SENATE JOURNAL

Thirty-sixth Legislature—Fourth Called Session.

FIRST DAY.

Senate Chamber,
Austin, Texas,
Tuesday, Sept. 21, 1920.

In obedience to the call of His Excellency, Hon. W. P. Hobby, Governor of the State of Texas, convening the Thirty-sixth Legislature in Fourth Called Session, this the 21st day of September, 1920, the Senate met in the Senate Chamber of the Capitol in the city of Austin at 10 o'clock a. m., and was called to order by Lieutenant Governor Johnson.

Temporary Officers.

The Chair announced the appointment of the following temporary officers:

Secretary, W. V. Howerton.
Journal Clerk, John D. Cofer.
Sergeant-at-Arms, J. A. Kenny.
Doorkeeper, W. H. Brummett.
Calendar Clerk, Miss Gardner.
Chaplain, Rev. S. H. Morgan.

The Chair directed the Secretary to call the roll. There was no quorum present, the following Senators answering to their names:

Alderdice.	Dudley.
Bledsoe.	Faust.
Buchanan of Bell.	Gibson.
Buchanan of Scurry.	Hertzberg.
Caldwell.	Hopkins.
Clark.	McNealus.
Cousins.	Rector.
Davidson.	Smith.
Dayton.	Williford.
Dean.	Witt.

Absent.

Bailey.	Parr.
Carlock.	Strickland.
Dorough.	Suiter.
Floyd.	Westbrook.
Hall.	Woods.
Page.	

At Ease.

There being no quorum, on the motion of Senator Hopkins, the Senate at 10:05 a. m. stood at ease until 2:30 this afternoon.

Quorum Present.

At 2:30 p. m., Senator Page having arrived, the Chair announced a quorum present and called the Senate to order.

Prayer by the Chaplain, Rev. S. H. Morgan.

Proclamation of the Governor.

By virtue of the authority vested in me by the Constitution of this State, I, W. P. Hobby, Governor of Texas, do hereby call a Special Session of the Thirty-sixth Legislature to convene in the City of Austin, Texas, at eleven o'clock a. m., Tuesday, September 21st, 1920, for the following purposes, to-wit:

1. To give consideration to the subject of safeguarding the general election of November, 1920; to prescribe qualifications for voters; and to prevent discrimination among voters in the exercise of the franchise at said election.

2. To consider and act upon such other matters as may hereafter be presented, pursuant to Section Ten, Article Three, of the Constitution of the State of Texas.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the State of Texas to be hereon impressed, at the City of Austin, this the fourteenth day of September, A. D. 1920.

(Signed) W. P. HOBBY,
Governor of Texas.

(Seal)

By the Governor:
(Signed) C. D. MIMS,
Secretary of State.

THE STATE OF TEXAS:
DEPARTMENT OF STATE:

I, C. D. Mims, Secretary of State of the State of Texas, do hereby certify, That the attached and foregoing is a true and correct copy of the Proclamation by W. P. Hobby, Governor of the State of Texas, calling

a Special Session of the Thirty-sixth Legislature to convene in the City of Austin, Texas, at eleven o'clock a. m., Tuesday, September 21st, 1920, as same appears of record in this Department.

In Testimony Whereof, I have hereunto signed my name officially, and caused the Seal of State to be hereon impressed, at the City of Austin, Texas, this the twenty-first day of September, A. D. 1920.

C. D. MIMS,
Secretary of State.

Report of the Senate Caucus.

Senator Caldwell sent up the following Caucus Report:

Senate Chamber.
Austin, Texas, Sept. 21, 1920.

To the President of the Senate:

Sir: Upon the call of Senator McNealus, chairman of the last caucus by the Texas Senate, a caucus was held on Sept. 21, 1920, at which a majority of Senators were present. The purpose of the caucus was to determine the number and personnel of the Senate employes and officers for the ensuing called session. Senator McNealus was elected chairman and Senator Caldwell secretary of the caucus.

The following were recommended as the officers and employes of the Senate for the ensuing called session of the Thirty-sixth Legislature:

Secretary: W. V. Howerton.

Assistant Secretary: Elbert O. Hooper.

Journal Clerk: John Cofer.

Assistant Journal Clerk: Mrs. Josephine Collins.

Sergeant-at-Arms: J. A. Kenny.

1st Assistant Sergeant-at-Arms: Morris Midkiff:

2nd Assistant Sergeant-at-Arms: Capt. G. T. Walker.

Sergeant-at-Arms in the Gallery and Newspaper Messenger: Jno. E. Cosgrove.

Doorkeeper: W. H. Brummett.

Assistant Doorkeeper: P. A. Hicks.

Calendar Clerk: Miss Lula Gardner.

It is recommended that the Enrolling Clerk and Assistant Enrolling Clerk and Engrossing Clerk and Assistant Engrossing Clerk be selected respectively by the Enrolling Committee and the Engrossing Committee.

Telephone Operator, Miss Mary Jacobs.

Mailing Clerk, Mrs. W. S. Banks.

Assistant Mailing Clerk, Mrs. Lottie Sturdevant.

Postmistress, Mrs. Clyde D. Smith.

