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IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

versus

CIVIL ACTION NO. 2255-N

THE STATE OF ALABAMA and
PERRY O. HOOPER, Judge
of Probate of Montgomery
County, Alabama,

DEFENDANTS.

PLAINTIFF'S SUPPLEMENTARY BRIEF ON THE ISSUE OF LAW

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NATURE OF THE PROCEEDINGS

This action was brought August 10, 1965, by the United States pursuant to the provisions of Section 10(b) of the Voting Rights Act of 1965 and 42 U.S.C. 1971(c).[1/] The complaint seeks a judgment declaring invalid and enjoining the enforcement of Sections 178 and 194 of the Alabama Constitution and the statutes implementing these sections which precondition the right to vote in State and local general, special and primary elections on payment of a poll tax for each of two years next preceding the election.[2/]

1/ The text of these statutory provisions and other pertinent provisions of the Federal Constitution and statutes are set forth at pp.6a-9 of Plaintiff's Brief in Opposition to the Motion to Dismiss filed by the State of Alabama in this cause.

The Voting Rights Act of 1965,P.L. 89-110, 79 Stat. 437-446, is hereinafter referred to as "the Act." The Act was signed by the President on August 6, 1965.

2/ Complaint, paras. 6-7

At a pretrial conference on December 9, 1965, the parties stipulated and agreed that the pleadings present two issues:[3]

> AN ISSUE OF LAW as to whether the requirements of the Constitution and the statutes of the State of Alabama for the payment of a poll tax as a prerequisite to voting in Alabama violate the Fourteenth and Fifteenth Amendments to the Constitution of the United States and Section 1971(a) of Title 42 of the United States Code.
>
> AN ISSUE OF FACT as to whether the purpose and effect of the requirements of and the administration of the poll tax in the State of Alabama as a pre-condition to voting violates the Fourteenth and Fifteenth Amendments to the Constitution of the United States and Section 1971(a) of Title 42 of the United States Code.

It was further agreed by the parties and ordered by the Court that the issue of law would be presented to the Court on December 20, 1965, upon the pleadings, briefs and oral argument; that if the United States prevails upon the issue of law, no further proceeding in this case will be necessary or appropriate; but that if the United States does not prevail upon the issue of law, the case is to be submitted to the Court upon the issue of fact. In the latter event the time for the hearing and submission of proof is to be subsequently designated by the Court.[4]

3/ The issues framed by the stipulation are set forth in the Order on Pretrial Hearing of United States District Judge Frank M. Johnson filed December 10, 1965.

4/ Order on Pretrial Hearing, December 10, 1965, p. 2.

It is the position of the United States that the requirement of the payment of a poll tax as a precondition to voting in Alabama violates the Fourteenth and Fifteenth Amendments to the Constitution and Section 1971(a) of Title 42 of the United States Code. In support of this position, we rely upon the facts alleged in paragraphs 3 through 9 of the complaint which the defendants have admitted; the findings of fact of the United States Congress expressed in Section 10(a) of the Voting Rights Act; the brief of the United States filed in opposition to the motion to dismiss of the State of Alabama and upon the further supplementary contentions set forth below. As the Court emphasized at the pre-trial conference, the issue of law presented by the State's motion and upon the instant argument is essentially the same.[5/]

5/ On August 19, 1965, the defendant State of Alabama filed a motion to dismiss the complaint on grounds that:

1. The complaint fails to state a claim upon which relief can be granted.

2. The State poll tax may be eliminated by constitutional amendment only.

3. The plaintiff has no legal standing to sue for the elimination of poll taxes.

4. The complaint fails to allege any discrimination on account of race or color in the collection of the tax.

(Continued)

II

PROVISIONS OF THE CONSTITUTION AND STATUTES OF ALABAMA RELATING TO THE POLL TAX 6/

The Constitution and statutes of Alabama 7/ require that, in order to vote in any election, a person must (1) be a citizen of the United States and 21 years of age or older, (2) have resided in the State one year, in the county six months, and in his voting precinct three months prior to any

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5/ (Continued)

The brief filed by the United States in opposition to the motion treats separately the plaintiff's contentions that the Alabama poll tax requirement violates the due process clause; that the requirement restricts the right of poor persons to vote in violation of the equal protection clause; and that the requirement denies or abridges the right of otherwise qualified Negroes to vote on account of their race in violation of the Constitution and 42 U.S.C. 1971. The Court on September 24, 1965, denied the motion to dismiss.

6/ Paragraphs 3-9 of the Complaint which allege these provisions in general terms are admitted by the defendants.

7/ The requirements and procedures for registration and voting in Alabama are contained in Article VIII of the Constitution of Alabama of 1901, §177-196 and in Title 17 of the Code of Alabama 1940, §1-426. A Constitutional Amendment passed on November 30, 1965, repealed the requirements that an applicant explain a section of the Constitution of the United States, be of good moral character and understand the duties and obligations of citizenship.

election in which he seeks to vote; (3) be able to read and write any article of the United States Constitution,[8] not be an idiot or insane person or have been convicted of any of certain enumerated crimes, and (4) have paid the poll taxes for which he is liable.[9]

A poll tax in the amount of $1.50 is imposed annually on every non-exempt resident of the state between the ages of 21 and 45.[10] The Constitution and statutes exempt from the payment of the tax all persons over 45: veterans of World War I, World War II, and the Korean War; presently serving members of the Alabama Naval or National Guard, or those who were members for 21 years.[11] The poll tax can be paid only between October 1 and February 1.[12] During

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8/ The State of Alabama has been certified by the Attorney General of the United States and the Director of the Census as a state subject to the provisions of Section 4 of the Voting Rights Act of 1965, 30 Fed. Reg. 987 (August 7, 1965). Accordingly, literacy tests may not be required as a prerequisite to voting in elections in Alabama.

9/ The 24th Amendment to the United States Constitution proscribes the requirement of poll taxes as a prerequisite to voting in Federal Elections.

10/ Ala. Code, Art. 8, §194 (1940).

11/ Ala. Code, Art. 8, §194 (1940) (age exemption); Amend. XC, Ala. Code, Tit. 17, §238 (1951) (military service exemptions).

