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The Dying Breath of Jim Crow: *Harper v. Virginia Board of Elections*

by William Page Johnson, II



Fifty years ago the United States Supreme Court handed down two landmark decisions. Everyone is likely familiar with the decision in *Miranda v. Arizona* which now requires police agencies to inform criminal suspects of their rights before being questioned. "You have the right to remain silent. Anything you say can and will be used against you in a court of law, etc., etc." The *Miranda* ruling has for fifty years protected the accused, ensuring that those suspected of a crime know their rights. So important is the *Miranda* warning, that if it is not given properly a defendant's confession can be thrown out of court. Indeed, the phrase *Miranda Rights*, as well as the verb, to *Mirandize*, have been added to our popular lexicon.

That same year a lesser known, but equally important decision was handed down by the high court. In January 1966, the decision in *Harper v. Virginia Board of Elections*, a suit initiated by four African American residents from Fairfax County and one from the City of Norfolk, helped put the final nail in the coffin of old *Jim Crow*.

Jim Crow, Segregation and Disenfranchisement

For nearly one hundred years, between 1877 and 1954, every southern state enacted laws to legally segregate African Americans and to discourage them from voting. This period became known as the *Jim Crow* era, a euphemism for an African American man. There was no pretense. This was blatant, state-sponsored segregation that impacted all aspects of life in the South.

At the end of the Reconstruction period following the Civil War, fearful whites sought to maintain the pre-war *status quo* and control the recently freed slaves through the passage of *Jim Crow* laws. Such laws were designed to segregate African Americans and discourage them from voting.

Because of the labor intensive farming practices of the slave era, the *freedmen*, as they were called, actually made up a majority of the



Although less common in Fairfax County, signs like these were prevalent in the South from the 1890's to 1960's. The train depot at Fairfax Station had two separate entrances marked by signs similar to those above.

From the Desk of the President-

December 2016

Happy New Year!

Historic Fairfax City, Inc. has had a most productive three years during which I have been honored to have served as president. We completed a Strategic Plan and have reviewed the plan annually to determine where stand with our goals and objectives. We have also reviewed and amended our Articles of Incorporation and By-Laws.

HFCI has taken three initiatives in the interest of historic preservation and sensitivity to historic locations. Each effort has been led by a committee of HFCI members who have advocated our positions to mayor, city council, and developers.

Fund raising projects have been quite successful including HFCI's annual Taste of the Vine event, White House ornament sales and Civil War Day. Through these events and other contributions, we have supported historic preservation projects at Blenheim and Grandma's Cottage as well as new exhibits at the Fairfax Museum, Blenheim Interpretive Center and the Ratcliffe-Allison-Pozer House.

Other ongoing programs include the HFCI historic Fairfax walking tours, historical markers, and oral history projects.

It is my pleasure as outgoing president to welcome our new officers for the coming year. John Keith, President, Hildie Carney, Vice President, Al Leightley, Treasurer and Chris Kelly, Secretary.

I especially want to thank Page Johnson who writes and edits the *Fair Facs Gazette*, our quarterly newsletter. His research is extensive, stories informative and engaging, all of which brings credit to HFCI.

Sandra Wilbur
President

Welcome New Members!

The President & Board of Directors of HFCI extends a hearty welcome to all new HFCI members.

Joseph Harmon
David and Cindy Meyer
Donna & Dan Roy
Ellen & David Soroka



DUES ALERT

If you have not paid your annual Historic Fairfax City, Inc. dues they are now due. Please remit based on the schedule below. Annual dues payments should be made out and sent to: **Historic Fairfax City, Inc.**, 10209 Main Street, Fairfax, VA 22030.

Your annual dues help HFCI to continue to meet its basic goal of preserving the unique history of the City of Fairfax. Tax deductible donations over and above dues payments are encouraged.



Visit us on the web:
HFCI Website!

<http://www.historicfairfax.org>

At the Fairfax Museum and Historic Blenheim...

Fairfax Museum and Visitor Center

The Fairfax Story - Hamill Gallery. Permanent Fairfax history exhibition.

“Chalkboards to Smartboards: Public Schools in the County of Fairfax and Fairfax City” - Gano Gallery. This exhibition explores the history of County and City public schools from their creation, massive development and growth periods; from segregated schools to integration; changing technologies; new structures and notable and everyday students. Through mid-July 2017.

