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James M. King

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THE PRIMARY FILING FEE: REASONABLE REGULATION OR EQUAL PROTECTION VIOLATION?

At present many states impose a filing fee on the primary election candidate as a condition to accepting his declaration of candidacy and placing his name on the primary ballot.¹ Such a fee is sustained as a reasonable exercise of the state's power to regulate and control the conduct of the electoral process.² The two main arguments advanced in support of the reasonableness of a filing fee are: First, those who seek the benefit of a particular proceeding provided by the law should reimburse the state for a portion of the expense incurred in carrying that proceeding into effect.³ Second, the fee provides an orderly and systematic method of selecting bona fide candidates,⁴ thus tending "to prevent an indiscriminate scramble for office,"⁵ on the assumption "that any candidate who is of sufficient worth to stand before the people as a candidate . . . will be at no difficulty to pay the required amount."⁶ By design the fee supposedly excludes those aspirants who do not have the public interest in mind; presumably they would receive insignificant support at the polls.⁷ Impliedly, the affluent candidate is more public-spirited than the poor.

This comment will analyze both state and federal constitutional objections to the imposition of the filing fee as a valid exercise of the state's power to regulate elections, utilizing California law as an example.⁸ While recent election cases emphasize equal protection of

¹ See, e.g., CAL. ELEC. CODE § 6552 (West Supp. 1967); MINN. STATS. § 202.05 (West Supp. 1967); REV. CODE WASH. § 29.18.050 (West 1965).

² Socialist Party v. Uhl, 155 Cal. 776, 103 P. 181 (1909); accord, State ex rel. Zent v. Nichols, 50 Wash. 508, 97 P. 728 (1908); State ex rel. Thompson v. Scott, 99 Minn. 145, 108 N.W. 829 (1906).

³ Socialist Party v. Uhl, 155 Cal. 776, 103 P. 181 (1909); see Lasseigne v. Martin, 202 So. 2d 250 (La. Ct. App. 1967), appeal dismissed, 250 La. 1081, 202 So. 2d 257 (1967); see also Annot., 89 A.L.R.2d 864, 869 (1963).

⁴ Socialist Party v. Uhl, 155 Cal. 776, 790, 103 P. 181, 187 (1909); cf. Gray v. Kenny, 67 Cal. App. 2d 282, 153 P.2d 961 (1944); see also 89 A.L.R.2d 864, 872 (1963).

⁵ Socialist Party v. Uhl, 155 Cal. 776, 790, 103 P. 181, 187 (1909).

⁶ *Id.*

⁷ *Id.*

⁸ Other states which require a primary filing fee of prospective candidates are: Alabama, Alaska, Arkansas, Connecticut, Florida, Idaho, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wyoming, and Washington.

The following states use the petition method instead of the fee requirement: Colorado, Indiana, Iowa, Illinois, Kentucky, Maine, Massachusetts, New Jersey, New York, North Dakota, Rhode Island, South Dakota, Tennessee, and Vermont.

the laws,⁹ the early cases turned on the reasonableness of the legislation.

THE REASONABLENESS TEST: SOME ANCIENT PRECEDENTS

After California adopted an enabling amendment to the constitution,¹⁰ the legislature in 1909 enacted a comprehensive direct primary law¹¹ similar to the provisions in the present Elections Code.¹² That same year the historic test case of *Socialist Party v. Uhl*¹³ challenged the constitutionality of that law. In a blanket attack plaintiff wove in the argument that the imposition of a filing fee, as a condition to placing a candidate's name on the primary ballot, was an unconstitutional exercise of the state's regulatory power over elections. Opponents of the direct primary law also contended that the fee violated Article I, section twenty-four of the California Constitution which prohibits property qualifications as a requirement for any person to either vote or hold office.¹⁴ Upholding the state's power to exact the fee, the court said it was justified as a reasonable regulation to promote the proper functioning of the primary.¹⁵

Aside from the reimbursement syllogism¹⁶ the court was particu-

Four states give the candidate a choice, either file a petition or a fee: Kansas, Michigan, New Hampshire, and Oregon.

⁹ See, e.g., *Williams v. Rhodes*, 89 S. Ct. 5 (1968); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966); *Reynolds v. Sims*, 377 U.S. 533 (1963).

