
January 1969

Voting Rights - Ownership of Property No Longer a Valid Qualification

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Recommended Citation

C. R. White, Note, *Voting Rights - Ownership of Property No Longer a Valid Qualification*, 23 Sw L.J. 964 (1969)

<https://scholar.smu.edu/smulr/vol23/iss5/16>

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whether it will put an "impossible burden on our already undermanned law enforcement personnel"³⁸ are questions which remain to be answered.

Indeed, there are many questions raised by the decision which remain to be answered. For example, to what extent do a person's physical characteristics enter into the determination of the area of his immediate control? Certainly a large person would have immediate control over a greater area than a small person. However, it is not so clear as to whether a young person could be said to have a greater area of immediate control than an old person, or whether a person's physical infirmity (being confined to a wheelchair for example) might alter what would be considered his area of immediate control. If it is to be accepted that a person with a physical infirmity would have a smaller area of immediate control the correlative question of whether a person with known physical prowess (*i.e.*, a known athlete) could be held to have a greater area of immediate control. There is also the situation of an ambulatory suspect. If an attempt is made to arrest the suspect in one room and he then moves to another, the problem is presented as to whether the police should be allowed to search the first room, or the second, or perhaps both. The immediate response might be to say that the place where the suspect finally comes to rest and the arrest actually takes place is the one to search. This conclusion presents some interesting possibilities. For instance, rather than trying to grab evidence and destroy it before they are apprehended, criminals might be better advised to run away from the evidence so that it will not be in the area of their immediate control.

It would be unrealistic to expect one decision of the Supreme Court to deal with all the possible factual variations that could arise. Thus, the Court delineated a guideline to be followed in judging these different situations. The guideline set down in *Chimel* is that they must be viewed "in the light of established fourth amendment principles."³⁹ The aid that this proposition will give seems highly questionable in light of the fact that if *Chimel* brought forth any point strongly, it is that there are no "established" fourth amendment principles.

Barry P. Helft

Voting Rights — Ownership of Property No Longer a Valid Qualification

Plaintiff was a thirty-one-year-old college educated bachelor who lived in his parents' home in a local school district in New York. He attempted to register for and vote in a school district election. However, the school district rejected his application because he had no children and neither owned nor leased taxable real property within the district as was required

³⁸ Collings, *Toward Workable Rules of Search and Seizure—An Amicus Curiae Brief*, 50 CALIF. L. REV. 421, 446 (1962).

³⁹ 395 U.S. at 769.

by a state statute governing voter qualifications for school district elections.¹ Plaintiff instituted a class action challenging the constitutionality of the voter eligibility requirements of the statute.² A three-judge district court ruled that the legislature could constitutionally limit the franchise to school district residents and their spouses who own real property, and to parents or guardians of children attending district schools. Accordingly, the court dismissed his complaint.³ *Held, reversed and remanded*: Even if a state may limit the right to vote in school district elections to persons "primarily interested" or "primarily affected," a statute prescribing voting qualifications such as (1) parenthood, or (2) ownership or leasing of taxable real property within the district, is not sufficiently tailored to achieve such a limitation, and is unconstitutional under the equal protection clause of the fourteenth amendment. *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969).

I. VOTING QUALIFICATIONS

The Constitution of the United States, as adopted in 1788 left to each state the power to determine who might vote in state and national elections.⁴ The states were not prohibited to prescribe voting qualifications based on property ownership, payment of taxes or even race or sex.⁵

¹ N.Y. Educ. Law § 2012 (McKinney 1969):

A person shall be entitled to vote at any school meeting for the election of school district officers, and upon all other matters which may be brought before such meeting who is:

1. A citizen of the United States.
2. Twenty-one years of age.
3. A resident within the district for a period of thirty days next preceding the meeting at which he offers to vote; and who in addition thereto possesses one of the following three qualifications:
 - a. Owns or is the spouse of an owner, leases, hires, or is in possession under a contract of purchase or is the spouse of one who leases, hires, or is in possession under a contract of purchase of real property in such district liable to taxation for school purposes, but the occupation of real property by a person as lodger or boarder shall not entitle such person to vote, or
 - b. Is the parent of a child of school age, provided such a child shall have attended the district school in the district in which the meeting is held for a period of at least eight weeks during the year preceding such school meeting, or
 - c. Not being the parent, has permanently residing with him a child of school age who shall have attended the district school for a period of at least eight weeks during the year preceding such meeting.

