factor in life"); *In re New York*, 57 App. Div. 166, 68 N. Y. S. 196 (1901) (the center of a street for planting trees was taken by eminent domain proceedings); Nichols, Power of Eminent Domain (1917), 161. Although, in the eminent domain cases the owners are compensated, the courts' attitude toward beauty in them has had a decided influence in "police power" cases. *Cf. State ex rel. Twin City Building and Investment Co. v. Houghton*, 149 Minn. 1, 176 N.W. 159 (1920) (eminent domain zoning case); and *State ex rel. Beery v. Houghton*, 164 Minn. 146, 204 N.W. 569 (1925) (similar ordinance sustained under police power). The court in the principal case, instead of rationalizing its decision by "health and safety" arguments, declared unequivocally that regulation for aesthetic ends is a valid exercise of police power.

The courts in refusing to sustain police power regulation in previous cases have construed "aesthetic" to mean "an appreciation of the beautiful." On this interpretation they have denied an interference with private property rights when the purpose was solely to satisfy the desire of the public to live in a more beautiful or attractive environment. The court in the principal case, however, placed an economic value on beauty, considering it as an asset of the state enuring to the benefit of the public. Thus the scenic beauty of the state in attracting tourists results in great economic benefit to the state. Similarly, attractive residential districts greatly increase the actual value of the property of the people in that area. This concept makes restriction for aesthetic purposes analogous to police power control in other instances. It has been frequently held that a private owner cannot be allowed to dissipate the natural resources of the state in order to gain a slight benefit to himself. *Ohio Oil v. Indiana*, 177 U.S. 190 (1900) (owner wasting large quantities of gas in order to produce a small amount of oil); see *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911); *Wall, Attorney General of the State of Wyoming v. Midland Carbon Co.*, 254 U.S. 300 (1920) (state can prevent private owner from burning gas wastefully purely for purpose of producing carbon). And it has been held that the use of private property can be restricted when such use results in great economic loss to the general public. *Miller v. Schoene*, 276 U.S. 272 (1928) (state prevented growth of red cedars which injured surrounding orchards). Thus the slight economic benefit to owners of billboards derived by placing them within certain distances of parks and in other places of scenic beauty is overwhelmingly offset by the great injury that would result to the general public by this destruction of the community economic asset of beauty.

Constitutional Law—Exclusion of Negroes from Primaries—State Action and the Fourteenth Amendment—[U.S.]—The respondent county clerk refused the petitioner, a negro, a Democratic primary election ballot, because of a resolution of the state Democratic convention excluding negroes from membership in the party. *Held*, the refusal did not violate the Fourteenth or Fifteenth Amendment of the federal Constitution, since the clerk was acting for a voluntary association and not for an agency of the state. *Grovey v. Townsend*, 55 Sup. Ct. 622 (1935).

Certain Southern states have made persistent efforts to disfranchise the negro by legal means. *Ratliff v. Beale*, 74 Miss. 247, 266, 20 So. 865 (1896). See reported aside by Justice Holmes indicating that he was well aware of disfranchisement by non-legal means. 41 Yale L.J. 1212, 1221 (1932). See also Rose, Negro Suffrage: The Constitutional Point of View, I Am. Pol. Sci. Rev. 17, 25 *et seq.* (1906). Qualifications

imposed on the right to vote in state elections have been upheld as not unduly discriminatory to negroes when they also applied to poor and illiterate whites. *Williams v. Mississippi*, 170 U.S. 213 (1898). Almost all the Southern states require payment of a poll tax. Ala. Const. (1901), art 8, § 181; Ga. Const. (1877), art. 2, § 6398; La. Const. (1913), art. 197; Miss. Const. (1890), art. 12, § 244; N.C. Const. (1868, amended 1902), art 6, § 4; Okla. Const. (1910), art. 3, § 4a; S.C. Const. (1895), art. 2, §4; Va. Const. (1902), art. 2, § 20. All require the ability to read and write. See 78 Forum 906 (1927); *cf. Minor v. Happersett*, 21 Wall. (U.S.) 162 (1874). But more direct attempts to prevent negroes from voting in elections have been stricken down as violative of the Fifteenth Amendment. *Guinn and Beal v. U.S.*, 238 U.S. 347 (1914); *Myers v. Anderson*, 238 U.S. 368 (1915) (the famous "grandfather clauses").