12/ Ala. Code, Art. 8, §194 (1940)

this period the prospective voter must have paid the poll taxes due for the previous two years in order to vote in an election in the ensuing year.[13/] Collection of the poll tax by enforcement of legal process is prohibited.[14/] The funds collected are used for the support of public schools.[15/] Poll taxes are paid to the County Tax Collector.[16/] On or before March 15 of each year the collector is required to furnish the Judge of Probate in his county with a list, by name, sex, and race of those persons who have paid the poll tax.[17/] The Probate Judge in turn furnishes the list of qualified voters to the election officials.[18/]

13/ Amend. XCVI, Ala. Code, Art. 8, §178 (1953). Section 10(d) of the Voting Rights Act of 1965 requires that initial registrants be allowed to vote in elections if they have tendered payment of the poll tax for the current year up to 45 days before the election.

14/ Ala. Code, Art. 8, §194 (1940).

15/ Ala. Code, Tit. 51, §237 (1940).

16/ Ala. Code, Tit. 51, §237 (1940).

17/ Ala. Code, Tit. 51, §247 (1940).

18/ Ala. Code, Tit. 17, §138 (1940).

III

CONGRESS HAS FOUND THAT THE ALABAMA POLL TAX REQUIREMENT DENIES PERSONS THE RIGHT TO VOTE BECAUSE OF RACE OR COLOR, DISCRIMINATES AGAINST PERSONS OF LIMITED MEANS, AND IS NOT REASONABLY RELATED TO ANY LEGITIMATE STATE INTEREST IN THE CONDUCT OF ELECTIONS.

A. The Findings and Declaration

The plaintiff is prepared to prove that the original purpose and inevitable effect of the Alabama poll tax is to disfranchise or to impose special burden on Negroes in their exercise of the right to vote; that the Alabama tax imposed an unreasonable financial burden on all poor citizens in Alabama; and that the Alabama tax is unrelated to any legitimate interest Alabama has in the conduct of elections. However, the evidence would only serve to confirm for the Court what Congress has already stated in its findings concerning poll taxes in Section 10(a) of the Voting Rights Act of 1965. The Congress found that --

> the requirement of the payment of a poll tax as a precondition to voting (1) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (2) does not bear a reasonable relationship to any legitimate state interest in the conduct of elections 19/, and (3) in some areas has the purpose or effect of denying persons the right to vote because of race or color.

19/ This objection to the tax was well expressed by the Report of the House Judiciary Committee:

(Continued)

19/ (Continued)

> Nothing in the payment of a poll tax evidences one's "qualification" to vote. A man with a million dollars in the bank cannot vote if he fails to pay the tax; a man who steals a couple of dollars to pay the tax has met this condition. A poll tax has nothing in common with true "qualifications": Age (reflecting maturity of judgment); residency (reflecting knowledge of local conditions), etc. Once it is demonstrated that the poll tax cannot be justified as a qualification for voting fixed by the States under Article I of the Constitution, good cause for this restriction on the right to vote is hard to find. Report No. 439 of the House Judiciary Committee on H. R. 6400, 89th Cong., 1st. Sess., at 22.

On the basis of these findings, Congress declared in the same section "that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting."[20/]

20/ This provision expresses unequivocally the conviction of the Congress that poll taxes are unconstitutional. Although the poll tax problem was the center of considerable controversy during the Congressional debate of the 1965 Act, the controversy among the majority of both Houses of Congress centered primarily on ways to eliminate the tax, not the desirability of eliminating the tax or the power of Congress to act. See, e.g., 111 Cong. Rec. 7616-7623, 9569-9601, 9725-9733. The majority of the Judiciary Committees in both the Senate and House of Representatives expressed the view that Congress had the power to outlaw poll taxes in the exercise of its powers to enforce the Fourteenth and Fifteenth Amendments and recommended an outright statutory ban on poll taxes. See Report No. 162, Part 3, of the Senate Judiciary Committee on S. 1564, 89th Cong., 1st Sess. at 32-35; Report No. 439 of the House Judiciary Committee on H. R. 6400, 89th Cong., 1st Sess. at 19-22 (hereinafter referred to as the Senate or House Judiciary Committee Reports, respectively.) The Attorney General, on the other hand, expressed the view that a statutory ban carried practical disadvantages which could be avoided by congressional findings and a declaration of unconstitutionality and that the latter approach, coupled with an authorization of the United States to sue to eliminate the tax, would be fully as effective as a statutory ban. See Letter from Attorney General Katzenbach to Senator Mansfield dated May 7, 1965, and reproduced at 111 Cong. Rec. 9587-9588. Senators Mansfield and Dirksen, the Majority and Minority Leaders in the Senate, concurred in the Attorney General's view and were co-sponsors of an amendment to the bill as introduced, the substance of which was ultimately enacted as section 10(a) of the Act. See 111 Cong. Rec. 10620-10634. (All references herein and hereinafter to Volume 111 of the Congressional Record are to the Daily Edition thereof.)

B. The Findings and Declaration Apply to the Alabama Poll Tax.

These Congressional findings and declaration were intended to apply to the four States which require the payment of a poll tax as a precondition to voting in State, local and primary elections -- Alabama, Mississippi, Virginia and Texas. Senators Mansfield and Dirksen, the Senator Majority and Minority Leaders, sponsored the poll tax amendment to the bill as introduced which was ultimately enacted as Section 10 of the Act.[21/] The Mansfield-Dirksen amendment contained a finding and declaration of unconstitutionality which applied to poll taxes in "certain States." During debate on the Senate floor preceding the adoption of that amendment, Senator Mansfield specifically stated that "[t]he 'certain States' are Alabama, Mississippi, Virginia and Texas."[22/]

21/ See 111 Cong. Rec. 10620-10634; note 23, infra.

