

lic defender system, a state may not deny prisoners legal assistance of another inmate²⁰⁴¹ and it must make available certain minimal legal materials.²⁰⁴²

The Criminal Sentence.—A convicted defendant may not be imprisoned solely because of his indigency. *Williams v. Illinois*²⁰⁴³ held that it was a denial of equal protection for a state to extend the term of imprisonment of a convicted defendant beyond the statutory maximum provided because he was unable to pay the fine that was also levied upon conviction. And *Tate v. Short*²⁰⁴⁴ held that, in situations in which no term of confinement is prescribed for an offense but only a fine, the court may not jail persons who cannot pay the fine, unless it is impossible to develop an alternative, such as installment payments or fines scaled to ability to pay. Willful refusal to pay may, however, be punished by confinement.

Voting and Ballot Access.—Treatment of indigency in a civil type of “fundamental interest” analysis came in *Harper v. Virginia Bd. of Elections*,²⁰⁴⁵ in which it was held that “a State violates the Equal Protection Clause . . . 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 or not paying this or any other tax.” The Court emphasized both the fundamental interest in the right to vote and the suspect character of wealth classifications. “[W]e 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. Lines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored.”²⁰⁴⁶

The two factors—classification in effect along wealth lines and adverse effect upon the exercise of the franchise—were tied together in *Bullock v. Carter*²⁰⁴⁷ in which the setting of high filing fees for certain offices was struck down under a standard that was stricter than the traditional equal protection standard but apparently less strict than the compelling state interest standard. The

²⁰⁴¹ *Johnson v. Avery*, 393 U.S. 483 (1969).

²⁰⁴² *Younger v. Gilmore*, 404 U.S. 15 (1971); *Bounds v. Smith*, 430 U.S. 817 (1977).

²⁰⁴³ 399 U.S. 235 (1970).

²⁰⁴⁴ 401 U.S. 395 (1971). The Court has not yet treated a case in which the permissible sentence is “\$30 or 30 days” or some similar form where either confinement or a fine will satisfy the State’s penal policy.

²⁰⁴⁵ 383 U.S. 663, 666 (1966). The poll tax required to be paid as a condition of voting was \$1.50 annually. Justices Black, Harlan, and Stewart dissented. *Id.* at 670, 680.

²⁰⁴⁶ 383 U.S. at 668. The Court observed that “the right to vote is too precious, too fundamental to be so burdened or conditioned.” *Id.* at 670.

²⁰⁴⁷ 405 U.S. 134 (1972).