No person shall be deemed to be ineligible to vote at any such meeting, by reason of sex, who has the other qualifications required by this section.

² Plaintiff did not challenge the age, citizenship, or residency requirements because he met all of these. He only challenged the additional requirements (*i.e.*, property, and parent or guardian of a child in the district school).

³ *Kramer v. Union Free School Dist. No. 15*, 282 F. Supp. 70 (E.D.N.Y. 1968). Initially the district court denied his request that a three-judge district court be convened. The Court of Appeals for the Second Circuit reversed, ruling that the complaint warranted the convening of a three-judge court. The case was remanded to the district court.

⁴ U.S. CONST. art. I, § 2 provides that, in voting for a representative, "The Electors [voters] in each state shall have the Qualifications requisite for Election of the most numerous Branch of the State Legislature." U.S. CONST. amend. XVII applies the same rule in specifying those who are qualified to vote for senators. These provisions, and U.S. CONST. amend. X, leave to the states the power to prescribe voting qualifications.

⁵ *Pope v. Williams*, 193 U.S. 621, 633 (1904); *Wiley v. Sinkler*, 179 U.S. 58 (1900). The Founding Fathers were content with restricting voting to the upper economic levels. The result was, according to the estimate of students of the subject, that not over half of the adult white men in the United States were eligible to vote. D. MCGOVNEY, *THE AMERICAN SUPFRAGE MEDLEY* 16 (1949) [hereinafter cited as MCGOVNEY].

Although three amendments have restricted the power of the states with respect to the kinds of voter qualifications they may prescribe, these restrictions have a limited effect. The fifteenth amendment, ratified in 1870, forbids the states to deny any citizen the privilege of voting "on account of race, color, or previous condition of servitude."⁶ The nineteenth amendment, ratified in 1920, forbids the states to deny any citizen the privilege of voting "on account of sex."⁷ The twenty-fourth amendment, ratified in 1964, forbids the states to deny any citizen the privilege of voting in certain elections "by reason of failure to pay any poll tax or other tax."⁸ It is significant that these amendments *did not grant* any citizen a right to vote nor did they deprive the states of their power to prescribe other qualifications for voting. That power merely was *reduced* by the prohibition of discrimination on account of race, sex, or ability to pay a tax.

Voting qualifications based on property ownership have never been dealt with by constitutional amendment.⁹ As late as 1949 one authority asserted that the Constitution permits states to prescribe property qualifications for voting in state and even national elections.¹⁰ This assertion was undoubtedly grounded on the attitude of courts toward the power of the states in this area. The controlling case in 1949 was *Pope v. Williams*.¹¹ There the Supreme Court upheld a Maryland statute requiring voters to have been registered in the state for at least a year prior to voting in a state election. The Court held that the right to vote in a state was not one of the privileges and immunities protected by the fourteenth amendment. The privilege of voting in a state was found to be within the jurisdiction of the state itself, and it was held that the question whether conditions for voting prescribed by the state were reasonable or unreasonable was not a federal one.¹²

In 1937 the Court upheld a Georgia poll tax¹³ as a valid prerequisite to voting,¹⁴ finding, as it did in *Pope*, that the right to vote is not a privilege protected by the privileges and immunities clause of the fourteenth amendment. Indeed, as late as 1959 the Court upheld a North Carolina literacy test¹⁵ and continued to follow similar reasoning.¹⁶ However, as the Court

⁶ U.S. CONST. amend. XV.

⁷ *Id.* amend. XIX.

⁸ *Id.* amend. XXIV.

⁹ North Carolina was the last state to abandon property requirements. *McGOVNEY* 50.

¹⁰ *Id.* at 51. This authority was obviously considering the fourteenth amendment as well as the Constitution itself.

