 12 percent of the population of the poll-tax States voted in the 1940 Presidential election, while 83 percent voted in 40 non-poll-tax States. This restriction is not the result of a

democratic decision. It was imposed originally by a restricted electorate; and, of course, it is maintained not by the entire people of the States but by those who benefit by it.

The 7 States which retain the poll-tax voting barrier elect 14 Senators and 69 Representatives. These Senators and Representatives participate in legislating for the entire country. In fact, their influence is disproportionate to their numbers. Because of the self-perpetuating limitation on the electorate which choses them, they are able with relative ease to maintain themselves in office. As a result, they acquire congressional seniority which assures to them strategically important positions in the legislative structure.

It cannot be said, therefore, that Federal elimination of the poll tax as a requirement for voting in Federal elections would be an interference with State's rights. H. R. 29 deals only with Federal elections and primaries. The Nation as a whole has a legitimate interest in seeing to it that the selection of Congressmen, Senators, and Presidential electors is made, in all parts of the country, on a democratic basis.

There can be no question as to the widespread demand for this legislation. Poll-tax bills were passed overwhelmingly in the House of Representatives in 1942, 1943, 1946, and 1947. Their defeat in the Senate was due not to a considered rejection by a majority of its members but to filibusters conducted by a small minority.

The people of this country demand elimination of the poll tax as a prerequisite to the right to vote. The United States Senate should not countenance any further frustration of that demand.

Respectfully submitted.

AMERICAN JEWISH CONGRESS,
WILL MASLOW,
JOSEPH B. ROBISON,
Of Counsel.

STATEMENT AMERICAN UNITARIAN YOUTH FOR SENATE HEARINGS ON BENDER ANTI-POLL-TAX BILL, BY PETER RAIBLE, CHAIRMAN, DOMESTIC COORDINATION COMMITTEE, AMERICAN UNITARIAN YOUTH

The American Unitarian Youth is a liberal religious organization with groups situated throughout the country, including the solid South. One of the basic principles of the Unitarian religion is "universal brotherhood, undivided by nation, race, or creed." In light of this belief, we are strongly in favor of anti-poll-tax legislation. It is untenable to us that in a country founded in the ideals of the worth of the individual and in the democratic process persons should be denied the right to vote and to participate in elections, because of their race.

At its last convention the American Unitarian Youth stated: "We strive to break down the patterns of discrimination and segregation, affirming the fundamental unity of humanity." It is interesting to note that this resolution was passed unanimously and that delegates were present from Southern States. In its wider aspects, anti-poll-tax legislation does not have effects only on the Negro in the South. Many more white southerners are deprived of the vote by the poll tax than are Negroes. It is our firm belief that the poll tax is in direct violation of the fourteenth and fifteenth amendments to the Constitution, as well as contrary to the spirit of the Declaration of Independence. These documents are the very basis of American democracy, and yet they are directly opposed by the poll tax. Can the fact that we have fought twice in the last 30 years to preserve these documents be reconciled with the poll tax? It is our opinion that they cannot. The United States is attempting to point out the democratic way of life to the entire world today, and yet our own citizens are denied the right to vote without the payment of a tax. The poll tax is completely irreconcilable with this policy.

In my own State of Texas in the 1946 elections only 5 percent of the population voted and only 8 percent of the potential voters. A quick comparison with the totals of Northern and Border States will show that 33 percent voted out of the entire northern population and that 47 percent of the potential voting population voted in the North. This shows the effect of the poll tax on the South.

The American Unitarian Youth calls upon the Senate of the United States to pass the Bender anti-poll-tax bill. We call for the passage of this bill not only because of our own beliefs but for its over-all result and the upholding of democracy.

STATEMENT OF MOSS A. PLUNKETT, ATTORNEY, ROANOKE, VA.

The recent conduct of many Democratic officeholders in and from the seven voter poll-tax States, all in the South, clearly indicates that they firmly believe that H. R. 20, commonly known as the anti-poll-tax bill of the Eightieth Congress, will soon take its place on the Federal statute books and that the hearings on the bill will serve no purpose other than to delay for a few days the passage of the bill. This is a consummation devoutly to be wished.

However, since an opportunity has been afforded by the hearings on the bill for testimony to be presented by both sides to bring up to date the 552 printed pages of testimony at the hearings which began on July 19, 1941, and ended on October 13, 1942, before a subcommittee of the Committee on the Judiciary, United States Senate, Seventy-seventh Congress, on S. 1280, the anti-poll-tax bill of that day, and the 103 printed pages of testimony at the hearings which were held in October and November 1943, before the full Senate Committee on the Judiciary of the Seventy-eighth Congress, on H. R. 7, the anti-poll-tax bill of that day, I wish to present a summary of our efforts in the Federal courts since that time to secure relief from the iniquitous voter poll-tax laws of Virginia.

STRATEGY OF THE ATTORNEY GENERAL OF VIRGINIA

On September 22, 1942, Hon. Abram P. Staples, attorney general of the State of Virginia, testified at the hearings on S. 1280. He opposed the bill on constitutional grounds. A portion of his testimony was in support of the following propositions (p. 359):

"3. The requirement of the payment of a poll tax as a prerequisite to the right to vote is a 'qualification' of an elector within the meaning of article I, section 2, of the Constitution, and of the seventeenth amendment.

* * * * * * * *

"6. Whether a State has exercised its constitutional power to prescribe the qualification of electors in an unconstitutional manner so as to derive citizens of rights guaranteed to them by the Constitution is a judicial question and is for the courts, not the Congress, to determine."

After reading the lengthy testimony of the attorney general of Virginia to the effect that the voter poll-tax question is for the courts to determine, we decided to engage him in battle on the field recommended by him.

OUR FIRST CASE IN THE FEDERAL COURTS

Section 20 of the Virginia Constitution provides, inter alia, that a citizen shall be entitled to register, provided:

"First. That he has personally paid to the proper officer all State poll taxes legally assessed or assessable against him for the three years next preceding that year in which he offers to register; or if he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him * * *."

Dorothy Bentley Jones became 21 years of age on May 8, 1944. No poll tax could be assessed against her for the year 1943 because she had not reached her majority, and no poll tax could be assessed against her for the year 1944 because on the 1st day of January 1944 she was still under 21 years of age. On May 12, 1944, she desired to register in order to vote in the election to be held on November 7, 1944, for the purpose of electing the Representative in the Congress of the United States from the Sixth Congressional District of Virginia and of electing the electors for President and Vice President of the United States to which the State of Virginia was entitled, the Legislature of Virginia having determined that such electors shall be chosen by the qualified voters of Virginia. The registrar refused to permit her to register because she had not paid a poll tax. She explained to the registrar that there was no poll tax assessable against her for any year, but the registrar insisted that she must produce a poll-tax receipt showing that she had paid a poll tax for the year 1945, a year in advance. Thereupon she filed a complaint against the registrar in the District Court of the United States for the Western District of Virginia.

The complaint contains, inter alia, the following allegations:

"14. Plaintiff alleges that the requirement of the payment of a poll tax as a prerequisite to registering and voting under the Constitution of Virginia is not a 'qualification' requisite for electors of the most numerous branch of the State

legislature, as the word 'qualification' is used in article I, section 2, clause 1, of the Constitution of the United States, because it does not in any sense determine the fitness of a person to register and to vote and that such a poll tax is a tax on and an abridgment of the right and privilege to vote * * *."

"15. Plaintiff alleges that by reason of defendant's refusal to permit her to register on May 8, 1944, in order to vote in the election to be held on November 7, 1944, * * * solely because plaintiff had not paid $1.50 in satisfaction of the State poll tax for the year 1945, which said poll tax is not assessable before the first day of 1945 and will not be assessable at that time in the event the plaintiff is not then a resident of the State of Virginia, and which said poll tax is unconstitutional in that * * * it is not a 'qualification' as the word 'qualification' is used in article I, section 2, clause 1, of the Constitution of the United States, plaintiff has been damaged in the sum of $3,500, having thus been deprived of her political rights under the Constitution and laws of the United States."

The first defense in the answer filed by said attorney general of Virginia is the following:

"Comes now the defendant and says that the plaintiff has failed to state a claim against the defendant upon which relief can be granted."

It will be observed that this defense flatly contradicts the position taken by the attorney general of Virginia at the hearings on the anti-poll-tax bill, on September 22, 1942, that whether a State has exercised its constitutional power to prescribe the qualification of electors in an unconstitutional manner so as to deprive citizens of rights guaranteed to them by the Constitution is a judicial question for the courts to determine.

After the plaintiff moved the court for a summary judgment in her favor upon the issues of law, the attorney general of Virginia, in order to avoid an adjudication of the above-mentioned issue of law, filed an amended answer containing the following:

"The said defendant further says that she has been advised that no capitation tax is now assessable against the plaintiff herein, Dorothy Bentley Jones, and that the payment of a capitation tax on her part is unnecessary, and that she will not require the payment of a capitation tax on the part of the said Dorothy Bentley Jones in order to register for the elections to be holden in November 1944."

It will be observed that while the amended answer had the effect of changing the rulings of the attorneys general of Virginia concerning the qualification of maiden voters, which gives freedom to vote to approximately 40,000 maiden voters each year in Virginia, the attorney general of Virginia successfully evaded an adjudication of the question whether or not the payment of a poll tax as a prerequisite to the right to vote is a "qualification" of an elector within the meaning of article I, section 2, of the Federal Constitution.

OUR SECOND CASE IN THE FEDERAL COURTS

The fourteenth amendment, section 2, to the Constitution of the United States provides 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 21 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 21 years of age in such State."

On September 22, 1942, the attorney general of Virginia, in opposing S. 1280, the anti-poll-tax bill of that day, stated (p. 361):

"The fourteenth amendment applies to State officers as well as Federal, and, while it penalizes the States for the exercise of their power to deny or abridge the right to vote, it at the same time recognizes the existence of that power. It certainly does not prohibit its exercise. The only power conferred to Congress is to reduce the State's representation * * *."

The Congress of the United States enacted the 1941 Apportionment Act with knowledge of the abridgment by the voter poll-tax laws of the State of Virginia of approximately 60 percent of its inhabitants, 21 years of age and citizens of the United States, without applying the penalty prescribed in the fourteenth

amendment, section 2, to the Federal Constitution. The 1941 Apportionment Act which apportions nine Representatives to the State of Virginia is, therefore, unconstitutional.

The Congress of the United States established the principle that where the number of districts in a State exceeds the number of Representatives to which such State is entitled under the Constitution, the Representatives from such State shall be elected from the State at large.

The Supreme Court of Appeals of Virginia, in *Brown* v. *Saunders* (159 Va. 28; 166 S. E. 105), a case in which the then current districting act of the State of Virginia, concerning the election of Representatives from the State in the Congress of the United States, was held to be unconstitutional because it was in conflict with the State constitution, declared that all Representatives from Virginia in the Congress of the United States must be elected by the electors of the State at large.

The Supreme Court of the United States, in *Smiley* v. *Holm* (285 U. S. 355, 374, 375), a case in which a State districting act was unconstitutional, says:

"It follows that in such a case, unless and until new districts are created, all Representatives allotted to the State must be elected by the State at large."

The State of Virginia, having a districting act for nine Representatives and not being constitutionally entitled to nine Representatives in the Congress of the United States because she had abridged the right to vote of 60 percent of those who should have had the right to vote, Henry L. Saunders decided to become a candidate for the House of Representatives from the State of Virginia to be elected by the electors of the State at large and, as required by the laws of Virginia, so notified the secretary of the Commonwealth of Virginia on October 19, 1943, giving his reasons for so doing.

The secretary of the Commonwealth of Virginia, acting under the advice of the attorney general of Virginia, notified Henry L. Saunders that he could not certify Henry L. Saunders as such a candidate. Thereupon Henry L. Saunders filed a complaint against the secretary of the Commonwealth in the District Court of the United States for the Eastern District of Virginia, for his refusal to certify Henry L. Saunders as a candidate for said office to be elected by the electors of the State at large, in the general election to be held on November 7, 1944, thereby depriving the said Henry L. Saunders of his political rights under the Constitution of the United States, said right of action for damages being based upon Revised Statutes, section 1979, title 8 (U. S. C. A. sec. 43).

The attorney general of Virginia moved the court to dismiss this action on the ground that all questions relating to the apportionment among the several States of representation in the House of Representatives are political in their nature and reside exclusively within the jurisdiction of Congress to determine.

The district court decided in favor of the secretary of the Commonwealth of Virginia; the Circuit Court of Appeals for the Fourth Circuit affirmed the judgment of the lower court; and the Supreme Court of the United States refused to grant a writ of certiorari.

The purpose of this suit was to attack the voter poll-tax laws of Virginia through the back door by having the Virginia Districting Act declared unconstitutional. While we were unsuccessful in doing so, it will be observed that the attorney general of Virginia, while in the courts, insists that questions political in nature reside exclusively within the jurisdiction of Congress to determine, whereas the attorney general, testifying at the hearings on S. 1280, involving questions clearly political in nature, insists that whether a State has exercised its constitutional power to prescribe the qualification of electors in an unconstitutional manner so as to deprive citizens of rights guaranteed to them by the Constitution is a judicial question, and is for the courts, not the Congress, to determine.

If the constitutionality of H. R. 29 is ever questioned in the Federal courts, the attorney general of Virginia will find his arguments in our second case in the Federal courts dogging his footsteps.

OUR THIRD CASE IN THE FEDERAL COURTS

Section 22 of the Tax Code of Virginia levies a State capitation tax of $1.50 per annum on every resident of the State not less than 21 years of age. Recognizing that section 424 of the Tax Code of Virginia provides that, except where otherwise specifically provided, all assessments shall be made as of the 1st day of January of each year, section 22 of the Tax Code of Virginia was amended by adding the following sentence:

"Notwithstanding any of the provisions of sections 6 and 424 of the Tax Code, or any other provision of law, the said capitation tax of $1.50 per annum is hereby levied upon every person not less than 21 years of age who moves into Virginia and becomes a resident, for the year in which he first becomes a resident, regardless of whether he was a resident on the 1st day of January of said year or became a resident thereafter during the said year."

This amendment was a result of the situation described in the testimony of Hon. Abram P. Staples, attorney general of Virginia, which appears on page 357 of the hearings on S. 1280, on September 22, 1942. Before the amendment was adopted persons moving into Virginia after the 1st day of January could vote in the following year without paying a poll tax.

In July 1943, Eileen S. Evans and her husband, a private in the United States Army, moved from West Virginia to Virginia for the purpose of establishing their residence in Virginia for the duration of the war. In January 1944, she inquired at the courthouse as to what she would have to do in order to qualify to vote on November 7, 1944, and was told that she would not have to pay a poll tax for 1943 because she was not a citizen of Virginia on January 1, 1943, and that she would not have to pay a poll tax for 1944 because poll taxes for 1944 are not required to be paid in order to vote in 1944, but that she would have to register to vote on or before October 7, 1944. While talking with friends about voting in the Presidential election of 1944 without paying a poll tax, she was warned to make a further investigation, whereupon she returned to the courthouse where she was told that under the 1942 amendment to section 22 of the Tax Code of Virginia, with which very few people were familiar, it would be necessary for her to pay a poll tax for 1943. On September 6, 1944, she paid a poll tax for 1943 and registered to vote, whereupon the registrar told her that she could not vote on November 7, 1944, because she had failed to pay her poll tax 6 months prior to November 7, 1944.

On election day she went to her voting precinct but was not permitted to vote. Thereupon she filed a complaint against the election judges, which contains, inter alia, the following allegations:

"18. The requirement of the payment of a poll tax as a prerequisite to voting under section 82 of the 1942 Code of Virginia is not a qualification requisite for electors of the most numerous branch of the State legislature, as the word 'qualification' is used in article I, section 2, clause 1, of the Constitution of the United States, 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.'

because said requirement of the payment of a poll tax as a prerequisite to voting under section 82 of the 1942 Code of Virginia and under the Constitution of Virginia does not in any sense determine the fitness of a person to vote but is a tax on and an abridgment of the right and privilege to vote arising out of and secured by the Constitution of the United States."

The attorney general of Virginia, through local counsel, filed an answer admitting all allegations of the complaint except the amount of damages and asked for a trial by jury on the sole issue of damages. The answer frankly stated that the purpose of the answer was to avoid an adjudication by the Federal courts of the issue of law raised by the complaint. Being solely an action for damages, the court entered judgment for the amount of damages agreed upon.

It will be observed that the attorney general of Virginia again successfully evaded an adjudication of the question whether or not the payment of a poll tax as a prerequisite to the right to vote is a "qualification" of an elector within the meaning of article I, section 2, of the Federal Constitution.

OUR FOURTH CASE IN THE FEDERAL COURTS

As hereinabove stated, Dorothy Bentley Jones, the plaintiff in our first case in the Federal courts, was permitted to register and to vote in the election held on November 7, 1944, without paying a poll tax, the attorney general of Virginia having filed an answer in said action to the effect that she had such right.

Dorothy Bentley Jones was a citizen of Virginia on January 1, 1945, but no effort was made to assess her with a poll tax for that year. She was a citizen of Virginia on January 1, 1946, and again no effort was made to assess her with a poll tax for that year. On November 5, 1946, she decided to vote in the election being held on that day to elect the Representative in the Congress of the United States

from the Sixth Congressional District of Virginia and to elect two United States Senators from Virginia.

She explained to the judges of election in her voting precinct that since she qualified to vote in 1944 without paying a poll tax, she considered herself qualified to vote in 1946 without paying a poll tax for the previous year. The judges of election refused to permit her to vote solely because she had not paid a poll tax for the year 1945.

On September 25, 1947, Dorothy Bentley Jones filed her complaint in the District Court of the United States for the Western District of Virginia against the judges of election who had denied her the right to vote for the reason above stated. In this action she asked for $3,500 damages for deprivation of her political rights secured by the Constitution of the United States; asked that her right to vote without being required to pay a poll tax be declared by the court; and asked that the three judges of election and their successors in office be restrained from denying her the right to vote in future elections.

The attorney general of Virginia, through his local counsel, filed an answer on October 28, 1944, admitting (*a*) that payment of a voter poll tax is not a "qualification" for an elector within the meaning of the Constitution of the United States, as it does not bear a reasonable relation to the fitness of an elector to vote; (*b*) that a poll tax is an unconstitutional burden by taxation upon a Federal right when payment of it is made a prerequisite to voting; (*c*) that the provision of the Constitution and laws of the State of Virginia that no one shall be permitted to vote who has not personally paid the poll tax or poll taxes assessable against him for the years prescribed therein does not establish a "qualification for an elector" within the meaning of the Federal Constitution because such provision has been and is frequently violated and will continue to be subject to frequent and substantial violations through payment of poll taxes on behalf of voters by some other persons; and (*d*) that the requirement of the Constitution and laws of the State of Virginia that persons otherwise qualified to vote must pay poll taxes in order to vote deprives plaintiff of rights and privileges of citizens of the United States in violation of the Federal Constitution.

In said answer, the defendants request the court to enter an order adjudicating that the plaintiff is entitled to recover from the defendants all lawful damages she has sustained, and that a trial be had before a jury, in which the jury will be instructed to fix the amount of damages.

The complaint alleges that Dorothy Bentley Jones desires to vote in future elections without paying poll taxes; that defendants' official duty is to enforce the Constitution and laws of the State of Virginia; that, unless the requirement of the payment of poll taxes as a prerequisite to voting is invalidated by the court, the defendants or their successors in office will continue to prohibit plaintiff from voting unless she pays such taxes; and that it is an established and invariable practice for defendants and all other judges of election in Virginia to refuse to permit to vote those who have failed to pay the poll taxes required to be paid by the Constitution and laws of Virginia as a prerequisite for voting. The defendants did not deny these allegations. They stand admitted under Federal Rules of Practice.

In order to meet the request for a declaratory judgment adjudicating that the provisions of the Constitution and laws of Virginia imposing the poll tax as a prerequisite for voting are unconstitutional, and in order to meet the request for an injunction against the defendants and their successors in office, the defendants' answer states:

"These defendants further say that, since Dorothy Bentley Jones contends that it is a violation of her constitutional rights to prevent her from voting solely because of her failure to pay the State poll taxes, these defendants will not deny her the right to vote in any election they serve as election judges if she is in all other respects qualified to vote."

Dorothy Bentley Jones decided to test the sincerity of the defendants by presenting herself at her voting precinct on November 4, 1947, and requesting the defendants to permit her to vote without having paid her poll taxes for 1945 and 1946 as required by the Constitution and laws of Virginia.

When she gave her name to the defendants who were still serving as judges of election at her voting precinct, they checked the poll tax books; found that she had not paid poll taxes for the prescribed years; and refused to permit her to vote. Thereupon she showed the defendants a copy of their answer in this case. All three defendants took time out to read their answer. Then one of the defendants stated that she should be permitted to vote, whereupon another of the

defendants said, "You have served as election judge long enough to know that Mrs. Jones cannot vote without paying her poll taxes." Again the defendants refused to permit Dorothy Bentley Jones to vote, solely because she had not paid poll taxes for the prescribed years.