Chaplain, Rev. S. H. Morgan.

It was further recommended that each Senator be permitted to name one stenographer typist as his secretary and that such secretary act as clerk to each committee of which such Senator may be chairman.

It was further recommended that the Lieutenant Governor have the exclusive appointment of such number of pages and porters as may be necessary for the dispatch of the Senate's business.

It was further recommended that the Lieutenant Governor be permitted to select a secretary, a stenographer and a personal messenger.

It was further recommended that the employes of the Senate shall be paid a compensation of five dollars per day except the Secretary and the Journal Clerk and Sergeant-at-Arms, who shall each be paid seven dollars per day, and except further that the pages and porters shall be paid two dollars per day.

It was further recommended that each Senator have such time as he may desire to make his personal appointment and that such appointment be made by handing the name of such appointment to the Secretary of the Senate.

It was further recommended that 1200 copies of the daily Journal be printed and that the same be prorated among the Senators and the Lieutenant Governor.

It was further recommended that the Sergeant-at-Arms rent such typewriters as may be necessary for the use of the employes of the Senate, such rental not to exceed four dollars per month.

It was further recommended that the Lieutenant Governor and each Senator in addition to the stationery and postage furnished him be allowed expenses incurred in transmitting and receiving telephone and telegraph messages as may be actually necessary in the discharge of his official duties, not to exceed during the session the aggregate sum of twenty-five dollars, all bills for such telegrams and telephone messages to be paid out of the contingent fund of the Senate when approved by the Senator incurring the same.

It was further recommended that each Senator be permitted to subscribe to five daily papers to be paid for out of the contingent fund.

McNEALUS, Chairman.
CALDWELL Secretary.

The report was laid before the Senate.

Senator Gibson moved to amend the caucus report by decreasing the number of daily Journals from 1200 to 500.

On the motion of Senator McNealus the amendment was tabled.

On the motion of Senator McNealus, the caucus report was adopted, and the secretary was instructed to cast the vote of the Senate for the officers named in the report.

The secretary having cast the vote of the Senate, the officers were declared elected.

Officers Administered the Oath.

The officers named in the report were delivered the oath of office by Lieutenant Governor Johnson.

Election of President Pro Tem.

The Chair announced that nominations were in order for President Pro Tem. of the Fourth Called Session of the Thirty-sixth Legislature.

Senator Dayton nominated Senator Walter Caldwell of Austin.

The nomination was seconded by Senators Hopkins, Gibson, Rector, and Williford.

The vote of the Senate having been cast, Senators Buchanan of Bell, Bledsoe, and Witt were appointed tellers and Senator Walter Caldwell was declared elected President Pro Tem, having received 19 votes and Senator Hopkins 1.

President Pro Tem Administered Oath.

Senators Gibson and Hopkins were appointed to escort Senator Caldwell to the platform and he was administered the oath of office by Lieutenant Governor Johnson.

Senators Excused.

Senator Dorough was excused until Thursday morning.

Senators Floyd, Strickland and Woods were excused indefinitely.

Simple Resolution No. 1.

Senator Caldwell sent up the following resolution:

Resolved, that the President appoint two committees of three each, one to notify the Governor and one to notify the House that the Senate is organized and ready for the transaction of business.

CALDWELL.
BLEDSOE.
GIBSON.

Notification Committees.

The Chair appointed Senators Dean, Alderdice, and Hertzberg to instruct the Governor that the Senate was organized and ready for work.

The Chair appointed Senators Buchanan of Scurry, Gibson, and Hopkins to notify the House that the Senate was ready for business.

Senate Concurrent Resoluition No. 1.

Senator Davidson sent up S. C. R. No. 1.

Requesting the Governor to submit only general bills at this session of the Legislature.

Senator Caldwell moved to refer the resolution to the Committee on Rules.

Senator Witt moved to amend the motion so that the committee be instructed to report on the resolution immediately.

The amendment was adopted.

The motion as amended was adopted.

Committee Returns.

The committee sent to notify the Governor returned and reported their duty performed.

Message from the Governor.

Miss Houghton, a messenger from the Governor, presented her-

self at the bar of the Senate with the following executive message:

Governor's Office,
Austin, Texas, Sept. 21, 1920.

To the Thirty-Sixth Legislature in Fourth Called Session:

It is deemed necessary for the Legislature to take immediate action because of the situation which has arisen since the adoption of the nineteenth amendment to the Constitution of the United States. That amendment is as follows:

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Sec. 2. Congress shall have power by appropriate legislation to enforce the provisions of this article.

It is the supreme law of the land, superseding the Constitution and laws of this State, with respect to suffrage.

The Attorney General of the State, the legal advisor of the Governor as set forth in Section 22, Article 4 of the State Constitution, and in compliance with my request, has construed the nineteenth amendment and its effect as applied to the general election in November. I accompany this message with the opinion of the Attorney General for your information.

As you, of course, know all male citizens are required by the Constitution and laws of the State to pay a poll tax as a prerequisite for voting in the general election. In the opinion of the Attorney General all male persons who have not paid poll taxes may likewise vote in the general election in November, as a result of the adoption of the nineteenth amendment.