¹⁰ "[T]he Legislature shall enact laws providing for the direct nomination of candidates for public office, by electors, political parties, or organizations of electors without conventions, at elections to be known and designated as primary elections; also to determine the tests and conditions upon which electors . . . may participate in any such primary election." CAL. CONST. art. II, § 2½ (1908).

¹¹ Act of March 24, 1909, ch. 405, [1909] Cal. Stats. 691.

¹² CAL. ELEC. CODE §§ 6400-6800 (West 1961), as amended, (West Supp. 1967). In the Direct Primary Law of 1909, the filing fee was established as a flat rate fee for federal and certain state offices. Act of March 24, 1909, ch. 405, § 7, [1909] Cal. Stats. 696. The Legislature amended this section in 1927 providing for percentage fees based on the first year's salary for candidates for federal and state-wide offices. Act of July 31, 1927, ch. 838, § 7, [1927] Cal. Stats. 1694. Fees for the offices of state senator and assemblyman were placed on the percentage scale in 1963. CAL. ELEC. CODE § 6552 (West 1961), as amended, ch. 693, § 3, [1963] Cal. Stats. 1701, and ch. 1305, § 1, [1963] Cal. Stats. 2831.

¹³ 155 Cal. 776, 103 P. 181 (1909). Since this was an overall attack, the court was primarily interested in considering the validity of the act as a whole, and only secondarily concerned with the specific thrust against the filing fee. In expressing its concern for the effectiveness of the entire act, the court commented that even if the provision relating to the fee conflicted with the state constitution, it would not invalidate the entire act. If eliminated, the remainder of the act providing a general scheme for the conduct of primary elections could stand. *Id.* at 789, 181 P. at 186-87.

¹⁴ "No property qualification shall ever be required for any person to vote or hold office." CAL. CONST. art. I, § 24.

¹⁵ The court relied on the enabling amendment which gave the legislature the power to implement the Primary Act by providing reasonable conditions for the exercise of the rights granted by that act. CAL. CONST. art. II, § 2½.

¹⁶ See p. 169 *supra*.

larly persuaded by the argument that the legislative intent was to create an orderly and systematic method by which the people might effectively register their choice for public office. To effect this intent the court sustained the fee as preventing a wholesale filing of nomination declarations which would disrupt the primary.¹⁷ Since this is a legitimate concern of the legislature, its intent is not questioned.¹⁸ The effective means to that end, nevertheless, should be closely scrutinized.¹⁹ The court indicated that the fee would be a reasonable regulation if it imposed no hardship on a person for whom there was minimal electorate support, but prevented a filing *en masse* by undesirable candidates.²⁰ The obvious difficulties with this position are the determination of the amount of the fee,²¹ and the judgment of the candidate's good faith. The latter is a decision better left to the voter except in cases where there is a clear attempt to upset the electoral process.²²

The court recognized that similar cases arose in several other jurisdictions although decisions contrary to its own were rendered in those states.²³ As a general rule the filing fee could be sustained as compensation for services rendered if reasonably related to the value of those services.²⁴ In distinguishing the North Dakota and Nebraska cases, the *Uhl* court noted that the relevant statutes in those

¹⁷ See note 4 *supra*.

¹⁸ The federal constitution grants to the state legislatures the authority to regulate elections within congressional limitations. U.S. CONST. art. I, § 4. See p. 173 *infra*.

¹⁹ See note 47 *infra* and accompanying text.

²⁰ *Socialist Party v. Uhl*, 155 Cal. 776, 790, 103 P. 181, 187 (1909).

²¹ *State ex rel. Riggle v. Brodigan*, 37 Nev. 492, —, 143 P. 238, 242 (1914) (dissenting opinion); see *Ballinger v. McLaughlin*, 225 S.D. 206, —, 116 N.W. 70, 71 (1908); *Johnson v. Grand Forks County*, 16 N.D. 363, —, 113 N.W. 1071, 1074 (1907).

²² A pertinent section of the Kentucky Statutes reads in part: "No person shall file a notification and declaration to become a candidate in a primary election as a pretended, fictitious or 'dummy' candidate for the purpose of influencing or controlling the selection of challengers or inspectors or officers of election . . ." KY. REV. STATS., ch. 119, § 119.060 (1963).