Fairfax Museum and Visitor Center “Second Sunday” Programs

Programs are held at **2 p.m.** on the second Sunday of each month. Unless otherwise noted, programs are held at the Fairfax Museum and Visitor Center, 10209 Main Street. Free (unless noted). Check back to find out about additional programs planned throughout the year. Information: **703-385-8414**.

Sunday, February 12, 2 p.m. - SHERWOOD Center, 3740 Old Lee Highway

Film screening of ROSENWALD

A 2015 documentary profiling Julius Rosenwald, President of Sears, and the schools he funded for African Americans. Film will be shown courtesy of The National Center for Jewish Film in Boston. The program will also include a brief history of the Rosenwald School that served the Fairfax community from 1926 – 1951.

Sunday, March 12, 2 p.m.

“The Fairfax Ladies Memorial Association and the Fairfax City Cemetery”

Curator Susan Inskeep Gray will discuss the role of Fairfax women to reinter Confederate war dead and the cemetery’s transition to a community burial place.

Civil War Interpretive Center at Historic Blenheim

PERMANENT EXHIBITION

“Blenheim’s Civil War Soldier Signatures: A Diary on Walls”. Explores the local Fairfax Court House history and the experiences of soldiers who wrote on the walls of the Willcoxon home (Historic Blenheim.) The replica attic is a life-sized replica of the house attic that shows the clearest graffiti in the house.

Historic Blenheim Civil War Interpretive Center Program Series Programs are free and held at 2 p.m. on Saturdays (unless otherwise noted) at the Civil War Interpretive Center at Historic Blenheim, 3610 Old Lee Highway. Information: 703-591-0560.

Saturday, January 28, 2 p.m.

“The CSS Shenandoah and the Last Shot of the Civil War”

Local author William Connery will tell the story of the Confederate Navy’s last ship, the CSS Shenandoah.

Saturday, February 25, 2 p.m.

“A Slave No More: Lewis Lee of Fairfax Court House”

Retired educator Wes Boutchard will unfold the incredible story of a mulatto slave related to Blenheim’s Willcoxon family, his escape from slavery and the choices he made as a free man.

Saturday, March 25, 2 p.m.

“Harriet Tubman: Move or Die”

Actress Gwendolyn Briley-Strand will perform a presentation as Ms. Tubman followed, by a question and answer session. Ms. Strand will display an exhibit, ***“The Portals Through Time,”*** about Miss Tubman on the Eastern shore, in Auburn, New York and the people with whom she interacted.

Saturday, April 29, 10 a.m.-5 p.m.

17th annual Fairfax Civil War Day

Living history programs, infantry and cannon firings, scholarly talks, military drills, historic house tours, Civil

War music, wagon rides, youth activities, barbecue and more! Admission: \$5/adults; \$3/youth, 12 and under.

Saturday, May 20, 2 p.m.

“Loudoun Boundary Line and Stuart’s Significant Achievement”

Local historians Jim Lewis and Chuck Mauro will discuss the creation of the Loudoun County/Fairfax County line and will then chronicle J.E.B. Stuart’s onerous journey through our area on June 27, 1863, impacting his arrival time at Gettysburg.

Saturday, June 24 2 p.m.

“Chronology of the Civil War in Fairfax County, Part I”

Preservationist, historian, and author Edward T. Wenzel will discuss notable incidents from the first two years of war in Fairfax County that have been included in his day-by-day Civil War chronology. This impressive volume of 618 pages includes 50 maps and more than 350 photos, while his separate index is 200 pages long. Both will be available for sale and signing.



Exhibition at Ratcliffe-Allison-Pozer House

Location: 10386 Main Street, Fairfax, VA 22030
Open Saturdays from 11am-2pm May-October for free tours; or call 703.385.8414 for tour appointment.

“Dr. Kate Waller Barrett: Mother to Many” -

Exhibition examines the life of this prominent social reformer of the Progressive Era, who saved the early 19th-century Ratcliffe-Allison-Pozer House from demolition in 1923.

Volunteers and Docents are sought for the city’s historic buildings: Ratcliffe-Allison-Pozer House, Historic Blenheim and the Civil War Interpretive Center and Fairfax Museum and Visitor Center. Additionally, volunteers may be interested in assisting with walking tours and special events. For information email Susan.Gray@fairfaxva.gov, or call **703-385-8415**.