Dorothy Bentley Jones then moved the court to permit her to serve a supplemental complaint setting forth the transactions or occurrences at the polls on November 4, 1947, whereupon the court granted said request.

A supplemental complaint setting forth what took place at the polls on November 4, 1947, was served on the defendants and they were given until February 2, 1948, to answer said complaint.

No answer having been filed by the defendants within the time specified, Dorothy Bentley Jones moved the court for a summary judgment in her favor as follows:

"(*a*) declaring that the provisions of the Constitution and laws of the State of Virginia imposing the poll tax as a prerequisite for voting are contrary to the Constitution of the United States, and

"(*b*) enjoining defendants and their successors in office from enforcing against plaintiff, or any member of the class she represents in this action, the provisions of the Constitution and laws of Virginia requiring payment of the poll tax as a prerequisite for voting."

A hearing on this motion has been set for March 29, 1948, at which time it is hoped that the Congress of the United States will have passed H. R. 29 declaring that the voter poll tax is an interference with the manner of holding elections and a tax on the right or privilege of voting.

Inasmuch as this action not only asks for damages but also asks for a declaratory judgment and for an injunction, it is believed that the attorney general of Virginia will not, in this action, be able to evade an adjudication of the question whether or not the payment of a poll tax as a prerequisite to the right to vote is a "qualification" of an elector within the meaning of article I, section 2, of the Federal Constitution.

CONCLUSION

To keep the record clear, we wish to call attention to the fact that in the latter part of 1947, Hon. Abram P. Staples resigned as attorney general of Virginia to become a justice of the Supreme Court of Appeals of Virginia; that Hon. Harvey B. Apperson, chairman of the State corporation commission, resigned said position to become attorney general of Virginia; that upon Mr. Apperson's death early in 1948, Hon. J. Lindsay Arnold, Representative in the Congress from the Sixth Congressional District of Virginia, was appointed by the General Assembly of Virginia to fill the unexpired term of Hon. Abram P. Staples, attorney general of Virginia; but that, despite these changes in personnel, there has been and will be no change in the attitude of the attorney general of Virginia concerning the voter poll tax.

The office of attorney general of Virginia is an important post in the political life of Virginia and this is well recognized by all officeholders who are members of the Byrd machine. Upon the holder of this office rests the responsibility placed upon him by the officeholders of the State, who are not only afraid to face a free electorate but are also afraid to let the Federal courts pass on the question whether or not the voter poll tax is a "qualification" as the word "qualification" is used in article I, section 2, clause 1, of the Constitution of the United States, to do everything possible to evade an adjudication of said question by the Federal courts and to do everything possible to oppose the passage of H. R. 29 by the Congress of the United States.

The Declaration of Independence declares:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed * * *"

If the will or consent of the governed is to be enforced or given in a peaceable manner, those governed must be given the free right to vote. A free ballot is the badge of freedom. A slave cannot vote.

The fourteenth amendment, section 1, to the Constitution of the United States provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States * * *"

Citizenship of the United States carries with it the duty of the citizen to give his life in defense of the United States. Such allegiance demands that

the Congress of the United States, serving under a living Constitution, remove the shackles of slavery forged by seven poll-tax States, all in the South, under the assumed authority of article I, section 2, clause 1 of the Constitution of the United States and under the misnamed doctrine of State's rights.

To say to the disfranchised millions in the South who are citizens of the United States that they must change the laws of their States fixing the qualifications of electors before they can vote as citizens of the United States is something just about as impossible of attainment as the requirement that they lift themselves by their own bootstraps.

The Senate of the United States ratified the charter of the United Nations, article 55 of which provides that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion," and this charter is now the supreme law of the land. What a strange thing it is for the supreme law of the land to tolerate the utter disrespect for the fundamental freedom of suffrage in the seven voter poll-tax States in the Nation which is leading the democratic forces of the world! Until the "principle of equal rights and self-determination of peoples" is extended to the millions whose right to vote is abridged in the seven voter poll-tax States, the United States will have little influence in getting other nations to have any respect for the "principle of * * * self-determination of peoples".

The atomic bomb dictates that wars must end in the world if civilization is to survive. If wars are to end, one of the principal causes of war—government without the consent of the governed—must be eliminated by giving to the peoples of the world the secret ballot with which to elect their representatives.

The House of Representatives of the Congress of the United States has, by overwhelming majorities, four times during the past 7 years, declared that the voter poll-tax shall not be deemed a qualification of voters but shall be deemed an interference with the manner of holding elections and a tax upon the right or privilege of voting for national officers, during which time a majority of United States Senators had to listen to the ravings of the late Senator from Mississippi.

To give meaning to the platforms adopted at the last conventions of the two major political parties in the United States and to give meaning to citizenship in the Nation which is now preparing to call its youth to the colors to defend democracy all around the earth, it is hoped that the Senate Committee on Rules and Administration will soon report favorably H. R. 29; that the Senate of the United States will shortly thereafter limit debate on the bill by invoking the cloture rule; and that the United States Senate will very soon thereafter vote for H. R. 29 with a majority even greater than that of the House.

Respectfully submitted.

MOSS A. PLUNKETT.

ROANOKE, VA., *March 22, 1948.*

STATEMENT OF ROBERT L. CARTER, DIRECTOR OF VETERANS AFFAIRS, AMERICAN VETERANS COMMITTEE (AVC), PRESENTED TO THE SENATE COMMITTEE ON RULES AND ADMINISTRATION FOR INCORPORATION IN THE RECORD OF THE HEARINGS ON H. R. 29, MARCH 22, 1948

The American Veterans Committee who heartedly enforses H. R. 29, an act making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election of national officers, and urges this committee to favorably report this legislation designed to abolish throughout the United States the poll-tax barrier to voting in Federal elections. This Nation has long since rejected the notion that property was a criterion of United States citizenship or a basis for mensuring an individual's rights and privileges. As veterans, we of AVC have a special interest in the enactment of the legislation now under consideration.

Our membership is composed of men and women who served in the United States armed forces in World War II. Our acceptance in the armed services was not conditioned upon our property holdings or the payment of any sum of money, nor were these factors considered when missions of danger and peril had to be performed. Yet the majority of servicemen from poll-tax States had had no voice in their Government because of the poll-tax barrier.

Although the poll tax disenfranchises more whites than Negroes, it was initially designed as a subtle device to keep Negroes from voting and participating in

government. Yet many of these same disenfranchised Negroes were drafted into our armed forces and were called upon to risk their lives in defense of this Nation against the aggression of Germany and Japan. Considerations of race, color, and property do not prevent the call of a citizen to make the supreme sacrifice when our Nation is endangered by outside aggression, and they must not be allowed to prevent the exercise of one of the most basic and fundamental rights in a democracy—the right to vote. In short, AVC feels that persons potentially subject to call to serve this country in time of war and entitled to exercise all rights and privileges inherent in American citizenship, including the right to vote. This right is the very core of our democracy. Without this right, democracy, as we know it, cannot survive. Because this is true, use of the ballot is not only considered a basic right and high privilege but the essential duty of every eligible citizen. Barriers to the exercise of this right and to the performance of this duty, therefore, are suspect and must be subjected to close scrutiny. Under examination it is clear that the poll tax as a prerequisite to voting is not reasonably necessary or related to the protection and preservation of democratic government. On the contrary, the undemocratic features of this device and its danger to the health of our representative form of government are unmistakenably apparent. Our National Government must assume the responsibility recognized in H. R. 29 to eliminate the poll tax from our national life.

Presently some seven States—Alabama, Arkansas, Virginia, South Carolina, Mississippi, Texas, and Tennessee—make the payment of the poll tax a prerequisite to voting. This requirement has disenfranchised millions of potential voters and has deprived these persons of effective participation in the governmental affair of their State and of this Nation. We cannot have a representative democracy with large segments of American citizens unable to take part in the election of officials who are to represent their district or State in the Congress. Since the disenfranchised cannot affect the election of Congressmen and Senators, these officials in turn need not consider them or their interests.

In poll-tax States in the 1944 Presidential election, 19 percent of the adult population voted whereas 61 percent voted in the non-poll-tax States. In the 1946 congressional elections, some 9.5 percent voted in the poll-tax States whereas 44 percent voted in the non-poll-tax States. Statistics show that vote is considerably lower now in poll-tax States than before this tax was required, and this despite tthe enfranchisement of women and the vast increase in population. We must take steps to bring the ballot to all citizens of this Nation and to wipe out the disgrace to our democracy which conditions the right to vote upon the payment of a sum of money.

Basic to freedom and to democracy is the ballot. Both perish with the deprivation of the free exercise of the right to vote. History teaches this painful lesson too well for it not now to be clearly understood by all. We have come to believe that universal suffrage is mandatory if we are to preserve a strong, healthy democracy.

More and more of our citizens desire to have a greater participation in government. Satisfaction of this desire is no local or sectional problem but a question of major national interest. It is the direct responsibility of the United States Government to take all steps necessary to the maintenance of a virile democracy at home. This responsibility cannot be shifted to the States, especially when the question involves measures to insure greater participation by the mass of people in the election of Federal officers. For these reasons AVC recommends the early enactment of H. R. 29.

Legislation to abolish the poll tax has been before the Congress on several prior occasions. In each instance, although the bill under consideration passed the House by a large majority, those opposing the bill have succeeded in killing it in the Senate by resort to the filibuster. The same fate apparently awaits H. R. 29 unless debate on this bill is limited by cloture. We, therefore, urge this committee not only to report favorably on H. R. 29 but also recommend to the Senate the invocation of cloture in order that H. R. 29 can be voted upon on the floor of the Senate.

STATEMENT OF LEE PRESSMAN, MEMBER NEW YORK BAR AND FEDERAL BAR, BEFORE THE SENATE COMMITTEE ON RULES AND ADMINISTRATION, ON BEHALF OF H. R. 29, THE FEDERAL ANTI-POLL-TAX BILL, MARCH 24, 1948

Mr. Chairman and members of the committee, the issue before your committee in regard to the constitutionality of H. R. 29, the Federal anti-poll-tax bill now under consideration, can be stated as follows:

Seven States within our Union require a tax to be paid by citizens of the United States before such citizens, who are otherwise eligible and qualified, may cast their ballot in primary or other elections for Federal officers. As a result of this poll tax it is conservatively estimated that approximately 10,000,000 Americas are now disfranchised.

On the basis of the fundamental principles which underly our democracy and Republic, does Congress have the right to prohibit such disfranchisement or is there some technical constitutional provision that prevents Congress from enacting the proposed legislation?

Hearings on this and similar bills have been conducted by committees of Congress in many previous sessions. In addition to witnesses who presented all available facts both in support and in opposition to the proposed congressional legislation, there appeared before these committees a wealth of legal talent. Probably no bill ever pending before Congress has ever received the searching inquiry, both from a factual and constitutional basis, that this proposed legislation has had.

I concede that the issue involved in anti-poll-tax legislation goes to the very roots of our Constitution and the form of government therein prescribed. But I doubt that any substantial constitutional doubt can be sustained by logic or legal analysis in opposition to the legislation.

The legal arguments that have been arrayed against congressional enactment of anti-poll-tax legislation can be summarized as follows:

(1) Article I, section 2, of the United States Constitution provides that "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."

Article I, section 4, provides that "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 choosing Senators."

The seventeenth amendment to the Constitution establishes the same procedure for the election of Senators.

It is urged that these sections indicate first, that the right to vote for national officers stems not from the Constitution, but rather is a privilege conferred by the States, and second, that while Congress may legislate as to the time, place, and manner of holding elections for national officers, the power of Congress has been expressly limited insofar as the qualifications of electors are concerned.

It is suggested that this point is sustained by virtue of article II, section 1, of the Constitution which provides that "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 Congress * * *"—the electors spoken of being Presidential electors.

(2) It is further argued that where it was sought to prevent States from denying citizens of the United States the right to vote for specific reasons, constitutional amendments were adopted, namely, the fifteenth and nineteenth amendments. I assume this argument is intended to claim that States may deny or abridge citizens of the United States their right to vote as long as it is not because of race, color, previous condition of servitude, or on account of sex.

These are the only arguments that have ever been made against the constitutionality of the proposed anti-poll-tax legislation. They are thoroughly invalid and specious. They are thoroughly inconsistent with the expressions of the framers of our Constitution, obnoxious to the entire framework and underlying principles of our Constitution, and are completely belied by the most recent decisions of the United States Supreme Court.

The constitutionality of Federal anti-poll tax legislation rests upon this analysis: The right to vote for Federal officers is a right protected by the United States Constitution; it is a privilege and immunity of citizens of the United States protected by the Constitution; it is not a privilege to be conferred or withdrawn at the whim of any State. For this reason Congress has the obligation to protect the exercise of this fundamental right. In discharging this duty, Congress cannot be restricted by any narrow and stultifying interpretation which would prevent adequate protection being afforded to citizens in the exercise of their right to vote. Therefore a State has no constitutional license to impose such conditions upon the exercise of the right to vote for Federal officers as to disenfranchise citizens of the United States by the simple subterfuge of calling such condition precedent a "qualification" for electors.

In support of this conclusion I offer the following points:

I. The United States Supreme Court in a recent case has determined that the right of American citizens to vote for Federal officers is a right protected by the United States Constitution; that it is a privilege and immunity of citizens of the United States to be protected under the Constitution.

This doctrine was enunciated in the case of *United States* v. *Classic* (313 U. S. 299). The facts of the case were these:

Section 19 of the Criminal Code makes it a criminal offense to "engage in a conspiracy to injure a citizen in the exercise of any right or privilege secured to him by the Constitution and the laws of the United States." Section 20 makes it a penal offense for anyone who, "acting under color of any law * * * willfully subjects or causes to be subjected any inhabitant of any State * * * to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and the laws of the United States in a primary election for a national officer." The ballots of certain citizens were nullified and not counted through fraudulent practices on the part of State officials. These officials were indicated and prosecuted under sections 19 and 20 of the Criminal Code. The United States Supreme Court upheld the indictment. A minority opinion expressly confirmed the rights of Congress to enact legislation directed against the fraudulent practices in question but simply denied that sections 19 and 20 of the Criminal Code exressly covered the situation. For our purposes it may therefore be assumed that there is unanimous opinion on the issue relevant to our discussion.

The Court had these interesting comments to make.

"The right of qualified voters to vote at congressional primaries in Louisiana and to have their ballots counted is thus the right to participate in that choice.

"We come then to the question whether that right is one secured by the Constitution. Section 2 of article I commands that Congressmen shall be chosen by the people of the several States by electors, the qualifications of which it prescribes. The right of the people to choose, whatever its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by State action in conformity to the Constitution, is a right established and guaranteed by the Constitution and hence is one secured by it to those citizens and inhabitants of the State entitled to exercise the right.

"While in a loose sense the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the States * * * this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers'" (*U. S.* v. *Classic*, 313 U. S. 299).

II. Since the right of American citizens to vote for federal officers is protected by the Constitution of the United States, Congress has the clear authority to protect the integrity and the free exercise of such a right.

The Classic case raised this very issue. It was contended in that situation that Congress could only determine the time, place, and manner of the final elections, which did not include any authority over primaries. In other words, the attempt was made to limit the authority of Congress as against the so-called all-embracing sovereignty of the States to legislate regarding Federal elections.

The United States Supreme Court dismissed this argument and held that the Constitution of the United States, which created this basic and fundamental right for American citizens and delegated to Congress the authority to protect such right, could not be interpreted in such a narrow fashion. To this point the court made the following interesting comments:

"We may assume that the framers of the Constitution, in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph, and wireless communication which are concededly within it. But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses. Hence we read its words not as we read legislative codes which are subject to continuous revision with the changing

course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of government.

"That the free choice by the people of the Representatives in Congress subject only to the restrictions to be found in sections 2 and 4 of article I and elsewhere in the Constitution, was one of the great purposes of our constitutional scheme of government cannot be doubted. We cannot regard it as any the less the constitutional purpose or its words as any the less guaranteeing the integrity of that choice when a State, exercising its privilege in the absence of congressional action, changes the mode of choice from a single step, a general election, to two, of which the first is the choice at a primary of those candidates from whom, as a second step, the Representative in Congress is to be chosen at the election.

"Unless the constitutional protection of the integrity of 'elections' extends to primary elections, Congress is left powerless to effect the constitutional purpose, and the popular choice of Representatives is stripped of its constitutional protection save only as Congress, by taking over the control of State elections, may exclude from them the influence of State primaries. Such an expedient would end that State autonomy with respect to elections which the Constitution contemplated that Congress should be free to leave undisturbed, subject only to such minimum regulation as it should find necessary to insure the freedom and integrity of the choice. Words, especially those of a constitution, are not to be read with such stultifying narrowness."

III. Congress has ample power to pass an anti-poll-tax bill. This power is available to Congress regardless whether the poll-tax statutes of the various States are unconstitutional or not.

In the Classic decision the Supreme Court pointed to two separate sources in the Constitution for congressional power. The Supreme Court quoted in full article I, section 8, clause 18, which gives Congress authority "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 and in any department or office thereof."

In addition and as a separate source of congressional power, the Court quoted from article I, section 4, of the Constitution, 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 choosing Senators."

The Court said with reference to the broad congressional power in clause 18 of section 8 of article I that "this provision leaves to the Congress the choice of means by which these constitutional powers are to be carried into execution."

After quoting the affirmation of this same principle in the historic decision in the case of *McCulloch* v. *Maryland*, the Court went on to conclude that "that principle has been consistently adhered to and literally applied and extends to the congressional power by appropriate legislation to safeguard the right of choice by the people of Representatives in Congress secured by section 2 of article I" (citing *Ex Parte Yarbrough*, 110 U. S. 657, and a host of other decisions).

Since there must be agreement therefor that the right to vote arises out of and is protected by the Constitution, and since there must be agreement that Congress may enact legislation to protect the constitutionally guaranteed right to vote, the sole issue in connection with the enactment of a bill such as that now before this committee, is whether or not that bill is in fact a measure related to the protection of the constitutionally guaranteed right to vote. In other words, is Congress powerless when it perceives a practice which in fact impedes and interferes with the proper exercise of the right to take action to remedy the situation?

To answer that question, as I have stated above, it is not necessary to argue whether or not State action—the poll tax—in the absence of Federal legislation, is unconstitutional. The Members of Congress are familiar with the many fields in which States may constitutionally act but must yield to Federal action. The case books are filled with instances where there is no question as to the constitutionality of State legislation until a Federal statute is passed. Once Congress has seen an evil and has determined that its removal is required for the effectuation of Federal powers, Congress may act with respect to that evil and thereafter inconsistent State legislation must fall.

The Supreme Court has repeatedly faced such situations in considering the exercise of the Federal commerce power:

State safety regulations affecting railroads were in existence until the Federal Government in the exercise of its commerce power found it necessary to take

action in the field. In enacting Federal legislation it was not necessary to doubt the constitutionality of the prior State action. It was enough that the Federal action was necessary in the proper exercise of Federal power.

I could continue citing these instances.

The doctrine is too familiar to require elaboration. The simple conclusion, however, must be emphasized since it apparently has been lost sight of in connection with this statute. The conclusion is that the power of Congress to enact this bill does not depend necessarily on the constitutionality of the poll-tax law. As in many other instances, the State poll tax may or may not be constitutional but Congress may nevertheless ascertain whether the existence of the poll tax presents an evil falling within congressional remedial power and if Congress so finds and acts on that finding, any inconsistent State legislation will fall.

Does the poll tax then present to Congress a situation in which there exists an evil within the power of Congress to remedy and which affects Federal rights in such a way as to require congressional action? It is not an answer to say that the poll tax is simply a qualification prescribed by the State within the meaning of article I, section 2, and that therefore Congress must find in the poll tax any evil consequences which require congressional action.

I shall address myself later to the constitutional proposition as to whether or not the poll tax can be said to be a qualification. But we need not, as I have repeatedly emphasized, debate that question at this point because whether or not it is a qualification, that is not the answer to the question of congressional power.

By the same token it might well be contended that a State practice which promotes fraudulent counting of the ballots is beyond congressional power of action. Or it may be contended that a State law which in effect prescribes discriminatory admission to the ballot box is beyond congressional power of action. Such a doctrine in effect says that the Constitution takes away from Congress in one section what it has granted to Congress in another section. Such a proposition in effect negates the doctrine enunciated by the Supreme Court in the Classic case—negates the proposition that the franchise does flow from the Constitution itself.