The attempt was next made to exclude negroes from voting in primary elections, since exclusion from the Democratic primary in many Southern states for most purposes has been equivalent to disfranchisement. Such legislation would have to satisfy the requirements of the Fourteenth Amendment which provides for equal protection, and also the Fifteenth Amendment which guarantees the right to vote against discrimination on account of race, color, or previous condition of servitude, although in this connection the Fifteenth Amendment seems to be regarded as covering no field not covered by the Fourteenth. See Powell, The Supreme Court and State Police Power 1922–30, 18 Va. L. Rev. 587, 635 (1932); *cf. Slaughterhouse Cases*, 16 Wall. (U.S.) 36 (1873); 6 Neb. L. Bul. 312 (1928). The Texas legislature went bravely to the task and passed a statute directly prohibiting negroes from voting in the Democratic primaries. Tex. Rev. Civ. Stat. (1925), art. 3107. This, however, was held unconstitutional in *Nixon v. Herndon*, 273 U.S. 536 (1927), as a denial of equal protection under the Fourteenth Amendment. In order to be condemned under the Fourteenth Amendment, however, a prerequisite is that there be state action. *Virginia v. Rives*, 100 U.S. 313 (1879); *Civil Rights Cases*, 109 U.S. 3, 11, 12 (1883); *Raymond v. Chicago Traction Co.*, 207 U.S. 20 (1907); Willoughby, Constitutional Law (1910), § 86; for the development of this doctrine see particularly Sharp, Movement in Supreme Court Adjudication, 46 Harv. L. Rev. 361 (1933). And traditional American doctrine is that a political party is a voluntary association. *Beene v. Waples*, 108 Tex. 140, 187 S.W. 191 (1916); Merriam, American Political Ideas (1920), 278. Remembering this, the Texas legislature next authorized the executive committee of the state Democratic party to prescribe the "qualifications of its own members," and the committee promptly excluded negroes. Tex. Rev. Civ. Stat. (1925), art. 3107. But this was likewise held unconstitutional in *Nixon v. Condon*, 286 U. S. 73 (1932), the court stressing the fact that there was no indication that the executive committee would have had this power in the absence of statute, and that the committee therefore was not acting for the convention but for the state legislature. See *Grigsby v. Harris*, 27 F. (2d) 942 (S.D. Tex. 1928); *Nixon v. Condon*, 34 F. (2d) 464 (W.D. Tex. 1929); *Nixon v. Condon*, 49 F. (2d) 1012 (C.C.A. 5th 1931); *West v. Bliley*, 33 F. (2d) 177 (E.D. Va. 1929); *Bliley v. West*, 42 F. (2d) 101 (C.C.A. 4th 1930); *cf. State ex rel. Hatfield v. Carrington*, 194 Ia. 785, 190 N.W. 390 (1922). The next move for the Texas legislature was thus clearly forcast: repeal the delegation of power to the committee, and allow the convention itself to exclude negroes. The exclusion would then be the act of a voluntary political organization, and there would be no state action to be condemned by either the Fourteenth or Fifteenth Amendment. This, in fact, was done, and held constitutional in

the present case because of the absence of any state action. See 41 Yale L.J. 1212, 1221 (1932) (comment).

In a state where selection in the primary is usually tantamount to actual election, the privilege to vote in the primary seems to be sufficiently connected with the election of state officials; so that any exclusion by a primary official from the primaries might be considered state action. *Cf. Love v Wilcox*, 119 Tex. 256, 28 S.W. (2d) 515 (1930); see Merriam and Overaker, Primary Elections (1928), 140; Evans, Primary Elections and the Constitution, 32 Mich. L. Rev. 45 (1934). Furthermore the Texas legislature had so surrounded the primary election with restrictions as to cause the Texas Supreme Court to say in a previous case that "the Legislature has assumed control of that subject to the exclusion of party action." *Briscoe v. Boyle*, 286 S.W. 275 (Tex. 1926). And we may well find state action where there is almost complete state control. See *White v. County Dem. Ex. Comm.*, 60 F. (2d) 973 (S. D. Tex. 1932); 1. Univ. Chi. L. Rev. 142 (1932); see also Tex. Rev. Civ. Stat. (1925), arts, 2935–3041; but see 5 Tex. L. Rev. 393, 399 (1927) where it is pointed out that state regulation in many fields is not necessarily state action. It has sometimes been urged that a primary represents state action provided state funds are used to pay primary officials and evidently no state funds are used in Texas. *White v. Lubbock*, 30 S.W. (2d) 722 (Tex. 1930). Moreover the position taken by the court in the present case makes it somewhat difficult to understand the previous decision in *Nixon v. Condon*, 286 U.S. 73 (1932), where the delegation to the executive committee of the convention of power to exclude was held bad. It is not at all clear that the committee would not have had this power in the absence of legislation, and it seems more than likely that the legislature did not intend to delegate power so much as to return power to the place where it was before the legislature entered the field with its own requirements. See 5 Tex. L. Rev. 393, 400 (1927). The complete failure to discuss the application of the Fifteenth Amendment in the present case also seems questionable inasmuch as its application was expressly held open by Justice Holmes in the *Herndon* case and was again reserved in the *Condon* case. It is true that the court in *Newberry v. U.S.*, 256 U.S. 232 (1921) indirectly held that a primary is not an election under Art. 1, § 4 of the federal Constitution, and thus, perhaps, it may be assumed that the right to vote under the Fifteenth Amendment would not include the right to vote in a primary. But the authority of the *Newberry* case has been considerably shaken. *Borroughs v. U.S.*, 290 U.S. 534 (1934); 1 Univ. Chi. L. Rev. 636 (1934). And no definition of the right to vote under the Fifteenth Amendment has been given. See *Hodge v. Bryan*, 149 Ky. 110, 148 S.W. 21; *Chandler v. Neff*, 298 Fed. 515 (W.D. Tex. 1929).

Corporations—Right to Cumulative Voting Though Not Complying with Statutory Requirement of Filing—[New York].—Pursuant to an agreement whereby the petitioner sold enough of his stock to the two respondents to make each owner of one-third the total stock, an amendment to the charter and a by-law were passed, unanimously, providing for cumulative voting. The New York Stock Corporation Law provides "unless otherwise provided in the certificate of incorporation . . . . filed pursuant to law . . . . every stockholder . . . . shall be entitled . . . . to one vote for every share . . . ." and "the certificate of incorporation . . . . filed pursuant to law may provide" for cumulative voting. N. Y. Cahill's Consol. Laws (1930), c. 60, §§ 47, 49. Through