22/ 111 Cong. Rec. 10627

The "certain States" limitation in the Mansfield-Dirksen amendment was subsequently changed to the "certain areas" language in Section 10(a) as enacted.[23/] This change in language was made by the Conference Committee immediately prior to the passage of the Act. The legislative history shows that, so far as the States to be affected were concerned, no substantive change was intended.[24/]

23/ The Mansfield-Dirksen amendment, which was contained in Section 9(a) of S. 1564, as passed by the Senate on May 26, 1965, provided in pertinent part:

> In view of the evidence presented to the Congress that the constitutional right of citizens of the United States to vote is denied or abridged in certain States by the requirement of the payment of a poll tax as a condition of voting, Congress declares that the constitutional right of citizens of the United States to vote is denied or abridged in such States by the requirement of the payment of a poll tax as a condition of voting. To assure that such right is not denied or abridged in violation of the Constitution, the Attorney General shall forthwith institute in such States in the name of the United States actions for declaratory judgment or injunctive relief against the enforcement of any poll tax, or substitute therefore enacted after November 1, 1964, which as a condition of voting, has the purpose or effect of denying or abridging the right to vote.

24/ See Conference Report, House of Representatives, 89th Cong., 1st Sess., Report No. 711, at p. 13; Remarks, Senator Hart, 111 Cong. Rec. 18661.

The principal reason Congress limited its findings and declaration of unconstitutionality to "certain areas" was because the State of Vermont requires payment of a $1 poll tax as a precondition to voting in town elections. An exemption is provided for "persons actually poor" and "persons receiving old-age assistance." Vt. Stat. Ann. 1958, Title 24, 5701; Title 32, §§3601, 3802.

The extensive Senate debates concerning the poll tax are replete with references to the Alabama poll tax. Opponents of the tax repeatedly stressed the fact that the low incomes of Negroes in Alabama made the tax, with its cumulative feature, an unreasonable financial burden.[25/] They also noted that where poll taxes have been abandoned, voter participation has increased.[26/] Others pointed to historical evidence that the Alabama tax was tied to the franchise for the specific purpose of disfranchising Negroes.[27/] It was noted that in Alabama, no legal process exists for requiring payment of the poll tax. The only penalty imposed for non-payment is loss of the right to vote.[28/] It was also noted that poll tax revenues form an insignificant portion of public school revenues.[29/]

25/ E.g., Remarks, Senators Kennedy of Massachusetts, Javits, Tydings and Douglas, 111 Cong. Rec. 7618-19, 8531, 9570, 9572, 9573, 9576, 9690, 9696-98.

26/ Remarks, Senator Kennedy of Massachusetts, 111 Cong. Rec. 8532-33.

27/ See Remarks, Senators Kennedy of Massachusetts, Tydings, Douglas and Case, 111 Cong. Rec. 7617-18, 9596, 9689, 9695, 9696.

28/ See Remarks, Senator Kennedy of Massachusetts, 111 Cong. Rec. 9576-77.

29/ See Remarks, Senators Kennedy of Massachusetts and Bayh, 111 Cong. Rec. 9576-77, 9705.

The majority of the Judiciary Committees of both the Senate and House of Representatives, in recommending an outright statutory ban on poll taxes in all States,[30] specifically discussed Alabama in the Reports accompanying the bills. Thus, a majority of the Senate Committee stated:

> At the present time five States require the payment of a poll tax as a condition for voting in State or local elections. The State of Arkansas has recently adopted a constitutional amendment to abolish the poll tax requirement and implementing legislation is expected to be passed in the near future. This leaves the States of Alabama, Mississippi, Texas and Virginia as the only areas where payment must be made before the privilege of voting is allowed. In the opinion of a majority of the Judiciary Committee, the Congress not only has the authority to outlaw the poll tax in these remaining States but has the duty to do so at this time under the powers given Congress by Section 5 of the 14th amendment and Section 2 of the 15th amendment. 31/

A substantially identical statement appears in the House Committee Report.[32] The joint statements by the majorities of the Judiciary Committees also referred to the original racially discriminatory purpose of the convention which adopted the tax in Alabama and

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30/ See Sec. 9 of S. 1564, as reported, April 9 (legislative day, April 8), 1965, 111 Cong. Rec. 7537; Sec. 10(b) of H.R. 6400, as reported, June 1, 1965, House Judiciary Committee Report, p. 4. The poll tax provision passed by the House of Representatives following limited debate was identical to the version reported by the House Judiciary Committee (see Sec. 10(b) of S. 1564, ordered to be printed with the amendments of the House of Representatives, July 9, 1965, 111 Cong. Rec. 663). The provision passed by the House of Representatives was, of course, changed by the Conference Committee (see notes 23-24 supra and accompanying text.

31/ Senate Judiciary Committee Report, at 32.

32/ House Judiciary Committee Report, at 19-20.

its heavier economic burden on Negroes living in this State.[33/] The House Committee report referred to the possibilities for abuse inherent in the administration of poll taxes.[34/]

33/ Ibid. at 20-21; Senate Judiciary Committee Report, at 33-34. Noteworthy in this connection is the following joint statement by the majority of the Senate Committee (at 34):

> We firmly believe that these differences in income [in Alabama, Mississippi, Virginia and Texas] and thus the ability to pay the poll tax flow from the system of State-supported segregation and discrimination in all of these States.

34/ The House Report states (at 22):

> In their administration, no less than by their arbitrary restriction, these [poll taxes] lend themselves to notorious abuse. Some poll taxes must be paid in advance, by a specified date--or the right to vote lapses; cumulative charges have to be satisfied, perhaps pricing the vote out of the market for the indigent applicant.

C. The Findings and Declaration Should be Given Weight.

The declarations of a legislature are entitled to great weight, Block v. Hirsh, 256 U.S. 135 (1921). Indeed, courts have said that the findings of Congress are presumptively correct. Smolowe v. Delendo Corp., 46 F. Supp. 758 (S.D. N.Y., 1942), aff'd., 146 F.2d 231 (2d Cir.), cert. denied, 320 U.S. 751 (1943). See also Ackerman v. J. I. Case Co., 74 F. Supp. 639, 642 (E.D. Wis., 1947). Just as the Congress is presumed to have had facts before it providing a rational basis for legislation (Borden Farm Products Co. v. Baldwin, 293 U.S. 195 (1934)), so here the Congress must be presumed to have had before it facts to justify its findings. And in this case the record before Congress would suffice to sustain the findings even in the absence of a presumption. 35/

The experience, expertise, and responsibilities of the Congress with respect to the electoral processes make the congressional judgments especially appropriate in this case:

First, the problem of the poll tax has been before successive sessions of Congress since 1939. The legislative experience with poll taxes was summarized recently by the Supreme Court in Harman v. Forssenius (380 U.S. 528, 539-40):

35/ See also Katzenbach v. McClung, 379 U.S. 294, 303-304 (1964) and Block v. Hirsh, supra.