The proposition which would have these consequences has been amply answered by history, by Congress, and by the courts. In the Federal Corrupt Practices Act enacted in 1925, and even then superseding a much older statute enacted in 1910, Congress has properly taken action to remove obstacles to the proper exercise of the constitutional right to vote. The taking of such action did not require a determination by Congress as to whether corruption within a State was per se unconstitutional. By the same token, in undertaking to prescribe safety devices on railroads engaged in interstate commerce, Congress was not making any determination as to whether contrary practices of railroads theretofore and State legislation which had theretofore permitted or directed these contrary practices was unconstitutional. In the railroad situation, as in the voting rights situation, Congress takes affirmative action to eliminate practices which it finds to have been impeding the operation of constitutionally protected operations: in the one instance, interstate commerce, and in the other, the right to vote for Federal officials.

The Federal power of affirmative action being thus clear, the sole determination that this committee has to make it a factual one: Does the poll tax produce consequences which in effect impede the proper exercise of the constitutionally guaranteed right to vote?

I am not going to attempt to answer that factual question. Every piece of evidence that I have heard on the issue of the poll tax and every rational consideration which has ever been advanced with respect to it seems to point to an affirmative answer to the question. Certainly the fraudulent practices which are encouraged by the very existence of the poll tax themselves indicate that congressional action against the poll tax falls exactly within the very category as congressional action against corrupt election practices. In the case of the poll tax Congress would simply be going closer to a root of the evil.

The answer to the factual question, I repeat, is one that flows from the data presented to this committee by many other witnesses. From the legal point of view, the only point which I emphasize is that if this committee answers that factual question in the affirmative, Congress has ample power to take action to remove the effects of the poll tax by this bill. And in so doing, the committee need make no determination as to whether the poll tax is constitutional or not.

IV. The States do not have any authority to impose any and all types of conditions upon the exercise of the right of American citizens to vote for Federal officers merely by terminating such conditions "qualifications" of electors. Where such conditions actually have no reasonable relationship to the qualifications for discharging the obligation of citizenship by voting, Congress may, in the interest of protecting the integrity of the Federal constitutional right, veto such conditions

There are those who urge that article I, section 2, leaves entirely in the hands of the States the uncontrolled power and discretion to decide who may or may not vote. It is true that the State may prescribe qualifications but in this connection it should be recalled that the basic right to vote for Federal officers is one which is given by the Constitution of the United States.

What, then, is the scope of the States' power to prescribe "qualifications"? Is the States' power in this respect completely without limitation? May the State, for example, declare that only named persons vote? Has section 2 of article I in fact negated any constitutionally guaranteed right to vote? The answer of the Classic case is clearly in the negative. The Court in the Classic case said that the right to vote does flow from the Constitution. That statement would be inconsistent with any construction of section 2 of article I which would in fact declare that the State has an absolute and unlimited right to grant or deny access to the ballot box.

Then if the State were to sanction fraud in the grant or denial of access to the ballot box, this view that the State power is absolute would affirm the constitutionality of such action. The fact is that the Supreme Court has negated that position. The obvious grounds for the Court's position are that a fraudulent limitation on the right to vote cannot come under the head of "qualification" to vote because the State may not make bribery a "qualification." Such a situation would clearly defeat the basic purpose of the constitutional guaranty of the right to vote.

We must come to the conclusion, then, that the term "qualification" does have limits—limits determined by the proper definition of the word. The restriction which the State seeks to place upon the right to vote must be a restriction which can reasonably be determined a "qualification" of a voter.

I doubt that any serious contention would be advanced that the ability to pay the amount prescribed by the poll-tax statutes is related to the voter's "qualification." Certainly no such contention has been advanced.

Can it be said that the payment of a poll tax is a proper qualification for a State to impose where it results in the disfranchisement of 10,000,000 American citizens?

Can it be said that the payment of a poll tax is a proper qualification for a State to impose where it results in the election of Congressmen through the vote of only 1 percent of the people in the congressional districts?

The poll tax is not a revenue measure; it has no relationship to the qualifications that American citizens should have before exercising their right to vote, but is simply a legal trickery to favor a particular class of candidates in elections. As such it only can be but must be condemned by Congress if the integrity of the constitutional right to vote is to be protected.

V. The fifteenth and nineteenth amendments of the Constitution do not establish any precedent that States may be prohibited from creating qualifications for electors only through such constitutional amendments

These amendments merely took note of the fact that the conditions such as race, color, or previous condition of servitude and sex had been historically recognized as appropriate qualifications. The amendments decreed that thereafter the right to vote should not be denied on account of these conditions either by the United States or by the States.

But these amendments do not in any way take away any power the Congress might otherwise have to protect the rights of national citizenship. If the poll tax, as we claim, is clearly an abridgment of the constitutional right of citizens of the United States to vote for Federal officers, then Congress can clearly legislate to protect the Federal right. If the poll tax is not a legitimate qualification for Federal suffrage in the constitutional sense, Congress has the power to protect the rights of national citizenships. A constitutional amendment is not necessary to achieve a result within the existing power of Congress.

VI. The record of the constitutional debates and subsequent statements of the framers of our Constitution demonstrate conclusively that the Federal Government was vested with the supreme authority to protect the all-important Federal right of suffrage. Further, these records disclose that the very issue now under discussion had been considered and disposed of in a manner as to assure Federal protection against arbitrary action by States to deny the people their right of suffrage.

Testimony has been presented to this committee in support of both these bills and previous bills by way of quotations from constitutional debates and from statements of many of those who participated in the framing of our Constitution.

I shall only attempt to cite just a few of these quotations to illustrate the clarity of thinking of those who drafted our Constitution with this problem in mind.

Mr. James Madison, in No. 57 of the Federalist, had this to say:

"Who are to be electors of the Federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States."

Can we say that this objective has been achieved in the face of poll-tax legislation which denies the right to vote to 10,000,000 American citizens?

Mr. Alexander Hamilton, in Federalist Nos. 59 and 60, made the following comments:

"Nothing can be more evident than that exclusive power of regulating election for the National Government, in the hands of the State legislatures, would leave the existence to the Union entirely in their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say that a neglect or omission of this kind would not be likely to take place. The constitutional possibility of the thing without an equivalent for the risk is an unanswerable objection. Nor has any satisfactory reason been yet assigned for incurring that risk."

Haven't we practically come to the point where the seven poll-tax States are threatening the existence of our Federal Government and our republican form of government when they disfranchise 10,000,000 American citizens from voting for national officers?

VII. Congress has recognized its authority to legislate regarding the qualifications of electors for Federal officers in recent enactments

On September 16, 1942, Congress passed a statute which provided that:

"No person in military service in time of war shall be required, as a condition of voting in any election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, to pay any poll tax or other tax or make any other payment to any State or political subdivision thereof."

It would be interesting to hear from one who challenges the constitutionality of the proposed bill as to how Congress had the authority to enact H. R. 7416 which contained the quoted provision.

CONCLUSION

One final thought should be presented to this committee on this question of constitutionality. Neither this committee nor Congress can usurp the powers of the courts of this Nation. It is the duty of Congress to enact legislation in accordance with the policy necessary for the welfare of the Nation. Congress must act within the scope of its constitutional power. But it is for the Supreme Court and not for Congress to decide close questions as to constitutionality. Had Congress usurped the powers of the Supreme Court to the extent of never enacting any legislation as to which there was any constitutional doubt, there are many statutes which would not today be on the books of the country. Had Congress been swayed by the views of some 58 prominent names in the legal profession, Congress would have concluded that it had no power to enact the National Labor Relations Act. The Supreme Court, acting within the scope of its functions, later made the final determination.

It should not be necessary for this committee to be convinced beyond a shadow of doubt that Congress has the power to enact this legislation. It is legislation

which is a vital necessity. There is a constitutional basis for it which I am convinced and which the authorities indicate is impeccable.

But whether the committee will agree completely on this proposition or not the members of the committee must agree that there is far more than a reasonable foundation for believing that the Supreme Court would uphold congressional power to enact this statute. That being so, it is the duty of this Congress to act in the light of the Nation's needs and to leave to the Supreme Court the final decermination, a determination which I am convinced would be favorable to this legislation.

STATEMENT OF ROBERT J. SILBERSTEIN, EXECUTIVE SECRETARY OF THE NATIONAL LAWYERS GUILD, IN SUPPORT OF H. R. 29, MADE TO THE SENATE COMMITTEE ON RULES AND ADMINISTRATION

For many years the National Lawyers Guild has given its wholehearted support to legislation pending in the Congress which would prohibit the imposition of poll taxes as a condition for voting in Federal elections. This position was reiterated at the national convention of the association held in Chicago February 20–23, 1948.

We are in complete agreement with the view expressed by the President's Committee on Civil Rights that "the elimination of this obstacle to the right of suffrage must not be further delayed." Moreover, we have no doubt as to the constitutionality of H. R. 29. In this connection we submit for your consideration our brief on the constitutionality of the Geyer bill (H. R. 1024), the provisions of which were substantially the same as the provisions of H. R. 29. The attached brief was prepared at our request by Mr. James J. Morrison of New Orleans, La., outstanding constitutional lawyer, and former professor of law at Tulane University. His analysis embodies the views of this bar association on the question of constitutionality.

The poll-tax issue is not racial; because of it, American citizens of every race, color, and creed are denied the right to vote merely because of economic status—a concept which is alien to the fundamental traditions of American democracy.

The poll-tax issue is not sectional. It is inimical to the best interests of every section and every group in the Nation, because all have a vital interest in assuring that our democracy is trul, representative of all the people. It cannot be said that the Representatives of the poll-tax States are representative of more than a small fraction of the citizens of those States. The poll tax places the payment of a fee between the voter and the ballot box and has curtailed the size of the entire electorate, white and Negro. It was estimated on the floor of the House of Representatives on July 21, 1947, that: "In the Presidential elections of 1944, 10 percent of the potential voters voted in the seven poll-tax States as against 49 percent in the free-vote States. In the congressional elections of 1946, the figures were 5 percent for the poll-tax States as compared with 33 percent for the free-voting States."

The President of the United States, addressing the Thirty-eighth Conference of the National Association for the Advancement of Colored People on June 29, 1947, said:

"Our immediate task is to remove the last remnants of the barriers which stand between millions of our citizens and their birthright."

The poll tax is one of these barriers. It effectively denies to millions of our citizens the elementary democratic right to vote.

The United States is seeking to influence the rest of the world to follow the path of democracy. It insists that in the occupied countries all citizens be accorded, without hindrance, the right to vote. The denial of this right to millions of Americans is a condition which makes a mockery of these demands.

As the President so well said:

"We cannot await the growth of a will to action in the slowest State or the most backward community. Our National Government must show the way."

The argument so frequently made that we should leave problems of this character to be solved by a gradual process of education is in our view wholly without merit. The National Government has a vital interest in assuring that democracy in our land is made fully effective. The minority in the seven States affected, who are now in control of the situation, have an interest in the maintenance of this barrier which stands between millions of our citizens and their right of suffrage. Education is not likely to induce them to approve a measure which

could diminish or destroy their power. Insofar as Federal elections are concerned, the responsibility rests upon the National Government to assure that this most fundamental democratic right to vote is no longer denied to these citizens. In our view the Congress has both the power and the duty under the Constitution to abolish the poll tax as a condition for voting in Federal elections.

THE GEYER BILL (H. R. 1024, 77TH CONG.) TO OUTLAW THE POLL TAX IN FEDERAL ELECTIONS IS CONSTITUTIONAL—SUBMITTED BY NATIONAL LAWYERS GUILD

To Members of the House of Representatives:

DEAR CONGRESSMEN: We respectfully submit for your consideration comprehensive proof of the constitutionality of H. R. 1024—the bill introduced by the late Congressman Lee Geyer to abolish poll taxes in Federal elections.

The analysis which follows was prepared at our request by James J. Morrison of New Orleans, La., outstanding constitutional lawyer and former professor of law at Tulane University. Mr. Morrison is a member of the national executive board of the National Lawyers Guild and his analysis embodies the organization's official position on the subject.

We consider the Geyer bill, H. R. 1024, vital war legislation. Its enactment would create the basis for fullest participation in the war effort by millions of American citizens who thus far have been denied that opportunity through the weapon of disfranchisement. It would be recognized by peoples all over the world as glowing proof that we are waging a people's war for democracy and freedom.

Those who oppose the Geyer bill are helping the Axis propagandists who utilize the existence of the poll-tax system to divide the American people and the United Nations. They provide ammunition to the appeasers within our own ranks.

The poll-tax issue is not racial; because of it, American citizens of every race, color, and creed are denied the right to vote merely because of economic status—a concept which is alien to the fundamental traditions of American democracy.

The poll-tax issue is not sectional; its effects are so sharply felt throughout the entire Nation that it has become one of the major obstacles to the complete realization of national unity. It is inimical to the best interests of every group in the Nation, regardless of geographical location.

Therefore, we join with the common people of the South and the whole Nation in urging the immediate enactment of the Geyer bill, H. R. 1024.

Respectfully,

ROBERT W. KENNEY, *President.*
MARTIN POPPER, *Executive Secretary.*
National Lawyers Guild, 61 East Forty-first Street, New York City.

Heretofore opponents of anti-poll-tax legislation have rested behind what they assumed to be the barrier of the Federal Constitution. Did not the Constitution provide that "the (Federal) electors in each State shall have the qualifications requisite for electors of * * * the State legislature?"[1] True, no one had bothered to make a careful study of the constitutionality of the particular bills before Congress, but in view of immemorial custom of long tradition, and of the many times the courts had upheld the imposition of the poll tax as an exercise of State power, a careful study did not seem necessary.

This complaisance began to dissolve, however, when it came to be realized by the opponents of the legislation that the constitutional principles upon which they had been relying were valid only in the absence of action by Congress, and were inapplicable to the entirely new method of approach adopted by the Geyer bill—i. e., the exercise of congressional power to control and abolish the poll tax only in Federal elections. This was made clear, not only by the implications of the Classic case,[2] but by the wealth of research done by proponents of the legislation and submitted to the Sub-committee of the Judiciary Committee considering the bill (S. 1280), all supporting the constitutionality thereof.[3]

The National Lawyers Guild has already published the splendid "brief" prepared by Mr. Boudin on the power of Congress to legislate the poll tax out of existence in Federal elections under the "Republican Form of Government"

[1] Art. I, sec. 2.
[2] *United States* v. *Classic* (313 U. S. 299, 61 S. Ct. 1031 (1941)).
[3] See report of the hearings before the subcommittee of the Committee on the Judiciary, U. S. Senate, 77th Cong., 2d sess., on S. 1280.

clause. This paper will be concerned with other constitutional bases for anti-poll-tax legislation, and will show that:

1. The founding fathers contemplated, and intended, to authorize legislation by Congress on the qualifications of electors in national elections.

2. Congress has always had the power to protect the purity of the ballot in elections for national officers, even although the exercise of such power impinged on the qualifications of electors.

3. Congress is specifically empowered by the fifth section of the fourteenth amendment to legislate to prevent States from "abridging the privileges or immunities of citizens of the United States," including the elective franchise,[4] which has clearly been held to be a "privilege and immunity of citizens of the United States" in the recent Classic case.

I. THE FOUNDING FATHERS CONTEMPLATED AND AUTHORIZED CONGRESS TO LEGISLATE ON THE QUALIFICATION OF ELECTORS

It has long been contended, and there is even highly respectable judicial dictum to the effect,[5] that the qualifications[6] of voters, for national officers as well as for State, is exclusively and peculiarly within the jurisdiction of the several States to prescribe. It is asserted that the Federal Government is prohibited from interfering with or affecting in any way the qualifications prescribed by the States for electors of national officers, be they ever so destructive of the national good, so long only as the same qualifications are prescribed for electors of the members of the most numerous branch of the State legislature, and so long as such qualifications do not discriminate because of race, color, or previous condition of servitude,[7] or because of sex.[8] This strange and unnatural doctrine, which seeks to insulate the national Government from the people of the United States—from the very basis of its own sovereign authority[9]—is arrived at by isolating one section of the Constitution, tearing it both from its context and from its historical background, and treating it as though it were the only constitutional provision affecting suffrage. That section is article I, section 2, of the Constitution, which provides:

"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."

Standing alone in a historical vacuum, the above provision may have the effect sometimes attributed to it; but it is too well established to require citation of authority that the provisions of the Constitution cannot be disassociated one from another, and that the instrument must be considered as a whole, composed of interrelated parts, which, *tout ensemble*, create a system of democratic government. So considered a relation to the other provisions of the Constitution concerning electors,[10] citizenship,[11] suffrage,[12] and the powers of Congress with reference thereto,[13] it becomes at once apparent that the National Government is not, and was never intended by the founding fathers to be, as impotent in election matters as heretofore thought, utterly cut off from the source of all democratic sovereignty, and dependent for the character of its electorate on the whim, caprice, and sufferance of the several States. In order to determine the intention of the founding fathers in drafting article I, section 2, of the Constitution, it is necessary to turn for a moment to the proceedings of the Constitutional Convention itself.

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[4] *United States* v. *Classic* (313 U. S. 299, 61 S. Ct. 1031 (1941)). See also *Corfield* v. *Coryell* (4 Wash. C. C. 71, Fed. Cas. No. 3230 (1825)).

[5] *Stone* v. *Smith* (159 Mass. 413, 34 N. E. 521 (1893)). See also *Minor* v. *Happersett* (21 Wall. 162 (88 U. S.), 627 (1875)). But cf. *United States* v. *Classic*, supra, note 4; *Ex parte Yarbrough* (110 U. S. 651, 4 S. Ct. 152 (1884)).

[6] For purposes of this discussion, it will be assumed that the requirements of payment of the poll tax is properly a "qualification requisite for electors" within the meaning of the Constitution. There is, however, considerable authority to the contrary, which is not without great merit. See for instance, the splendid legal analysis made by Senator Pepper in his testimony before the Senate Judiciary subcommittee in presenting S. 1280, op. cit., supra, note 3.

[7] Amendment XV, United States Constitution.

[8] Amendment XIX, United States Constitution.

[9] "We the people of the United States * * * do ordain and establish this Constitution for the United States of America." Preamble, United States Constitution.

[10] Art. I, sec. 4, amendments XII, XVII. Presidential electors under art. II, sec. 2, presents a different problem.

[11] Art. I, secs. 2, 3; art. II, secs. 1.2 and 1.5; art. III, sec. 2; amendments XI, XIV, XV, XIX.

[12] Amendments XV and XIX.

[13] Art. I, secs. 4, 8.18; amendments XIV, sec. 5, XV, sec. 2, and XIX, sec. 2.5.

A. THE CONSTITUTIONAL CONVENTION

1. *Evolution of the Texts of the Constitution*

The archetype of this section appears in the plan for a constitution submitted to the Convention by Mr. Pinckney. In the Pinckney plan, the provision appears as follows:

"ARTICLE 3. The members of the House of Delegates shall be chosen every * * * year by the people of the several states; and the qualification of the electors shall be the same as those of the electors in the several States for their legislature."[14]

This provision, similar to the provision as it finally appeared in the Constitution, first came up for consideration in the Convention on Thursday, May 31, 1787, when it was proposed "that the members of the first branch of the legislature ought to be elected by the people of the several States." This resolution was opposed by Messrs. Sherman and Gerry, who favored election by the legislatures. Messrs. Mason, Wilson, and Madison, however, argued for the resolution, and it was carried by a vote of 6 to 2.[15]

The question was again adverted to in committee of the whole on June 6, when Mr. C. C. Pinckney moved "that the first branch * * * be elected by the State legislatures, and not by the people." The committee of the whole defeated the proposed change by a vote of 8 to 3, retaining election in the people rather than in the legislatures.[16]

Again, on Thursday, June 21, the proposition was brought up and, according to Mr. Madison,[17] "General Pickney moved 'that the first branch, instead of being elected by the people, should be elected in such manner as the legislature of each State should direct.'" After considerable discussion, this proposal was finally rejected by a vote of 4 to 6.[18] Thus it is seen how the phrase under discussion was first brought into the original concept, and into the original discussions, of the Constitution. It was in connection with the question of whether elections by the people or eletelon by the legislatures should obtain. Always the Convention votd down suggestions for election by the legislatures, and insisted upon election by the people. Mr. Madison's notes go on: "General Pinckney then moved 'that the first branch be elected by the people in such mode as the Legislature should direct;' but waived it on it being hinted that such a provision might be more properly tried in the detail of the plan."[19]

Finally, on Tuesday, August 7, the question of the qualification of electors was again taken up in a consideration of the report of the committee of detail.[20] The committee had proposed the following as the constitutional provision:

"The qualifications of the electors *shall be the same, from time to time,* as those of the electors, in the several States; of the most numerous branch of their own legislatures."[21]

Had that proposal of the committee on detail actually been adopted by the founding fathers, it would be very clear that state qualifications would control in federal elections. But this is what happened to that proposal:

Mr. Madison reports that—

"Mr. Gouverneur Morris moved to strike out the last members of the section, beginning with the words, 'qualification of electors,' in order that some other provision might be submitted which would restrain the right of suffrage to freeholders."