Select historic buildings are open during city special events, including the Chocolate Lovers Festival, Civil War Weekend, Independence Day Celebration, Fall Festival and Festival of Lights and Carols. To arrange group tours of city-owned historic buildings email Susan.Gray@fairfaxva.gov or call **703-385-8414**.

The city has published a free self-guided walking tour brochure that provides a brief history of the city and noteworthy buildings in the Old Town Fairfax Historic District. This brochure is available from the Fairfax Museum and Visitor Center, 10209 Main Street, or call **703-385-8414**.

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The Historic District was listed in the National Register of Historic Places in 1987. It includes a variety of building and monument types and styles, including:

Fairfax Courthouse (1800)
Ratcliffe-Allison House (1812)
Joshua Gunnell House (c.1830)
William Gunnell House (c.1835)
Ford House (c.1835)
Fairfax Elementary School (1873)*
Old Fairfax Jail (1885)
Old Town Hall (1900)
Marr Monument (1904)

*Fairfax Elementary School was converted into the Fairfax Museum & Visitor Center in 1992.

Fairfax News of 50 Years Ago

FAIRFAX CITY — Used car lot on 54,000 ft. of ground. Located in heart of city with 178' frontage on Lee Highway. Property is paved, lighted and is improved with sales office and repair shop. Tremendous terms. Mike Mudre FE 8-7200 - JA 2-1189.

JAMES L. DIXON & CO., Realtors

Evening Star, January 15, 1967, p. C27, c. 3.

FAIRFAX — Mosby Woods 4-bedrm split level, \$34,750. 273-0136.

FAIRFAX CITY — All brk. semi. det. 2 story, full bsmt., 2-bedrms., liv. rm. with firepl., spacious yd., offstreet pkg. FHA appraisal, \$14,500. 938-7371.

Evening Star, January 27, 1967, p. C8, c. 8.

Fairfax City Man Slain, Wife Charged

A 37-year-old Fairfax City man was shot to death in his home a few feet from a city policeman who had answered a call to take a complaint from the man's wife.

Police charged Mrs. Martha Burke, 37, with homicide in the shooting of her husband, Joel Burke. He was shot once in the right chest and died at Fairfax Hospital.

Fairfax City police said the patrolman, Pvt. Charles Freeman, had gone to the Burke home in the 10000 block of School Street at about 2:10 p.m. with his partner, Cpl. Kenneth Stark.

Mrs. Burke came out of the house and said she wanted to get a warrant charging her husband with assault, police said. They then called to Burke to move his car so she could follow in her car to the station to get the warrant.

Mrs. Burke then went back into the house and her husband followed, trailed by Pvt. Freeman. Inside the house, Mrs. Burke came out of a bedroom and fired one shot from a .32-caliber automatic pistol, police said.

Burke was employed by a private trash collecting firm in Fairfax City.

Evening Star, February 6, 1967, p. B2, c. 8.

100 Years Ago

New Road Is Planned.

A meeting of interest to automobile owners of Washington will be held at Fairfax, Va., Friday next. The boards of supervisors of Fairfax, Alexandria and Prince William counties, in Virginia, will then meet in joint session to consider a proposition for the building of a road from this city through the counties named, to Manassas. At this meeting it is expected the route for the new road will be agreed upon and preliminary steps for its construction taken. There is also a plan on foot for the rebuilding of the main pike due west from Alexandria to a point where it will connect with the celebrated valley turnpike in the Shenandoah valley, Va.

Evening Star, January 8, 1917, p. 16, c. 3.

GETTING READY FOR WAR.

Fairfax County Citizens Planning to Promote Enlistments.

To secure enlistments for a local military company and to prepare for such service as Fairfax county may in any way be able to render, a call has been issued for a general meeting of inhabitants of this county to be held at Fairfax Court House April 6th.

This action was the result of an informal conference held Tuesday night at the home of R. Walton Moore, at Fairfax, which was in telephone communication with Gov. Stuart, who announced himself as entirely in sympathy with the movement. The committee which will make the arrangements for the coming general meeting consists of Capt. S. R. Donohoe, Col. R. E. Lee, D. S. Mackall, James W. Ballard and R. R. Farr.

Alexandria Gazette, March 29, 1917, p. 1, c. 6

population in many Virginia counties. The most popular method for denying suffrage to African Americans in these localities was for white election officials to have voters report to the polls in two lines – one “white,” and one “colored.” Inevitably, the *white* line progressed much faster than the *colored* line. Predictably, when the polls closed the *colored* line was still full of individuals waiting to cast their vote.