A provision of the Oklahoma Elections Laws requires that at the time of filing a petition to have his name placed on the primary ballot, a candidate shall deposit two hundred fifty dollars with the State Election Board. This deposit is to be used to defray any expenses of a hearing concerning challenges to the individual's candidacy. If successful in defense, and his name is placed on the ballot without further objection, the deposit is returned. OKLA. ELEC. LAWS, ch. 5, § 165a (Supp. 1968).

²³ *Johnson v. Grand Forks County*, 16 N.D. 363, 113 N.W. 1071 (1907); *People ex rel. Breckon v. Election Comm'rs*, 221 Ill. 9, 77 N.E. 321 (1906); *State ex rel. Adair v. Drexel*, 74 Neb. 776, 105 N.W. 174 (1905); see also Annot., 89 A.L.R.2d 864 (1963).

²⁴ The expenses of the primary are paid out of the public treasuries. CAL. ELEC. CODE § 10000 (West 1961). There is no question, therefore, of the power of the legislature to require those submitting their names to be voted for at the primary to pay the expenses of the election.

The actual services referred to are those rendered in the filing of the nomination papers. *Socialist Party v. Uhl*, 155 Cal. 776, 789-90, 103 P. 181, 187 (1909).

jurisdictions had based determination of the fee "on the emoluments of the office to which the candidate aspires" ²⁵ Since there was no reasonable relation between the fee and the services rendered the decision went against the state in those instances. *Uhl*, however, relied upon *State ex rel. Thompson v. Scott*, ²⁶ wherein the Supreme Court of Minnesota admitted that the flat rate fee was not intended to have any appreciable relation to the amount of income from the office. ²⁷

Yet *Uhl* seems to imply that a fee based on a percentage of salary is prima facie unreasonable because it is determined directly by the remuneration of the office and not the cost of the services which are rendered. ²⁸ Had the present fee scale been integrated into the Direct Primary Act of 1909, it seems that the court might have struck it down as not being directly related to the cost of the services performed, that is, based on the arbitrary and irrelevant standard of lucrativeness of the office. ²⁹

Besides justifying the fee as a proper revenue measure when designed as a reasonable reimbursement for services, the *Uhl* court also sustained it on the regulation theory. ³⁰ The goal was to preclude political imposters from using the primaries for purposes other than those for which they were devised. ³¹ The supporting logic was that any candidate of sufficient integrity to run for representative office would have no difficulty paying the required filing fee. ³² This assumption, though couched in euphemistic terms, is the equivalent of stating that a citizen's worth as an aspiring candidate is measured by his ability to meet a pecuniary standard in order to qualify for candidacy. Such a criterion is neither contemplated nor permitted by the California Constitution. ³³ Such reasoning is also repugnant to federal constitutional policy. ³⁴

Underlying the argument that the fee requirement prevents an

²⁵ *Id.* at 790-91, 103 P. at 187. In *Johnson* the fee was set at two percent of the annual salary of the office sought. *Johnson v. Grand Forks County*, 16 N.D. 363, —, 113 N.W. 1071, 1071 (1907). In *Drexel* it was one percent. *State ex rel. Adair v. Drexel*, 74 Neb. 776, —, 105 N.W. 174, 178 (1905).

²⁶ 99 Minn. 145, 108 N.W. 829 (1906).

²⁷ *Id.* at —, 108 N.W. at 830.

²⁸ *Socialist Party v. Uhl*, 155 Cal. 776, 103 P. 181 (1909) (by implication).

²⁹ *Id.*

³⁰ *Id.* at 790, 103 P. at 187.

³¹ The purpose of a primary election law is to preserve the integrity of parties by restricting the right to participate in the primary of a given party, either as a candidate or an elector, to persons who are committed to the principles of that party, sympathetic with its aims, and loyal to its tenets. *Id.* at 792-93, 103 P. at 188.

³² *Id.* at 790, 103 P. at 187.

³³ CAL. CONST. art. I, § 24.