This motion provoked considerable debate in the Convention. Mr. Wilson argued that this clause was carefully considered—

"* * * and he did not think it could be changed for the better. It was difficult to form any uniform rule of qualification for all the States. Unnecessary innovations, he thought, too, should be avoided. It would be very hard and disagreeable for the same person at the same time, to vote for representatives in the State legislature, and to be excluded from a vote for those in the National Legislature."

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[14] 5 Elliot's Debates, p. 129. As to the authenticity of this section, however, see ibid., p. 578, appendix No. 2.

[15] New Jersey and South Carolina voted against, while Connecticut and Delaware were divided and not voting. Ibid., p. 135, et seq.

[16] Connecticut, New Jersey, and South Carolina voting for the amendment.

[17] Ibid., p. 220, et seq.

[18] Delaware this time joining Connecticut, New Jersey, and South Carolina in voting for election by the legislatures.

[19] It is significant to notice that the important principle the fathers sought to establish was election of Members of the House "by the people" instead of "by the Legislatures," and that the "mode" of election, including the qualifications of the electors, was looked upon as a matter to be "more properly tried in the detail of the plan."

[20] Ibid., p. 385, et seq. For the report, see ibid., p. 377.

[21] Italics added.

Gouverneur Morris then advanced a more serious objection. Morris is reported by Madison to have complained that—

"* * * another objection against the clause, as it stands, is that it makes the qualification of the National Legislature depend on the will of the States, which he thought not proper."

Now, while Gouverneur Morris' motion to strike out all of the words beginning with "qualifications of electors," was not adopted, nevertheless it is significant to observe that the clause as finally reported by the committee on style and arrangements, and as finally incorporated into the Constitution, is quite different from the clause as proposed by the committee on detail. The change can only be explained on the basis of the consideration advanced in the discussions in Convention on August 7, to which reference has just been made, because that is the last time it was discussed.

While the Constitution as finally submitted did not "restrain the right of sufferage to freeholders," as Gouverneur Morris proposed, it did omit the significant phrase that "the qualification of electors shall be the same from time to time as those of the electors in the several States," leaving the provision merely to read that "electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures," as it reads at the present time.

Finally, and conclusively, the Convention on June 21, 1787, flatly rejected another proposition that would have placed the qualifications of voters exclusively within the discretion of the State legislatures, on grounds incompatible with any later surrender of the power to prescribe qualifications by the National Government.

On that date, Pinckney moved "that the first branch instead of being elected by the people should be elected in such manner as the legislature of each State should direct."[28]

But this resolution was vigorously attacked, and ultimately defeated. According to Mr. Madison's notes:

"Hamilton considered the motion as intended manifestly to transfer the election from the people to the State legislatures, which would essentially vitiate the plan. It would increase the State influence which could not be too watchfully guarded against.

"Wilson considered the election of the first branch by the people, not only as the cornerstone, but as the foundation of the fabric * * *. The difference was particularly worthy of notice in this respect, that the legislatures are actuated not merely by the sentiment of the people, but have an official sentiment opposed to that of the General Government, and perhaps to that of the people themselves.

"King enlarged on the same distinction. He supposed the legislatures would constantly choose men subservient to their own views, as contrasted to the general interest, and that they might even devise modes of election that would be subversive of the end in view. He remarked several instances in which the views of a State might be at variance with those of the General Government * * *."

This discussion on the floor of the Constitutional Convention in connection with the resolution of June 21 is highly significant. Here is a perfectly clear expression by the Convention on June 21, 1787, that the State legislature should not be permitted to exercise an exclusive discretion as to the qualifications of electors of national officers because "they may even devise modes of election that would be subversive of the end in view."

Certainly the language of article I, section 4, of the Constitution does not override this clear expression of the intention of the founding fathers not to entrust the State legislatures with exclusive control of the qualifications of national electors.

The significance of the omission of the requirement that the qualifications of electors "shall be the same, from time to time" as those of the electors in the several States, and of the refusal of the Convention to grant the State legislatures exclusive discretion with regard to national elections, because the State legislatures "might even devise modes of elections that would be subversive of the end in view," becomes obvious. It is made even more apparent by the inclusion of clause 1 in article I, section 4, providing:

"The time, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the

[28] Prescott, Drafting the Federal Constitution (1941); 208 et seq. (a rearrangement of Madison's notes). Emphasis in Mr. King's remarks added.

Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators."

These clauses, read together, in light of Mr. Madison's notes on the discussion in the Convention, and the fears of the fathers that the State legislatures "might even devise modes of elections that would be subversive of the end in view," show clearly an attempt to synchronize the view of Mr. Wilson that "it was difficult to form any uniform rule of qualifications for all the States. Unnecessary innovations * * * should be avoided," with Gouverneur Morris' objection "* * * it makes the qualifications of the National Legislature depend on the will of the State which he thought not proper." The clauses of the Constitution as they presently appear synchronize the objections and proposals which we have traced step by step through the Constitutional Convention. The Constitution as finally worked out provides no uniform rule of qualifications—makes no innovations—and gives to the States, in the first instance, regulatory powers with regard even to national elections; but it heeds Gouverneur Morris' objections by retaining in Congress the power "to make or alter such regulations, except as to the places of choosing Senators."

Finally, if there was any question that the founding fathers did not intend to surrender completely to the States the fundamental democratic power of determining the qualifications of voters, it is erased by the plain language of article I, section 8, subsection 18:

"The Congress shall have power * * * to make all laws which shall be necessary and proper for carrying into execution * * * all * * * powers vested by this Constitution in the Government of the United States."

Not only in the regulation of "the time, place, and manner of holding elections" a power specifically and expressly vested in the Congress by article I, section 4, but the determination of the qualifications of voters is a power unquestionably exercised by the Government of the United States in article I, section 2, of the Constitution itself.[32]

The very exercise of the power by the Constitution proves conclusively that it is one "vested by this Constitution in the Government of the United States," from which it inevitably follows that Congress has the power to "make all laws which shall be necessary and proper for carrying (it) into execution."

2. *Invalidity of a restrictive, mechanistic, interpretation of article I, section 4*

It has been urged that article I, section 4, clause 1, should be restricted to the mechanics of elections, and that it does not apply to the substance thereof, nor to the qualifications of electors. But this view is totally unacceptable in light of the history of article I, section 2, as set out above. It would, indeed, be strange if the founding fathers, whose wisdom and political sagacity in creating a document of enduring strength, permitted in this single instance an aberration which reserved to the National Government the right only to tinker with the mechanics of election while leaving entirely within the discretion—one might almost say, within the caprice—of the States, complete power over the substance thereof. There is nothing in the Constitution to indicate that the founding fathers were so shortsighted. They must have known, for instance, that Massachusetts, from 1631 to 1664, had a law declaring that "* * * for time to come noe man shall be admitted to the freedom of this body politicke, but such as are members of some of the churches within the lymitts of the same," and that in the colonial period from which the country was then but just emerging, "Baptists, Quakers, Roman Catholics, and Jews frequently found themselves excluded from political rights."[33]

Certainly it cannot be suggested that the founding fathers meant to perpetuate such a theocratic system, or to make it possible for it to gain a foothold or to endure as a result of individual State action.[34] Indeed, the Convention was already split on the question of property qualifications by pressure from the rising "mechanics" and "merchant" classes, who were opposed to the property qualification. The record of the Convention makes it clear that it was in order not to disturb the delicate balance achieved in the several States between the "proprietary" and "mechanics" classes that the compromise incorporated in article I, section 2, was hit upon and adopted. It represents an acceptance, for

[32] See *Ex parte Yarbrough* (110 U. S. 651, 4 S. Ct. 152 (1884)); *United States* v. *Classic* (313 U. S. 299, 61 S. Ct. 1031 (1941)).

[33] Salt, American Parties and Election (rev. ed., 1939), p. 18, et seq.

[34] Compare United States Constitution, art. VI, sec. 3, and amendment I, which are incompatible with such religious tests.

the time being only, of the status quo; it does not even suggest that the adjustment made shall be permanent—indeed, it was purposely designed to permit of change; and certainly it does not even imply that only the individual States could change it. To the contrary, words which did imply exclusive power in the States to alter the qualifications of voters[26] were significantly omitted after Gouverneur Morris' objection "that it made the qualifications of the National Legislature depend on the will of the States, which he thought not proper."

To turn this clause, then, into a surrender of power by the National Government to the States, is to miss the point always insisted upon by the fathers, that the National Government must itself prescribe the qualifications of its voters,[27] and to defeat the whole purpose of its inclusion in the Constitution; for it is obvious that if the purpose of the clause were to surrender the power to the States, it need never have been included in the Constitution at all,[28] or would have been phrased in unambiguous language such as was used in giving the State legislatures exclusive jurisdiction,[29] with certain exceptions, over the qualifications of presidential electors. If the fathers had meant to say that with regard to the electors of Representatives, they would have said so there also.

B. CONTEMPORARY CONSTITUTIONAL THOUGHT

That article I, section 4, clause 1, was neither intended nor understood to be the innocuous procedural regulations of elections machinery ascribed to it by later writers, appears clearly from the storm of controversy which arose over its inclusion in the Constitution. This controversy was so heated that Hamilton felt constrained to devote two numbers of the Federalist[30] to this clause of the Constitution. In this connection, he said:

"This provision has not only been declaimed against by those who condemned the Constitution in the gross, but it has been censured by those who have objected with less latitude, and greater moderation; and, in one instance it has been thought exceptionable by a gentleman who has declared himself the advocate of every other part of the system."

Certainly such a hue and cry was not raised over whether the Federal Government had the power to open the polls at 7 in the morning rather than at 8; or the power to declare that elections should be held on the first Tuesday after the second Monday of November, or the 31st of May; or even whether the election should be held in the precincts, counties, or special districts, or where not. Certainly Hamilton himself was not thinking purely in the terms of such mechanical devices when he declared the importance of the provisions to be as follows:[31]

"I am greatly mistaken, notwithstanding, if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition * * * *every government ought to contain in itself the means of its own preservation.*[32] Every just reason will at first sight, approve an adherence to this rule, in the work of the Convention; and will disapprove every deviation from it which may not appear to have been dictated by the necessity of incorporating into the work some particular ingredient, with which a rigid conformity to the rule was incompatible. Even in this case, though he may acquiesce in the necessity, yet he will not cease to regard and to regret a departure from so fundamental a principle, as a portion of imperfection in the system which may prove the seeds of future weakness and perhaps anarchy.

"It will not be alleged, that an election law could have been framed and inserted in the Constitution, which would have been always applicable to every probable change in the situation of the country; and it will, therefore, not be denied, that a discretionary power over election ought to exist somewhere. It will, I presume, be as readily conceded, that there are only three ways in which this power could have been reasonably modified and disposed: *That it must either have been lodged wholly in the National Legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with reason, been preferred by the Convention.*[33] They have permitted the regulation of elections

[26] I. e., the clause "The qualifications of the electors shall be the same from time to time, as those of the electors in the several States," in the draft of the Committee on Revision. Op. cit., supra, note 21.
[27] See Federalist No. 60.
[28] See amendment 10
[29] See United States Constitution, art. II, sec. 2.
[30] Nos. 59 and 60.
[31] Federalist No. 59.
[32] Emphasis not added.

for the Federal Government, in the first instance, to the local administration; which, in ordinary cases, and when no improper views prevail may be both more convenient and more satisfactory; that they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

"Nothing can be more evident, than exclusive power of regulating election for the National Government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy.[33] They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say, that a neglect or omission of its kind would not be likely to take place. The constitutional possibility of the thing without an equivalent for the risk, is an unanswerable objection. Nor has any satisfactory reason been yet assigned for incurring that risk."[34]

Certainly regulations which prescribed the "manner of holding elections," but which neglected to prescribe who could participate therein, would omit an essential ingredient of the "manner of holding" such elections. As said by the United States Circuit Court in *United States* v. *Munford*:[35]

"There is little regarding an election that is not included in the terms, time, place, and manner of holding it."

In a concurring opinion in the *Munford* case, Judge Hughes said:[36]

"The power of Congress over Federal election was as broad as the language of Article I import. Congress could legislate generally in respect to Federal elections."

II. H. R. 1024 IS CONSTITUTIONAL AS WITHIN THE UNDISPUTED POWER OF CONGRESS TO PROTECT THE PURITY OF THE BALLOT

H. R. 1024 expressly provides that:[37] "The requirements * * * that a poll tax be paid * * * has resulted in pernicious political activities in that frequently such taxes are paid for the voters by other persons as an inducement for voting for certain candidates. Experience proves that existing legislation prohibiting the making of expenditures to any person to induce persons to vote for certain candidates has failed to prevent this practice. It is, therefore, necessary, in order to insure the honesty of such elections, that the Congress forbid the requirement that poll taxes be paid as a prerequisite for voting at such elections."

This amounts to a direct finding by the Congress that abolition of the poll tax is essential to the protection of the purity of the ballot in Federal elections. Such a legislative finding is not subject to impeachment by the courts, certainly not where supported by evidence, and the peculiar susceptibility of the poll tax to corrupt practices in elections is a matter of common knowledge, too well known to require extended discussion.[38]

Nothing can be clearer than that Congress possesses the power to legislate to protect the purity of the ballot in elections for national officers. This principle was completely settled, and has never been deviated from, since the first case to come before the Supreme Court raising the question. In *Ex parte Yarbrough*[39] (the Ku-Klux cases), Mr. Justice Miller, speaking for the Court said:[40]

"That a government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the legislature is elected by the people directly, has no power by ap-

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[33] Emphasis added.

[34] It is true that in the following number (Federalist No. 60) Hamilton expressly states that prescribing qualifications of electors "forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulations of the time, the places, and manner of elections." But this assertion is so completely at variance with the above-quoted statement, that it can be considered only as dictated by the political exigencies of the moment.

[35] 16 Fed. 225, 228 (C. C. Virginia, 1883).

[36] Ibid., at p. 231.

[37] Compare S. 1280 (the "Pepper bill")—"The requirements * * * that a poll tax be paid as a prerequisite for voting or registering to vote * * * 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 such requirements * * * 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 * * *."

[38] Reference may be made generally to the testimony at the hearing on S. 1280, supra, note 3; to the "Gooch Report" submitted to the Virginia Legislature; etc.

[39] 110 U. S. 651, 4 S. Ct. 152 (1884). See, for the latest expression of the Court on the subject, *United States* v. *Classic*, loc. cit., supra, note 2.

[40] Ibid., 4 S. Ct. at pp. 155, 157.

propriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration. If this Government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends, from violence and corruption. If it has not this power, it is left helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption.

"Now, the day fixed for electing Members of Congress has been established by Congress without regard to the time set for election of State officers in each State, and but for the fact that the State legislatures have, for their own accommodation, required State elections to be held at the same time, these elections would be held for Congressmen alone at the time fixed by the act of Congress. Will it be denied that it is in the power of that body to provide laws for the proper conduct of those elections? To provide, if necessary, the officers who shall conduct them and make return of the result? And especially to provide, in an election held under its own authority, for security of life and limb to the voter while in the exercise of this function? Can it be doubted that Congress can, by law, protect the act of voting, the place where it is done, and the man who votes from personal violence of intimidation, and the election itself from corruption or fraud? If this be so, and it is not doubted, are such powers annulled because an election for State officers is held at the same time and place? Is it any less important that the election of Members of Congress should be the free choice of all the electors, because State officers are to be elected at the same time? *Ex parte Siebold* (100 U. S. 371). These questions answer themselves; and it is only because the Congress of the United States, through long habit and long years of forbearance, has, in deference and respect to the States, refrained from the exercise of these powers, that they are now doubted. But when, in the pursuance of a new demand for action, that body, as it did in the cases just enumerated, finds it necessary to make additional laws for the free, the pure, and the safe exercise of this right of voting, they stand upon the same ground, and are to be upheld for the same reasons."

This in itself would seem to be completely determinative of the constitutionality of the bill in question. But it will undoubtedly be urged that the principles above announced do not apply to the poll-tax device, even though the Congress find as a fact that the poll tax as a prerequisite to voting is the very essence of fraud corruption. It will be argued that the poll tax, be it a device for ever so much corruption, is immune from congressional interference, because as a "Qualification requisite for elections of the most numerous branch of the State legislature," the power is expressly granted to the States by article I, section 2, of the Constitution to impose it as a qualification for the electors of national officers. But this is a fallacy to which at least three answers may be given:

First. Any such argument must assume that article I, section 2, grants to the States an exclusive power over the qualifications of voters for national officers, an assumption which the first part of this discussion has demonstrated to be fallacious.

Second. Even assuming that the Constitution gives the States exclusive power to prescribe the qualifications for voters in national election, yet the Constitution expressly grants Congress plenary authority to regulate the "manner of holding elections." As said by the Circuit Court in *United States* v. *Munfords*[41]

"If Congress can provide for the manner of elections, it can certainly provide that it shall be an honest manner; that there shall be no repression of voters and an honest count of the ballot."

It should be clear, then, without going further, that the plenary authority with regard to the manner of conducting elections exercised by Congress under article I section 4, supersedes even an exclusive state authority (if such it is) to prescribe qualifications. As pointed out in the Habeas Corpus Cases,[42] there is nothing unusual about such supersessions under our dual form of government.

Third. Since the Classic case particularly, there is no longer any doubt that the right to vote in national elections, and even in State primaries for nomination of national officers, is a right or privilege dependent on, and secured by, the Constitution—specifically by article I, section 2, thereof. This being so, it inevitably follows that Congress, under article I, section 8, clause 18, as well as under article I, section 4, is empowered to protect the exercise of such right

[41] 16 Fed. (C. C. Va., 1883), 223.
[42] *Ex part Siebold* (100 U. S. 717, 25 L. ed. 404 (1879)).

against fraud, coercion, violence, or corruption. As said much earlier in the Yarbrough case: [43]

"The proposition that it has no such power is supported by the old argument often heard, often repeated, and in this court never assented to, that when a question of the power of Congress arises the advocate of the power must be able to place his finger on words which expressly grant it. The brief of counsel before us, though directed to the authority of that body to pass criminal laws, uses the same language. Because there is no express power to provide for preventing violence exercised on the voter as a means of controlling his vote, no such law can be enacted. It destroys at one blow, in construing the Constitution of the United States, the doctrine universally applied to all instruments of writing, that what is implied is as much a part of the instrument as what is expressed. This principle, in its application to the Constitution of the United States, more than to almost any other writing, is a necessity, by reason of the inherent inability to put into words all derivative powers—a difficulty which the instrument itself recognizes by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted, and all other powers vested in the Government or any branch of it by the Constitution (art. I, sec. 8, clause 18)."

Again, the power of Congress to legislate upon matters within the scope of its authority is plenary under the very terms of the Constitution itself, which provides that: [44]

"This Constitution, and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every State, shall be bound thereby; anything in the constitution or laws of any State to the contrary notwithstanding."

Hence, it is clear that an act of Congress passed pursuant to the Constitution is "the supreme law of the land," superior in its obligation to a State law or constitution, even although it, too, is passed pursuant to the Constitution of the United States. [45]

And so, here too, with respect to H. R. 1024—even granting that the Constitution, in article I, section 2 places the determination of the qualifications for voters in national elections exclusively in the States—yet when Congress exercises its undoubted power to protect the purity of the national ballot under article I, section 4, and under article I, section 8, clause 18, the exercise of which conflicts with a State power also derived from the Constitution, the latter must, under our constitutional system, yield to the paramount power of Congress.

III. H. R. 1024 IS AUTHORIZED BY THE FIFTH SECTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Perhaps no power of Congress has been so little understood, and so little exercised, as that conferred upon the Congress by the fifth section of the fourteenth amendment. Like the "spending power," recently rediscovered in connection with the social security and agricultural-adjustment programs, [46] and the "war power," resurrected only in periods of national emergency, the "enforcement power," as it may be called, of the fourteenth amendment has lain dormant since its first flurry of activity during the reconstruction period. But the failure of Congress to exercise this power must not be permitted to mislead, either as

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[43] Loc. cit. supra, note 39, 4 S. Ct. at p. 155.

[44] Art. VI, sec. 2.

[45] This has been decided in innumerable cases by the Supreme Court. Perhaps the most pertinent case for illustrative purposes is *McCulloch* v. *Maryland* (4 Wheat. 316, 4 L. ed. 579 (1819)). There the exercise of perhaps the most important State powers—the State police and taxing powers—powers inuring in the State both by reason of its sovereignty and by virtue of the express constitutional provision contained in the tenth amendment—were stricken down by the Court because the exercise of the power by the State in the particular instance conflicted with the paramount power of Congress to legislate by virtue of art. I, sec. 8, clause 18. Mr. Chief Justice Marshall, speaking for the Court, in the course of his opinion, said (p. 601): "* * * The Nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason: the people have, in express terms, decided it by saying, 'this Constitution, and the laws of the United States, which shall be made in pursuance thereof,' * * * shall be the supreme law of the land," and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States shall take the oath of fidelity to it.