Over the years, African Americans resisted in whatever manner they could. They continued to press for equality in the courts. Progress was painfully slow. In the 1896, the U.S. Supreme Court in *Plessy v. Ferguson* upheld southern Jim Crow laws, and ushered in the doctrine of *separate but equal*. It was during this period the now infamous, “white” and “colored” signs appeared throughout the South. In response to the new doctrine, white southern legislators also stepped up their efforts to disenfranchise African Americans at the polls.

Although the Fifteenth Amendment to the United States Constitution (ratified in 1870) granted all male citizens the right to vote (women could not vote until 1920), subsequent state and local laws were adopted to discourage African Americans from voting. By 1905, every southern state had at least one or more *tests* to discourage African Americans from going to the polls. There were literacy tests,¹ property tests,² and the infamous poll tax.³ Some states also adopted *grandfather* clauses in which literacy tests, property tests and poll taxes could be waived if the prospective voter could prove that his ancestor (i.e. *grandfather*) had voted before the Civil War. As slaves were not even considered citizens before the passage Fourteenth Amendment to the Constitution in 1868, this measure heavily favored poor white voters and virtually eliminated all African Americans as potential voters.

The Virginia Poll Tax

From 1902 to 1966, Virginia imposed a \$1.50 poll tax on every individual who sought to register to vote in Virginia. Two-thirds of the poll tax collected, \$1.00, was to be used by the state in aid of free public schools. The

remaining \$.50 was to be remitted to the locality for general revenue purposes.

The earliest poll taxes in Virginia extend back to 1619. In 1876, the Virginia Constitution was amended to require payment of a poll tax. The crime of petty larceny was also added to the list of crimes that could disqualify

State of Virginia, County of Fairfax, to-wit:

I, Harvey M. Cross, Sheriff of the County of Fairfax, do solemnly swear that I have posted one copy of the list of all persons in my county who have paid their State poll taxes, as required by the Constitution of this State, prior to the Eighth day of May, 1927, said list being the same received by me from the Clerk of the Circuit Court of this county, and was posted at the places and upon the dates following:

VOTING PLACE	WHERE POSTED	DATE OF POSTING
Clifton	Midwell's Shop	1927 June 29
Centerville	Tushville Store	" " "
Wells	Wells	" " "
Pender	Sherris	" July 2
Swains	Fords	" " 5
Burkes	Dums	" " "
Baylis	Springmans	" " "
Woodwards	Fairfax	" " "
Accotink	Lynns	" " "
Moons	Brooks	" " "
Pulman	Pulman's	" " "
Long Spring	On Eating House	" " "
Falls Church	Town Hall	" " 4
West End	Stanton's Store	" " 5
Amantale	Byrns	" " "
P. H.	Dr. C. H. Doon	" " 4
Opemia	Indepot Bldg.	" " "
Langley	Community Hall	" " "
Lick	Levellins Store	" " "
Hamden	On P. D. Bldg.	" " 2
Tompson	Dons Store	" " "
Trombore	Indepot Bldg.	" " "
Pleasant Valley	Pector's Store	" " "
Forestville	Colquhoun	" " "
Bransville	Whites	" " "

So help me God.

Harvey M. Cross
Sheriff Fairfax County, Va.

Subscribed and sworn to before me this Ninth day of July, 1927.

F. W. Richardson
Clerk Circuit Court Fairfax County, Va.

The foregoing return was received in the office of the Clerk of the Circuit Court of Fairfax County, on the 9th day of July, 1927 and admitted to record.

Teste: F. W. Richardson Clerk

Sheriff's Certification of Poll Tax Posting, Fairfax County.
July 9, 1927.

Source: Fairfax County Circuit Court Archives.

potential voters. Both provisions were adopted solely to deny African Americans the right to vote.