³⁴ U.S. CONST. amend. XXIV; *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

"indiscriminate scramble" is the premise that the number of candidates should be limited and restrained. *Johnson v. Grand Forks County*³⁵ reasoned against *Uhl* on this point. *Johnson* saw the spirit of the election system as encouraging free choice; the greater the number of aspirants, the more varied the choice.³⁶

The reason for regulating the primary is to maintain an orderly elective system.³⁷ The purpose of preserving the system should be to enable citizens to intelligently participate not only as voters expressing their choices for representatives,³⁸ but also as candidates carrying out the mandate of their supporters. State regulatory methods must be in accord with this purpose. By adopting means which have no relevance to an intelligent participation in the elective process, in order to effectuate that process, the state legislates idly since the law defeats its very purpose.³⁹

A CANDIDATE'S RIGHT: EQUAL PROTECTION

Federal constitutional limitations govern any preliminary election that in fact determines the true weight a vote will have.⁴⁰ Since a California primary election is an integral part of the full elective process,⁴¹ it follows that when a state regulation of a primary election denies to any elector within its borders the equal protection of its laws, that elector has standing to seek relief under the equal protection clause of the fourteenth amendment.⁴² But in order to guarantee the candidate equal protection, the elector's right to be a candidate must first be established.

While the United States Constitution established an elector's

³⁵ 16 N.D. 363, 113 N.W. 1071 (1907).

³⁶ *Id.* at —, 113 N.W. at 1074. Quoting J. WIGMORE, *THE AUSTRALIAN BALLOT SYSTEM* 54 (1889), the court stated: "But it is to be remembered that in this country a candidacy may be hopeless as regards the election of the nominee, and yet important and highly desirable as a means of exhibiting the strength of a section of electors or of a particular movement, and, of course, compelling the attention of the leading parties, and the modification of their platforms and legislative policies. It will be seen, therefore, that the plan of requiring a reasonable deposit is not adapted to our political methods, and that its adoption would be ill advised." *Id.* at —, 113 N.W. at 1074-75.

³⁷ *Socialist Party v. Uhl*, 155 Cal. 776, 792, 103 P. 181, 188 (1909).

³⁸ *Id.*

³⁹ See *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966); *cf.* *Spier v. Baker*, 120 Cal. 370, 52 P. 659 (1898).

⁴⁰ *Gray v. Sanders*, 372 U.S. 368 (1963); *accord*, *Smith v. Allwright*, 321 U.S. 649 (1944).

⁴¹ *Barber v. Blue*, 65 Cal. 2d 185, 417 P.2d 401 (1966); *accord*, *Donnellan v. Hite*, 139 Cal. App. 2d 43, 293 P.2d 158 (1956); *In re McGee*, 36 Cal. 2d 592, 226 P.2d 1 (1951).

⁴² *Williams v. Rhodes*, 89 S. Ct. 5, 10 (1968); see *Otsuka v. Hite*, 64 Cal. 2d 596, 601, 414 P.2d 412, 416 (1966).

right to be a candidate for United States Senator and member of the House of Representatives,⁴³ nowhere does it provide for his right to be a candidate for state office.⁴⁴ In 1944 the Supreme Court held that both the right to vote and the right to candidacy in state elections were privileges of state citizenship, rather than national citizenship, and thus were not protected by the privileges and immunities clause.⁴⁵ This holding, however, has already been overruled with respect to the voter's right.⁴⁶ To acknowledge a right to vote without a right to run seems somewhat illogical.

In a representative form of government the people express their sovereignty through the ballot. If preservation of the people's sovereignty measures the viability of representative government, then the elective franchise is obviously the most valuable right of citizenship.⁴⁷ To treasure the right to vote without securing the right to candidacy seems self-defeating. The touchstone of the voting right is free choice.⁴⁸ To the extent that choice is limited, the voting right is diminished. Thus, restricting the number of candidates reduces the voting right. It follows that the right to vote necessarily implies the right to candidacy.

However, in discussing the applicability of the equal protection clause it is unnecessary to pinpoint the source of the right in question.⁴⁹ It is enough to say that once the right is granted to the electorate, lines which are discriminatory may not be drawn.⁵⁰ Accordingly, the right of candidacy is subject only to the imposition

⁴³ U.S. CONST. art. I, § 2; see *United States v. Classic*, 313 U.S. 299, 314-15 (1941).