¹¹ 193 U.S. 621 (1904).

¹² *Id.* at 632-33.

¹³ GA. CODE ANN. § 92-108 (1933) (repealed).

¹⁴ *Breedlove v. Suttles*, 302 U.S. 277, 283 (1937):

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.

¹⁵ N.C. GEN. STAT. § 163-28 (1964).

¹⁶ *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50 (1959): "The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, *Pope v. Williams*, 193 U.S. 621, 633 . . ."

began to broaden its interpretation of the equal protection clause,¹⁷ its attitude toward voting rights changed.

II. RECENT DEVELOPMENTS IN VOTING RIGHTS

In *Baker v. Carr*¹⁸ the Supreme Court questioned under the equal protection clause the constitutionality of a state system of apportionment.¹⁹ The Court held that certain voters were denied equal protection of the laws because their votes did not carry as much "weight" as did the votes of other citizens in the state.²⁰ Indeed, one justice saw the equal protection clause as a third barrier (in addition to the fifteenth and nineteenth amendments) to a state's freedom in prescribing qualifications of voters.²¹ However, *Baker* did not actually involve voter qualifications because no one claimed to have been denied the right to vote. The injury alleged was that under the state's method of apportionment, the plaintiff's votes were debased.

Reynolds v. Sims,²² a subsequent case affecting state control of voting, also involved reapportionment.²³ It is significant that the Court, in discussing the equal protection clause, referred to "the right of all *qualified* citizens to vote, in state as well as in federal elections."²⁴ On this basis it seems clear that the Court had not presumed to control the *qualifications* set by the states, but only the *effectiveness* of a vote cast by a voter qualifying under state law.²⁵

In *Carrington v. Rasb*²⁶ the Court dealt with a provision of the Texas Constitution²⁷ denying the franchise to all members of the military service living in Texas who had not been residents of Texas when they entered the service. Finding that the provision prevented any such person from establishing his residence in Texas for voting purposes until he was no longer a member of the armed forces, the Court declared the provision unconstitutional. It found disfranchisement of military personnel to be a discrimination forbidden by the equal protection clause.²⁸ *Carrington*

¹⁷ U.S. CONST. amend. XIV.

¹⁸ 369 U.S. 186 (1962).

¹⁹ In the words of Mr. Justice Frankfurter, "In sustaining appellant's claim, based on the Fourteenth Amendment, that the District Court may entertain this suit, this Court's uniform course of decision over the years is overruled or disregarded." *Id.* at 277 (Frankfurter, J., dissenting).

²⁰ The Court actually stated its holding as a much more narrow one (369 U.S. at 197-98), but this has been the ultimate effect of the decision.

²¹ 369 U.S. at 244 (Douglas, J., concurring).

²² 377 U.S. 533 (1964).

²³ The Court held that "the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." *Id.* at 568.

²⁴ *Id.* at 554.

²⁵ It should be noted at this point that amendment XXIV was proposed in 1962 and ratified in 1964. It, of course, forbids the states to deny a citizen the right to vote in a federal election due to his failure to pay a poll tax or any other tax. This did not affect any poll tax requirements for state elections. Furthermore, this action would seem to indicate that the prevailing attitude was the same as when the fifteenth and nineteenth amendments were proposed and ratified, *i.e.*, that a constitutional amendment was the only proper way to limit the states' power to determine voting qualifications.

²⁶ 380 U.S. 89 (1965).

²⁷ TEX. CONST. art. 6, § 2.

²⁸ However, Mr. Justice Harlan found the majority holding to be unnecessary and an improper extension of the federal judiciary power. 380 U.S. at 98 (Harlan, J., dissenting).

was the first decision to hold that state laws governing the qualifications of voters are subject to the limitations of the equal protection clause of the fourteenth amendment.²⁹ It is significant that not all residence requirements were forbidden. The Texas constitutional provision was held to be unconstitutional only because of its particular discriminatory effect. Thus, because a residence requirement that does not invidiously discriminate is still permissible,³⁰ the limitation established by *Carrington* must be considered to be a narrow one.