To throw the election in November wide open to every person in Texas over twenty-one years of age without limitation, without an official record of the name of each person voting or the payment of the customary tax, whether it be a poll tax or a suffrage tax by another name, is too dangerous to think of. Yet unless there is legislation by your honorable body, such will be the case, provided the Attorney General's interpretation is accepted by election officers, as it properly should be. And the holding of a wide-open election in Texas, which you are called in extraordinary session to avoid, is not only fraught with danger but is beset with other evils. It will cause discrimination, not between sexes, but between voters, some of them paying and some of them not paying, a discrimination which in my judgment is not desired by the people of Texas. And especially is this true when that discrimination may be remedied by action of the legislature which may at the same time keep within the provisions of the nineteenth amendment.

The people of Texas have imposed the poll tax in the organic law of the State, as a prerequisite for voting. It is conclusive, therefore, that the people desire the payment of a tax before persons may exercise the franchise privilege, unless it be voters who have become qualified to vote between the expiration of the time for paying the poll tax and the time of holding the election. This policy will be undisturbed at the general election in November, if the payment of a tax equivalent to the poll tax, and keeping a record thereof, is required, on the part of the persons who have not heretofore paid.

Women who have become qualified voters by the adoption of the nineteenth amendment have not been subjected to the payment of a tax, serving as a pre-election fee, by the laws of the State. Such may be required, however, by legislative act, according to the opinion of the Attorney General, and will result in placing all men and women on an equal basis as voters. If a legal way can be found, adhering to the expressed opinion of the Attorney General, to permit only new voters, that is men and women who have become qualified voters since the time expired for paying a 1920 poll tax to vote, I would not consider it discrimination repugnant to the policy of the State to permit such persons to vote. If in order to do that, however, it is necessary to admit all others who have not paid a poll tax to vote without paying the equivalent of the poll tax, I would regard it as a discrimination unjust to those who have paid poll taxes and inimical to the welfare of Texas.

Not only is legislative action made necessary to avoid discrimination on the part of voters, but there may be serious results in the event of a failure to take action, some of which I will point out.

An attempt to hold a wide-open election will of itself provoke confusion because while all election of-

ficers should, in the absence of a court decision or a statewide law, be guided by the ruling of the Attorney General, who is the State's legal advisor, yet it is possible there will be election officers who will refuse to do so. A condition under which election officers in some polling places may allow voters who have not paid poll taxes to vote, and election officers in other polling places may refuse to allow them to vote, would result in disorder and inequality. For this reason the necessity of a plan to bring about equality and uniformity is obvious. This can only be accomplished by a statewide law or by a court decision. It it too late to obtain the latter. Action by the legislature will bring about the former.

The election in November is the most important of all elections. A president and vice-president of the United States, a governor and all State officers, Congressmen, members of the legislature, and all district and county officers are to be voted for. As a safeguard the election of all these officers should be by a vote of record, not by a wide-open election.

To remove all question about the legality of voters who will participate in this election, and enact a law prescribing same is of supreme importance. Even the electoral vote of the State might be put in jeopardy if illegal voters are permitted to vote or legal voters are not permitted to vote. The qualifications of legal voters should be defined by law and settle all doubts.

The public policy of Texas has been well established for more than twenty-five years, as opposed to an election not safeguarded by a record open to public inspection, giving the names and addresses of those who vote. It is important to preserve the integrity of this policy, and not open the way for as many or more voters who are unrecorded to vote as voters who have paid a poll tax and whose names are of record. Under such system the opportunity is offered for fraudulent voting. Whether there is danger of repeaters, ballot-box stuffing, and the casting of fraudulent votes at such election sufficient to change the result is not the prime consideration. The possibility of tainted ballots in an election in Texas is offensive to her citizenship.

In view of the area and population of Texas, the undertaking of electing a State officer by fraud would perhaps be too great to make it possible. But if legislation on your part shall prevent the election of a single county or district officer in Texas by fraudulent votes, it would more than compensate for the time and expense and sacrifice made necessary by calling you in extraordinary session. There were about 750,000 persons in Texas who qualified themselves to vote in the November election by paying poll taxes or obtaining exemption certificates. It is safe to estimate that at least 2,500,000 men and women are of voting age in Texas. All of these may be permitted to vote regardless of whether they have or have not paid a poll tax unless a law bringing about uniformity is enacted. Even though this situation is due to circumstances beyond the control of Texas, it would be discrimination just the same to hold an election at which 750,000 persons have been required to pay a poll tax of $1.75 in order to exercise the suffrage franchise, while it is possible for 1,750,000 or more to vote without the payment of an equal amount.

In my judgment, if those who are allowed to vote without paying poll taxes can not be limited to those who have otherwise become qualified voters since the first of February, 1920, then the greatest protection that can be given the ballot box and the nearest approach to exact justice that may be reached, and the step that will come nearer doing away with discrimination than any other which may be proposed, is to enact a law qualifying all of those who have paid a poll tax prior to February 1st, 1920, and giving all of those who have not paid a poll tax 15 days in which to record their names and addresses at the county tax collector's office, and pay an amount equal to the poll tax which those voters who previously qualified have paid, and thus qualify for voting at the November election. While it would be desirable to give those voters who have not paid poll taxes a longer period of time in which to qualify the date of holding the election prevents it. However, the opportunity will then be offered each and every citizen of Texas, who is otherwise qualified to exercise the suffrage franchise, to vote on an equal basis.