During this period, the Virginia poll tax became a source of fraud and corruption. Crooked politicians paid the poll taxes of poor whites *en masse* in exchange for their votes. In 1882, the Virginia General Assembly was forced to reverse themselves and amend the Constitution yet again and abolish the poll tax.⁴

In 1902, Virginia adopted a new Constitution which was overtly racist and clearly designed to disenfranchise African Americans. During the ensuing Constitutional Convention, held in Richmond, most of the debate centered on this single issue. Delegate Carter Glass (D–Lynchburg) expressed the sentiments of many of the delegates with respect to African Americans and the poll tax:

*“This plan of popular suffrage will eliminate the darkey as a political factor in this State in less than five years....”*⁵

At the conclusion of Glass’ lengthy remarks, Delegate Abram L. Pedigo⁶ (R–Henry County) boldly challenged him:

*“Will it be done by fraud and discrimination?”*⁷

Delegate Glass was shockingly blunt in his response:

*“By fraud, no; by discrimination, yes. Why, that is precisely what we propose; that, exactly, is what this Convention was elected for—to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate.”*⁸

Under the new Constitution, beginning in 1904, all male citizens were entitled to register to vote only if they passed a literacy test,⁹ or owned property, and they paid a \$1.50 poll tax. By contrast, Confederate veterans, and their sons,¹⁰ were entitled to register on the basis of their service alone, but still had to pay the poll tax.¹¹

In addition to the new registration tests, every male citizen had to first pay a poll tax of \$1.50 before being permitted to even register to vote. When adjusted for inflation, this is the equivalent of \$42.18 in today’s dollars. Additionally, the poll tax was an annual levy and was due and payable even in *off* years when there was no election. If you had not paid your poll tax in the interval between elections, you were required to pay the outstanding balance plus a 5% annual penalty before you could register.

As a direct result of the passage of the new Constitution, only 130,000 votes were cast in the Virginia election for Governor in 1905. This represented a 35% reduction in the number of votes for Governor in 1901. By some estimates the number of registered African Americans voters was reduced by 85% over the same period.

As a more recent example, if you had not voted or paid your poll tax since the presidential election of 1960, you would have had to pay as much as \$6.79, or \$24.28 adjusted for inflation, in order to vote in 1964. This may not sound like a lot of money until you consider that in 1963, the median annual gross income of southern white families and individuals was \$5,565 and \$1,653, respectively, and that of non-whites was \$2,520 and \$913.¹²

Of the same time period, I remember my own father as saying, ‘I thought if I could only make \$10,000 a year I’d be on easy street.’ In 1964, for poor people, non-whites in particular, \$6.79 was a lot of money!

The Beginning of the End

The mid-1960s was a watershed for Civil Rights in the United States. Between 1964 and 1965, sweeping civil rights legislation was passed at the Federal level. In January

1964, the Twenty-fourth Amendment to the U.S. Constitution was ratified prohibiting any poll taxes in all Federal elections. In July 1964, the Civil Rights Act of 1964 was adopted prohibiting discrimination on the basis on race, color, religion, sex, or national origin. In August 1965, the Voting Rights Act was adopted prohibiting states and localities from imposing voting qualifications or prerequisites to voting, or standards, practices, or procedures that deny or curtail the right of a U.S. citizen to vote on the basis of race, color, or language minority.

By 1964, four southern states Alabama, Mississippi, Texas, and Virginia still implemented a poll tax for state and local elections. These states clung to a 1937 ruling by



Evelyn Thomas Butts, c. 1966.
Photo credit: Unknown

the U.S. Supreme Court (*Breedlove v. Suttles*) that poll taxes were not racially discriminatory and were therefore legal.

Evelyn Thomas Butts (1924-1993) of 1070 Kennedy Street, Norfolk, Virginia, was the wife of a disabled World War Two veteran, mother of

three, and a Seamstress who worked out of her modest home. She was also an African American Civil Rights activist.

On November 29th, with the country reeling from the recent assassination of President John F. Kennedy, Evelyn Butts, through her attorney Joseph A. Jordan, Jr.,¹³ filed suit in U.S. District Court against Virginia Governor Alburtis Sydney Harrison, *et al*, that Virginia's poll tax was unconstitutional.^{14,15} Clement F. Haynsworth, Jr., Chief Judge of the U.S. Court of Appeals for the Fourth Circuit, referred the case to a special three-judge panel consisting of Albert V. Bryan of the United States Court of Appeals for the Fourth Circuit and Federal District Judges Oren R. Lewis and John D. Butzner Jr.¹⁶

In March 1964, Allison W. Brown, Jr.¹⁷ an attorney and executive board member for the American Civil Liberties Union (ACLU) and National Association for the Advancement of Colored People (NAACP) in Washington, D.C. filed a separate action in U.S. District Court on behalf



Joseph A. Jordan, Jr., Norfolk, VA
Civil Rights Attorney
Photo credit: Unknown

of four Fairfax County residents, Annie E. Harper, Curtis and Myrtle L. Burr and Gladys A. Berry, who courageously agreed to join the fight against the poll tax.

