

**Testimony of Professor Carol Anderson
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Senate Judiciary Committee
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Chairman Durbin and Members of the Senate Judiciary Committee, thank you for this opportunity to speak with you today about the history of voting rights. I will focus on three key themes that echo powerfully in today's electoral landscape. 1) The target of disfranchisement; 2) the use of race-neutral language to evade the 15th amendment; and 3) the cloaking of disfranchisement under the banner of election integrity.

In 1890, during the rise of Jim Crow, the Mississippi legislature revised the state's constitution, as explained by state legislator James "Big Chief" Vardaman, "to eliminate the n****r from politics."¹ Similarly, Virginia representative Carter Glass, like so many others, rushed to champion a bill in the legislature that would "inevitably cut from the existing electorate four-fifths of the Negro voters" in the state.² I call it bureaucratic violence, because it is designed to attack and undermine African Americans' voting rights and other citizenship rights, while providing an aura of legitimacy that physical violence simply cannot bring. What Vardaman and Glass were advocating was an omnibus disfranchisement program, the Mississippi Plan, which was modified throughout the South, and included the poll tax, the literacy test, the grandfather clause, and other barriers to the ballot box. Not surprisingly, Black electoral participation dropped precipitously. In 1880, for example, Black voter turnout was 81% in North Carolina, by 1912, a dozen years after the state amended its constitution to include the poll tax, the literacy test, and the grandfather clause, it had dropped to just one percent.³

The states were able to destroy Black voter participation by violating the spirit and intent of the 15th amendment, while adhering to the letter of the Constitution. They did so by deploying

race neutral language that used the legacies of slavery as a proxy for race. The poll tax, for example, required *all* voters to pay a fee to cast a ballot. What the poll tax actually did, though, was to prey on the endemic poverty created by centuries of unpaid labor, followed by the post-Civil War Black Codes, and then sharecropping.⁴ The tax seemed innocuous on its surface but, because of that poverty, it amounted to Black farm laborers paying in 1900 the equivalent of \$239.00 in 2020 to vote.⁵

Similarly, the literacy test, which required a voter to read a section of the Constitution, exploited the consequences of denying education to the enslaved for hundreds of years and then, after the Civil War, grossly underfunding Black schools.⁶ The race-neutral ploy worked. The U.S. Supreme Court ruled in the 1898 *Williams* decision that the poll tax and the literacy test did not violate the 15th Amendment because they applied to everyone who wanted to vote. That decision, of course, ignored that not everyone had to deal with the legacies of having their ancestors enslaved for centuries. The result of the court's blessing of a Jim Crow electorate was that by 1940, only three percent of age-eligible African Americans were registered to vote.⁷

These states justified erasing millions of American citizens from the ballot box by claiming they were fighting election fraud and protecting democracy.⁸ They knew that wasn't the case.⁹

The lie of massive rampant voter fraud is serving the same function today as it did during the rise of Jim Crow. It stokes fear in a segment of the population that democracy is in peril, and, thus, provides cover for laws that target Black voters with race-neutral language. In the 21st century, as Indiana implemented the first voter ID law in the nation, Secretary of State Todd Rokita, a Republican, recalled that "Back in 2001 and 2002, election integrity was a huge issue. . . there was a fear of votes being stolen. Even," he added, "if the fear didn't pan out to be true, . . . the fear was still there."¹⁰ In 2021, as Georgia passed SB 202, State Representative Alan Powell,

a Republican, admitted that “widespread voter fraud . . . wasn’t found. It’s just in a lot of people’s minds that there was.”¹¹ That fictional “Loch Ness monster”¹² has led Republican legislators in 47 states to propose 361 voter restriction bills to supposedly address concerns about voter fraud.¹³ If left unchecked, this onslaught of bureaucratic violence will make the Mississippi Plan look tame by comparison. Thank you.

¹ Jason Morgan Ward, *Hanging Bridge: Racial Violence and America's Civil Rights Century* (New York: Oxford University Press, 2016), 62.