> Congressional hearings and debates indicate a general repugnance to the disenfranchisement of the poor occasioned by failure to pay the tax.... Another objection to the poll tax raised in the congressional hearings was that the tax usually had to be paid long before the election -- at a time when political campaigns were still quiescent -- which tended to eliminate from the franchise a substantial number of voters who did not plan so far ahead. The poll tax was also attacked as a vehicle for fraud which could be manipulated by political machines by financing block payments of the tax. In addition, and of primary concern to many, the poll tax was viewed as a requirement adopted with an eye to the disenfranchisement of Negroes and applied in a discriminatory manner. The House of Representatives passed anti-poll tax bills on five occasions and the Senate twice proposed constitutional amendments. Even though in 1962 only five States retained the poll tax as a voting requirement, Congress reflected widespread national concern with the characteristics of the tax. Disenchantment with the poll tax was many-faceted. One of the basic objections to the poll tax was that it exacted a price for the privilege of exercising the franchise.

The legislative record over the years demonstrates that Congress had more than an ample basis in fact and experience to support its findings and declaration in the Voting Rights Act of 1965.[36/]

36/ See, e.g., Hearings before a Subcommittee of the Committee on the Judiciary, United States Senate, 77th Cong., 2d Sess., on S. 1280; Hearings Before the Sub-Committee on Elections, Committee on the Judiciary, House of Representatives, 80th Cong., 1st Sess. on various bills to abolish (continued)

Second, problems involving the complex mechanics of the electoral process are problems to which the members of Congress, whose tenures depend on that process, bring a high level of expertise. In the course of election campaigns and in their constant contacts with constituents, Senators and Congressmen, as professional politicians, acquire detailed first-hand knowledge about the problems encountered in voting by all sections of the electorate. Their experience specially qualifies them to determine, for example, the effect on the poor of taxing the ballot[37/] and the reasonableness of requiring payment of the tax months before elections.[38/] Congress' fund of political experience cannot be introduced as evidence that meets judicial standards, but it is certainly a valid basis for congressional action.

36/ (Continued)
the poll tax in federal elections; Report No. 530, Senate Judiciary Committee, 78th Cong., 1st Sess. on H.R. 7; Report No. 1662, Senate Judiciary Committee, 77th Cong. 2d Sess. on H.R. 1024; Hearings before the Subcommittee on Constitutional amendments of the Committee on the Judiciary United States Senate, 87th Cong., 1st Sess. on S.J. Res. 58 and 81; Hearings before the Committee on the Judiciary, United States Senate, 89th Cong., 1st Sess. on S. 1564 (hereinafter referred to as Senate Hearings); Hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 89th Cong., 1st Sess. on H.R. 6400, Serial No. 2; Senate and House Judiciary Committee Reports. These facts stand in the absence of a showing that Congress had no basis for believing them. Public Cleaners v. Florida Dry Cleaning & Laundry Board, 32 F. Supp. 31 (S.D. Fla., 1940). This court can take judicial notice that Congress could rationally have believed the evidence before it.

37/ See note 19, supra and accompanying text. And see Remarks, Senators Kennedy of Massachusetts and Douglas concerning the special burden the poll tax represents in the semi-barter economy which prevails in parts of the rural South. 111 Cong. Rec. 7619, 9697. To the same effect, see Senate Judiciary Committee Report, at 33.

38/ See Senate Hearings, at 196; Remarks, Senator Kennedy of Massachusetts, 111 Cong. Rec. 9573.

Third, Congress anticipated that its findings concerning the poll tax would be given weight by the courts. The following colloquy between Senator Hart, the floor manager of the bill,[39] and Senator Miller makes this clear (111 Cong. Rec. at 10633):

> Mr. HART. First, States have explicitly been named and identified as those which the evidence points to and with respect to which we are making this finding: Alabama, Louisiana,[40] Mississippi, and Texas.
>
> Second --
>
> Mr. MILLER. But the States are not spelled out in the amendment.
>
> Mr. HART. No. There is clear indication, however, in the legislative history on which we make our finding with respect to them, and I believe the court would accept the finding, which I believe is substantial and persuasive.

39/ Senator Hart is also a member of the Senate Judiciary Committee which conducted extensive hearings on the voting rights bill and of the Conference Committee which resolved the differences in the bills passed by the Senate and House of Representatives.

40/ Since Louisiana repealed its poll tax requirement in 1934, Senator Hart's reference to Louisiana was apparently an inadvertent error.

Mr. MILLER. Not conclusive.

Mr. HART. I would not like to speak for the court. It is my feeling that the evidence is overwhelming, but it would be a matter for the court to decide.

Mr. MILLER. But the Senator certainly does not intend to have Congress tie the hands of the court in making a finding, does it?

Mr. HART. We would not be in a position to do it even if we intended it. I am sure the court gives us credit for good faith and sound judgment in making such a finding.

In addition, the Attorney General, in his letter of May 7, 1965, to Senator Mansfield, expressed the view that the Congressional declaration of unconstitutionality "will weigh as heavily with the courts as any attempt to outlaw state taxes by Congressional fiat." 111 Cong. Rec. 9588.[41/] It is clear from the legislative history that the Senate relied heavily upon those views in making its decision to adopt the provision in its present form.[42/]

41/ The Attorney General reasserted this view in his letter of May 19, 1965, to Senator Mansfield, when he wrote, "This solem declaration of the Congress should be very important in guiding the courts to a resolution of the ultimate constitutional question." 111 Cong. Rec. 10632

42/ 111 Cong. Rec. 10620-10634.