In 1966 in *Harper v. Virginia Board of Elections*³¹ the Court went farther into the area of voter qualifications. In that case, the Court declared a Virginia poll tax violative of the equal protection clause.³² The tax had been levied on voters in an election not protected under the twenty-fourth amendment. Mr. Justice Douglas, writing for the majority, reasoned that the ability of a person intelligently to cast a vote bears "no relation to wealth nor to paying or not paying this or any other tax."³³ The Court found that any poll tax would constitute the type of discrimination forbidden by the equal protection clause. This finding would seem to represent a significant extension of the decision in *Carrington*. Perhaps, however, a valid distinction can be made between the discriminatory effect of poll taxes and the discriminatory effect of residence requirements. It seems clear that the ability of a person to cast an intelligent vote bears no relation to a person's ability to pay a poll tax. However, it might be argued that in certain elections a person's residence does bear a relation to his ability to cast an intelligent vote. It is significant that even the Court's prohibition of poll taxes was questioned. Mr. Justice Black, while voicing disapproval of the poll tax as a prerequisite for voting, strongly protested that the Court had no power to declare such a voting qualification unconstitutional and void.³⁴ It is interesting to note that Mr. Justice Harlan, also dissenting, found the opinion to hold property qualifications unconstitutional.³⁵ Although any such holding by the majority must be considered dicta the stage clearly was set for the Court in subsequent cases to consider the constitutionality of property qualifications.³⁶

²⁹ *Id.* at 97. This was the first time, other than by constitutional amendment ratified specifically for such purpose, that the power of the states to prescribe voting qualifications had been limited.

³⁰ *Id.* at 91.

³¹ 383 U.S. 663 (1966). The Virginia poll tax had been upheld in *Butler v. Thompson*, 341 U.S. 937 (1951) against the same challenges.

³² This was only two years after the process of constitutional amendment was used to eliminate poll tax in federal elections. See note 25 *supra*.

A few months earlier a district court had struck down the Texas state poll tax as a violation of the due process clause. The Court affirmed this decision on the basis of *Harper*. *Texas v. United States*, 252 F. Supp. 234 (W.D. Tex.), *aff'd*, 384 U.S. 155 (1966).

³³ 383 U.S. at 666.

³⁴ 383 U.S. at 675, 677 (Black, J., dissenting).

³⁵ 383 U.S. at 683 (Harlan, J., dissenting): "But today in holding unconstitutional state poll tax and property qualifications for voting . . ." Justice Harlan did not explain the reason underlying his interpretation of the majority opinion.

³⁶ See Note, *Ownership of Land as a Prerequisite to the Right To Vote: Equal or Unequal Protection?*, 117 U. PA. L. REV. 594 (1969) (an article which attacks property qualifications with much of the same reasoning as the Court later used to strike them down).

III. KRAMER V. UNION FREE SCHOOL
DISTRICT NO. 15

In *Kramer v. Union Free School District No. 15*³⁷ the Court declared unconstitutional under the equal protection clause a statute which prescribed property requirements for voting.³⁸ The Court relied on decisions in the reapportionment cases³⁹ in finding that the right to vote is the foundation of a representative society. Furthermore, the Court observed that an infringement of this right must be scrutinized carefully.⁴⁰ It determined that any statute challenged for structuring a local governmental unit in a manner which does not represent fairly all of the people is not entitled to a general presumption of constitutionality.

The Court rejected the argument that statutes distributing the franchise are not subject to exacting judicial scrutiny simply because under a different statutory scheme the offices subject to election might have been filled through appointment. Indeed, the Court cited *Harper* for the proposition that "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment."⁴¹

Questioning the constitutionality of the New York statute, the Court looked to the test established in *Carrington*, *i.e.*, whether the exclusions are necessary to promote a compelling state interest.⁴² The state argued that it had a legitimate interest in restricting a voice in school matters to those directly affected by school board decisions. The Court ventured no opinion as to the validity of this contention, but did assume for argument that such a restriction could be imposed. It found that the proper test of the statute was not whether it gave the franchise to those who were "primarily interested," but rather, whether those who it excluded were "substantially less interested." The Court found that the classifications in section 2012⁴³ permitted inclusion of many persons who have at best, a remote and indirect interest in school affairs, while permitting exclusion of others who have a distinct and direct interest in the school meeting decision. Certainly, it would be difficult for any statute to meet this exacting standard when citizens who do not own property could always be strongly interested in and greatly affected by the outcome of an elec-

³⁷ 395 U.S. 621 (1969).