The Fairfax County Appellants

Annie E. Harper, of 7735 Fordson Road, Gum Springs, age 79, was a retired domestic worker living on social security. "*She was quite a lady and spunky,*" remembers former daughter-in-law Yvonne R. Smith.

Curtis and Myrtle Burr, of 6600 Quander Road, Alexandria, were the parents of nine children. Curtis, then a 41-year old veteran of World War Two, supported his family on less than \$3,000 annually as a brick mason.



Grave of Annie Collins Harper, Snowden Cemetery, Ft. Hunt, Virginia.
Photo credit: Page Johnson



(l-r) Curtis Burr, Christina Burr (granddaughter), Myrtle L. Burr, 1995.

Photo courtesy: Sandra Burr.

Gladys A. Berry,¹⁸ age 42, of 8018 Fordson Road, Gum Springs, was a divorced and unemployed domestic worker. She was reliant on the support of her two daughters, domestic workers, who also support their combined seven children.^{19, 20, 21}

On May 12, 1964, the suit brought by Evelyn Butts was dismissed for “*failure to prosecute the case with diligence.*”²² Butts filed a second lawsuit on May 21, 1964. The Butts and Harper cases were consolidated. Because the Butts case had been dismissed and re-filed, the case filed by the Fairfax County appellants took precedence. The combined cases were subsequently styled *Harper v. Virginia Board of Elections*.

The case was heard in Alexandria, Virginia on October 21, 1964.



Allison White Brown, Jr., 1950

Photo credit: University of Michigan Law School

On November 12, 1964, the panel dismissed the case on the grounds that the complainants had failed to state a claim upon which relief could be granted because payment of a poll tax had been determined to be constitutional in 1937 by reason of the U.S. Supreme Court decision in *Breedlove*

v. Suttles. Further, with regard to the pauper disqualification, the court noted that none of the appellants or *members of their class* had been prevented from voting on those grounds. In conclusion, the panel stated that “*an expression by us on the meaning and the implications of that term would be entirely academic and without place here.*”²³

Case Goes to the Supreme Court

On January 15, 1965, Allison Brown appealed the decision on behalf of his clients to the U.S. Supreme Court.²⁴ In March 1965, the high court agreed to hear the case.²⁵ By contrast, Evelyn Butts’s attorney, Joseph Jordan, who lacked the financial resources and proximity of the ACLU, did not file an appeal on Butts’s behalf until October 1965. Once again, the cases were combined and styled *Harper v. Virginia Board of Elections*.

On August 6, 1965, President Lyndon Johnson signed the Voting Rights Act into law. On the same day he announced that U.S. Attorney General, Nicholas Katzenbach, would be initiating lawsuits against Virginia, Alabama, Mississippi and Texas charging that the poll tax was illegal under the new law.

On December 13, 1965, U.S. Solicitor General Thurgood Marshall (1908-1993), representing the United States, filed an *amicus curiae* (i.e. “*a friend of the court*”) brief with the Supreme Court. He requested permission to participate in the oral arguments in *Harper v. Virginia Board of Elections* in opposition to the imposition of a poll tax. In his brief, Marshall stated, in part:

“...however it may have been viewed in an earlier era,



Thurgood Marshall, 1966.

Photo credit: Richard Stacks, Balt. Sun.

restricting the franchise to the propertied or financially able can no longer be justified on the theory that there is a reliable and demonstrable relationship between the possession of monetary means and the attributes of responsible citizenship.”²⁶

The court granted his motion and allotted thirty minutes for that purpose.²⁷ Marshall, a future Supreme Court Justice and lifelong advocate for civil rights, began his career with the NAACP in 1934. He famously represented Oliver L. Brown in a lawsuit against the Topeka, Kansas Board of Education in 1954. Known today simply as *Brown v. Board of Education* the case was a landmark decision by the U.S. Supreme Court reversing the doctrine of *separate but equal* established in *Plessy v. Ferguson* and officially ending state-sponsored segregation.