It is fitting and appropriate and in keeping with sound public policy to apply any revenue derived from such legislation, if enacted, to the cause

of public education and I therefore recommend that such provision be made by your honorable body as will result in this fund becoming a part of the available school fund of the State.

To safeguard the general election to be held in November and to prevent discrimination among voters as nearly as that may be done is the object I hope for, and feel confident will be accomplished through the medium of your combined wisdom and as a result of your deliberations.

Respectfully submitted,

W. P. HOBBY,
Governor.

Nineteenth Amendment—Suffrage—Right to Vote Without Payment of Poll Tax.

The Secretary of State of the United States, the proper officer to make the announcement, has officially declared the Nineteenth Amendment to the Federal Constitution adopted. It is now recognized by the Federal Government as a part of the Constitution of the United States and must be treated as such by the respective states of the United States, unless and until such time as the proper and legally constituted authorities hold otherwise.

By the adoption of the Nineteenth Amendment, all states are prohibited from exercising any discrimination against citizens who desire to vote and who are otherwise qualified to vote by reason or on account of sex.

All women, who are otherwise qualified to vote, may participate in the general election to be held in November next.

All men, otherwise qualified to vote, may participate in the general election in November next without the payment of a poll tax.

Male inhabitants are still liable for the payment of a poll tax, but failure to pay the same will not disqualify a man from voting who is otherwise a qualified voter.

Austin, Texas, September 10, 1920.
To His Excellency, Hon. W. P. Hobby,
Governor of Texas,
CAPITOL.
Sir:—

On September 2nd, you submitted this Department the two following questions:

"1. Will all women in this State be qualified voters at the next General Election?

"2. If all women, including of course those who have not paid Poll Taxes, are qualified to vote at the next General Election, are all men who have not paid Poll Taxes likewise qualified to vote at said Election?"

In answering your inquiry, the writer at the outset desires to acknowledge with thanks the material aid and assistance rendered him in the preparation of this opinion by First Assistant Attorney General W. A. Keeling and Assistant Attorney General W. W. Caves.

There is disagreement between the lawyers of the United States on the question as to whether or not the 19th Amendment has been legally adopted and made a part of our Federal Constitution. Being aware of this disagreement, Judge Keeling wired Honorable Bainbridge Colby, Secretary of State of the United States, and asked him whether or not the 19th Amendment had been officially declared adopted. In reply, Judge Keeling received the following telegram:

"Your telegram September 3 on receipt from the Governor of Tennessee had ratified the proposed Nineteenth Amendment to the Federal Constitution I issued the announcement provided for by Section Two Hundred and Five of the Revised Statutes of the United States, the notification read from the Governor of Tennessee being the thirty-sixth notice of ratification transmitted to the Department.

"Bainbridge Colby, Sec'y of State."

By this telegram, we are given to understand that the Secretary of State, whose duty it is to make the announcement, has officially declared the 19th Amendment to the Federal Constitution adopted. It is now recognized by the Federal Government as a part of the Constitution of the United States and must be treated as such by the respective states of the United States, unless and until such time as the proper and legally constituted authorities hold otherwise. Of course, if the Supreme Court of the United States should hold that the 19th Amendment has not been adopted, then women cannot vote in the coming general election, neither can men, unless they have paid their poll taxes.

As a legal proposition, it cannot be

questioned that every provision in a state constitution and every provision contained in the statutes of a state, which are inconsistent with the provisions of any article or amendment to the Federal Constitution, cannot stand. It, therefore, becomes necessary to consider the provisions of our State Constitution, and the provisions of our laws with reference to suffrage, and especially with reference to payment of a poll tax as a prerequisite to exercising the privilege of suffrage.

Section 2, Article 6, of our State Constitution, in part, is as follows:

"Every male person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years and who shall be a citizen of the United States and who shall have resided in this State one year next preceding an election and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector, and every male person of foreign birth, subject to none of the foregoing disqualifications, who not less than six months before any election at which he offers to vote shall have declared his intention to become a citizen of the United States in accordance with the Federal Naturalization Laws, and shall have resided in this State one year next preceding such election and the last six months in the county in which he offers to vote, shall also be deemed a qualified elector; and all electors shall vote in the election precinct of their residence; provided that electors living in any unorganized county may vote at any election precinct of their residence; provided, that county is attached for judicial purposes; and provided, further, that any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before he offers to vote at any election in this State and hold a receipt showing his poll tax paid before the first day of February next preceding such election."

It will be observed that under our Constitution, persons who are permitted and authorized to vote are qualified by the use of the word "male." In addition to that, we also find that if a male person is one that is subject to pay a poll tax, that he must have paid such poll tax before he offers to vote and hold his receipt showing his poll tax paid before the first day of February next preceding such election. As already stated, any provision of our State Constitution which is inconsistent with the Nineteenth Amendment to the Federal Constitution cannot stand, and our Constitution provides that "every male person subject to none of the foregoing disqualifications. . . . shall be deemed a qualified elector." The effect of this provision in our State Constitution is to prevent women from participating in an election, and is therefore a discrimination against a part of the citizens of this State by reason and on account of sex.