Finally, deference to the Congressional judgment is particularly appropriate where, as here, the Congress is exercising authority expressly conferred upon it to enforce the Fourteenth and Fifteenth Amendments.[43/] These specific grants of legislative power imply not only a wide scope for Congressional judgment but also a special responsibility to enforce these Amendments. In the landmark case of Ex parte Virginia, 100 U. S. 339, 345-46 (1879), the Supreme Court generally defined the breadth of the enforcement sections of the three post-War Amendments:

> 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.

This standard clearly encompasses the "appropriate legislation" findings and declaration that poll taxes are unconstutitional.

43/ Section 10(b) recites that the statutory authority of the Attorney General to bring this action is conferred "in the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment . . ."

IV

THE ALABAMA POLL TAX VIOLATES THE FIFTEENTH AMENDMENT

The Fifteenth Amendment forbids States from denying or abridging the right to vote on the basis of race. The right to vote free from racial discrimination is, therefore, a fundamental and explicit constitutional right entitled to the fullest protection the courts are capable of conferring upon it. Accordingly, the Fifteenth Amendment precludes not only those State voting statutes which operate to achieve a racially discriminatory effect, Louisiana v. United States, 380 U.S. 145 (1965); United States v. Mississippi, 380 U.S. 128 (1965), but also a statute which harbors a clear potential for discrimination and which is not essential to the State's pursuit of its legitimate interests. The Alabama poll tax requirement is such a statute.[44/]

The United States has alleged and is prepared to prove at trial the racially discriminatory purpose and effect of the Alabama poll tax requirement. This proof, however, is not essential to a disposition of

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44/ We have argued in our first brief, and we reassert the argument here, that the franchise is a fundamental personal right implicit in a number of provisions of the Constitution, including the First Amendment. Plaintiff's Brief in Opposition to Motion to Dismiss, pp. 16-22. The Fifteenth Amendment contention presented here is related to the earlier argument in that it is premised upon a fundamental right which calls upon the courts to afford broad protection in vindication of the right. Here, however, the right of which we speak is not implicit; it is contained in the language of the Fifteenth Amendment as plain as words can make it.

the Fifteenth Amendment question. Congress in Section 10(a) of the Voting Rights Act of 1965 has found generally that the two essential ingredients for Fifteenth Amendment disposition of this case exist: First, a poll tax requirement harbors a potential for racial discrimination, and second, the poll tax, far from being a necessary tool for the achievement of a State interest in the franchise, does not bear even a reasonable relationship to any such interest.[45/]

A. The Fifteenth Amendment Confers A Fundamental Constitutional Right Entitled To Maximum Judicial Protection.

The right to vote in elections free from racial discrimination is expressly conferred by the Fifteenth Amendment. Racial discrimination in voting is absolutely forbidden; the State can do nothing to achieve this forbidden object without violating the explicit constitutional command.

The Fifteenth Amendment is more than an admonition to the States; it affirmatively confers individual rights. Thus, the Supreme Court in United States v. Mississippi, 380 U.S. 128, 138 (1965), declared: "The Fifteenth Amendment protects the right to vote regardless of race against any denial or abridgement by the United States or any State" (emphasis added).

45/ See discussion of the Congressional findings, supra, at pp. 8-14.

Whatever may be the historical view regarding the right of suffrage itself, the right to vote free from racial discrimination was characterized soon after the adoption of the Fifteenth Amendment as a "necessary attribute of national citizenship." United States v. Cruikshank, 92 U.S. 542, 555 (1876). In Ex Parte Yarbrough, 110 U.S. 651 (1884), the Supreme Court said of the Fifteenth Amendment:

> While it is quite true, as was said by this court in United States v. Reese, that this article gives no affirmative right to the colored man to vote, and is designed primarily to prevent discrimination against him whenever the right to vote may be granted others, it is easy to see that under some circumstances, it may operate as the immediate source of a right to vote.46/

In determining whether the poll tax requirement constitutes a prohibited threat to the right to vote free of discrimination, the judicial inquiry should proceed with a view to protecting the preferred right. The burden of justifying any abridgement of the right is to be borne by the State.47/ Where, for example,

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46/ 110 U.S. at 665. It has recently been suggested that the difference between the nature of the right conferred by the Fifteenth Amendment and those protected by the Fourteenth Amendment justifies Congressional action to enforce the Fifteenth which would not be supportable under the Fourteenth. Note, The Strange Career of "State Action" Under The Fifteenth Amendment, 74 Yale L.J. 1448 (1965).

47/ The specificity of the right and the importance of its operation to the functioning of a democratic society determine the kind of judicial review which must be had upon allegations of infringements of the right. See United States v. Carolene Products, 304 U.S. 144, 152-3, fn. 4 (1938).

the issue is an alleged abridgement of a free press, the initial statement of the issue must acknowledge "this essential personal liberty of the citizen," and then "the inquiry is as to the historic conception of the liberty of the press and whether the statute under review violates the essential attributes of that liberty." Near v. Minnesota, 283 U.S. 697, 707-708 (1931). See Grosjean v. American Press Co., 297 U.S. 333 (1936). The rights of the people to enjoy freedom of press and religion "occupy a preferred position," and the courts must "'weigh the circumstances and . . . appraise the . . . reasons . . . in support of the regulation . . . of the rights.'" Marsh v. Alabama, 326 U.S. 501, 509 (1946) (quoting from Schneider v. State, 308 U.S. 147, 161).

The fundamental nature of the right conferred by the Fifteenth Amendment and the judicial obligation sedulously to protect that right from unwarranted abridgement have been recognized by the Supreme Court. The Court has observed that Fifteenth Amendment rights "would be of little value if they could be . . . indirectly denied," Smith v. Allwright, 321 U.S. 649, 664 (1944), or "manipulated out of existence." Gomillion v. Lightfoot, 364 U.S. 339, 345. By establishing the fundamental nature of the right and then examining with a jaundiced eye apparent limitations upon it, the Court has been able to conclude that the Amendment "nullifies sophisticated as well as simple-minded modes of discrimination" and "hits onerous procedural requirements

which effectively handicap exercise of the franchise although the abstract right to vote may remain unrestricted as to race." Lane v. Wilson, 307 U.S. 268, 275 (1939).

