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# **Jim Crow Era: Continuities and Similarities in Recent Voter Suppression Acts**

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## **Abstract**

In this thesis I will set out to determine if it is possible to compare the partisan political landscape and subsequent voter suppression laws successfully to the voter suppression laws and increasingly partisan political landscape of the period between 1996 and 2012. I will do this by researching and analyzing multiple elements of voter suppression of both the Jim Crow era and the period of 1996-2012. Elements that will be analyzed include the poll tax, white primaries, early voting, felon disenfranchisement, and voter identification laws, and will only be researched from the perspective of states below the Mason-Dixon line. The outcome of the analysis will provide the tools to answer the research question. I will then argue that the voter suppression laws and partisan political landscapes of both periods bear many similarities and continuities to one another, and that they can indeed be successfully compared.

keywords: partisanship, voter suppression, Jim Crow, poll tax, white primaries, early voting, felon disenfranchisement, voter-ID

## Introduction

The right to vote is one of the fundamental rights on which today's modern society is built. It is the corner stone of democracies around the world in which fair elections are held so that citizens have the opportunity to actively participate in the assembly of the government. Governments should be an extension of the people that they govern, and should accommodate citizen's most pressing needs and desires. This however has not always been the case, nor has it been a given that voter rights are universally protected and upheld, even in the democratic power house that is the United States of America. The United States has seen many attempts to infringe on the right to cast a ballot throughout its history, and this violation of rights can even be observed when analyzing legislation that has been introduced in the last decade. The origins of voter suppression may lie in the political landscape formed by the Jim Crow era, but it is in today's political climate that voter suppression is perpetuated. This suggests that there are continuities to be found between the Jim Crow era and the last few decades, which leads to my research question.

In order to further explore this notion of continuity between the periods, I will determine if it is possible to compare the partisan political landscape and subsequent voter suppression laws of the Jim Crow era successfully to the voter suppression laws and increasingly partisan political landscape of the period between 1996 and 2012.

This is an increasingly relevant question, mainly because of its dividing nature in politics today. This divide can, as one would expect, be traced back to the divide between Republicans and Democrats. Bernie Sanders, who ran for the Democrat nomination, made voter suppression one of his main talking points, while the Trump administration wants to crack down on illegal voting, which could pose a threat when it comes to voter suppression. To capture the dividing nature of modern day United States politics I will focus on specific Democrat and Republican policies and actions of the period between 1996 and 2012. I will also juxtapose these actions with those of the Jim Crow era in order to contextualize, and to expose any continuities and similarities between the period. To narrow research down further I will focus only on states that are situated under the Mason-Dixon line, which are also the states in where the Jim Crow laws were enacted. The measures and laws of voter suppression that I will analyze include the poll tax, white primaries, felon disenfranchisement, early voting restriction and voter identification laws. Elements like literacy requirements and deceiving tactics will not necessarily be fleshed out in chapters one and two, but will be mentioned in chapter 3 in an effort to present a picture that is representative for both periods without

omitting to many important parts. Comparisons and continuities are relevant because of the history and development of voter suppression since the end of the Reconstruction. The motivation behind voter suppression, and political gain at cost of the opponent and certain groups, have all stayed mostly the same over the decades. Society, ethics, and human rights however have changed drastically. The comparison between the two time periods provides clarity on how the means of voter suppression have changed because of the shift of society towards human rights, or how voter suppression laws have not changed enough in light of societal changes.

Previous research done on the period between 1996 and 2012 tends to focus on isolated case studies where voter suppression is an issue and does not tend to contextualize it by putting it in a larger time frame or by comparing it to cases of voter suppression in other time periods. Previous work on voter suppression in the Jim Crow era does focus on putting individual case studies in a larger time frame, but because this research tends to be older, it cannot take into account or is not able to hypothesize about a connection between the Jim Crow era and the period of 1996-2012. These are two gaps that my research attempts to fill. Doing this allows me to work with previous work done in the field and gives me the tools to build towards a new conclusion.

In order to answer my research question I will have to make use of descriptive and comparative research. I will have to describe and analyse relevant aspects of specific case studies, both for the Jim Crow era and the period of 1996-2012. I will do this by using research that has already been done on the field of voter suppression. I will then have to compare the outcome of my research of the two time periods. This allows me to connect two different periods of research, which then leads to new insights and connections. Focusing on two different time periods and comparing them gives me a new, different angle and allows me to work with two different parts of previous research. Who are the actors in the two periods? Who are the affected groups? How were voter suppression measures motivated? How were changes in measures, good or bad, motivated and who supported these measures? How overt were the measures? These comparative sub-questions then will lead to the answer of the research question.

To separate the two time periods and the different types of analysis I will employ a *text-by-text* organizational scheme, which entails that I will dedicate different chapters to the different time frames and analyses instead of alternating. Chapter one will be dedicated to voter suppression means in the Jim Crow era, while chapter two will cover the period of 1996-2012. This theoretical analysis will provide me with a frame of reference for chapter 3,

which will work with the comparative sub-questions formulated earlier. The structure of chapters one and two will be largely determined according to means of suppression, these means then will be generally divided in state-by-state manner. Many measures of voter suppression took place around the same time, but fluctuate heavily state-by-state, therefore the structure will not necessarily be chronological. Chronology will however be applied whenever the structure allows it.