Under the authorities which we shall presently consider, the adoption of the Nineteenth Amendment to the Federal Constitution unquestionably has the effect of superseding or destroying that part of our State Constitution which qualifies the kind of a person who may vote by the use of the word "male," so that our Constitution by the adoption of the Nineteenth Amendment is now made to read: "every person subject to none of the foregoing disqualifications," the word "male" being omitted, "shall be deemed a qualified voter."

The Fifteenth Amendment to the National Constitution provides that "the right of citizens of the United State to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude." The effect of the Fifteenth Amendment was to prevent discrimination against citizens desiring to exercise the privilege of suffrage on account of race, color or previous condition of servitude.

The effect of the Nineteenth Amendment is to prevent any State from discriminating against a citizen desiring to vote on account of sex. The principles of the Fifteenth Amendment and the Nineteenth Amendment are identical as both amendments deal with the question of suffrage; one prevents discrimination on account of race, color, etc., and the other prevents discrimination on account of sex.

The constitution of Delaware, which was adopted in 1831, and which was still in effect after the adoption of the Fifteenth Amendment to the Federal Constitution, restricted the right of suffrage at general elections to free white, male

citizens of the age of twenty-one and upwards.

In Neal vs. Delaware, 103 U. S., 370, the Supreme Court of the United States, in considering the provision of the Constitution of the State of Delaware in connection with the Fifteenth Amendment to the National Constitution, said:

"Beyond question the adoption of the Fifteenth Amendment has the effect, in law, to remove from the State Constitution, or render inoperative, that provision which restricts the right of suffrage to the white race. Thenceforward, the statute which prescribed the qualifications of jurors was, itself, enlarged in its operation, so as to embrace all who by the State Constitution, as modified by the supreme law of the land, were qualified to vote at a general election. The presumption should be indulged, in the first instance, that the State recognizes, as is its plain duty, an amendment of the Federal Constitution, from the time of its adoption, as binding on all of its citizens and every department of its government, and to be enforced, within its limits, without reference to any inconsistent provisions in its own constitution or statutes. In this case, that presumption is strengthened, and, indeed, becomes conclusive, not only by the direct adjudication of the State court as to what is the fundamental law of Delaware, but by the entire absence of any statutory enactments or any adjudication, since the adoption of the Fifteenth Amendment, indicating that the State, by its constituted authorities, does not recognize, in the fullest legal sense, the binding force of that amendment and its effect in modifying the State Constitution upon the subject of suffrage."

The State Court in this same case said:

"The Fourteenth Amendment, therefore, and the act of 1875 passed by Congress as appropriate legislation for its enforcement, or either, are superior to our State Constitution, and it had to give way to them, and it did so give way, and was repealed, so far as the word 'white' is mentioned therein as qualification for a voter at a general election, as soon as the amendment was proclaimed to be adopted, and has been so understood and treated by all persons in this State from that time forth. . . . There is, then, an excision or erasure of the word 'white' in the qualification of voters in this State; and the Constitution is now to be construed as if such word had never been there."

The language last quoted is quoted by the Supreme Court of the United States in the case of Neal vs. Delaware with approval.

Again in the case of Ex parte Yarbrough, 110 U. S., 651, the Supreme Court of the United States said:

"While it is quite true, as was said by this court in United States v. Reese, 92 U. S., 214, 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 to others, it is easy to see that under some circumstances it may operate as the immediate source of a right to vote. In all cases where the former slave-holding States had not removed from their Constitution the words 'white man' as a qualification for voting, this provision did, in effect, confer on him the right to vote, because, being paramount to the State law, and a part of the State law, it annulled the discriminating word 'white', and thus left him in the enjoyment of the same right as white persons. And such would be the effect of any future constitutional provision of a State which should give the right of voting exclusively to white people, whether they be men or women."

And again in the case of Guinn vs. United States, 238 U. S., 347, the Supreme Court of the United States said:

"While in the true sense, therefore, the Amendment gives no right of suffrage, it was long ago recognized that in operation its prohibition might measurably have that effect; that is to say, that as the command of the Amendment was self-executing and reached without legislative action the conditions of discrimination against which it was aimed, the result might arise that as a consequence of the striking down of a discriminating clause a right of suffrage would be enjoyed by reason of the generic character of the provision which would remain after the discrimination was stricken out, Ex parte Yarbrough, 110 U. S., 651; Neal v. Delaware, 103 U. S.,

370. A familiar illustration of this doctrine resulted from the effect of the adoption of the Amendment on state constitutions in which at the time of the adoption of the Amendment the right of suffrage was conferred on all white male citizens, since by the inherent power of the Amendment the word 'white' disappeared and therefore all male citizens without discrimination on account of race, color or previous condition of servitude can under the generic grant of suffrage made by the State."

