



# REGION XI NOTES

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## VOTING RIGHTS AND POLL TAXES

(Part 3 of a three part series)

Section 2 of the Voting Rights Act imposes a permanent, nationwide ban on the use of so-called literacy tests. These tests require demonstration of general abilities to read, write and figure arithmetic. The understanding tests require a demonstration of certain educational achievement and knowledge of any particular subject chosen by the state. There are also moral character requirements, and voucher requirements, which call for registered voters or members of a higher social or economic class to vouch for an otherwise eligible voter from a lower social or economic class. However, Section 2 does not make poll taxes illegal. How, then, are poll taxes illegal and unconstitutional?

As for **federal** elections, the twenty-fourth amendment forbids conditioning the right to vote on the payment of a poll tax. This amendment was not ratified until 1964.

As for **state** elections, the federal constitution does not explicitly address the issue of poll taxes. As early as 1937 and as late as 1959, the U.S. Supreme Court upheld the right of states to assess a poll tax as a condition to voting. Then in 1966 the Court surprisingly reversed itself and ruled in *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), that state poll taxes are unconstitutional. In fact, the *Harper* ruling dealt with the very same Virginia poll tax which the Court had ruled constitutional in 1951, just a mere fifteen years earlier!

The different treatment of the same statute could be explained by the Court's adoption of an extremely stringent legal standard for reviewing state actions. In 1951, the Court simply accepted almost any "rational," non-discriminatory justification given by Virginia without seriously challenging the state, while in 1966 the Court required a "compelling" justification, plus some proof that there were not reasonable, alternative means to accomplish whatever worthy goal the state was attempting to achieve. In 1951, the Court accepted Virginia's goal of ensuring that voters were worthy by measuring "worthiness" to manage their monetary affairs and pay a minimal poll tax of \$1.50. By 1966 the Court probed state actions more intensively, requiring a compelling state need, not a mere simple need, for any law that impacted or diluted voting rights or that had a disproportionate effect on one race group. Rather than giving states the benefit of any doubt as to their motives and purposes when voting and race were involved, the Court in 1966 created a presumption whereby any state act negatively affecting a fundamental

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right (such as voting and equal protection) was considered suspect and had to be justified by compelling reasons. The Court in *Harper* decided that "...wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process" and that "...[the poll tax] was a capricious or irrelevant factor." Virginia had defended the poll tax as "an elementary and objective intelligence test," reasoning that it was "a non-discriminatory objective test of minimum intelligence for ordering one's own affairs and participating in those of the state." Nevertheless, there was some evidence that the state had adopted the poll tax in 1902 precisely to disenfranchise Negroes. Even without this evidence, the Court would have decided that there was absolutely no compelling reason for denying the vote because a person is poor or not gainfully employed.

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