² Michael Waldman, *The Fight to Vote* (New York: Simon & Schuster, 2016), at 84-85.

³ Richard M. Valeyly, *The Two Reconstructions: The Struggle for Black Enfranchisement* (Chicago: University of Chicago Press, 2004), Kindle, Location 1735. The impact of the literacy test and poll tax on Black voter turnout between 1880 (pre-Mississippi Plan) and 1912 (plan implemented) in the other Southern states: Alabama (55 percent/2 percent); Arkansas (57 percent/3 percent); Florida (84 percent/2 percent); Georgia (42 percent/2 percent); Louisiana (44 percent/1 percent); Mississippi (45 percent/2 percent); South Carolina (77 percent/2 percent); Tennessee (70 percent/1 percent); Texas (59 percent/1 percent); and Virginia 59 percent/2 percent), Table 6.3 “The Extent of Black Disfranchisement.”

⁴ Jos Ohl, “Educational Test Has Failed to Bar Mississippi Negroes; Poll Tax Disfranchises Them: Georgia Plan Much Better, Says Money, Senator Frankly Admits Failure of the Educational Test in Mississippi,” *The Atlanta Constitution (1881-1945)*; Atlanta, Ga., CMG Corporate Services, Inc. on behalf of itself and the Newspapers, December 24, 1905, p. 1.

⁵ Valeyly, *The Two Reconstructions*, Kindle, Location 1704, 1706; Measuring Worth, <https://www.measuringworth.com/calculators/uscompare/relativevalue.php>, accessed April 18, 2021.

⁶ Ward, *The Hanging Bridge*, 62.

⁷ Waldman, *The Fight to Vote*, 142.

⁸ Michael Fellman, *In the Name of God and Country: Reconsidering Terrorism in American History* (New Haven, CT: Yale University Press, 2010), 139.

⁹ U.S. Commission on Civil Rights, “Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Volume VII: The Mississippi Delta Report: Chapter 3, Voting Rights and Political Representation in the Mississippi Delta,” at 10, <https://www.usccr.gov/pubs/msdelta/ch3.htm>, accessed November 27, 2020; Fellman, *In the Name of God and Country*, 139.

¹⁰ Josh Siegel, “After Voter ID Defeats, Lessons from Indiana’s Law that ‘Has Stood Test of Time’,” *Daily Signal*, August 7, 2016, <http://dailysignal.com/2016/08/07/after-voter-id-defeats-lessons-from-indianas-law-that-has-stood-test-of-time/>, accessed September 25, 2017. For Judge Richard Posner’s and Justice John Paul Stevens’s regrets for the roles they played in upholding this law, see, Richard A. Posner, *Reflections on Judging* (Cambridge, MA: Harvard University Press, 2013), Kindle, at 84–5; Robert Barnes, “Stevens says Supreme Court decision on voter ID was correct, but maybe not right,” *Washington Post*, May 15, 2016, https://www.washingtonpost.com/politics/courts_law/stevens-says-supreme-court-decision-on-voter-id-was-correct-but-maybe-not-right/2016/05/15/9683c51c-193f-11e6-9e16-2e5a123aac62_story.html, accessed April 19, 2021

¹¹ Amy Gardner, “State GOP lawmakers propose flurry of voting restrictions to placate Trump supporters, spurring fears of a backlash,” *Washington Post*, February 19, 2021, https://www.washingtonpost.com/politics/gop-voting-restrictions/2021/02/19/d1fab224-72ca-11eb-85fa-e0ccb3660358_story.html, accessed April 19, 2021.

¹² Benjamin L. Ginsberg, “My party is destroying itself on the altar of Trump,” *Washington Post*, November 1, 2020, <https://www.washingtonpost.com/opinions/2020/11/01/ben-ginsberg-voter-suppression-republicans/>, accessed April 19, 2021.

¹³ Heather Cox Richardson from Letters from an American, newsletter, April 18, 2021, <https://heathercoxrichardson.substack.com/p/april-18-2021?>, accessed April 19, 2021.