On January 24, 1966, *Harper v. Virginia Board of Elections* was argued before the U.S. Supreme Court for two days. The attorneys argued that the poll tax placed a disproportional, and therefore unfair, financial burden on their clients and thousands of poor and minority citizens in the exercise of their constitutional rights in violation of the equal protection clause of Fourteenth Amendment to the U.S. Constitution. Allison Brown stated, “*It is plain that by the very nature of this tax that poor people are going to be discriminated against for voting.*”²⁸ Solicitor General Thurgood Marshall strongly recommended the court to declare the poll tax unconstitutional, “*...so that individuals who gained the right to vote under the Voting Rights Act may actually exercise the right this year.*”²⁹

Outside the courtroom Marshall stated, “*You cannot put a tax on the right to vote in any form or fashion. The poll tax is a merely a tax on the right to vote.*”³⁰ One of the attorney’s for Evelyn Butts stated, “*If a person cannot afford three meals a day he is going to think twice about voting.*”³¹

The Decision

On March 24, 1966, Justice William O. Douglas announced the court’s decision by stating,

“If we were controlled by precedent we would affirm the lower court’s decision. Certainly history is on the side of the poll tax. But history was also on the side of segregation.”³²

In a 6–3 decision, the Supreme Court ruled poll taxes to be unconstitutional, ending more than sixty years of inequality to poor and minority voters in the United States and eliminating a last vestige of a dying era.

The current Virginia Constitution, adopted in 1971, expressly prohibits the prerequisite of a poll tax to register to vote in Virginia:

“No fee shall be charged to the applicant incident to an application to register.”³³

(Endnotes)

¹ Literacy Tests were tests administered by election officials to determine the competency of potential voters. Poor, uneducated, and minority voters, were compelled to read and explain a newspaper article, a literary work, or some aspect of the state’s constitution. In some states if you could not prove to the registrar that you could read, you were denied the right to vote. Literacy tests were particularly discriminatory as they were applied both selectively and subjectively by election officials. The literacy test in Virginia, adopted in with the Constitution of 1902, potential voters had to read and explain a passage in the state’s Constitution to the satisfaction of the election official.

² Property tests required that prospective voters own property as a prerequisite to voting.

³ Poll taxes were simply a tax assessed for the privilege of voting.

They were discriminatory to poor people, non-whites in particular.

⁴ McDaniel, Ralph Clipman, Ph.D., Virginia Constitutional Convention, 1901-02, © 1928, Johns Hopkins University Press, Baltimore, MD.

⁵ Report of the Proceedings and Debates of the Constitutional Convention, State of Virginia, Held in the City of Richmond, June 12, 1901 to June 26, 1902, v. II, p. 3076, © 1906, Hermitage Press, Inc., Richmond, VA.

⁶ Abram Lincoln Pedigo (1838-1908) He was a strong Union man and when Virginia seceded from the Union, he went to Lexington, Ohio where he served as Mayor from 1863 to 1865. He returned to Henry County after the War. He was an election officer in Henry County in 1869. He served as a delegate to the Republican Gubernatorial Convention at Lynchburg in 1873. He represented Henry County in the Virginia General Assembly from 1887-1889. He was elected a member of the Virginia Constitutional Convention of 1901 and was an outspoken critic on many aspects. Ultimately, he and a majority of

Republican delegates refused to sign the new Constitution. He is buried in Oakwood Cemetery, Martinsville, VA.

⁷ Ibid 5.

⁸ Ibid 5.

⁹ The literacy test in in Virginia Constitution of 1902 required a person to be able to read any section of the said Constitution submitted to him by the officers of registration and to give a reasonable explanation of the same; or, if unable to read such section, able to understand and give a reasonable explanation thereof when read to him by the officers..

¹⁰ By 1902, the United Confederate Veterans and the Sons of Confederate Veterans had become a formidable political force in every southern state.

¹¹ Constitution of Virginia 1902, Article II, Section 20.

¹² Current Population Reports, Consumer Income, Income of Families and Persons in the United States: 1963, Series P-60, No. 43, September 29, 1964, p. 31, U.S. Census Bureau, Washington, D.C. <https://www2.census.gov/prod2/popscan/p60-043.pdf>

¹³ Joseph Augusta Jordan, Jr. (1923–1991) was a combat veteran of World War II. He was severely wounded in France and paralyzed from the waist down. He would spend the rest of his life in a wheel chair. He was a graduate of Virginia Union University and Brooklyn Law School. He began the practice of law in Norfolk in 1954. In 1968, he became the first African American elected to the Norfolk City Council since 1889. He served three terms on the council, two years as vice mayor. In 1977, he was appointed a judge to General District Court. He retired in 1986. He died in June 14, 1991.