B. Statutes Which Have The Potential of Infringing Upon Fundamental Constitutional Rights Are Invalid in The Absence of A Compelling State Need to Support Them.

Conflicts between the exercise of powers belonging to the States and individual rights conferred by the federal Constitution are unavoidable in our federal system. The inclusion in the Constitution of guarantees against State action presupposes that from time to time the States may act in a way that will tend to infringe upon the protected rights. To insure the integrity of these individual rights, State legislation in this area must undergo analysis which probes beyond the perhaps innocuous terms of the statute or its application to a particular set of facts. Demonstrable abridgments of constitutional rights of course require that the offending legislation be stricken down; but, in addition, a statute which harbors a potential for such an abridgment must also fall. The potential may lie in possible applications of the legislation to deny protected rights or it may be seen in vague language which, even without active enforcement, inhibits the exercise of such rights.

1. A State may not distort or abuse its legitimate powers to achieve an abridgment of constitutional rights. The power of taxation, for one, may not be manipulated to fashion "a deliberate and calculated device in the guise of a tax to limit the circulation of

information to which the public is entitled in virtue of the constitutional guaranties." Grosjean v. American Press Co., 297 U.S. 233, 250 (1936). But in addition to statutes which directly oppress protected rights, statutes merely capable of an application which would infringe on such rights also are proscribed. A statute shown to have plainly permissible applications must be voided if "it sweeps within its broad scope activities that are constitutionally protected . . . ." Cox v. Louisiana, 379 U.S. 536, 552 (1965). The legality of any particular application is not dispositive, "[f]or in appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar." NAACP v. Button, 371 U.S. 451, 432 (1963).

2. A statute which might never be used to deny constitutional rights may unconstitutionally inhibit the exercise of such rights because of its language or reasonable conclusions that affected persons may draw from its existence. The Court in NAACP v. Button, 371 U.S. at 435-436, said of such a statute:

> A statute broadly curtailing group activity leading to litigation may easily become a weapon of oppression, however even handed its terms appear. Its mere existence could well freeze out of existence all such activity on behalf of the civil rights of Negroes.

In pursuit of its wholly legitimate interest in controlling obscenity, the State "is not free to adopt whatever procedures it pleases . . . without regard to the possible consequences for constitutionally protected speech." Marcus v. Search Warrant, 367 U.S. 717, 731 (1961) (emphasis added). It is, therefore, necessary "that regulation by the States of obscenity conform to procedures that will ensure against the curtailment of constitutionally protected expression." Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 66 (1963). Such curtailment may occur when persons "sensitive to the perils posed" by the statute, "avoid the risk of loss of employment, and perhaps profession, only by restricting their conduct to that which is unquestionably safe." Baggett v. Bullitt, 377 U.S. 360, 372 (1964).

3. Statutes which unquestionably further legitimate State purposes are invalid if they infringe on protected rights and the infringement is not essential

to the State's purpose. When Alabama sought to obtain NAACP membership lists in a proceeding to enforce its laws regarding the registration of associations, its efforts were constitutionally unsupportable because the Court was "unable to perceive that the disclosure of the names of petitioner's rank and file members has a substantial bearing" on the legitimate inquiry to determine whether the NAACP was conducting business in the State. NAACP v. Alabama, 357 U.S. 449, 464 (1958). An Arkansas law requiring teachers to list all their organizational affiliations over a five-year period was declared invalid in Shelton v. Tucker, 364 U.S. 479, 488 (1960), the Court first observing the potential infringement on rights that accompanies such disclosures, and then stating:

> In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.

In a similar case dealing with the disclosure of NAACP membership lists, the Court ruled (Bates v. Little Rock, 361 U.S. 516, 524-525 (1960)):

> [T]he State may prevail only upon showing a subordinating interest which is compelling. . . . When it is shown that State action threatens significantly to infringe upon constitutionally protected freedom it becomes the duty of the Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification.

These principles of judicial review apply in the area of Fifteenth Amendment rights for the same reasons and in the same way as the courts have applied them in the area of First Amendment rights. They are at the foundation of the decision in Louisiana v. United States, 380 U.S. 145 (1965). The Court observed that the statute there under attack gave registrars of voters "uncontrolled power" to determine whether applicants were qualified to vote, and that "[t]he cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which have the voting fate of a citizen to the passing whim of an individual registrar." 380 U.S. at 153. On these grounds the statute was declared invalid under the Fifteenth Amendment.

C. The Poll Tax Achieves A Racially Discriminatory Effect, Is A Likely Tool of Racial Discrimination, And Is Unnecessary To The Pursuit Of Any Legitimate Interest Of The State.

The United States stands ready to prove at trial that the Alabama poll tax requirement was conceived of a desire to disfranchise Negroes without disfranchising white persons and that it substantially achieves this effect. Such proof, however, would simply corroborate the general findings of Congress contained in Section 10(a) of the Voting Rights Act of 1965.[48/] Because the findings are based upon a record and known circumstances showing

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48/ See discussion of Congressional findings, supra, at pp. 7-20.

them to be, at the very least, reasonable, they provide the factual basis for a general legal conclusion that Alabama poll tax requirement violates the Fifteenth Amendment.

1. Congress found that the poll tax "in some areas has the purpose or effect of denying persons the right to vote because of race or color."[49] This finding establishes that the poll tax requirement harbors a realistic potential for discrimination in violation of the Fifteenth Amendment. As we have shown, Congress' general finding may be given great weight in this proceeding.[50]

Congress' finding of a nexus between the poll tax and racial discrimination in violation of the Fifteenth Amendment reflected the judgments of the courts. See, e.g., United States v. Dogan, 314 F.2d 767 (C.A. 5, 1963); United States v. Duke, 332 F.2d 759, 764 (C.A. 5, 1964); United States v. Holmes County, 9 Race Relations Rep. 229 (S.D. Miss, C.A. No. 3417, Feb. 25, 1964; not officially reported). Congress refers to "purpose and effect,"

49/ The phrase "in some areas" was meant by Congress to embrace Alabama. See, supra, pp. 10-14.