From these decisions there can be no question but that the adoption of the Nineteenth Amendment to the Federal Constitution has the effect of erasing or destroying the word "male" as used in that provision of our State Constitution already quoted, and which qualifies or describes the kind of a person with reference to sex who is permitted to vote. From the day and date that the Nineteenth Amendment was declared adopted it had the effect of changing Section 2 of Article 6 of our State Constitution, so that it should thereafter read, "Every person subject to none of the foregoing disqualifications," etc.

The Constitution does not require, nor is there any statute which requires a woman to pay a poll tax as a prerequisite to exercising the privilege of voting at a general election. We have a statute which provides that a woman must pay a poll tax in order to participate in a primary election or in the nominating convention of a political party. This statute does not attempt to require women to pay a poll tax in order to vote at a general election and can not be so construed. It follows that all women, who are otherwise qualified, may vote in the general election to be held in November next without the payment of a poll tax.

We next consider the second question submitted by Your Excellency, that is,—Can men vote, who are otherwise qualified, in the coming general election without the payment of a poll tax? The Nineteenth Amendment says nothing about women as such and is equally silent with reference to men as such, but it does prevent discrimination with reference to exercising the privilege of suffrage on account of sex. We have determined that women can vote in the general election to be held in November next without the payment of poll tax, Our laws provide in express terms that a male person who is subject to pay a poll tax can not vote unless he has paid the tax and holds a receipt showing that such tax was paid prior to the first day of February preceding such election. Are these provisions of our laws inconsistent with the Nineteenth Amendment? We think so. Is it discrimination on the part of the State to require a man to pay a poll tax in order to vote and not make the same requirement of a woman? If it is discrimination, isn't the basis of the discrimination one of sex? We think both these questions must be answered in the affirmative. The purpose of the Nineteenth Amendment was to give the right of suffrage to women. The language in which the Amendment is framed prevents discrimination against men as well as against women. No requirement can be made of men that is not made of women with reference to exercising the elective franchise.

The Nineteenth Amendment to the Federal Constitution is as follows:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

In Ex Patre Yarbrough, supra, the Supreme Court of the United States said:

"In the case of the United States v. Resse, so much relied on by counsel, this court said in regard to the Fifteenth Amendment, that 'it has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is an exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude.' This new constitutional right was mainly designed for citizens of African descent. The principle, however, that the protection of the exercise of this right is within the power of Congress is as necessary to the right of other citizens to vote as to the colored citizen, and to the right to vote

in general as to the right to be protected against discrimination."

The above quotation applies with equal force to the Nineteenth Amendment. That is to say, the Nineteenth Amendment has invested the citizens of the United States with a new constitutional right. That right is an exemption from discrimination in the exercise of the elective franchise on account of sex. As pointed out by the Supreme Court with reference to the Fifteenth Amendment, this right "is as necessary to the right of other citizens to vote as to the colored citizen and to the right to vote in general as to the right to be protected against discrimination." The Nineteenth Amendment gives the woman a right to vote. The protection of the exercise of this right is as necessary to the right of other citizens to vote as to the women, and other citizens have an equal right with women to be protected against discrimination.

The Supreme Court of the United States has many times held that the Fifteenth Amendment prevented a State from making any requirement of a negro man as a condition precedent to the exercise of the elective franchise that it did not require a white man to comply with. It would be equally true as pointed out in the above decision that no requirement could be made of a white man that was not required of a negro. The same principle is true in this case. No requirement can be made of a woman that is not required of a man and the reverse of this proposition must, of necessity, be true. There cannot and must not be any discrimination on account of sex.

It is a well settled principle of constitutional and statutory construction that where a part of an article or section of the State Constitution or a part of a State statute is inconsistent with some provision of the National Constitution and other parts are not that ordinarily it will be held that only the part that is inconsistent is annulled and that part which is not inconsistent with the National Constitution remains valid and unimpaired. It was under this well known rule of construction that the Supreme Court of the United States held that the only effect the Fifteenth Amendment had on the provision of the Delaware State Constitution already referred to was to annul the word "white" and left the remainder unimpaired. It is this same rule that permits this Department to hold that the only effect the Nineteenth Amendment has on Section 2, Article 6 of our State Constitution is to annul the word "male" and leave the remainder of the section unimpaired, except, that provision contained in Section 2, Article 6 which provides that any voter who is subject to pay a poll tax shall have paid such tax before he offers to vote at any election in this State and hold a receipt showing his poll tax paid before the 1st day of February next preceding such election must remain inoperative until persons subject to pay a poll tax include women as well as men. This section of our Constitution does not say who is subject to pay a poll tax. The statute must be looked to in order to determine who is subject to pay a poll tax in this State as a prerequisite of voting.

Article 2939, Vernon's Sayles' Civil Statutes, 1914, provides as a part of the qualifications for voting that—

"Any voter who is subject to pay his poll tax under the laws of the State of Texas or ordinances of any city or town in this State shall have paid said tax before he offers to vote at any election in this State and hold a receipt showing the payment of his poll tax before the 1st day of February next preceding such election."