⁴⁴ But belief in the right to candidacy is not a novelty in constitutional law. As early as 1902 Chief Justice Beatty of the California Supreme Court said: "The right to be chosen to a public office is as much a constitutional right as the right of suffrage, and to deprive any person possessing the constitutional qualifications for office of the opportunity of competing with other candidates upon equal terms is a denial of his constitutional rights." *Murphy v. Curry*, 137 Cal. 479, 486, 70 P. 461, 464 (1902) (concurring opinion).

⁴⁵ *Snowden v. Hughes*, 321 U.S. 1 (1944).

⁴⁶ *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

⁴⁷ "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1963); accord, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 667 (1966).

The right to vote is a "fundamental political right, because preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); accord, *Otsuka v. Hite*, 64 Cal. 2d 596, 601, 414 P.2d 412, 416 (1966).

⁴⁸ *United States v. Classic*, 313 U.S. 299, 314 (1941).

⁴⁹ *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966).

⁵⁰ *Id.*

of state standards which do not discriminate against candidates and do not contravene restrictions imposed by Congress.⁵¹

In striking down the poll tax as a condition to voting in state elections, the Supreme Court said in *Harper v. Virginia State Board of Elections*:⁵²

We conclude that a state violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying this or any other tax. . . .

But we must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth like race, creed, or color is not germane to one's ability to participate intelligently in the electoral process.⁵³

Since the right to candidacy is a necessary corollary of the right to vote, it seems that the state violates the equal protection clause when it imposes upon a candidate a standard of wealth in the guise of a filing fee; a standard irrelevant to his intelligent participation in the electoral process.

Proponents of the filing fee have argued the same three rationales that had sustained the life of the poll tax as a condition to the exercise of the voting franchise.⁵⁴ First, it was urged, the state may exact fees from citizens for many different kinds of licenses. If it could demand of a citizen a fee for a driver's license, it could demand of its citizens a fee for a voting "license."⁵⁵ This is the "reimbursement for services" argument upon which *Uhl* relied as justification for the imposition of the filing fee.⁵⁶ The Supreme Court dismissed this theory in *Harper*, stating that the interest of a state with regard to voting is limited to fixing qualifications.⁵⁷ Secondly, it was said that payment of a poll tax before a citizen could vote promoted civic responsibility and weeded out those who did not

⁵¹ *Id.* at 665 (by implication); see also *Lassiter v. Northampton Bd. of Elections*, 360 U.S. 45, 51 (1959).

⁵² 383 U.S. 663 (1966).

⁵³ *Id.* at 668.

⁵⁴ *Harper* is the most recent case containing a searching discussion. For a summary of the earlier cases discussing the poll tax issue see Annot., 139 A.L.R. 562 (1942).

⁵⁵ *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 668 (1966).

⁵⁶ See p. 169 *supra*. "The right to exact a reasonable fee for the privilege of running for office may be sustained, on the principle that fees in actions and proceedings in courts, and for filing and recording papers, are sustainable." *State ex rel. Zent v. Nichols*, 50 Wash. 508, —, 97 P. 728, 730 (1908).

⁵⁷ See note 53 *supra* and accompanying text.

care enough about public affairs to pay the tax. This is the regulation argument that those who can bear the levy are more responsible, more knowledgeable, more educated, and more worthy of confidence than those without means.⁵⁸ Although rational, and historically documented, the regulation theory carried little weight with the Court;⁵⁹ the degree of discrimination was and still remains irrelevant when applying the equal protection clause.⁶⁰ Neither is an administrative benefit to the state justified when it deprives a class of individuals of the right to vote.⁶¹

A third argument favoring the tax was that the weight of precedent alone was enough to justify its approval; that the poll tax was instituted for a rational purpose, its validity established, and therefore, should not have been questioned.⁶² In response the Supreme Court noted that the equal protection clause is not "shackled to the political theory of a particular era."⁶³ Citing its historic reversal of *Plessy v. Ferguson*,⁶⁴ the Court stated that "[n]otions of what constitutes equal treatment for purposes of the Equal Protection Clause *do* change."⁶⁵

Although it is not clear that there is a right to candidacy, the expanding interpretation of equal protection would seem to protect the candidate as strongly as the voter when the state employs a primary filing fee which is arbitrary or discriminatory.