³⁸ On the same day the Court, relying almost exclusively on *Kramer*, struck down a Louisiana statute which restricted the right to vote in elections to approve issuance of revenue bonds by municipal utilities to "property taxpayers" only. *Cipriano v. City of Houma*, 395 U.S. 701 (1969) (per curiam). The Court, as in *Kramer*, did not decide if a state could validly limit the franchise to those "primarily interested" or "primarily affected," but assumed that it might and then declared that the statute was not sufficiently tailored to achieve this limitation without violating the equal protection clause.

³⁹ See, *e.g.*, *Reynolds v. Sims*, 377 U.S. 533 (1964); *Baker v. Carr*, 369 U.S. 186 (1962).

⁴⁰ This assertion seems sufficient to the majority of the Court, but the argument remains that voting qualifications are to be established by the states and are subject to federal control only if they violate the constitutional amendments, (*i.e.*, the fifteenth, nineteenth, and twenty-fourth) which specifically limit the states' power in this area. See notes 5, 6, 7, 8, 21 *supra*, and accompanying text.

⁴¹ 383 U.S. 663, 665 (1966).

⁴² 380 U.S. at 96.

⁴³ See note 1 *supra*.

tion. These findings were made quite clear by an example. Although appellant was denied the right to vote, an uninterested, unemployed young man who paid no state or federal taxes, but rented an apartment in the district, could participate in the election. Accordingly, the Court decided that the requirements of the New York statute are not sufficiently tailored for the purpose of limiting the franchise to those primarily interested in school affairs to justify denial of the franchise to appellant and members of his class.

IV. CONCLUSION

Although the Court expressed its holding in a very limited manner by saying that the statute in question did not meet the "exacting standard" required for selective distribution of the franchise, it appears that the effect of the decision will be to end all property requirements for voting.⁴⁴ To deny someone the right to vote merely because he does not own real property is certainly an "invidious" discrimination on the basis of wealth. However, the Court has gone even farther than this in striking down a statute⁴⁵ which permits not only owners of real property to vote but also lessees of real property and parents of school age children.⁴⁶

The Court left open the question of whether a state could validly limit the franchise to those "primarily interested" or "primarily affected." This would seem to indicate that when the appropriate case arises, the Court might say that the states cannot validly limit the franchise in any such manner. The residence requirements, when next examined by the Court, may be limited even more than done in *Carrington*, and perhaps eliminated completely. Certainly in view of the great mobility of our society and the readily accessible sources of information and facts, an argument could be made for shortening or even eliminating the residence requirements. Indeed, it is possible that the Court might accept an argument that age requirements exclude a large number of people who are not "substantially less interested" in our government's policies (*e.g.*, the young men between eighteen and twenty-one who are subject to the draft but have no voice in the government). With this decision the Court has moved one step closer to universal suffrage and has eliminated a discrimination practiced by the states since the earliest days of our nation, and has moved toward a government whose policies will better reflect the wishes of *all* the people.

C. R. White

⁴⁴ This will have an effect on the many states which have property requirements for voting. See, *e.g.*, OKLA. STAT. tit. 11, § 65 (1961); TEX. ELECTION CODE arts. 5.03, 5.07 (1952) (property requirements for voting).

⁴⁵ See note 1 *supra*.

⁴⁶ It should be noted that the statute involved in *Cipriano v. City of Houma*, 395 U.S. 701 (1969), restricted the franchise to "property taxpayers" only. Therefore, the decision in *Cipriano* has a much more limited effect than the decision in *Kramer*.