This Article is a part of the Terrell Election Law. This Article of the Statute does not say who is subject to the payment of a poll tax but requires, as does section 2 of article 6 of the Constitution, that persons subject to the payment of a poll tax must have paid same and that same must have been paid before the 1st day of February next preceding such election. The statute does not say that persons required to pay a poll tax under the Constitution, but what it does say is, that persons subject to pay a poll tax under the laws of Texas or ordinances of any city or town in this State. We know that the Constitution is sometimes referred to as a part of our laws, but in this instance we do not think the Legislature intended to refer to the Constitution for the reason that the poll tax imposed by section 3, article 7 of the State Constitution is only for $1.00, and the poll tax levied by statute is $1.50, and gives the right

to the respective counties of the State to levy an additional poll tax of 25 cents. And in addition to this, cities and towns are permitted by statute to levy a poll tax of $1.00. By legislative construction it would seem to be determined that the Constitution does not say who is subject to pay a poll tax as a condition precedent to exercising the elective franchise. We think this legislative construction correct. What the Constitution does do is to require all voters subject to pay a poll tax to have paid same before offering to vote. Such payment to have been made prior to the 1st day of February next preceding such election. If we are correct in this assumption it follows that the provision in section 2, article 6, which requires all voters subject to pay a poll tax, is not inconsistent with the Nineteenth Amendment. However, it remains inoperative until persons subject to pay a poll tax as a condition precedent to the exercise of the elective franchise shall include women as well as men.

We must look to Article 7354, Vernon's Sayles' Civil Statutes 1914, in order to ascertain who is subject to pay a poll tax. This statute provides:

"There shall be levied and collected from every male person between the ages of twenty-one and sixty years, resident within this State, on the first day of January of each year (Indians not taxed, and persons insane, blind, deaf and dumb or those who have lost one hand or foot, excepted) an annual poll tax of one dollar and fifty cents, one dollar for the benefit of free schools, and fifty cents for general revenue purposes; provided, that no county shall levy more than twenty-five cents poll tax for county purposes."

Under the laws of Texas it is male persons between the ages of twenty-one and sixty years of age, resident within this State, that are subject to the payment of a poll tax. We are not unmindful of the provisions of section 3, article 7 of our State Constitution and we will presently discuss these provisions. However, under the Terrell Election Law it is only persons who are subject to pay a poll tax under the laws of Texas or ordinances of cities and towns that must have paid same before they can vote.

When we consider article 7354 and the provisions above quoted from the Terrell Election Law together, we find that citizens who are subject to the payment of a poll tax cannot vote unless they have paid the poll tax and that such payment was made before the 1st day of February next preceding the date of the election to which the citizen offers to vote, and we also find that the citizens who are subject to the payment of the poll tax are male citizens between twenty-one and sixty years of age.

Article 7354 standing alone is not inconsistent with the Nineteenth Amendment. This article levies a poll tax not on voters but on "male persons" between the ages named "resident within this State." Every male resident in Texas is not a voter, but he must pay a poll tax if his age is between twenty-one and sixty years. Foreigners who have not taken out their naturalization papers are not voters.

The Legislature has the power to levy a poll tax on men without levying such a tax on women. Section 1, Article 8 of our State Constitution says that "the legislature may impose a poll tax." Article 7354 was enacted in 1882. A poll tax from that time to this has been levied on every male person between the ages named who reside in this State, but the payment of this tax was not made a prerequisite to voting until the Terrell Election Law was enacted. It follows that the provision of the Terrell Election Law already quoted is inconsistent with, or at least made inoperative, by the Nineteenth Amendment. This is, it remains inoperative until women are included among the persons subject to the payment of a poll tax as a condition precedent to exercising the elective franchise. The statute that levies the poll tax is not inconsistent with the Nineteenth Amendment. Men subject to pay a poll tax must continue to do so, but they cannot be prevented from voting as a penalty for failing to pay the poll tax. If both men and women were subject to pay a poll tax that provision of the Terrell Election Law which we are discussing would not be inconsistent with the Nineteenth Amendment, but women not being subject to such tax and being permitted to vote, if otherwise qualified, without having paid a poll tax and that men cannot, unless they have paid a poll tax. Hence there is a discrimination against citizens of the United States and Texas desiring to exercise the elective franchise and this discrimination is on account of sex which is expressly forbidden by the

Nineteenth Amendment to the Constitution of the United States.

We must next consider Section 3, Article 7 of the State Constitution wherein it is provided:

"One-fourth of the revenue derived from the State occupation taxes and a poll tax of $1 on every male inhabitant of this State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public school....." etc.

This section of our constitution has nothing to do with our suffrage laws, unless it be held that Section 2, Article 6 of the Constitution, in providing that all voters subject to pay a poll tax must have paid same in order to vote specifically refers to the above section of the constitution. If it does, then the above section of the constitution is annulled by the Nineteenth Amendment for the above section of the constitution levies a tax on male persons and does not levy a tax on female persons. If it be held that Section 2, Article 6 and Section 3, Article 7 must be construed together, we have our Constitution levying a poll tax on men and demanding its payment as a prerequisite to exercising the privilege of suffrage and the Nineteenth Amendment provides that women can vote and we have no law imposing a poll tax on them as a prerequisite to voting. Therefore, both sections of the Constitution would be inconsistent with the Nineteenth Amendment for the reason that they would impose a more onerous duty upon male citizens than upon female citizens as a condition precedent to voting.