THE FILING FEE AS ABRIDGEMENT OF THE VOTER'S RIGHT

If the effect of imposing a filing fee on a candidate seems apparent, the incursion upon the voter's rights is less obvious. In *United States v. Classic*⁶⁶ the Court upheld the voter's right to choose representatives for federal office in any election that determines the true weight a vote will have. *Reynolds v. Sims*⁶⁷ requires that in a state election each man's vote is to have the same weight

⁵⁸ *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 685 (1966) (dissenting opinion of Justice Harlan).

⁵⁹ *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 668 (1966).

⁶⁰ *Id.* at 685-86 & n.10 (dissenting opinion).

⁶¹ *Carrington v. Rash*, 380 U.S. 89 (1965) (state could not deny the opportunity to vote to a bona fide resident merely because he was a member of the armed services).

⁶² *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) (dissenting opinions of Justices Black and Harlan).

⁶³ *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 669 (1966).

⁶⁴ 163 U.S. 537 (1896), *rev'd*, *Brown v. Board of Education*, 347 U.S. 483 (1954) (repudiating the infamous "separate-but-equal" doctrine which had sustained racial segregation in public schools).

⁶⁵ *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 669 (1966).

⁶⁶ 313 U.S. 299 (1941).

⁶⁷ 377 U.S. 533 (1964).

as the other's in proportion to the entire electorate. By utilizing contemporary fourteenth amendment interpretations *Harper* guarantees to state election voters the same protection guaranteed in the twenty-fourth amendment⁶⁸ to federal election voters.

Despite these indicia of constitutional policy, the primary filing fee endures even though it seems to tax the voter's rights. When a candidate is prevented from participating in the primary by an arbitrary standard of wealth, his constituency may no longer have the opportunity to vote for a candidate sympathetic to its views. Though the assessment is levied against the candidate, the effect on the elective system is the same as if it were levied directly against the voter, that is, his constitutionally protected right to choose⁶⁹ is abridged.

That write-in votes are permitted in no way vitiates this argument. For a person nominated by having his name written on the primary ballot must pay the same filing fee to attain the general election ballot that would have been required if his primary declaration had been filed.⁷⁰

Funds provided by concerned citizens to pay a candidate's fee are clearly distinguishable from monies contributed to the political party for campaign and other expenses, since the fees go to the state and county treasuries.⁷¹ Yet in this situation the constituent is called upon to pay in order to exercise his right to freely choose. This would seem to be a discriminatory paradox.

CONCLUSION

Although the state may impose reasonable regulations on the conduct of a primary election, the rights of the citizen should be protected against any conditions that are not relevant to intelligent participation in the electoral process. The important interest of the state in conducting orderly elections is not the determinative factor even though the rights of only a few are infringed or denied.⁷² The rights of each and every citizen should be given equal protection.

Since the right to candidacy is a necessary corollary to the voter's free choice, neither the candidate nor the voter should be burdened with irrelevant and arbitrary regulations.

⁶⁸ "The right of citizens . . . to vote in any primary or other election for . . . [list of federal offices], shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax . . ." U.S. CONST. amend. XXIV.

⁶⁹ See *United States v. Classic*, 313 U.S. 299, 314 (1941).

⁷⁰ CAL. ELEC. CODE § 6555 (West 1961).

⁷¹ CAL. ELEC. CODE § 6556 (West 1961).

⁷² *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 668 (1966).

Moreover, modern interpretation of the equal protection clause indicates that wealth is not germane to one's ability to participate intelligently in the electoral process. The filing fee seems no more relevant to the candidate's intelligent involvement than does the poll tax to the voter's participation. Furthermore, to the extent an effective franchise right demands that citizens be able to place the name of their candidate into the competition, a filing fee would tax this right, albeit indirectly. The voter himself may have to satisfy the required fee in order to see his nominee in the running.

While precedent suggests that candidacy is a so-called "privilege," it would seem that there is no room at the inn of American democracy for property qualifications which conflict with the prevalent egalitarian requirements of the equal protection clause of the fourteenth amendment.

James M. King