"The Government of the United States, then, though limited in its powers, is supreme, and its laws, when made in pursuance of the Constitution, form the supreme law of the land 'anything in the Constitution or laws of any State to the contrary notwithstanding.'

"* * * In considering this question, then, we must never forget that it is a constitution we are expounding."

[46] See Steeg, The Spending Power (10 Tulane L. Rev. 446 (1936)).

to its scope, or its importance; for the provision is pregnant with possibilities. This section merely provides that: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

On its face, this provision is innocuous enough. But when it is considered that these words relate back to, and grant Congress the power to enforce, as against "abridgements" by States, such broad and comprehensive concepts as "privileges and immunities of citizens of the United States"—deprivations of "life, liberty, and property without due process of law"—and denials of "the equal protection of the law"—then the tremendous scope of the latent congressional authority can be appreciated.

The significance of the tremendous scope of authority proposed to be conferred upon the Congress by this fifth section of the fourteenth amendment did not escape the Congress which proposed the amendment. It was consciously intended to confer broad and new powers, not theretofore possessed under the Constitution, on the Congress. Senator Howard, in introducing the resolution proposing the fourteenth amendment in the Senate, speaking for the Joint Committee of Fifteen who drafted the proposal, said in speaking of the fifth section:[47]

"Here is a direct, affirmative, delegation of power to carry out all the principles of all these guaranties, a power not found in the Constitution."

Its importance was emphasized by the attacks made upon the fifth section in the House. Mr. Hendricks said of it:[48]

"When these words were used in the amendment abolishing slavery, they were thought to be harmless, but during this session there has been claimed for them such force and scope of meaning as that Congress might invade the jurisdiction of the States, rob them of their reserved rights, and crown the Federal Government with absolute despotic power. As construed, this provision is most dangerous."

A student of the period has commented on it as follows:[49]

"These unequivocal statements by the representatives of the two parties leave little room for doubt as to the purpose of the section, or of the power to be conferred on Congress. What the one regarded as essential to the amendment to make it effective, the other regarded as dangerous."

The bearing of this on the constitutionality of H. R. 1024 is, of course, immediate, direct, and simple. The Classic case has held fully, finally, and decisively that "the right of the people to choose (i. e., the elective franchise in national elections) * * * is a right (privilege) established and guaranteed by the Constitution * * *."[50]

This being so, it must inevitably be a "privilege or immunity of citizens of the United States" within the first section of the fourteenth amendment,[51] and as such, under the fifth section thereof: "Congress shall have power to enforce, by appropriate legislation, the provisions of this article,"[52] including abridgements of "privileges * * * of citizens of the United States"—for example, abridgements of the elective franchise in national elections.

It is the fact of congressional exercise of its power under the fifth section of the fourteenth amendment to prevent abridgements by States of the right or privilege of citizens of the United States to exercise the elective franchise in national elections that distinguishes this situation from those presented in *Breedlove* v. *Suttles*,[53] *Pirtle* v. *Brown*,[54] and similar cases. In each of these cases the court was asked to strike down the State requirement of payment of poll taxes on its own motion, and without implementation by Congress. This, the

[47] Congressional Globe, 39th Cong., 1st sess., p. 180.
[48] Ibid., p. 2940. See also comments of Mr. Harding, of Kentucky, ibid., p. 2147.
[49] Flack, The Adoption of the Fourteenth Amendment, vol. 26. Johns Hopkins University Studies in Historical and Political Science (1908), p. 139.
[50] *United States* v. *Classic* (313 U. S. at p. 314; 61 S. Ct. at p. 1037). Interlineations mine.
[51] See *Corfield* v. *Coryell* (4 Wash. C. C. 371, Fed. Cas. No. 3230 (1825)).
[52] It is curious, but true, that it was not thought at the time the fourteenth amendment was proposed that it empowered Congress to interfere with State qualifications for voters; and, indeed, this is perhaps still true to the extent that such qualifications do not amount to "abridgments" of the franchise. But this was based entirely upon the misapprehension that the right to vote was not one of the privileges or immunities secured by the Constitution, but was entirely within the local State law. See Senator Howard, Congressional Globe, 39th Cong., 1st sess. (1866), p. 2764.
[53] 302 U. S. 277 (1937).
[54] 118 F. 2d (C. C. A. 6, 1941) 218; cert. den. 314 U. S. 621, 62 S. Ct. 64, 86 L. ed. 68 (1941).

court quite properly refused to do. As pointed out in the early case of *Ex Parte Virginia*:[56]

"All of the amendments [i. e., the thirteenth, fourteenth and fifteenth] derive much of their force from this later provision. It is not said the judicial power of the General Government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed. It is not said that branch of the Government shall be authorized to declare void any action of a State in violation of the prohibitions. It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective. Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

"Nor does it make any difference that such legislation is restrictive of what the State might have done before the constitutional amendment was adopted. The prohibitions of the fourteenth amendment are directed to the States, and they are to a degree restrictions of State power. It is these which Congress is empowered to enforce, and to enforce against State action, however put forth, whether that action be executive, legislative, or judicial. Such enforcement is no invasion of State sovereignty. No law can be, which the people of the States have, by the Constitution of the United States, empowered Congress to enact. This extent of the powers of the General Government is overlooked, when it is said, as it has been in this case, that the act of March 1, 1875, interferes with State rights. It is said the selection of jurors for her courts and the administration of her laws belong to each State; that they are her rights. This is true in the general. But in exercising her rights, a State cannot disregard the limitations which the Federal Constitution has applied to her power. Her rights do not reach to that extent. Nor can she deny to the General Government the right to exercise all its granted powers, though they may interfere with the full enjoyment of rights she would have if those powers had not been thus granted. Indeed, every addition of power to the General Government involves a corresponding diminution of the governmental powers of the States. It is carved out of them.

"The argument in support of the petition for a habeas corpus ignores entirely the power conferred upon Congress by the fourteenth amendment. Were it not for the fifth section of that amendment, there might be room for argument that the 1st section is only declaratory of the normal duty of the State, as was said in *Ky.* v. *Dennison* (24 How. 66, 16 L. ed. 717). The act under consideration in that case provided no means to compel the execution of the duty required by it, and the Constitution gave none. It was of such an act Chief Justice Taney said that a power vested in the United States to inflict any punishment for neglect or refusal to perform the duty required by the act of Congress 'would place every State under the control and dominion of the General Government, even in the administration of its internal concerns and reserved rights.' But the Constitution now expressly gives authority for congressional interference and compulsion in the cases embraced within the fourteenth amendment * * *."

In the present case, therefore, quite a different situation will prevail when the constitutionality of this statute is presented for adjudication. Unlike the situation which prevailed in the Breedlove, the Pirtle, and the other poll-tax cases, Congress will have spoken. It will have declared, in effect, that the requirement in some of the States for the payment of a poll tax as a prerequisite for voting in national elections is an "abridgment" of a right or privilege of citizens of the United States, "established and guaranteed by the Constitution." It will have prohibited the States from imposing through its legislatures and enforcing through its administrative and executive officers the "abridgment" found to exist. In so acting, Congress will have complied to the letter with the provisions of the fifth section of the fourteenth amendment in enforcing the "privileges and immunities of citizens of the United States" as defined in *United States* v. *Classic*, in *Ex Parte Yarbrough*, and by Mr. Justice Bushrod Washington in *Corfield* v. *Coryell*. Under such circumstances, no court will declare the act of Congress unconstitutional.

[56] 100 U. S. 339, 346 (1879).

IV. SOME IMPLICATIONS OF LACK OF CONGRESSIONAL POWER

So far attention has been directed exclusively to justifying the power of Congress to prescribe the qualifications of voters in national elections. It will be fruitful to consider the implications of the converse of that proposition—that the authority to prescribe the prerequisites to voting is a power resting exclusively in the legislatures of each State, over which the Congress has absolutely no control. These implications are, to say the least, startling, and certainly not outside the bounds of possibility, and even probability.

It must be recalled that the only express constitutional restrictions on State abridgments of the elective franchise are contained in the fifteenth and nineteenth amendments, prohibiting the denial of the right to vote because of (1) race, (2) color, (3) previous condition of servitude, or (4) sex. It must be assumed, if the converse of the proposition here supported is true, that the individual States can impose any qualification on voting except such as violate the above prohibitions. Hence, Massachusetts could well reenact its statute of 1631, that—"for time to come noe person shall be admitted to the freedom of this body politicke, but such as are members of some of the churches within the lymitts of the same."

There is no prohibition against the States establishing religious qualifications for voters. Montana could provide that only Catholics could vote; Nebraska that only Spiritualists; South Carolina only Lutherans, and Congress would be powerless to interfere. Moreover, Kansas could provide that only those who subscribed to the principles of the Communist philosophy possessed the qualifications requisite for voting. Idaho could provide that only Fabian Socialists could vote; Indiana that only those who accept the principles of the corporative State; and Louisiana only members in good standing of the share-the-wealth clubs, who accepted the principles of "Every man a king",[86] possessed qualifications entitling them to vote for Members of Congress. There is no constitutional prohibition against the imposition of any of the above qualifications—yet does any person seriously believe, that the National Government would for a moment countenance such qualifications? And let no one say "It can't happen here"—it has happened, and is now happening in too many parts of the democratic world.

Again, a number of States already disqualify from voting inmates of State-maintained charitable and eleemosynary institutions.[87] It is but a step from this for States so inclined to disqualify recipients of WPA and social-security benefits. Already the cry is being raised in many sections of the country that such beneficiaries should be disqualified from voting. If Congress cannot outlaw the poll tax, neither can it outlaw a disqualification based on receipt of benefits.

Thus, the argument that Congress cannot constitutionally interfere with qualifications for voters in national elections established by the State legislatures reduces itself to an absurdity, and lays the foundation for a dissolution of the Union, for obviously, it is impossible to adopt a separate constitutional amendment (such as the fifteenth and nineteenth) to prohibit every deleterious qualification of voters that the ingenuity of the States can devise that would, as Mr. King pointed out on June 27, 1787, "be subversive of the end in view" in the establishment of the National Government.

CONCLUSION

Thus, it appears that H. R. 1024 is constitutional from every point of view, and, indeed, that the position that Congress has no authority to prescribe the qualifications of voters in national elections leads to absurd and totally inacceptable conclusions.

Statement of Lillian Smith for Americans for Democratic Action
March 24, 1948

I, Lillian Smith, resident of Clayton, Ga., author and editor, am submitting this statement on behalf of Americans for Democratic Action, in support of H. R. 29, abolishing the poll tax.

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[86] The posthumous work of Huey P. Long, ex-Governor, United States Senator, and "Kingfish" of Louisiana.

[87] See, for example, Louisiana Constitution of 1921, art. 8, sec. 6: "The following persons shall not be permitted to register, vote, or hold office * * * in this State, to wit: * * * those who are inmates of any charitable institution, except the Soldiers' Home * * *." See also, Louisiana Act 45 of 1940, art. 2, sec. 12, incorporating the same provision.

I, a Georgian, have lived most of my life under the poll-tax system, where the cost of a ballot was a day's wage for two-thirds of the workers around me.

In Rabun County our population is rural. Until recent years, wages were so low that every dollar had to be spent for food and overalls and rent. There is a wage floor below which a dollar is the difference in life and death and wages are still below that floor in parts of our South. Citizenship was a luxury that the poor folks of my county did not even look at in shop windows. It was not for them and they knew it. Sometimes they were corralled, told to go in and vote for Mr. So-and-so, that "Somebody" had paid their poll tax. And, glad that somebody had paid something for them, they would go, filing into the booth, not with the strutting independence of men who have made up their own minds or with the dignity that comes from knowing that no one can buy your opinion, but shame-faced and sheepish, aware that somehow they were cheating themselves and their country.

Anyone who had watched this happen and who loves man's freedom knows the poll tax is no small evil, as some say carelessly, but termites crumbling the foundations of democracy.

Two and a half years ago, we abolished the poll tax in Georgia. Since then, the ballots have doubled in my county. My family are in politics and we keep up with votes. We know that men who had never voted in their lives, and their wives, sons, and daughters, have gone to the polls in precinct or courthouse and cast their first ballot—men who could have been voting for 40 years but didn't, until voting was free. As important, they have begun watching the men they have elected and scrutinizing candidates they are going to elect tomorrow. Workers on my farm, planting corn in the field, will stop in the middle of a furrow to talk politics. "I tell you what I think," one will say, and halt his mule (on my time of course) to tell me. Five years ago, they didn't care who was elected or why. But they care now and it is hard to fool them. Their free vote has become too precious to waste.

This is grass-roots democracy; this is what keeps our country free, what keeps men strutting their independence and shouting their opinions to the skies.

Then why not let each State do it for itself, as did Georgia? Why Federal legislation?

Because we have no time. Time is running out for democracy all over the world. Communism is creeping like a disease, a great epidemic, moving across the earth, seizing on men's minds and imaginations. And in their weakness and panic, they run out to meet it half way, grasping their own death as a way out of trouble. Ideas like that cannot be fought with guns. Each time a gun is fired into such an idea, the idea splits, starting chain reactions everywhere. Ideas are fought only with better ideas that work. If American democracy cannot work, then in the world's eyes it is no better for today's world traffic than an outmoded Model T car.

The poll tax keeps democracy from working in seven of our Southern States. That is bad; but that is not the worst. The poll tax is seized upon by Communists in this country, Communists in Europe, in Czechoslovakia, in China, in India, in Palestine as proof that democracy cannot carry out its promises. It shakes the world's faith in us as a people, it makes them lose belief in our moral strength. Strength is admired especially by weak people; they need it to lean on. And most of the world's people today are weak, except Russia and ourselves.

That is why democracy cannot twiddle and dee while people talk of States' rights. States' rights are relevant only when a problem does not cross the border lines of a State. This problem not only crosses lines, it has made its nest in Washington, right on top of the Capitol, flying South only when fields are ripe for feeding. And now it is a problem with wings strong enough to circle the whole earth.

Time is of the essence in this fight for human freedom. It has taken 27 years for four Southern States to rid themselves of the poll tax. At this rate, it will take 30 to 40 more years for the other seven to rid themselves of it, even if they do it faster than North Carolina, Louisiana, Florida, and Georgia did. Where will the world be in 30 years? We don't know. We dare not think ahead that far. It is plain common sense that folks don't lift themselves far by their own boot straps. Not only is the thing awkward, it just won't work, unless some great force underneath is helping with the lifting. There are political machines in our Southern States that control the voting—powerful machines that don't want the poll tax removed. It is the last thing they want to see happen. The people who do want the poll tax removed are the people who can't pay the poll tax so that they can vote to have the poll tax removed. There we are. It is a trap

that no one inside it can easily open. Federal legislation is the only way it can be done quickly. We in the South need our country's leverage to help do the lifting for us.

After all, southerners are Americans. It is well for us to remember that what happens down South happens up North and out West also. The South is just the place you stick the thermometer to find out how much fever the whole Nation has.

We Americans have a dream that our enemies across the earth are turning into a nightmare. It is a beautiful dream, a crazy, wonderful dream; this notion of human freedom; this idea that each person has within himself a little kingdom over which he alone rules; this belief that dignity and integrity are so important to a man that his soul dies without them; this stubborn determination that no authority is going to supersede the authority of our own conscience.

Democracy, after all, is just our way of making the dream come true. I do not believe there is another good way. Communism is nothing but a quick efficient method of dressing up the dream to kill it—making clothes for the body and overnight turning them into shrouds for the dread spirits of men. I, for one, will have none of it. People who have never voted might not feel as I do, and you do, about this. That is why I know that we must not wait 30 years to find out. That is why the South's poll tax is the whole Nation's trouble, why getting rid of it is uniquely the job of Congress. The passing of H. R. 29 will show the world that democracy has at last made good on one of its most important promises.

STATEMENT SUBMITTED BY ALBERT J. FITZGERALD, PRESIDENT, UNITED ELECTRICAL, RADIO, AND MACHINE WORKERS OF AMERICA, CIO, TO THE SENATE COMMITTEE ON RULES AND ADMINISTRATION, ON H. R. 29

The United Electrical, Radio, and Machine Workers of America, CIO, an organization of 600,000 men and women in the electrical, radio, and machine industry, urges upon this committee speedy approval of H. R. 29, the Bender anti-poll-tax bill.

In common decency there can be no further delay in passing this essential legislation. On four separate occasions the House of Representatives has passed such legislation. Three times it was killed in the Senate. Today this committee and the Senate are again faced with this oft-repeated demand to extend the franchise in Federal elections to the disfranchised.

We recognize that the abolition of the poll tax is not a cure-all, that it is but one step in the direction of enforcing constitutional rights and privileges to all Americans, without exception, as guaranteed by the fourteenth amendment. But it is a necessary step, and just as important, a test of the sincerity and honesty of the men in both parties who proclaim their devotion to freedom and democracy.

There is no need to argue the fact of disfranchisement, both of Negroes and whites, in the seven poll-tax States in the South. Even the opponents of this bill do not argue the fact. Nor would they dispute such cold figures as those showing that in the then eight poll-tax States in the 1944 Presidential election only 18.3 percent of the potential voters went to the polls, as contrasted with 68.7 percent in the 40 nonpoll-tax States. The opponents of this bill stand on their "right" to maintain a frankly admitted minority rule, because, they say, it is not the business of the rest of the American people.

But disfranchisement in the South is the business of all the American people. Labor in particular has had bitter experience with the 5 percent and 7 percent Democratic Congressmen and Senators from the South who, by their votes in the Congress, have helped to deprive workers all over the Nation of a decent minimum wage, have gutted the Wage-Hour Act, have wrecked price and rent controls, and have fastened the shackles of the Taft-Hartley law on us.

President Truman committed himself to the abolition of the poll tax in his civil-rights message of February 2, 1948. The Republican Party for years has claimed to be the friend and protector of the Negro people, and is committed to the abolition of the poll tax. Now is the time to make good the promise. Speeches on democracy, freedom, and liberty addressed to the world in these tense times are a mockery and a fraud, so long as we deny this democracy, freedom, and liberty to American citizens in seven States of the Union. Our failure to practice what we preach discredits us in the eyes of the world.

The UE at its twelfth annual convention in Boston on September 22–27, 1947, declared its opposition to the poll-tax system and resolved to work for its aboli-

tion. In line with this resolution, we urge committee approval of H. R. 29, and prompt action in the Senate, with such measures as are necessary to pass it.

STATEMENT SUBMITTED FOR INCLUSION IN THE RECORD OF HEARINGS ON H. R. 29 BY THE SENATE COMMITTEE ON RULES AND ADMINISTRATION ON BEHALF OF THE NATIONAL FEDERATION OF SETTLEMENTS

The National Federation of Settlements, representing 211 settlements and neighborhood houses in 66 cities and 25 States, is deeply concerned with the maintenance and extension of civil liberties. We believe that every citizen of voting age should have the right to vote regardless of economic position. Where families are living on substandard income it is inevitable that payments for food and shelter receive first consideration. Therefore, the existence of requirements of payment of a poll tax undercuts the right to vote of both Negroes and white in a number of our States.

If this country is to put into practice the principles of democracy for which it stands, it should do away with such discriminatory legislation as the poll tax. We therefore hope that H. R. 29 will be reported out favorably.

NATIONAL COMMITTEE TO ABOLISH THE POLL TAX,
Jackson, Tenn., March 16, 1948.

HON. C. WAYLAND BROOKS,
Chairman, Senate Committee on Rules and Administration,
Washington, D. C.

DEAR SENATOR: I have the honor to place before your committee the following statement with regard to H. R. 29.

I am chairman of the National Committee to Abolish the Poll Tax, 127 B Street SE., Washington, D. C., and a lifelong resident of the State of Tennessee.

H. R. 29 forbids requirements of payment of poll taxes as a condition precedent to voting for President and Representatives in Congress.

Enactment of this measure will serve the public interest, in that—

1. The poll tax is (*a*) an infringement upon the right to vote declared in the United States Constitution and implicit in any concept of popular government, and (*b*) a barrier to exercise of the suffrage.

(*a*) The "poll" tax actually is a vote tax in seven States, a penalty imposed upon voters, but forgiven nonvoters. The taxation of a right abridges the right. The absence of free elections inhibits popular government.

(*b*) The poll-tax requirement blockades the polls, as witness the voting record of two sister States, by Presidential elections, in percentages of votes cast to population of voting age. Tennessee imposed the poll-tax requirement in 1890. Kentucky requires none.

	Tennessee	Kentucky		Tennessee	Kentucky
1872	55	55	1908	48	67
1876	64	68	1912	45	76
1880	61	65	1916	48	68
1884	64	64	1920	[1] 31	63
1888	71	76	1924	20	54
1892	58	72	1928	23	61
1896	67	68	1932	24	62
1900	54	67	1936	28	56
1904	46	76	1940	30	57

[1] Woman suffrage.

2. By effectively disenfranchising millions of the people, the poll tax has reestablished "taxation without representation," a famous cause of revolution.