We are of the opinion that Section 3, Article 7, has nothing to do with suffrage but that it is a revenue provision. In holding that Section 3, Article 7 of the State Constitution is a revenue measure and has nothing to do with suffrage, we are following the well settled rule of statutory and constitutional construction which provides that where a state constitution or statute by one construction is made inconsistent with the National Constitution and therefore unconstitutional and of no effect, and another construction just as reasonable can be given the state constitution or statute which would prevent its being inconsistent with the National Constitution, that construction will be given which will cause the State Constitution or statute to remain unimpaired, of full effect and constitutional.

We, therefore, hold that Section 3, Article 7 is not affected by the Nineteenth Amendment. We have already held that Article 7354 of the Civil Statutes is not inconsistent with the Nineteenth Amendment, therefore, every male person between the ages named in the statute is still liable to the State for the amount of his poll tax, and this poll tax will be construed to be levied so long as this article of the statute remains unimpaired. This is true for the reason that this section of the Constitution, and this article of the statute, is a tax levied for revenue only. A man can vote, if otherwise qualified, without having paid a poll tax for the reason that the provisions of the Terrell Election Law already referred to are annulled by the Nineteenth Amendment. However, this does not relieve men from the payment of the poll tax. It only has the effect of preventing the State from penalizing a man who does not pay his poll tax by preventing him from voting. The poll tax as levied is one for revenue and must be paid regardless of whether the man is a voter or not. In this connection we call attention to the fact that neither the Constitution nor the statute which levies the poll tax requires a poll tax to be paid by a voter. The Constitution, Section 3, Article 7, says: "Every male inhabitant of this State." The statute says, Article 7354 "there shall be levied and collected from every male person between the ages of twenty-one and sixty, resident within this State." The term "inhabitant" as used by the Constitution and the term "resident" as used in the statute are synonymous. Male persons are qualified voters who are not subject to the payment of a poll tax, namely, men over sixty years of age and men between twenty-one and sixty years of age who are blind, insane, deaf and dumb, or those who have lost one hand or one foot. Many men are required to pay the poll tax who are not qualified voters. Every male inhabitant or resident of this State, between the ages mentioned, must pay a poll tax, but every male inhabitant or resident of this State is not a qualified voter. The poll tax then is not levied upon men who are qualified voters, but upon male in-

habitants between certain ages with the exceptions pointed out above.

Therefore, you are respectfully advised, that in the opinion of this Department the second question submitted by Your Excellency, as well as the first, must be answered in the affirmative. That is to say, that all male persons, otherwise qualified to vote in the general election to be held in November next, must be permitted to vote regardless of whether they have or have not paid a poll tax.

Yours very truly,
(Signed) E. F. SMITH,

This opinion has been considered in conference, passed upon, and is now ordered recorded.

(Signed) W. A. KEELING,
Acting Attorney General.

Senate at Ease.

On the motion of Senator Clark the Senate at 3:30 p. m. stood at ease subject to the call of the Chair.

In the Senate.

The Chair called the Senate to order at 4:45 p. m.

Senator Dayton's Personal Privilege.

Senator Dayton rose to a point of personal privilege, inasmuch as he could not be here the entire session.

Recess.

At 4:54 p. m., on the motion of Senator McNealus the Senate stood recessed until 8:30 p. m. tonight.

Tuesday Night.

The Senate was called to order at 8:30 p. m. pursuant to recess by Lieutenant Governor Johnson.

Committee from the House.

A committee from the House presented itself at the bar of the Senate and announced that the House was organized and ready for work.

Senate Committee Returned.

The committee sent by the Senate to notify the House that the Senate was organized returned and reported their duty performed.

Adjournment.

Senator McNealus moved to adjourn until tomorrow at 10 o'clock.

Senator Bledsoe moved to adjourn until 9 o'clock tomorrow.

On the motion of Senator McNealus, the ayes and nays were demanded. There was no quorum present, the following members answering to their names:

Yeas—3.

Caldwell.	Dudley.
Dayton.	

Nays—13.

Alderdice.	Hertzberg.
Bledsoe.	Hopkins.
Buchanan of Bell.	McNealus.
Buchanan of Scurry.	Rector.
Cousins.	Smith.
Davidson.	Witt.
Gibson.	

Absent.

Carlock.	Page.
Clark.	Parr.
Dean.	Suiter.
Faust.	Westbrook.
Hall.	Williford.

Absent—Excused.

Bailey.	Strickland.
Dorough.	Woods.
Floyd.	

There being no quorum present, on the motion of Senator Bledsoe, the Senate at 9:55 p. m. stood adjourned until Wednesday morning at 9 o'clock.

SECOND DAY.

Senate Chamber,
Austin, Texas,
Wednesday, Sept. 22, 1920.

The Senate met at 9 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor W. A. Johnson.

The roll was called, no quorum being present, the following Senators answering to their names:

Alderdice.	Buchanan of Bell.
Bailey.	Buchanan of Scurry.
Bledsoe.	Caldwell.