¹⁴ Virginian-Pilot, December 20, 1963, p. C33, c. 9.

¹⁵ Virginian-Pilot, December 10, 1963, p. 20, c. 1.

¹⁶ Ibid 13.

¹⁷ New York Times, April 19, 1984, obituary of Allison W. Brown Jr. was a lawyer with the National Labor Relations Board and an official of the American Civil Liberties Union. Mr. Brown, who lived in Alexandria, was born in Champaign, Ill., graduated from Antioch College and the University of Michigan Law School (1950). He joined the staff of the labor relations board after moving to the Washington area in 1950. But he was best known for his activities in support of the civil rights movement, particularly in arguing cases before the Supreme Court. Among the cases he successfully argued were *Runyon v. McCrary* in 1976, which led to the opening of private schools to black students, and *Sullivan v. Little Hunting Park* in 1969, in which the Supreme Court held that private swimming pools could not bar membership on racial grounds. Mr. Brown also argued a 1964 case, *Harper v. Virginia Board of Elections*, in which the Supreme Court struck down state laws requiring payment of poll taxes as a requisite for voting. Mr. Brown served on the executive board of the civil liberties group's Washington area organization, and on the national board. Brown died of a heart attack April 8, 1983 at Mount Vernon Hospital in Alexandria, Va. He was 60 years old.

¹⁸ Gladys A. Berry was born in Baltimore, Maryland, May 30, 1922. She was the daughter of Edward H. and Gladys Marie Williams. She married _____ Berry. She resided at 8018 Fordson Road, Alexandria. She died at Fairfax Hospital, August 25, 1983. She is interred in the Coleman Cemetery, Ft. Hunt, VA.

¹⁹ Evening Star, October 22, 1964, p. B2, c. 1.

²⁰ Evening Star, March 18, 1966, p. 31, c. 7-8.

²¹ Evening Star, March 25, 1966, p. 46, c. 6-8.

²² Richmond Times Dispatch, August 3, 1965, p. 7, c. 5.

²³ 240 F. Supp. 270 (E.D. Va. 1964).

²⁴ Evening Star, January 16, 1965, p. 24, c. 6.

²⁵ Evening Star, March 8, 1965, p. 1, c. 2-3.

²⁶ Brief for the United States as Amicus Curiae, *Harper v. Virginia Board of Elections*, 383, U.S. 663, 1965. See also Scott, Wendy B., Reflections on Justice Thurgood Marshall and *Shelby County v. Holder*, Louisiana Law Review, V. 76, No. 1, The Voting Rights Act at 50: The Past, Present, and Future of the Right to Vote A Symposium of the Louisiana Law Review Fall 2015, Louisiana State University.

²⁷ 382 U.S. 951. & 86 S. Ct. 425

²⁸ The Progress Index, January 26, 1966, p. 1, c. 9.

²⁹ Richmond Times Dispatch, January 26, 1966, p. 1, c. 5.

³⁰ Ibid. 18.

³¹ Ibid. 18.

³² *Danville Register*, March 25, 1966, p. 2, c. 2.

³³ Constitution of Virginia 1971, Article II, Section 2.

150 Years Ago

FIRE AT FAIRFAX COURT HOUSE.

[Correspondence of the Alexandria Gazette.]

FAIRFAX COURT HOUSE, January 26, 1867.

—Our “city” was visited to-day by one of those calamities to which all combustible materials are liable, and which have been so prevalent over the whole country of late. The fire here of this morning exhibited some features which may be noted, for a fire in town and a fire in the country, are two distinct affairs. It broke out about 12 o'clock m., in a building inhabited by George Gaines, the extreme western tenement of a block of five houses, owned by Mrs. N. Monroe, situated on the left of the main street, as you approach from the direction of Alexandria. Every effort was made to save the rest of the block, but without success, and the five houses were destroyed. Four of these were inhabited by Messrs. Gaines, Pettit, Harmon and Norris as dwelling houses. The remaining one was the large cabinet and undertaker's establishment of C. H. Carver. The contents of the houses were all removed, but in breakage and stealage the parties have lost heavily.

Alexandria Gazette, January 28, 1867, p. 2, c. 3.

“The dead continue to live by way of the resurrection we give them in telling their stories.” - Gerda Lerner

"Preserving the Past. Protecting the Future."

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