UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Harper v. Virginia State Board of Elections

240 F. Supp. 270 (E.D. Va. 1964) · No. Civ. A. Nos. 3253, 3346 · Decided November 10, 1964

SUMMARY

The United States District Court for the Eastern District of Virginia dismissed consolidated challenges to Virginia's poll tax and exclusion of paupers from voting, holding that the Supreme Court's decision in Breedlove v. Suttles foreclosed the plaintiffs' Fourteenth Amendment arguments. The court found no racial discrimination in the poll tax's application and deemed the pauper exclusion claim academic because the plaintiffs had not shown they were designated as paupers.

CASE DETAILS

COURT	United States District Court for the Eastern District of Virginia
WRITING FOR THE COURT	Per curiam; Bryan, Circuit Judge; Lewis, District Judge; Butzner, District Judge
JURISDICTION	Virginia
DECIDED	November 10, 1964
DOCKET	Civ. A. Nos. 3253, 3346
DISPOSITION	dismissed
PROCEDURAL POSTURE	Two consolidated federal actions challenging Virginia's poll-tax requirement and pauper voting exclusion under the Fourteenth Amendment.
STANDARD OF REVIEW	The court applied controlling precedent governing constitutional challenges to Virginia's poll-tax requirement; no separate standard of review was articulated.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority outside the Eastern District of Virginia and subject to controlling appellate precedent.
PARTIES	Annie E. Harper et al., Mrs. Evelyn Butts v. Virginia State Board of Elections et al., Albertis Harrison, Governor, et al.

TOPICS

voting rights | election law | equal protection | fourteenth amendment | constitutional law

PRACTICE AREAS

election law | constitutional law | civil rights

QUESTIONS PRESENTED

1. Whether Virginia's requirement that voters pay a poll tax violated the Fourteenth Amendment's no-abridgment and equal protection commands when indigent citizens were unable to pay.
2. Whether Virginia's constitutional exclusion of paupers from voting was unconstitutional on the record presented.

HOLDINGS

1. The court rejected the challenge and dismissed the complaints because the constitutionality of Virginia's poll-tax requirement had been squarely resolved against the plaintiffs by controlling Supreme Court precedent, which the district court was not at liberty to depart from.
2. The court declined to reach the constitutional meaning or validity of the pauper exclusion because the plaintiffs did not show that they or anyone in their class had been designated paupers under the Virginia Constitution; the challenge was therefore academic.

KEY QUOTATIONS

> "*We are not at liberty to deviate from that precept.*" (240 F. Supp. at 270)

> "*Therefore, an expression by us upon the meaning the implications of that term would be entirely academic and without place here.*" (240 F. Supp. at 271)

FACTUAL BACKGROUND

The plaintiffs alleged that they were financially unable to pay Virginia's poll tax, which required payment of $1.50 for each of the three preceding years for which an elector was assessable. They argued that the requirement deprived them and similarly impoverished citizens of the right to vote solely because of poverty and denied them a privilege available to wealthier citizens. They also challenged Virginia's constitutional exclusion of paupers, but did not show that they or anyone similarly situated had been designated paupers under the Virginia Constitution.

PROCEDURAL HISTORY

Plaintiffs brought two actions challenging Virginia constitutional and statutory provisions requiring payment of a poll tax as a prerequisite to voting and excluding paupers from voting. The three-judge district court considered the actions together and dismissed both complaints, relying on controlling Supreme Court and Fourth Circuit precedent and concluding that the pauper-disqualification challenge was academic on the record presented.

DISPOSITION

dismissed

CASES CITED

- Breedlove v. Suttles, 302 U.S. 277, 283 (1937)
- Butler v. Thompson, 97 F. Supp. 17, 21-22 (E.D. Va. 1951), aff'd per curiam, 341 U.S. 937 (1951)
- Saunders v. Wilkins, 152 F.2d 235, 237 (4th Cir. 1945), cert. denied, 328 U.S. 870 (1946)
- Hamm v. Virginia State Board of Elections, 230 F. Supp. 156 (E.D. Va. 1964), aff'd, 379 U.S. 19 (1964)

OPINION

PER CURIAM.

240 F. Supp. 270 (1964) Annie E. HARPER et al., Plaintiffs, v. VIRGINIA STATE BOARD OF ELECTIONS et al., Defendants. Mrs. Evelyn BUTTS, Plaintiff, v. Albertis HARRISON, Governor, et al., Defendants. Civ. A. Nos. 3253, 3346. United States District Court E. D. Virginia, at Alexandria. Argued October 21, 1964. Decided November 10, 1964. J. A. Jordan, Jr., Norfolk, Va., Len W. Holt, Washington, D. C., and Max Dean and Robert L. Segar, Flint, Mich., for plaintiffs in No. 3346.

