"MALE CITIZENS"

IN THE

West Virginia Constitution

What will be the effect of these words in our State Constitution if the Susan B. Anthony amendment becomes part of the Federal Constitution?

MUTUAL PTG. CO., CHARLESTON, W. VA.

NOTE OF ARGUMENT

The question has been asked:

"What effect will the Suffrage Amendment to the Federal Constitution have on the right of women citizens of West Virginia to vote at elections held in this state, when that amendment shall have been ratified by thirty-six states, and so made a part of that constitution?

This question is raised because of the use in our present state constitution of the words "male citizens," in prescribing the qualification of voters.

We think the answer obviously is that, when so amended, the Federal Constitution will, proprio vigore, render unconstitutional and inoperative all provisions of the law of West Virginia, whether found in its constitution or in its statutes, which would, if enforced, have the effect to deny or abrige on account of sex the right of any citizen of this state to vote.

No amendment of the state constitution, and no statutory enabling act by the Legislature would be absolutely necessary, in such case, to entitle the women of the state to full and equal suffrage in all elections thereafter held in the state; and if by or under color of any law of the state, administered by its officials, the female citizens of the state should be denied equal participation by the ballot in any election so held in the state, then such election would be void as equivalent to no constitutional election having been held.

Of course enabling legislation should be passed, not only for the purpose of harmonizing the election laws of the state with the supreme law of the land, but for the further purpose of providing the increased facilities to enable the larger number of voters to conveniently exercise the franchise. It is inconceivable that such legislation would not be passed if the nineteenth amendment becomes effective, but it is not essential.

Lawyers who dissent from this view base their opinion wholly upon the fact that the Federal Constitution did not, as originally adopted, concern itself with the matter of who might vote, but in effect left that matter to the determination of the respective states by providing that those citizens in each state who might be qualified to vote for members of the most numerous branch of the state legislature, might also vote for electors and members of Congress. And their view would be entirely right in the absence of any further delegation by the states of power to the Federal Government, but they would, of course, admit that the states could, in the manner provided, delegate to the Federal government additional power over **suffrage,** as well as over any other subject of government.

They must also admit that by the fifteenth amendment the states **did** voluntarily give up the power to deny or abridge the right of any of their citizens to vote on account of **"race, color or previous condition of servitude."**

The fifteenth amendment was made in the following words:

"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 RACE, COLOR OR PREVIOUS CONDITION OF SERVITUDE.

"THE CONGRESS SHALL HAVE POWER TO ENFORCE THIS ARTICLE BY APPROPRIATE LEGISLATION."

Upon this amendment becoming a part of the Federal Constitution it became the supreme law of the entire nation, and, **ipso facto,** superseded and amended all conflicting provisions of all state constitutions and statutes.

The word **"white"** qualifying voting citizenship remained in several state constitutions, that of Delaware among others, but the United States Supreme Court promptly held that the continued presence of the word **"white"** did not in any way prevent or restrict the right of colored citizens to vote upon the same terms and conditions as white citizens in those states.

In two very clear opinions, one written by the late Mr. Justice Harlan, and the other by Mr. Justice Miller, that Court held that the adoption of the fifteenth amendment was all that was needed to insure to colored citizens the right to vote regardless of state law.

In **Neal vs. Delaware,** Syllabus 1 and 2 are as follows:

1. "The Constitution of Delaware adopted in 1831, and the words of which have never been changed, gave the right of suffrage, with a few special exceptions, to free white male citizens. And the statute of the State, adopted in 1848, and never repealed, restricts the selection of jurors to those qualified to vote at a general State election.

2. "The legal effect of the adoption of the Amendments to the Federal Constitution and the laws passed for their enforcement, was to annul so much of the State Constitution as was inconsistent therewith, including the provision confining suffrage to the white race; and thence forward the jury statute was enlarged in its operation so as to render colored citizens, otherwise qualified, competent to serve on juries in the State Courts."

In the opinion in the same case, Justice Harlan says:

"Beyond question the adoption of the Fifteenth Amendment had 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. Thence forward, the statute which prescribed, the qualification 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."

Neal vs. Delaware 103 U. S. 370.

In **Ex Parte Yarbrough,** Syl. 9 is as follows:

"In all cases where the former slave holding States had not removed from their Constitutions the words "white man," as a qualification for voting, the 15th Amendment to the Constitution does, **proprio vigore,** substantially confer on the negro the right to vote, and Congress has the power to protect and enforce that right."

In the opinion in the same case, Justice Miller says:

"While it is quite true, as was said by this court in U. S. v. Reese, 92 U. S. 218 (XXIII., 564), 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 Constitutions 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 presons.

> 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."
>
> Ex Parte Yarbrough—110 U. S. 651.

In neither of the foregoing cases was there a single dissenting opinion, and neither of them has been reversed or modified.

The proposed nineteenth Amendment, the sufirage amendment, is in the following words:

"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.

"CONGRESS SHALL HAVE POWER TO ENFORCE THIS ARTICLE BY APPROPRIATE LEGISLATION."

It will be noted that the form of the fifteenth amendment is used in the pending suffrage amendment, the only difference being the use of the word "sex" instead of "race, color or previous condition of servitude."

So it necessarily follows that if we substitute the word **"male"** for the word **'white"** in the above quoted decisions of the United States Supreme Court, we will have exactly what that Court would of necessity hold as to the word **"male"** in the West Virginia Constitution after the suffrage amendment

becomes a part of the Constitution of the United States.

Were any elaboration of these views necessary, the consideration that every two years, that is, at "every general election" in this state, Congressmen are elected, and that in the case of Yarbrough, supra, it is held that

> "The right to vote for members of Congress is fundamentally based upon the constitution of the United States and was not intended to be left within the exclusive control of the States;"

still further strengthens our position.

From this construction of the constitution springs the right of Congress to regulate elections for President, Congressmen and United States Senators and to enact the penal statute of 1918 against corruption in elections.

The conclusion is irresistible that the word **"male"** in our state constitution and statutes relative to voters will automatically become null and void the moment that the equal suffrage amendment becomes part of the Federal Constitution, and that the presence of the word "male" in our constitution in no way restricts the power of the Legislature to ratify the pending amendment, and to pass convenient enabling acts to become effective when the said amendment shall have been ratified by thirty-six states, and proclaimed to be in effect.

And, further, there is no doubt that the Legislature can and should pass and put into immediate effect an act providing for the listing of female citizens of this state over the age of twenty-one years, and, providing for the use of such lists as lists of registered voters in event that the citizens so listed shall be legal voters when any primary or general election shall be held in the state.

This brief is not prepared as an argument either for or against ratification. Neither is it intended in any sense as a criticism of those very good lawyers who both in the Legislature and outside of it, have urged a contrary view of the legal question involved; for at least one of the lawyers signing this note held the contrary view before having made a careful study of the question, and of the Supreme Court decisions upon it.

Our only purpose is to clear the atmosphere on the question by stating the points involved, and the Supreme Court decisions settling them, in such a plain, clear way that all who read, whether lawyers or laymen, will understand them, and not be misled.

Very respectfully submitted,

CLYDE B. JOHNSON.
WILLIAM E. CHILTON.
FRED. O. BLUE.

March 10, 1920.