3. By effectively disenfranchising millions of the people, the poll tax has denied Government itself of the guidance of the popular will.

4. The poll-tax question cannot be left to the people of the poll-tax States because, without the vote, the majority of the people of these States have no peaceful means of dealing with the question.

5. The electorate in all of the poll-tax States is now, permanently (see No. 1—b above) a minority of the people of voting age in those States. This is the characteristic of the oligarchic form of government.

6. But article 4, section 4 of the Federal Constitution enjoins that: "The United States shall guarantee to every State in this Union a republican form of government." This is a provision to guarantee the republican form of government to the Nation as well. The form of government of the United States depends directly upon the protection of the suffrage of its citizens.

7. The Congress is the "other legislature" of the people of all of the States, their proper recourse in seeking relief from a State-imposed tax that has impaired the right to vote.

8. The courts hold the question of the poll tax a "political" question, not in their province, but in the province of the Congress.

9. Under article 4, section 4 of the United States Constitution, the return of free elections to the people of the poll-tax States is the duty of the Congress, whose Members are sworn to uphold the guaranties of the Constitution.

I would appreciate it greatly, Senator, if the committee would allow me the opportunity to make a further statement upon this matter, orally, since I have been much concerned with it, as a citizen, and am perhaps more than commonly acquainted with all of its aspects.

Sincerely,

JENNINGS PERRY.

MEMORANDUM ON CONSTITUTIONALITY OF H. R. 29, SUBMITTED BY THE AMERICAN CIVIL LIBERTIES UNION

H. R. 29 makes unlawful a requirement of payment of a poll tax as a prerequisite for voting in any election for national officers. Section 1 provides that payment of a poll tax is not and shall not be deemed a qualification of voters or electors within the meaning of the Constitution, but is and shall be deemed an interference with the manner of holding elections and a tax upon the right or privilege of voting. Section 2 makes it unlawful for any State or other governmental subdivision to prevent any person from voting in any election for a national officer on the ground that such person has not paid a poll tax, or to levy any tax on the right or privilege of voting in such an election. Section 3 makes it unlawful for any State or other governmental subdivision to interfere with the manner of selecting persons for national office by requiring the payment of a poll tax as a prerequisite for voting in any election for such officers. Section 4 makes it unlawful for any person to require the payment of a poll tax as a prerequisite for voting in any election for national officers.

H. R. 29 might be a more effective statute if it contained a preamble setting forth the factual basis for legislation with respect to the poll tax. The requirement of payment of poll taxes as a prerequisite to voting has led to wide abuses of the franchise. Citizens have been barred completely, or corruptly induced to vote for one candidate or another in consideration of the payment of the tax. The integrity of national elections is seriously impaired. The actual effect of poll-tax requirements is to discriminate against and disfranchise Negroes and other citizens of the United States economically similarly situated. That this is the main purpose of poll taxes was explicitly stated by Senator Carter Glass, when as a delegate to the constitutional convention of Virginia he stated:

"The chief purpose of this convention is to amend the suffrage clause of the existing constitution. It does not require much prescience to foretell that the alterations which we shall make will not apply to 'all persons and classes without distinction.' We were sent here to make distinctions. We expect to make distinctions. We will make distinctions." (Proc. Const. Conv., p. 14.)

"I declared then (referring to the beginning of the convention and the debate on the oath) that no body of Virginia gentlemen could frame a constitution so obnoxious to my sense of right and morality that I would be willing to submit its fate to 146,000 ignorant Negro voters [great applause] whose capacity for self-government we have been challenging for 30 years past."

1. Although poll taxes purely as revenue measures have been held not unconstitutional (*Breedlove* v. *Suttles*, 302 U. S. 277), it is always competent to investigate whether the ends for which the law is adopted are fair. The statute must be tested by its operation and effect (*Near* v. *Minn.*, 283 U. S. 697). If the statute is applied and administered so as to obtain an illegal discrimination, the

statute must fall under the equal protection clause (*Yick Wo* v. *Hopkins*, 118 U. S. 356). The distinctions "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis" (*Gulf, C. & S. F. R. Co.* v. *Ellis*, 165 U. S. 150).

The requirement of payment of a poll tax as a prerequisite to voting bears no reasonable and just relation to qualifications to vote. The payment of a poll tax neither insures a free exercise of the vote nor induces honesty. On the contrary, it brings in its wake fraud and civil vice. The ability to pay the tax bears no relationship to wisdom or integrity. Poll-tax requirements are related rather to accomplishment of the purposes already indicated, the disfranchisement of United States citizens, some because of their color, and others because of their economic condition. It is submitted that because of their unfair operation poll-tax statutes violate the equal-protection clause of the fourteenth amendment. "Class legislation, discriminating against some and favoring others is prohibited * * *" (*Yick Wo* v. *Hopkins*, supra, 225). (See *McPherson* v. *Blacker*, 146 U. S. 39.)

Under the fifth section of that amendment, Congress is empowered to pass appropriate corrective legislation. As stated in the civil rights cases (109 U. S. 3), "It (the fourteenth amendment) nullifies and makes void all State legislation which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without the process of law, or which denies to them the equal protection of the laws. It not only does this, but in order that the Nation will, thus declared, may not be a mere brutum fulmen, the last (fifth) section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it."

2. That this proposed legislation may be sustained under the fifteenth amendment is also clear. As has been pointed out above, one, if not the main object of the poll-tax laws, is to prohibit and prevent Negroes from voting. Congress may by appropriate legislation remove restrictions imposed on Negroes in their exercise of the franchise.

"The amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation'," (*United States* v. *Reese*, 92 U. S. 214; *Guinn* v. *U. S.*, 238 U. S. 347). The proposed bill merely removes one of the restrictions which the poll-tax States have imposed in order to prevent Negroes from voting. Whether the poll-tax laws discriminate against Negroes on their face or in their operation is immaterial. The Congress has the power to secure Negroes against discrimination in their right to vote under this amendment. (See cases supra, *Lane* v. *Wilson*, 307 U. S. 268.)

3. Fundamentally H. R. 29 is based on the proposition that the right to vote for a Member of Congress arises from the Constitution of the United States. Section 2 of article 1 provides that:

"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 the electors of the most numerous branch of the State legislature."

And section 4 of article 1 provides that:

"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 all such regulations except as to the places of choosing Senators."

In *U. S.* v. *Classic* (313 U. S. 299) 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. U. S. (162), 170; *U. S.* v. *Reese*, 92 U. S. 214; *McPherson* v. *Blacker*, 146 U. S. 1; *Breedlove* v. *Suttles*, 302 U. S. 277), this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article 1 to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more

general power under article 1, section 8, clause 18 of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'" (See *Ex parte Siebold*, 100 U. S. 371; *Ex parte Yarbrough* 110, U. S. 663, 664; *Swofford* v. *Templeton*, 185 U. S. 487; *Wiley* v. *Sinkler*, 179 U. S. 58.)

The Yarbrough case, supra, has always been considered as authority for holding that the privilege of voting for a Member of Congress is derived and depends on the Federal Constitution. Language to the contrary in *Suttles* v. *Breedlove* (302 U. S. 277), is not controlling. That case was concerned with voting in State as well as National elections. The court treated the tax as a simple revenue-raising measure and approached the problems from that point of view. Nowhere in the opinion is there mention of the provisions of section 4 and section 8, clause 18 of article 1 of the Constitution, and congressional power thereunder to protect the integrity of national elections.

Since the right to vote in national elections arises from the Federal Constitution, such congressional power exists. Congress has the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers" (art. 1, sec. 8, clause 18, *U. S.* v. *Classic*, supra, 873 and cases cited). In *U. S.* v. *Classic*, supra, at 873, the court stated that "the States are authorized by the Constitution to legislate on the subject (of elections and voters) to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and article 1, section 9, clause 18." Thus an enactment finding that the integrity of the ballot and freedom of election for Federal offices is destroyed by State poll-tax provisions is undoubtedly within the power of Congress. In re Yarbrough, supra, *Newberry* v. *U. S.* (256 U. S. 232).

As already indicated, there is ample evidence that making payment of poll taxes a condition of voting leads to wide abuses. From the early nineteenth century the device has been recognized as a source of evil and a threat to the purity of the ballot. This type of menace has in the past prompted Congress to act. Congress has already enacted legislation to protect its interest in a fair election (the Corrupt Practices Act, the Hatch Act). It is clearly within its right, if it is not its duty, to abolish pernicious practices jeopardizing the proper exercise of the franchise. In the language of the Yarbrough case, it would be a proposition so startling as to arrest attention and demand the gravest consideration to declare that Congress did not possess the power to enact any law "necessary and proper" to secure Federal elections from the influence of fraud, violence and corruption. (See *U. S.* v. *Classic*, supra.)

As a matter of public policy, and under the doctrines of constitutional law as established by the Supreme Court, it is clear that the proposed legislation is within the power of Congress to enact. It is to the public interest that the franchise be protected from any unnecessary and unreasonable requirements. Certainly as far as Federal elections are concerned, it is submitted that H. R. 29 is constitutional and a proper exercise of the congressional power to ensure decent and honest elections participated in by the greatest possible number of our citizens.

STATEMENT OF GEORGE W. HARDIN, GREENVILLE, TENN.

Mr. Chairman and members of the committee, it is a pleasure for me to appear before you this morning to speak in favor of the abolition of the poll tax as a prerequisite to voting.

I am an announced candidate for the United States Senate from Tennessee in the Democratic primary of August 5. I am a farmer. I served as county superintendent of schools for Greene County, Tenn., from 1927 to 1933. From 1933 to 1935 I served as superintendent of the miscellaneous tax unit in Tennessee.

As a native of Tennessee, I feel that the legislation before you, H. R. 29, is a worthy step in the proper direction. For many years I have consistently opposed the proposition that a citizen's right to vote should be taxed. I firmly believe that it is fundamentally wrong and undemocratic. H. R. 29, to abolish the poll tax in Federal elections, will not completely cure the poll-tax evil, but tax-free Federal elections will set a worthy example for State elections, and I believe that State action to abolish the poll tax in State elections will follow close upon the abolition by congressional action of poll-tax restrictions in Federal elections.

Today the poll tax practically bars a man of moderate means from running for county office. I speak from personal experience. In Greene County, Tenn., to make a successful race, a man must be prepared to put up approximately $2,000 as his part of a fund to pay poll taxes. If this is not done, a candidate for county office just doesn't have a look-in and had just as well forget about running. That is the situation in my county and I believe that Greene County is a fair sample of the situation throughout the State of Tennessee, and the other poll-tax States.

On one occasion in Greene County the local Democratic organization spent approximately $8,000, and the local Republican organization spent a similar amount, making a total of approximately $16,000 in poll-tax payments. It should be remembered that the major part of this expenditure came out of the pockets of the local candidates.

The Democratic organization in my county is experiencing great difficulty in obtaining any one to run for cunty office because of the necessary poll-tax payments. The poll tax is the ground in which corrupt political organizations grow. The time for the abolition of the poll tax is long overdue.

At a time such as this when we are preaching democracy to the world, let us do a little house cleaning at home.

STATEMENT BY JOSEPH CADDEN, EXECUTIVE DIRECTOR, CIVIL RIGHTS CONGRESS

The Civil Rights Congress has long advocated passage of legislation to abolish the poll tax as a prerequisite to voting. In this election year there are new and impelling reasons for such legislation. Favorable action by the House of Representatives has further emphasized need for immediate enactment of H. R. 29.

We are certain that no Senator will deny that the right to vote is the most fundamental of all for each and every American. Our Constitution is perfectly clear on this point. Our Constitution states with equal clarity that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" (fourteenth amendment, sec. 1).

The poll tax prevents millions of citizens from participating in governmental affairs. It creates a second-class citizenship repugnant to American traditions and the United States Constitution.

Originally designed to prevent the growth of the Populist Party in the South, it has been used to perpetuate a one-party system ruled by a handful of men who have been able to assume a virtual dictatorship over the seven Southern States requiring payment of a poll tax. In modern times, the poll-tax rule prevented the growth of the Republican Party in the South. During this year it is aimed to prevent any sizeable vote for Henry Wallace in these Southern States.

Disenfranchisement by means of the poll tax is a crime against our Constitution and our form of government. No democracy, no republican form of government, is possible so long as there is minority rule in the seven poll-tax States. In the last Presidential election, only 18.31 percent of the eligible voters cast ballots in the poll-tax States, as compared to 68.74 percent in other States. More votes were cast that year for 5 representatives from Connecticut than for 34 representatives from five poll-tax States.

Negro Americans are most affected by this disenfranchisement. For although more white people are deprived of their suffrage by the poll tax, the majority of the Negro people live in poll-tax States. Thus our Negro minority is suppressed, prevented from full participation in our National Government and relegated to a second-class citizenship.

American history is a record of progress which must continue particularly at this moment of world history. The United States Senate will be serving the interests of the whole Nation by wiping out the poll tax, allowing all of the people of the poll-tax States to exercise their right to vote and to elect Representatives who will follow a course of progress. It is no accident that the present Congressmen from poll-tax States are the greatest enemies of progress, self-appointed guardians of feudalism, the logical fruit of a degenerate one-party system.

Let all Americans exercise their right to vote. Abolish the poll tax immediately and enfranchise millions of Americans now deprived of their right to choose their representatives to the Congress.

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STATEMENT BY WALTER P. REUTHER, PRESIDENT, UAW-CIO, IN SUPPORT OF H. R. 29, A BILL TO ABOLISH THE POLL TAX AS A REQUIREMENT FOR VOTING IN FEDERAL ELECTIONS, PRESENTED TO THE SENATE COMMITTEE ON RULES

Supplementing the statement presented on behalf of the Congress of Industrial Organizations by CIO Secretary-Treasurer James B. Carey, I present for the record and the consideration of the members of the Senate Rules Committee the following brief statement on behalf of the UAW-CIO.

The UAW-CIO has always opposed the poll tax as a requirement for voting in Federal elections; we have always advocated and worked for its abolition.

Today, when it is proposed that we defend democracy throughout the world, we cannot afford to continue bobtailed democracy here at home. The continued use of the poll tax as a device for depriving American citizens of a citizen's right to vote—and so to determine the political and economic policies under which he must live—weakens our democracy at a time when it should be strong. The fact that the poll tax is used for the purpose of denying the vote to millions of citizens is established by the record as cited by CIO Secretary-Treasurer Carey.

Likewise, the constitutionality of such legislation as H. R. 29 will have been adequately discussed by Mr. Carey and by able lawyers. The UAW-CIO has long felt that the Constitution not only does not prohibit such legislation as H. R. 29, but that its intent and spirit plainly require the enactment of such legislation to prevent the abridgment of the privileges and immunities of its citizens and to accord them the equal protection of the laws.

The UAW-CIO constitution lays upon officers and members the duty to participate actively in political campaigns and elections. We recognize that full protection of the welfare of our members as workers and as citizens can be achieved only if our members fully exercise their rights as citizens by becoming informed about issues which affect their welfare and by voting intelligently for or against candidates who will promote or oppose policies and acts affecting their interests as workers and as citizens. Section 4 of article 2 of the UAW-CIO constitution states that an objective of our union is:

"To educate our membership in the history of the labor movement and to develop and maintain an intelligent and dignified membership; to vote and work for the election of candidates and the passage of improved legislation in the interest of all labor. To enforce existing laws; to work for the repeal of those which are unjust to labor; to work for legislation on a national scale * * *."

Article 39 of the UAW-CIO constitution makes it a duty of each member of the UAW-CIO to register and vote in Federal, State, and local elections.

A considerable number of the 1,000,000 members of the UAW-CIO live in poll-tax States. While they are better able, because of improved wages and working conditions which they have obtained through union organization and collective bargaining, to pay the price of admission to the voting booth, they are penalized and discriminated against, compared with other union members in non-poll-tax States. The varying requirements as to amount of the tax, the date of payment, cumulative features, etc., which have been described by Mr. Carey and other witnesses, all operate to make voting more difficult and to reduce the number of voters. This is not accidental; this is, as the record shows, the deliberate intent and purpose of these laws. They are, in their effect, antidemocratic.

The use of the poll tax as a requirement for voting in Federal elections makes it impossible for the UAW-CIO to carry out to the fullest extent the intent of our constitution. That, I submit, is a challenge to this committee and to the Congress. There is nothing in the provisions of our constitution which I have cited that is opposed to the Constitution of the United States or to the American ideal of free government by freemen, acting individually or in free association with their fellows. The UAW-CIO wants to promote the solution of our political and economic problems by constitutional means, by promoting the fullest participation of all our members, as citizens, in our political life. We want to use the constitutional method of free elections to promote policies which we believe to be in our interest and in the public interest.

Yet we find that in practice this method is not equally available to all our members. Those members living in poll-tax States must submit to poll taxes and related requirements for voting which do not exist in other States.

Moreover, even if all UAW-CIO members in poll-tax States were to pay the poll tax and meet related requirements, our strength would be reduced by the fact that millions of other wage earners, lacking the relative advantages in wages, working conditions, and information about political issues which the UAW-CIO is able to supply its members, are not able to pay the poll tax.

The UAW-CIO believes in progress with the community, not at the expense of the community. It is our policy to seek allies, to work with other groups in the community for the achievement of common ends. In the poll-tax States, this policy cannot be fully realized. Other citizens in the community may wish to join with UAW-CIO members in support of certain policies and candidates, or in opposing others, but are barred from final effectiveness by the fact that they cannot pay the price of admission to the voting booth. Democracy is denied them and at the same time the full exercise of democracy is denied to the UAW-CIO members who themselves may be able to pay the price of admission.

This is why our own practical experience shows that the poll tax is rank class legislation, a denial of the fundamental constitutional right of equality. It creates a sort of bobtailed democracy. Considering the dynamics of our industrialized economy, it is an unintentional undermining of the form of government which was intended to function under the Constitution.

Abolition of the poll tax as a requirement for voting in Federal elections is not a question of extending democracy; it is rather a means of establishing democracy. Democracy cannot function on the present discriminatory class basis that exists in the poll-tax States. Democracy is not divisible. All citizens must be free or none is free for long; all citizens in a democracy must have the right to vote or none is wholly free. Those who imagine they are free while others are denied the full exercise of freedom swiftly become prisoners of fear and hate. They fear the resentment of those who are not free; fear hardens quickly into hate, and hate creates the chain reaction that disintegrates and destroys a democracy based upon a community of interest and welded by common purpose and ideals.

Great as the poll-tax evil is in its effects within the poll-tax States, the evil effects upon our national welfare are even greater. Members of Congress elected by microscopic minorities voting in poll-tax States find it easy to perpetuate themselves in office and, under the seniority system, to rise to positions of power in which they can veto or delay progress and reform. Thus, while the poll-tax system destroys democracy within the poll-tax States, it threatens to weaken it to the point of destruction in the Nation.

In this critical hour, when we stand before the world as the champion of democracy and the hope of freemen, the poll tax is not only a mockery but a barrier to the sort of legislative action we must have if we are to practice within our borders the democracy we appropriate billions to defend abroad.

The defense of democracy is not merely a matter of appropriating funds for ERP and for military aid to nations resisting totalitarian aggression. If we are to make good on our moral commitments under ERP, if we are to produce at capacity to meet both domestic and ERP needs, plus the defense requirements that may be found necessary, the American people must have a Congress elected by all its citizens, not a Congress in which the Senators and Representatives from some seven States have been elected by a plurality of a minority of as little as 3 percent of the potential voters.

H. R. 29 is as truly a measure of national defense as an appropriation for an adequate air force. The strength and survival of democracy require the enactment of H. R. 29 now.

STATEMENT OF JOHN W. EDELMAN, WASHINGTON REPRESENTATIVE, TEXTILE WORKERS UNION OF AMERICA, CIO, MARCH 25, 1948

I am speaking here today on behalf of the 250,000 or more organized and unorganized textile workers who live in the seven States in the South where payment of a poll tax is still a prerequisite for voting. With their families, this group of workers my union speaks for represents well over a million persons.

You have had before this committee a most impressive array of United States Senators, governors, and state attorneys general (or their deputies), all of them trying to prove that the United States Congress is powerless under the terms of the Constitution to protect the free exercise of the franchise by the citizens of the United States.

Parenthetically, I wish to observe that in tone and substance these learned-sounding disquisitions on the poll tax sounded awfully familiar to us. All through the years we were told that the Constitution forbade the enactment of various items of social legislation which are now commonplace. The Constitution seems to us just as safe, and an even more noble and profound document after the courts have ruled such laws are perfectly valid and the so-called States' righters quite wrong and outdated in their version of what the framers meant. Our

attorneys will deal with the purely legal arguments, but as experienced laymen we have a very strong conviction that the gentlemen who so strongly put forth the view that Congress can't eliminate the poll tax will be proved just as wrong as were the gentlemen who argued that only the State could deal with the problem of minimum wages, social security, labor relations and similar basic issues affecting the welfare and security of the community.