50/ See, supra, pp. 15-20. Specific contemporary instances of discriminatory administration of the poll tax were in fact before Congress. Hearings on S. 1564 Before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., pt. 2, at 1226-1227, 1306-1307 (1965).

which go beyond the acts of individual officials.[51] The racially discriminatory purpose of linking the poll tax to the vote is a matter of historical record which Congress may be presumed to have had before it.[52] Moreover, a poll tax requirement adopted at the same time as that of Alabama was, in a recently expressed view of the Supreme Court, "born of a desire to disenfranchise the Negro." Harman v. Forssenius, 380 U.S. 528, 543 (1965). This, too, could properly have influenced the Congressional determination. The discriminatory economic effect which Congress found to be accomplished by the poll tax requirement is outlined in our first brief at pp. 60-71.

More subtle aspects of the requirement may well have induced Congress to make its finding. Where the State itself adopts an unyielding opposition to the registration of Negroes as voters, as Alabama has,[53]

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51 / This Court has postponed consideration of the "purpose and effect" of the Alabama poll tax requirement until trial. We refer to the existence of materials supporting the Congressional finding of "purpose and effect" merely to demonstrate the reasonableness of the finding.

52/ See, e.g., Key, Southern Politics 578-579 (1949, Vintage Books ed.); The Court may "assume that the legislature had before it such information as was readily available," including works of history. Bryant v. Zimmerman, 278 U.S. 63, 76 (1928).

53/ See, e.g., Davis v. Schnell, 81 F. Supp. 872 (S.D. Ala. 1949), affirmed 336 U.S. 933 (1949); Alabama v. United States, 304 F.2d 583 (C.A. 5, 1962); United States v. Atkins, 323 F.2d 733 (C.A. 5, 1963); United States v. Mayton, 335 F.2d 153 (C.A. 5, 1964); United States v. Penton, 212 F. Supp. 193 (M.D. Ala., 1962).

each of the separate devices which together make up the racially discriminatory system operate to achieve the single end. The use of artificial barriers which cause the actual disqualification of individuals may also "inhibit other qualified voters from running the gauntlet of discriminatory and humiliating practices by a registrar and his deputies." United States v. Manning, 215 F. Supp. 272, 288 (W.D. La., 1963). Congress could well have concluded that in such a setting the very existence of a poll tax requirement has an unnatural dampening effect on Negro participation in the electoral process.

2. Congress has found that the poll tax "does not bear a reasonable relationship to any legitimate State interest in the conduct of elections."[54/] Again, in our first brief (at pp. 28-36) we have attempted to rebut each of the ostensible justifications that could be put forth by the State to support the tax. (See, supra, pp. 37-38.) Congress, from its unique vantage point, has found these considerations persuasive. It would require a compelling demonstration indeed for the State to convince this Court otherwise.

It is the absence of a reasonable relationship to a legitimate State interest that allows this Court to conclude that the poll tax requirement violates the

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54/ Voting Rights Act of 1965, Section 10(a)(ii).

Fifteenth Amendment. Given the racial characteristics of the tax, the State would have to demonstrate not just any rational relationship to its interests, but a compelling and essential relationship to a legitimate object.

The powers of the State to levy taxes and to regulate the right to vote are unquestioned. Nonetheless, it is no novelty for such powers to give way to ensure fulfillment of constitutional rights. The power to regulate obscenity must yield to the essentials of a free press;[55/] the power to regulate the practice of law may not be used to impede free speech;[56/] the legitimate regulation of libel may be circumscribed for similar reasons;[57/] so, too, may the entirely proper regulation of out-of-state businesses,[58/] and inquiries into the fitness and qualifications of teachers.[59/] Essential rights may not be threatened in the course of examining the loyalty of State employees,[60/] or in preventing

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55/ Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963); Marcus v. Search Warrant, 367 U.S. 717 (1962).

56/ NAACP v. Button, 371 U.S. 415 (1963).

57/ New York Times v. Sullivan, 376 U.S. 254 (1964).

58/ NAACP v. Alabama, 357 U.S. 449 (1958).

59/ Shelton v. Tucker, 364 U.S. 479 (1960).

60/ Baggett v. Bullitt, 377 U.S. 360 (1960).

breaches of the peace.[61] And the power to tax itself must also bend for such reasons.[62]

The State does not need the poll tax, but Negroes need to be free from its restrictive impact. The tax violates the Fifteenth Amendment.

61/ Cox v. Louisiana, 379 U.S. 559 (1965).

62/ Grosjean v. American Press Co., 297 U.S. 233 (1936); Murdock v. Pennsylvania, 319 U.S. 105 (1943).

V

THE POLL TAX REQUIREMENT IS AN ARBITRARY RESTRICTION ON THE RIGHT TO VOTE

The United States contends that the execution of a price for the right to exercise the franchise cannot be justified as a qualification for voting nor is it reasonably related to any legitimate interest the State may have in the conduct of elections. We reassert here in support of this contention the arguments advanced at pp. 22-39 of our brief in opposition to the State's motion to dismiss.

The Congress implicitly found the poll tax to be an arbitrary restriction on the right to vote in 1962 when it adopted the Twenty-Fourth Amendment. In 1965 it made the finding explicit in Section 10(a) of the Voting Rights Act. The Supreme Court reflected the same conclusion in its statements critical of the Virginia poll tax requirement in Harman v. Forssenius, 380 U.S. 528, 539-540 (1965).[63/]

The poll tax requirement cannot be justified as a means of assuring an interested electorate. Only those citizens between 21 and 45 are required to pay and even within this group, substantial numbers are exempted including veterans of wars and members of the

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63/ The Court's statement is quoted at page 26 of plaintiff's brief in opposition in this case.

National Guard.[64/]

Payment must be made long before election campaigns begin and generate interest in voting. Non-payment is as easily the result of inadvertence as an indicator of lack of interest. Indeed, the State has made no statutory provision for the giving of notice or reminders to citizens that the tax must be paid before February 1 or the franchise lost.

The payment of a fee to vote is not a reasonable or necessary means of testing residence. As the Supreme Court pointed out in Harman v. Forssenius, 380 U.S. 528, 543, "numerous devices [are available] to enforce valid residence requirements -- such as registration, use of the criminal sanction, purging of registration lists, challenges and oaths, public scrutiny by candidates and other interested parties."