Ira M. Lechner and Allison W. Brown, Jr., Washington, D. C., and Philip Schwartz, Arlington County, Arlington, Va., for plaintiffs in No. 3253. Robert Y. Button, Atty. Gen. of Virginia, and Richard N. Harris, Asst. Atty. Gen. of Virginia, Richmond, Va., for defendants Virginia State Board of Elections in No. 3253 and for Albertis Harrison, Governor, in No. 3346.

Donald C. Crounse, Asst. Commonwealth's Atty., Fairfax County, Va., for Electoral Board of Fairfax County and Waneta M. Buckley, General Registrar of Fairfax County, Va., in No. 3253. *271 Alfred W. Whitehead, Commonwealth's Atty., City of Norfolk, Norfolk, Va., for Mary Dudley, City Registrar, City of Norfolk, Alex H. Bell, City Treasurer, City of Norfolk, and William Prieur, Clerk, Corporation Court, City of Norfolk, in No. 3346.

Before BRYAN, Circuit Judge, and LEWIS and BUTZNER, District Judges. PER CURIAM: Poll tax payment as a prerequisite to voting in State and local elections, exacted by the Constitution and statutes of Virginia,[1] is attacked in these two consolidated actions as violative of the no-abridgment and equal protection commands of the Federal Fourteenth Amendment.

A corollary attack is made upon the provision of the State constitution excluding "paupers" as persons entitled to vote in any election.[2] The common premise of the assaults is: that the plaintiffs are financially unable to pay the tax$1.50 for each of the 3 preceding years for which the elector was assessable; and that they and other State citizens similarly impecunious are thereby deprived, solely on account of their poverty, of the privilege to vote, and at the same time they are also denied a privilege accorded other citizens not so poor.

Notwithstanding the plaintiffs' impoverishment and eligibility to vote, their denunciation of the State constitutional and statutory poll tax requirements has been squarely refuted by the Supreme Court in Breedlove v. Suttles, 302 U.S. 277, 283, 58 S. Ct. 205, 82 L. Ed. 252 (1937).

We are not at liberty to deviate from that precept. There the Court considered arguments akin to those of the plaintiffs here, including the economic factor, and rejected them. This court adhered to that precedent in Butler v. Thompson, 97 F. Supp. 17, 22 (1951), aff'd per curiam 341 U.S. 937, 71 S. Ct. 1002, 95 L. Ed. 1365.

In this it adverted to the like holding of this Circuit in Saunders v. Wilkins, 152 F.2d 235, 237 (1945), cert. denied 328 U.S. 870, 66 S. Ct. 1362, 90 L. Ed. 1640, rehearing denied 329 U.S. 825, 67 S. Ct. 119, 91 L. Ed. 701, an appeal touching the Virginia constitutional and statutory clauses now questioned.

The tax is levied upon every adult resident irrespective of his intent to vote.[3] Moreover, no racial discrimination is exhibited in its application as a condition to voting. Cf. Butler v. Thompson, supra, 97 F. Supp. 17, 21. Adequate answer to the attack upon the exclusion of paupers is that this disqualificationapparently of early historical origin and prevalent in several Stateshas not been employed to prevent the plaintiffs or their class from voting.

Plaintiffs do not essay a showing that they, or anyone else in destitute circumstances, have been designated "paupers" in the sense of the Virginia Constitution. Therefore, an expression by us upon the meaning the implications of that term would be entirely academic and without place here.

The complaint in each of these cases will be dismissed. Dismissed. NOTES [1] Va. Constitution §§ 18, 20, 21 and 38; 1950 Code of Va. as amended §§ 24-17, 24-22, 24-67, and 24-120. The separation by race or color, as required in § 38 of the Va. Constitution and § 24-120 of the Code of Virginia, in the listing of persons who have paid the poll taxes was declared invalid by this court in Hamm v. Virginia State Board of Elections, 230 F. Supp. 156, aff'd October 26, 1964, 379 U.S. 19, 85 S. Ct.

157, 13 L. Ed. 2d 91. [2] Va. Constitution § 23; 1950 Code of Va. § 24-18, as amended. [3] Va. Constitution § 173; 1950 Code of Va. § 58-49, as amended.