Some of the distinguished legislators who appeared here in opposition to H. R. 29 and companion measures, we in organized labor are able to cooperate with on many broad issues involving social legislation. We believe that were there a wider exercise of the franchise by the working farmers and the average run of factory people in the States these gentlemen represent in Congress, that they would not feel themselves obliged to take a position which we regard as being in contradiction with every tenet of American liberalism.

My purpose in appearing here today is not to rehash the arguments urging enactment of H. R. 29, but to get on the record here an expression representing the feelings, desires, and convictions of the ordinary run of people in these seven States, who, for many years, have been habitually obliged to overcome what are to them serious obstacles to free voting, either in primary or general elections.

In Stonewall, Miss., within recent weeks the Textile Workers Union of America won a collective-bargaining election conducted by the National Labor Relations Board. Average wages at this plant employing over 500 persons are less than 45 cents an hour. The minimum rate of pay is 41 cents, which most of the employees receive; a few key employees make 60 cents an hour. People who earn such disgracefully low wages simply cannot afford even sufficient food for an adequate diet let alone pay poll taxes. In short, these workers are effectively barred from exercising their right to vote just because they are too poor. This is a species of class discrimination which is utterly foreign to what we are taught in the textbooks is the American concept of government.

I hasten to point out that the Stonewall Mills is happily today an isolated case insofar as wages are concerned. Today the minimum wage paid to textile workers in the South is more than double the 41 cents which still obtains at this particular plant. But it is only very recently that the earnings of textile workers in the South (or in the North for that matter) have reached a point which provide something close to a tolerable standard of living. Four or five years ago almost none of the heads of families employed in the textile plants in the South could vote without depriving their children of needed food or other basic necessities. Even today the amount of the exaction which is required of the ordinary worker who has fallen behind in his poll taxes in States like Virginia or Alabama is greater than most of them can afford.

In Alabama the amount of accumulated back taxes can go as high as $36 per person. We can site to you instances where people still pay out such outrageous sums. Last year in a typical mill center in Alabama the average payments ran between $12 and $21 per person, not per family, in those cases where the individual had been obliged to let his payments lapse. In Virginia, where the maximum amount a prospective voter can be charged who has failed to pay poll tax in the past is $5. We find that if a man and wife has to find $10 between them in order to be permitted to exercise what we are told is an inalienable right to vote, that in practice this right is only too often not exercised.

Also, let me call attention to the fact that 40 cents an hour is still the statutory wage in this country and outside of the texile industry there is still a great army of low-wage earners in these Southern States who find it difficult to pay poll taxes. For instance, in the lumber and timber industry which employs many workers in the area under discussion, we find 47 percent of all employees, or over 300,000 persons, earn less than 75 cents an hour. In tobacco 35 percent of all employees earn less than 75 cents an hour: in furniture and finished lumber products, 21 percent or about 88,000 persons earn less than 75 cents an hour. These figures are for July 1947. Such changes as have occurred since then don't alter this picture materially. I have not even mentioned the earnings of all those workers in intrastate employment whose earnings are not regulated in any way, and who are most infrequently organized into unions. Among this group there is a vast number who continue to find it exceedingly difficult and often impossible to find even $1 or a $1.50 to get a poll-tax receipt, let alone the larger sums that must be met in case the individual has back taxes to pay off before he will be permitted to vote.

Within the past several days I have discussed either by mail or by telephone this problem of the poll tax with officials of the Textile Workers Union or of

the CIO in all the poll-tax States with the exception of Arkansas. In addition, I had the opportunity of talking over the whole problem with a typical group of 12 factory workers from various parts of Virginia, who spent a week here in Washington studying how Congress and other branches of our Government work. To get the clearest picture of this problem, this committee, in our judgment, should have called these rank and file witnesses before you, in addition to the statesmen who technically, but not actually, were speaking for us. You would have heard, as I did, a very different discussion of this matter of poll taxes than was presented to this committee by the several Members of Congress and the whole array of learned counsel. First of all, you would have been struck, as I am every time I go South or talk to a group of workers from the South, at the deep resentment that is felt against the whole poll-tax system and all that it implies. These workers feel quite intensely that the poll-tax laws stay on the books simply because a group of men who now hold political office or who control political party mechanisms in these States do not want the majority of the people to participate in political decisions or affairs. There is a deep feeling among Southern workers that these payments are unjust and unfair, and operate as a real handicap on the efforts which unions are making everywhere to increase the number of voters in all elections, and to heighten democratic participation in all public affairs. No one, and I mean that literally, takes seriously the declaration made here by more than one opponent of anti-poll-tax legislation that the real intent of these levies is to raise money for school purposes. Labor is traditionally committed to the support and improvement of our public education. We have experienced a notable and generally unanimous lack of interest from the elements in this Congress who speak against enactment of anti-poll-tax legislation when we come up with specific measures for increased appropriations of one kind or another to assist and improve our educational systems.

One point that southern rank and file workers and union representatives stress to me in our talks about this problem is that in several of these States—Virginia is a case in point—there has been for many years a very lax administration of all State tax laws. By that I mean that a rather marked lack of diligence has been demonstrated in many cases in the actual collection of State property and income taxes. What we find very frequently is that the man or women who hasn't paid poll taxes hasn't been called upon in the past to pay these other taxes. But when he does finally come across and put down the money for the poll tax you may be sure that promptly and automatically he gets a bill for whatever else he owes. Now don't let anyone infer that I am arguing against anyone paying his just taxes. That is not what I am saying. What I am pointing out is that the type of uninformed or underprivileged citizen who has customarily been unable to make tax payments because he didn't have income or property, or because he lived where the politicians were pretty "easy" about collections, is bound to get the impression once he qualifies to vote by paying the poll tax that he is inviting a lot of other payments which he formerly was not called upon to meet. It is difficult to get across to a brilliant and sophisticated audience a sense of the political and social climate in many of these mill towns in these seven States where we have to wrestle with this problem of educating people to pay poll taxes and become informed on legislative issues. Few people realize that we still have today in many of our highly modern and complex industrial establishments in this region a surprising number of older workers who still cannot read or write. For example, in one of our larger plants in Virginia 2 years ago we found a shop committee of 11 persons who did negotiate a pretty technical kind of an agreement but which included four persons who were unable to read the contract they helped to prepare. These men and women memorized the provisions of that document word for word.

The thought I am trying to convey is simply that in dealing with a somewhat culturally isolated and politically unawakened group such as southern cotton mill workers, who for years were virtually segregated in their feudally controlled villages, that the existence of the poll tax looks a much larger and more difficult bar to voting than would the same requirement elsewhere, or with different people. For years cotton mill workers were called "lint heads" by the merchant or professional groups in adjoining or nearby communities. Mill hands didn't have the kind of clothes that enabled them to feel at home if they went to the church which the doctor or the tax collector attended. Too often the children were kept out of school because they didn't have shoes. These are not distant and forgotten memories. The feelings engendered by this type of social and economic discrimination, I believe, are today deeper among the underlying population of the South

than are the feelings which some prominent gentlemen say are being disturbed today by sections of the report of the President's Committee on Civil Rights. I have been working in the South for more than 25 years now. Perhaps that is too short a time to have an opinion. But a quarter of a century is time enough, I submit, to be able to know definitely and positively that the people in these seven Southern States deeply resent the continuance of the poll tax and furthermore, it takes no political scientist to make the further deduction that the existence of such feelings among our people weakens our whole democratic system, whose deepest support rests always on the belief and faith of the great body of our fellow citizens.

Before winding up I must touch on one specific and current situation in the South. Members of my union in South Carolina have asked me to point out certain practical implications of the statement made here by Senator Olin D. Johnston of South Carolina when he related that the number of people who vote in the general election in that State is insignificant. Mr. Lloyd Welchel of the TWUA, who lives in Gaffney, S. C., describes a rather typical mill village system as follows:

"Poll tax required for general elections in South Carolina but not primaries. South Carolina poll tax is $1. Voter is required to pay his personal taxes before he can get receipt for poll tax. If he owes $20 personal tax he will have to pay $20 plus $1 poll tax before he can get his poll-tax receipt. In average general election in Gaffney, S. C., Cherokee County, ward 1, 1,000 could vote but usually not more than a dozen are qualified. An average of 2 percent of voters in the county actually go to the polls and cast ballots in the general elections."

As a rule the primary election is all that really matters in a one-party State. But we trade-unionists wish to stress the fact that it is politically unwise to assume that this condition will always exist. The several thousand South Carolinians I represent happen not to go along with this alleged "southern revolt" which most of the opponents of this legislation are parties to. If, as is threatened in Virginia, the party electors refuse to vote for the party nominee, what legal course of action is left to us? It may happen that labor and liberal forces in States like South Carolina or Virginia will be obliged to run independent candidates in the general election to secure support for the head of our party ticket. Whatever you may say about the political shrewdness of trying to be so elementarily honest as to feel called upon to make sure our votes for President go for the man we cast our ballots for, surely you must admit that this is our full right under the Constitution. We may feel moreover that it is our bounden duty under the simplest code of ethics and fair play. But as hard-boiled political realists, look what we are up against if we try to run an independent ticket in South Carolina. We would have to qualify hundreds of thousands of voters and pay out in poll taxes and other back taxes whole wagonloads of money. We would have a monumental task of political education to accomplish. This situation is one of the most striking examples of the basic injustice of the poll-tax system, and a compelling illustration of how it works to aid those who might seek to frustrate the will of the majority.

Attached hereto, Mr. Chairman, are copies of three statements received in the past several days from CIO or textile-worker representatives in Texas, Tennessee, and Virginia, respectively. These are typical of what I believe are the temperate and well-informed views of the working people of those and adjoining States. I respectfully urge that you read these rather brief statements very carefully.

STATEMENT BY J. J. HICKMAN, SECRETARY-TREASURER, TEXAS STATE CIO COUNCIL, AUSTIN, TEX.

A poll-tax receipt is a voter's certificate for persons aged 21 to 59, inclusive. Those 60 and over are exempt. An exemption certificate is required only in cities of 10,000 or more population.

The poll tax is levied by the State constitution. The levy of $1.50 goes in the proportion of $1 to the public free schools and 50 cents to the general revenue fund. At their option, counties may levy an additional 25 cents, making a maximum total levy of $1.75.

Poll-tax payments can be made during the months of October, November, December, and the following January. No poll-tax receipts are issued (unless illegally so) after midnight, January 31, of any year. There are no other means of qualifying to vote if the dead line is missed.

The poll-tax receipt must be designated for the precinct in which the voter resides. If the poll-tax-receipt holder changes the place of his residence from one precinct to another, he must, in order to vote in the precinct to which he has moved, go to the tax collector's office and have a transfer of his registration made. A qualified voter, when presenting himself at the polls in any local, county, State, or National election, must present his poll-tax receipt or exemption certificate to be stamped by the election judges.

The husband may pay the poll tax of his wife or the wife for the husband. Otherwise, each person must present himself before a duly authorized tax collector or deputy for the payment of poll tax or make a notarized authorization to the person designated to pay his poll tax for him.

The effect of the constitutional requirement for payment of poll tax as a prerequisite of voting is to cut down the voting strength among farm people and low-paid workers. Thousands of people who are able to pay their poll tax and who have every intention of doing so neglect to do so before the dead line for payment.

Many employers, in past years, notwithstanding provisions of the law to the contrary, paid the poll taxes of all of their employees and required them to vote according to the employers' direction. Many politicians held out books of poll-tax receipts to be handed out in exchange for votes. Labor unions have done much toward eliminating the practice of employers dictating to their employees how to vote until, at the present time, only small employers whose employees are not organized try to get away with it.

Some labor unions require a poll-tax receipt as a prerequisite for membership, and failure to pay poll tax each year is cause for expulsion from membership in the union. Under the Taft-Hartley law and the Texas labor law, however, the legality of such a requirement is doubtful.

STATEMENT BY HAROLD S. MARTHENKE, EXECUTIVE SECRETARY-TREASURER, TENNESSEE STATE CIO COUNCIL, NASHVILLE, TENN.

We have felt all along that the Tennessee poll tax is one of the major factors making it difficult for people to vote in the State. There are a few recent examples which I think illustrate the effect of the poll tax on the number of votes cast.

In a recent county election in Chattanooga where no poll tax was required to vote, out of a total registration of about 57,000 in Hamilton County, approximately 30,000 people went to the polls. This is somewhat over 50 percent of the registration. Had a poll-tax receipt been required to vote in this election, the chances are that the vote would not have been anywhere near as great.

Another illustration, and I think a very important one, is the attitude being taken by the Shelby County trustee's office on the payment of poll tax by proxy. The Shelby County trustee will not accept poll-tax payments in groups, but requires that each payment, unless made personally, be made in the form of a postal note mailed first class with a self-addressed and stamped envelope for the receipt to be mailed. This involves a cost for each poll tax paid in that manner of about 11 cents. I might say in this connection that our people in Memphis are, as in other sections of Tennessee, working vigorously to get poll taxes paid. As far as I know, this is not happening in other sections of the State, the county trustees outside of Shelby County being fairly cooperative in accepting poll-tax payments in groups.

Of course, Shelby County is the stronghold of Boss Crump, and his boys are well aware of what we are up to so they are very conveniently throwing every possible stone in our way to make it difficult to qualify the voters down there. It is quite obvious from the above that the Crump machine in Memphis is definitely using the poll tax to prevent a large and uncontrolled vote. If Federal law prohibits poll-tax as a qualification for voting, what might happen in Shelby County to the senatorial and congressional races would be very interesting because Crump has always been able to maintain a close, in fact very close, control over votes cast in Shelby County. If a large uncontrolled vote is had in Shelby County, Crump will lose control. This would happen if the poll-tax requirement for Federal elections is removed.

I have observed in Nashville elections, particularly in my own precinct, that the election officers will only ask for poll-tax receipts from certain individuals. The last time I voted, I was asked for my receipt (I had it in my hand), but the previous 8 or 10 people in line were not asked whether they had a poll-tax receipt

or not. Of course, the election officers knew my identity and the slate they favored was the antilabor slate.

The poll tax, despite any assertion to the contrary, provides relatively little revenue to the county and State as a tax. As an instance, we have, at the last count, less than 40,000 people registered in Davidson County, which would mean a total, if everyone paid their poll tax to the State and county, of less than $40,000 to each. Proportionately, in the other large cities, the return would be small. Again, the average person, unless he is a property owner, has to make a special trip to the courthouse to pay his poll tax. Unless he is urged or someone pays it for him (that is, gets the money from him and takes it down to the courthouse), he just doesn't pay it. As a result, he just doesn't vote. Many people, particularly those living in the country, may have to travel several miles to make this payment. Unless urged, as I have said before, they just don't do it.

Indicative of this attitude on the part of Tennessee voters is that the total vote, even in an important election, is usually not more than 10 percent of those who could vote. On election day you hear a great many people say, "I didn't pay my poll tax. I'm not going to vote because I can't."

STATEMENT BY LEWIS CONN, MANAGER, PITTSYLVANIA TWUA JOINT BOARD, DANVILLE, VA.

1. The poll tax is an effective barrier against true democratic expression. The purpose and net result of the poll tax is to keep the vote small, thus encouraging or making easier manipulation by a political machine.

In Danville, with a population of 40,000, the largest vote ever cast in any election, prior to 1947 (primary or general election), was 4,100. In 1947 a vigorous and all-out campaign by labor succeeded in boosting it to an all-time high of 4,900. This was a different organization job which cannot be sustained from year to year on the same level. Many who paid their poll taxes for the first time in the 1947 election campaign, including back taxes, will again be disqualified to vote in 1948 because they let their taxes lapse.

In most communities there is no such aggressive and politically ambitious organization like Labor's Legislative League. Obstacles in the path of a free ballot like the poll tax simply mean that people don't bother to qualify to vote. Placing the dollar sign on the ballot is destructive of democracy and puts people in office who represents only a small segment of the people.

TWUA ran a free income-tax service for its members which brought several hundred people into the union office. Each was asked if he had paid poll taxes for last year, and if not, why not. This followed an intensive 2-year educational campaign on why workers should qualify to vote, spurred by antilabor legislation, advancement of candidates for virtually all local offices, and poll-tax contests with prizes. 207 people said they had paid their poll taxes; 170 said they had not, 30 made no reply.

This is considerably better than the picture for Danville as a whole. The conclusion is obvious that those who suffer most from the poll tax, so far as free expression is concerned, are those people who are not identified with an organized group. In the past, the conservatives have been the organized group which was a minority in the population polled and a majority of the qualified voters. In the Danville area, labor now promises to become the majority of the qualified voters, replacing the conservatives. But labor, too, will not have attained a majority status in the population as a whole. The unorganized nonvoters will not be truly represented by either group, although labor believes it comes closer to expressing the feeling of this group than do the conservatives.

Poll tax encourages either widespread disinterest in political life or, on the other hand, stimulates the organization of closely knit pressure groups.

2. The poll tax discriminates against the lower income groups.

A Virginia worker and his wife who had not paid poll taxes before must pay a total of about $10 in order to qualify to vote this year. The high cost of voting results, in effect, in class legislation against the lower income groups. This has been shown very clearly here in Danville. Although population in the fourth and eighth wards is roughly the same as most of the other nine Danville wards, as far as votes are concerned, these two wards have been the tail that wagged the dog. They are the silk-socking wards of Danville.

For example, in the primary election of August 6, 1946, 3,774 votes were cast. The fourth and eighth wards together cast 1,117 or more than 31 percent of the vote.

Harry Byrd, running for United States Senate against Martin Hutchinson, polled 2,178 votes. Hutchinson polled 1,596. Of Byrd's votes, 914, or 42 percent came from these two wards. On a city-wide basis, Byrd polled 58 percent of the total vote. In these two wards, he polled 78 percent of the total vote. If all votes in these two wards were eliminated, he would have polled 49 percent of the total vote. Martin Hutchinson carried five of the nine wards, yet got only 42 percent of the vote.

Primary reason for the fact that the votes do not reflect the will of the people is the poll tax. The well-to-do find it no real financial burden. To a workingman it involves a personal financial sacrifice.

3. Neither the Democratic Party organization nor public officers make any sustained effort to collect poll taxes. The performance of these officials demonstrates they would prefer not to receive them in large numbers, particularly from sections of the population which have been traditionally nonvoters, such as labor and the Negroes.

4. Many people may pay their taxes as a routine thing along with other taxes and not realize they have paid them and thus fail to register and therefore cannot vote.

5. County residents must travel to the county seat, a distance in some cases of 20 miles or more, in order to pay taxes.

6. In Virginia, the deadline for payment of taxes is 3 months before a Federal primary and 6 months before the general election. At this time, there is no real interest in a political campaign. Many who would qualify to vote in the 2- or 3-week period prior to an election bypass the opportunity now.

UNITED STATES ELECTIONS III

Votes cast in Democratic primaries and in general elections in poll-tax States, by congressional districts, with percentages, 1946.

ALABAMA

(Poll tax $1.50; cumulative 24 years)

State and district	Successful candidate	1940 population	Total vote cast in first Democratic primary	Percent total population voting	Total vote cast in election	Percent total population voting
1	Boykin	297,473	*19,142	6	*12,448	4
2	Grant	356,553	*22,325	6	*17,711	5
3	Andrews	303,837	27,818	9	*13,307	4
4	Hobbs	283,622	32,646	12	18,506	7
5	Rains	294,339	47,501	16	*21,560	7
6	Jarman	251,757	26,379	10	*13,551	5
7	Manasco	285,138	*24,342	9	31,418	11
8	Sparkman	300,112	*23,927	8	19,077	6
9	Battle	459,930	46,989	10	31,820	7
Total		2,832,961	271,069	10	179,488	6

Source: Democratic primary, National Committee to Abolish the Poll Tax.

ARKANSAS

(Poll tax $1)

1	Gathings	423,152	(*)		*20,250	5
2	Mills	222,974	(*)		*22,955	10
3	Trimble	177,476	(*)		*24,950	14
4	Cravens	242,165	[1] 15,050	6	*13,844	6
5	Hays	293,023	[1] 14,540	5	25,553	9
6	Norrell	303,301	(*)		28,197	9
7	Harris	287,296	[1] 21,880	8	*15,584	5
Total		1,947,387	[1] 51,470	6	151,333	8

[1] Approximate.

Source: Democratic primary figures estimated from preliminary returns in Arkansas Gazette and Arkansas Democrat, Little Rock.)

Votes cast in Democratic primaries and in general elections in poll-tax States, by congressional districts, with percentages, 1946—Continued

GEORGIA

(Abolished poll tax in 1945)

MISSISSIPPI

(Poll tax $2, cumulative 2 years)

State and district	Successful candidate	1940 population	Total vote cast in first Democratic primary	Percent total population voting	Total vote cast in election	Percent total population voting
1	Rankin	263,367	25,208	10	[a]5,429	2
2	Whitten	231,701	(b)		[a]6,491	3
3	Whittington	435,530	(b)		[a]4,185	1
4	Abernethy	201,316	(b)		[a]10,017	5
5	Winstead	261,466	28,227	11	[a]7,122	3
6	Colmer	319,635	44,623	14	[a]6,448	2
7	Williams	470,781	39,364	8	[a]10,345	2
Total		2,183,796	137,422	10	[a]50,037	2

Source: Democratic primary, Jackson Clarion Ledger, July 7, 1946, official.