Nor can a tax on the franchise be sustained as a revenue measure. Recognizing a legitimate State interest in raising revenue, this interest does not justify using disfranchisement as a means of collection. Alternative means are available which do not restrict fundamental rights. As the Court held in Murdock v. Pennsylvania, 319 U.S. 105, 113 (1943), a State may

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64/ Well under half of the Alabama voting age population is required to pay the tax. U. S. Bureau of the Census. U. S. Census of Population: 1960. Detailed Characteristics. Alabama. Final Report PC(1)-2D. Table 104, p. 2-291; Table 97, p. 2-260.

not, at least without demonstrating an urgent need, "impose a charge for the enjoyment of a right granted by the Federal Constitution." A small amount of revenue raised by the charge of $1.50 per voter demonstrates no such need and provides no warrant for the restriction of the fundamental right of the franchise.

VI

THE ALABAMA POLL TAX REQUIREMENT INEVITABLY DISCRIMINATES AGAINST THE POOR

As we pointed out in our brief in opposition to the State's motion to dismiss, more than 500,000 citizens of voting age resident in Alabama have incomes insufficient to provide the basic necessities of life.[65] The unconstitutionality of the poll tax requirement does not, however, depend upon the number of the poor who must choose between food and franchise. The Supreme Court has made clear that the States may not condition fundamental rights upon an individual's economic status. In Griffin v. Illinois, 351 U.S. 12 (1956), and succeeding cases it was the right of a criminal defendant to bring an effective appeal. In Reynolds v. Sims, 377 U.S. 533, and Gray v. Sanders, 372 U.S. 368 (1963), it was the franchise itself:[66]

65/ Brief in opposition, pp. 41-43. We reassert here the arguments made at pp. 39-47 of that brief in support of the contention that the poll tax violates the equal protection clause of the Fourteenth Amendment.

66/ Reynolds v. Sims, 377 U.S. at 536.

> Diluting the weight of voters because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, Brown v. Board of Education, 347 U.S. 483 . . . , or economic status, Griffin v. People of State of Illinois, 351 U.S. 12 (emphasis added). And again (at 560-61):
>
> [Wesberry v. Sanders, 376 U.S. 1] clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State (emphasis added).

The amount of the economic charge involved need not be large. In Smith v. Bennett, 365 U. S. 708 (1961), a $3.00 fee for allowances of an appeal was struck down. Here a husband and wife must pay $6.00 to vote.

A charge for the vote will inevitably handicap and deter potential voters of straited economic means. They will have to sacrifice more to enjoy the same right. Only the most compelling interest would justify this discrimination. No such interest may be found.

VII

NO CONTROLLING PRECEDENTS PRECLUDE A JUDGMENT FOR THE UNITED STATES IN THIS CASE

It is frequently assumed that because a State is empowered to set qualifications for voting, a poll tax enacted pursuant to that power is constitutional. See, e.g., Davis v. Teague, 220 Ala. 309, 125 So. 51 (1929). The Supreme Court, however, has not so held.

Breedlove v. Suttles, 302 U.S. 277 (1937), resolved none of the issues presently before this Court. In Breedlove, the Court held that the Georgia poll tax requirement (a three-year cumulative provision since repealed) did not violate the equal protection clause or the privileges and immunities clause of the Fourteenth Amendment in its partial exemption of women and total exemption of minors and persons over 60. The Court further ruled that the Nineteenth Amendment in no way prohibited the exemption of women who do not register to vote. The Court decided no questions under the due process clause or the Fifteenth Amendment, but suggested, without actually deciding, that a State does not possess the constitutional power to exact payment of a poll tax from all persons irrespective of their ability to pay (302 U.S. at 281):

> While possible by statutory declaration to levy a poll tax upon every inhabitant of whatsoever sex, age or condition, collection from all would be impossible for always there are many too poor to pay. Attempt equally to enforce such a measure would justify condemnation of the tax as harsh and unjust.

As we stated in the Brief in Opposition to the Motion to Dismiss (p. 47), the Court's decision in Griffin v. Illinois and statements in Gray v. Sanders and Reynolds v. Sims suggest a heightened recognition of the rights of the poor to equal treatment and the likelihood that the dictum in Breedlove would not be followed.

In Butler v. Thompson, 97 F. Supp. 17 (E.D. Va. 1951), a three-judge district court rejected an attack on Virginia's poll tax based exclusively upon the Fifteenth Amendment, and its judgment was affirmed per curiam by the Supreme Court. 341 U.S. 937 (1950). The attack was premised on two facts: (1) the drafters of the Virginia poll tax intended that it achieve the disfranchisement of Negroes, and (2) the tax was unfairly administered in that only 61% of the adult Negro population compared to 76% of the adult white population were assessed the tax. The district court ruled that the motives of the drafters were legally immaterial and that the convention history did not clearly establish a racial purpose. On the latter point the Supreme Court has now concluded otherwise, Harman v. Forssenius, 380 U.S. 528, 543 (1965), and the former proposition is of doubtful validity where the alleged motive or purpose is racial. See Griffin v. School Board, 377 U.S. 218, 231 (1964). The plaintiff's failure of proof on the issue of discriminatory administration is, of course, irrelevant to the issue of law presented here. Further, the decision says nothing of the factual record

or other considerations which moved Congress to make the contrary findings which are before the Court in this case.

The opinions in Breedlove and Butler approach the issue of the constitutionality of the poll tax by conceding a broad power in the State to levy such a tax, and then hold that the complainants have established no individual right which requires the court to circumscribe that power. The approach is no longer valid; it is now necessary to start with the fundamental right to vote and the explicit right to be free from racial discrimination in voting, and then ask whether the State poll tax requirement unduly infringes upon the right.

CONCLUSION

We respectfully submit that, as a matter of law, the poll tax in Alabama violates the Fourteenth and Fifteenth Amendments to the Constitution of the United States as well as 42 U.S.C. 1971(a), and that the United States is entitled to the relief prayed for in its Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kenneth G. Franklin, certify that on December 17, 1965, I served the foregoing Plaintiff's Supplementary Brief on The Issue of Law on:

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