SOUTH CAROLINA

(Poll tax $1; no poll tax in primary)

1	Rivers	260,482	(b)		[a]5,380	2
2	Riley	361,933	(b)		[a]4,863	1
3	Dorn	304,379	50,587	17	[a]3,530	1
4	Bryson	339,858	48,440	13	[a]3,376	1
5	Richards	251,137	(b)		[a]3,357	1
6	McMillan	353,015	51,918	14	[a]5,882	2
Total		1,899,804	146,250	15	26,388	1

Source: Democratic primary, South Carolina Democratic Executive Committee.

TENNESSEE

(Poll tax $1 to $2)

1	Phillips	385,747			[a]24,144	6
2	Jennings	288,938			34,237	9
3	Kefauver	331,120	32,866	10	29,504	9
4	Gore	237,324	[a]18,638	8	11,297	5
5	Evins	225,918	41,429	18	[a]11,646	5
6	Priest	257,267	71,001	28	9,313	4
7	Courtney	231,592	26,530	11	[a]11,659	5
8	Murray	250,695	[a]17,512	7	[a]11,893	5
9	Cooper	248,992	33,710	14	[a]12,685	5
10	Davis	358,250	50,418	14	[a]37,070	10
Total		2,915,841	292,104	14	193,448	7

Source: Democratic primary, secretary of state.

VIRGINIA

(Poll tax $1.50; cumulative 3 years)

1	Bland	250,621	(b)		18,492	7
2	Hardy	332,984	31,431	9	29,345	9
3	Gary	309,756	[c]32,908	11	29,923	10
4	Drewry	243,165	(b)		15,650	6
5	Stanley	301,157	22,051	7	24,131	8
6	Almond	301,988	27,702	9	30,982	10
7	Robertson [d]	259,048	(b)		31,348	12
8	Smith	318,495	27,262	9	34,205	11
9	Flannagan	380,679	(b)		39,788	11
Total		2,677,773	141,354	9	253,864	9

[a] Primary only; Harrison ran in election.
[b] Elected by convention.
[c] 1 percent missing.
[d] Elected by convention.
Source: Democratic primary, Richmond Times-Dispatch, Aug. 9, 1946, official.

Votes cast in Democratic primaries and in general elections in poll-tax States, by congressional districts, with percentages, 1946—Continued

TEXAS

(Poll tax $1.50)

State and district	Successful candidate	1940 population	Total vote cast in first Democratic primary	Percent total population voting	Total vote cast in election	Percent total population voting
1	Patman	306,803	53,772	18	*11,929	6
2	Combs	331,069	63,497	19	20,704	6
3	Beckworth	292,631	58,673	20	*10,688	4
4	Rayburn	259,239	*48,929	19	12,761	5
5	Wilson	298,364	56,070	14	16,188	4
6	Teague	262,735	49,074	19	*9,221	4
7	Pickett	299,721	*54,092	18	14,811	5
8	Thomas	528,961	80,013	15	46,416	9
9	Mansfield	355,317	61,339	17	*16,719	5
10	Johnson	286,110	63,230	22	*16,947	6
11	Poage	251,852	*50,378	20	*9,178	4
12	Lucas	286,132	65,012	23	17,412	6
13	Gossett	279,924	60,577	22	*17,716	6
14	Lyle	368,754	67,198	18	*30,070	8
15	West	334,616	42,300	13	*14,620	4
16	Thomason	230,700	32,547	14	*8,114	4
17	Burleson	230,010	54,744	24	*14,874	6
18	Worley	239,736	57,008	24	16,049	7
19	Mahon	275,339	71,396	26	16,726	6
20	Kilday	338,176	38,008	11	*10,543	3
21	Fisher	258,425	*56,476	22	*15,701	6
Total		6,414,824	1,185,833	18	347,395	5

Source: Democratic primary, Texas Almanac 1947-48.

GRAND TOTAL

7 States	69 districts	20,874,386	[1] 2,079,252	14	1,201,953	6

[1] Exclusive South Carolina, Tennessee first and second, and all districts where no votes were cast.
* No opposition.

SUMMARY

	1944	1946
Lowest vote in election	Abernethy, Fourth Mississippi, 13,343.	Richards, Fifth South Carolina, 3,357.
Lowest vote in primary	Abernethy, Fourth Mississippi, 6,950.	Hays, Fifth Arkansas, 14,540.
Lowest percent population voting in election.	Whittington, Third Mississippi, 3.87.	Whittington, Third Mississippi, 0.96.
Lowest percent population voting in primary.	Patrick, Ninth Alabama, 2.80	Hays, Fifth Arkansas, 4.97.
Number districts without contests in election.	36	43.
Number districts without contests in primary.	40	25.

Senator STENNIS. I have here, Mr. Chairman, a statement by the Governor of Texas, by the attorney general and the assistant attorney general of Texas, which I wish to file.

The CHAIRMAN. Without objection, it will be so ordered.

(The statement referred to is a follows:)

STATEMENT OF GOV. BEAUFORD H. JESTER, ATTORNEY GENERAL PRICE DANIEL, AND ASSISTANT ATTORNEY GENERAL OCIE SPEER OF TEXAS

Has the Congress constitutional power to prescribe by resolution or otherwise the requirement that a poll tax be paid as a prerequisite to voting for President, Vice President, electors for President or Vice President, for Senator, or Member of the House of Representatives?

In this short discussion these things are stated as fundamental:

1. "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" (United States Constitution, art. 1, sec. 2).

2. "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 Legislatures" (United States Constitution, art. XVII).

3. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people" (United States Constitution, art. X).

4. There is no authority for Federal prescription as to the qualification of electors of Senators and Members of the Congress other than articles XV and XIX dealing respectively with race and sex discrimination.

5. There is no provision in the Constitution nor is there any act of the Congress attempting to prescribe the qualification for electors in the States, except the fifteenth and nineteenth amendments forbidding race and sex discriminations.

6. The United States, as such, holds no elections, and therefore prescribes no qualifications for electors for Senators and Members of the Congress. The sole constitutional manner of electing Senators and Members of Congress is through electors of the respective States, possessing the qualifications of electors for the most numerous house of the legislature or assembly of the respective States.

7. The sole constitutional power, therefore, is in the respective States to require the payment of a poll tax as a condition precedent to the right to vote for members of the most numerous house and incidentally and necessarily for Senators and Members of the Congress, provided such poll-tax requirement is a "qualification" within the meaning of the constitution.

Mr. Dirksen, Congressman from the Sixteenth District of Illinois, speaking before a subcommittee on elections of the Committee of House Administration, on Monday, July 7, 1947, considering H. R. 66, thus summarized the whole situation:

"And the question that is involved here goes back to the one word 'qualification.'"

The learned Congressman could understand the necessity for having age as one of the qualifications. "It involves the question of maturity of judgment to discharge the responsibility as a citizen." He could understand citizenship as a qualification because "that involves fealty and devotion to the country as distinguished from divided allegiance between this and some other country." Further, he could understand residence as a qualification; "whether he is a resident or not certainly is an appropriate question to determine on a question of qualification." "We can understand," he added, "the imposition of literary tests as a qualification because that goes to the question of competency and capacity to understand the affairs of Government. * * *"

"And appearing as a Member of Congress in a representative capacity," he added, "I must be my own constitutional lawyer in placing an interpretation upon the word 'qualification' as it appears in the Constitution. So I come to the conclusion that in my judgment a poll tax is not a qualification, and the second conclusion I draw is that Congress does have power to deal with this thing."

"As I see it a poll tax is not a qualification but a restriction, because it does not involve a question of comprehension; it does not involve the question of capacity. A man may be a graduate of a university and have all of the other qualifications, but if a poll-tax requirement is not met it does not mean anything. So the poll tax does not mean that he has the capacity or the competency. The question of comprehension or capacity to understand the affairs of government are not involved in the payment of a poll tax. He may have such a qualification and still be disfranchised if he does not pay any tax. The question of comprehension under the poll-tax system is not involved at all."

"If poll tax is a qualification then, of course, the State could make it not $2 but $200 or $1,000 and could disfranchise a group of the electors of the State."

An ardent supporter of the resolution has thus isolated the very crux of the question and has volunteered his individual views as to the proper interpretation of the word "qualification" as it appears in the Constitution, such matter being, however, entirely a matter for the judiciary—the Supreme Court—and not the Congress, the creator of laws and policies within the Constitution.

It is submitted, however, that the learned Congressman is in error and his conclusion is wrong as matter of law when he decides that a State is not within

its constitutional authority in prescribing the payment of a poll tax as a legal qualification for electors of its representatives to the legislature. He is encroaching upon the judicial branch of the Government.

Every lawyer knows, and likewise every Congressman knows, except in moments of temporary forgetfulness, that a legislature may make classification of subjects for legal treatment without offending the fundamental requirements of equality of right and uniformity of law under the fourteenth amendment where such classification is reasonable, having reference to the purpose of the act. It is this principle that permits of exceptions, qualifications, and different modes of legal treatment. If this were not the rule the efficiency of legislation would be seriously hampered by reason of such general coverage.

If an act of a State legislature imposing the requirement of a poll-tax receipt as a qualification for eligibility for electors for members of its legislature applies to all persons alike it is valid law, and not in violation of the fourteenth amendment or any other constitutional provision.

Classification for legal treatment is not "discrimination" prohibited by the equal-protection clause of the fourteenth amendment (*Caskey Baking Co.* v. *Commonwealth of Virginia*, 313 U. S. 117, 85 L. Ed. 1223). The equal-protection clause of the fourteenth amendment "is not a disembodied equality and the Constitution does not require things which are different in fact or opinion to be treated in law as though they are the same" (*Tigner* v. *State of Texas*, 310 U. S. 141, 84 L. Ed. 1124).

The inequality within constitutional inhibition must be unreasonable and arbitrary (*Smith* v. *Cahoon*, 283 U. S. 553, 75 L. Ed. 1264).

A statutory discrimination will not be set aside as denial of equal protection of laws, if any state of facts reasonably may be conceived to justify it (*Metropolitan Casualty Insurance Co. of New York* v. *Brownell*, 204 U. S. 580, 79 L. Ed. 1070).

The "equal protection clause" does not forbid discrimination with respect to things that are different (*Puget Sound Power & Light Co.* v. *City of Seattle*, 291 U. S. 619, 78 L. Ed. 1025).

Even the dividing line between rational and arbitrary legislative acts should not be drawn with a view to remote possibilities (*Burnet* v. *Wells*, 289 U. S. 670, 77 L. Ed.—).

State legislation need not uniformly apply to objects having differences constituting rational bases for legislative discrimination (*Fort Smith Light & Traction Co.* v. *Board of Improvement of Bathing District No. 16 of City of Fort Smith*, 274 U. S. 387, 71 L. Ed. 1112).

Even an ordinance whose provisions are within the police power of a city to enact will not be held void on the ground that the motive of its framers was to discriminate against a certain class, where such motive does not appear from the language of the ordinance nor from its enforcement (*Soonshing* v. *Crowley*, 113 U. S. 703, 28 L. Ed. 1145).

There is no contention, however, that the ordinary poll-tax requirement for voting is otherwise than of general application to all persons coming within its terms, and is not discriminatory. The only semblance of discrimination lies in the gratuitous and extraneous arguments that the underlying motive of the legislatures has been to discriminate against somebody—the Negroes or the extremely poor—or that the requirement of such poll-tax receipt is foreign to the purpose of such acts in that it is in nowise and to no extent relevant or legally pertinent to the end sought. Such a contention is wholly without real support.

A State may legislate upon any subject creating a law with such consequences, application, exceptions, and limitations as it may reasonably think pertinent when its factual classifications have any reasonable basis in law, and such act will be valid unless it appears to a court of competent jurisdiction that such reasonable classification did not, as matter of law, exist, but that the same was arbitrary and offensive to constitutional limitations.

Let us see, now, if such acts of the States may be stricken down even by the Supreme Court, much less the Congress, a body without the judicial power as being void.

If the States are to prescribe the qualifications of electors of the most numerous House of their respective legislatures then let us see what particular qualifications the State could, within its constitutional limits, prescribe. The first and perhaps the most nearly unanimous qualification is one of age. In the nature of suffrage there must be an age qualification but just where the line of

demarkation may be is fairly debatable. Twenty-one years by common consent is the minimum age. It is arbitrary to a degree. But, indisputably, a State might prescribe a different age and such different age, having a legal basis and being uniform and not in violation of any Federal Constitution as with respect to race or sex, the same would be upheld not only as a State regulation but likewise as a compliance with the Federal Constitution.

A residence requirement is common and perhaps universal, but the time of residence might vary greatly in different States and each State be within its own constitution in prescribing that qualification.

Registration of voters is a commonplace and proper qualification. Property ownership is not an improper one, and in all of the States, perhaps, in certain elections, it is specifically required as in the issuance of bonds. Intelligence test, including education, is an essential and universally recognized qualification within certain degrees as, for instance, the denial to the insane.

The poll-tax requirement is not an infrequent one, but at the present time a very annoying one to some of those States which have not found it helpful to adopt it. Again, there are just grounds of forfeiture of the voting privilege for those acts and crimes against the government or society, such as impeachment of public officers, conviction for penal offenses, and the like. Finally, in Texas and probably in other States, all soldiers, marines, and seamen employed in the service of the Army or Navy of the United States are forbidden to vote.

This diversity of State laws is not to be forbidden but, on the contrary, is in keeping with the thoughts, habits, experiences, conditions, and the like considerations of the particular group of our people. It is the embodiment of that individuality begotten by democratic ideals of government. It was contemplated when the United States was created.

Now, if it lies within the power of the Congress by simple legislative enactment to prescribe qualifications of electors in one State, it may do so in all the States. If it may prescribe qualifications by denying poll-tax payments as a qualification in one State, it could, by the same authority, likewise do so in all States. Similarly, if it may prescribe with respect to poll-tax payments, it may prescribe with respect to any other qualification; that is to say, age, residence, intelligence, property ownership, convictions for crime, soldiers and sailors in the Army and Navy, offenses against the State government as a sovereign State. In short, it would take over the whole field of suffrage, at least to the extent that the suffrage embraced the filling of most numerous branches of the State legislatures or assemblies—substantially the whole field of suffrage. This would bring about a chaotic condition in every State of the Union, and conceivably would meet the combined opposition of every State in the Union. Such a governmental debacle was not contemplated when our constitutions were written. Government with respect to suffrage like that of the anti-poll-tax resolution was not the kind our founding fathers had in mind.

Like Congressman Dirksen, we can understand how residence of one can bespeak qualification as elector, or we can understand how education may likewise bespeak qualification. We think we can understand further, however, how a resident paying taxes to the State that protects him in his life, his home, his property, his speech, his business, his worship, and educates at public expense his children as well, would naturally feel an interest in, and an affection for, such State that would be equally loud in bespeaking qualification and fitness—for the high privilege of suffrage, especially where the benefits received by him so enormously outweigh the paltry sum usually imposed as a poll tax—in Texas $1.75 per year. It is interesting at this point, as well as pertinent, to say that for every person of whom a poll tax is required, such person, if a parent of a child within free-school age, receives an allotment from the public free-school funds of $55 per year, into which fund $1 of every poll-tax payment constitutionally enters.

Sponsors and supporters of House resolutions involved speak frequently of the poll-tax requirement as a disfranchisement of qualified electors. This is not accurate speaking. The right of suffrage is not an inherent or inalienable right—it is a conferred right, a pure matter of grace or policy of the Government itself. There is such a thing as forfeiture of the right of suffrage, to be sure, as a statutory incident to a conviction for a heinous crime, or crimes involving offenses against public policy, and the like; but this is beside the argument. It is the exception and not the rule. The individual citizen acquires the right of suffrage by meeting the requirements of the Constitution and statutes with respect to eligibility and qualification. It is therefore lax terminology and inaccurate law to speak of the poll-tax laws as disfranchising anyone.

We repeat, it not only can be seen, but it is perfectly obvious to the most careless thinker, that a churchman who pays his weekly offerings to his church is a better qualified churchman; a lodge member who pays his lodge dues, a better lodge brother; and a citizen who pays according to his ability, whether large or small, to support his Government is a better citizen—better equipped in mind and soul than if he did not bear to such church, lodge, or State that intimate relation of friendship and support. This is qualification to serve loyally, whether church, lodge, society, or sovereign State.

It comes with ill-becoming grace for the Congress, through any spokesman, to accuse a coordinate sovereign government (the State) with fraud, intentional discrimination, and the like in matters of legislation. With equal ill-becoming grace it would be improper for the State to retort to the Congress, "Your motives, your purposes, your enactments, are not in good faith; they are the cheap practices of politics at its lowest stage, trying to woo the dissatisfied groups of opposing political parties." It is a sad day for the country when governmental affairs are permitted to be carried on in such manner.

As representatives of different, but most intimately associated sovereigns, let us approach the question upon the clear principles of constitutional law. With the familiar apostrophe of Abraham Lincoln: "Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap; let it be taught in schools, in seminaries, and in colleges; let it be written in primers, spelling books, and in almanacs; let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the Nation; and let the old and the young, the rich and the poor, the grave and the gay of all sexes and tongues and colors and conditions, sacrifice unceasingly upon its altars."

Let us likewise reach our conclusion upon the same high planes of constitutional reasoning.

Section 2 of article I of the Constitution of the United States mandatorily requires: "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." Complimentary thereto article 17 in equally mandatory terms requires: "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for 6 years."

The tenth amendment strengthens, if possible, the emphatic, mutual understanding of the United States and of the States as to the precise method of electing Senators and Congressmen as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." The only express prohibitions of the Constitution are those with respect to discriminations as to race, article XV, and with respect to discrimination as to sex, article XIX.

The case of *United States* v. *Classic* (313 U. S. 307) throughout confirms the contentions we are here making with respect to the specific method of electing Senators and Members of the Congress, and contains not a word or thought to deny the power of the States to impose a poll-tax requirement, or any other appropriate qualification for the electors.

"There is an unbroken line of decisions of the Supreme Court which recognize the exclusive power of the States to prescribe the suffrage qualifications of their electors, except insofar as they are restricted by the fifteenth and nineteenth amendments which forbid discriminations only because of race, color, or previous conditions of servitude, or of sex. In *Breedlove* v. *Suttle* (302 U. S. 277, 283), decided less than 5 years ago, the Supreme Court in a unanimous opinion said:

"'To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the fourteenth amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the fifteenth and nineteenth amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate (*Minor* v. *Happersett*, 21 Wall. 162, 170 et seq.; 22 L. ed. 627, 629; *Ex parte Yarbrough*, 110 U. S. 651, 664, 665; 28 L. ed. 274, 275; 4 S. Ct. 152; *McPherson* v. *Blacker*, U. S. 1, 37, 38; 36 L. ed. 869, 878; 13 S. Ct. 3; *Guinn* v. *United States*, 283 U. S. 347, 362; 59 L. ed. 1340, 1346; 35 S. Ct. 926; L. R. A. 1916 A; 1124 82 L. ed. 256).'"

We respectfully cite the committee to the extension of remarks of Hon. Harry Flood Byrd, of Virginia, in the Senate of the United States, Tuesday, September 22 (legislative day of Monday, September 21), 1942, Congressional Record

appendix, 1942, pages A3589 to A3596, being the address of Hon. Abraham P. Staples, attorney general of Virginia.

Mr. John W. EDELMAN (Textile Workers Union of America). I want to add to the record a compilation of some election figures from the seven States dealing with the particular point that the Senator raised as to the percentage of voters in the primary elections as well as the general election, as compared with the two. You will find that they are exceedingly low in both cases.

Senator STENNIS. Do those figures show that those are the ones qualified to vote or actually voted?

Mr. EDELMAN. Actually voted, and the source is given in detail, Senator.

The CHAIRMAN. Without objection, we will include it as a part of your remarks that you have already filed with us, sir.

I think that will conclude our hearing.

(Whereupon, at 11:45 a. m., the committee adjourned.)

(At the conclusion of the hearing Senator Stennis submitted a statement which he requested be made a part of the record of the hearings. The statement referred to follows:)

I have been present during every minute of the entire hearings on the anti-poll-tax bill and am also familiar with the great deal of preparation that had to be made for the hearings by the chairman of the committee and its clerk, Mr. Albert L. Seidel.

I want to observe that everyone from both sides has been given the utmost consideration and also to especially thank the chairman and the clerk and the clerk's staff for their very fine and efficient cooperation to me in getting before the committee part of the hearings that I had been asked to be responsible for. They have performed a hard task in a most excellent manner and I commend them most highly.

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