I expect that my research will find several continuities between the Jim Crow era and the period between 1996 and 2012, and that partisanship was perhaps the most important element in the implementation of voter suppression laws both in the Jim Crow era and the period of 1996-2012.

## 1. Voter Suppression Jim Crow Era

The emergence of poll taxes, literacy tests and other legislation that restricted southern suffrage can be found in the decision of the United States Supreme Court on October 15, 1883, in which the Supreme Court declared sections of the Civil Rights Act of 1875 to be unconstitutional. The Civil Rights Act of 1875 stated that accommodations in public places were to be open to everybody, regardless of class or race. The Civil Rights Act of 1875 also provided protection against practices that would enable voter suppression such as poll taxing, which changed after native whites were able to regain control of the state constitutions and weakened the protective provisions of the act (470 Williams). The decision to declare parts of the Civil Rights act of 1875 unconstitutional provided a framework for legislation, which then could be designed to restrict and eliminate the participation of the African-American in politics (Brewer 260). Carter Glass, then future Senator of Virginia, stated: "By fraud, no; by discrimination yes. But it will be discrimination within the letter of the law... Discrimination! Why, that is precisely what we propose; that, exactly, is what this convention was elected for - to discriminate to the very extremity permissible action under the limitation of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate... It is a fine discrimination, indeed, that we have practiced in the fabrication of this plan (Brewer 261).

Carter Glass' extreme statement shows how bitterness of the reconstruction was combined with the fear that originated from the threat that Populists posed to the power structure of the political South (Brewer 261). Democrat Carter Glass was afraid that the African-American vote was going to empower Populists and Republicans, which would have altered the southern political landscape. Although Glass only mentions the African-American vote in his statement, it also were the poor whites who suffered from disenfranchisement. This was not a disadvantage for Democrats like Glass, as poor southern whites flocked towards Populism, which had been reinvigorated by a new disdain towards the plantation aristocracy .

The first case of voter suppression during the Jim Crow era that will be discussed in this thesis focuses on poll taxes. The poll tax served as a prerequisite for voting and was adopted by most of the southern states and even by some northern states. The crusade against the poll tax and the fight for the abolition of the poll tax only started in 1939 (469 Williams). Before the annulment of the Civil Rights act it was stipulated that poll taxes were not to be made a voting qualification. This changed after native whites were able to regain control of

the state constitutions (470 Williams). This decision provided a framework for legislation, which then could be designed to restrict and eliminate the participation of the African-American in politics (Brewer 260).

Poll taxes were mostly used by politicians to acquire and retain political power. In 1928, Huey Long used poll taxed constituents to seize power of Louisiana, while Eugene Talmadge rose to power in Georgia in 1932 (Brewer, 264). It is important to note that there are a lot of fluctuations regarding poll taxes. Differences between poll taxes occurred as each individual state could introduce their own kind of poll tax, and sometimes even smaller political entities like counties could make up their own poll tax. In Indiana for example, this resulted in some positive discrepancies. Citizens affected by poverty or injury were able to receive exemption and invalids could request exemption unless they owned more than three hundred dollars in property (Malan 326).

Poll taxes in Indiana also served an important purpose for the state. As early as 1821 the poll tax income was used by the state as a source of revenue for state purposes. A portion of the revenue was diverted towards common schools under a law of 1855. This also posed a problem for the state of Indiana. A law of 1952 stated that African-Americans were exempt from poll taxes. This was decided in regard to the race problem in Indiana. Poll taxes from then on only applied to white male inhabitants of the state between the ages of twenty-one and fifty (Malan 326). Because African-Americans were exempt from poll taxes, and because revenue received from poll taxes was diverted towards schools, the children from African-Americans and mulattoes were not permitted to attend a public school if the resident parents of white children objected (Malan 327)

In 1889 the fulfillment of a capacitating tax was instituted as a suffrage prerequisite in Florida. In 1890 Mississippi imposed a poll tax as a requirement for voters while Tennessee reactivated a poll tax requirement that was already embedded in the constitution of 1870. The states of Arkansas, South Carolina, Louisiana, North Carolina, Alabama, Virginia, Texas, Maryland, Delaware, and Oregon all followed with some form of poll taxes. As observed earlier, it was the desire to eliminate African-American voters from politics that fueled the spread of poll taxes as a prerequisite to vote. Another factor can be found in the pressure that teachers were putting on politicians in favor of the poll tax. Poll taxes were always used to help fund public schools (471 Williams).

That poll taxes were sometimes merely one part of a wider strategy to disenfranchise African-American voters can be seen when observing voter suppression in the state of Texas. By the end of the 19th century, Texas was a one-party state where the Democratic Party

dominated the political landscape. In an effort to maintain this position, a poll tax was added to the Texas constitution in 1902. The poll tax, however, did not prove to be entirely successful in eliminating the elective power of the African-American demographic, and thus felt Travis County representative Alexander W. Terrell compelled to urge the state legislature to implement a mandatory primary statute (Hine 372). The practice of holding primaries started in the black belt counties of East Texas, where organized unions, clubs and associations expressed their desire to remove African-Americans from local, county and state politics. These groups that were formed under the banner of the Democratic Party restricted their membership to white citizens only, and usually held primary elections to select Democratic candidates who ran unopposed in the fall general elections. Over the next decades, the practice of holding primaries became a state wide phenomenon, which, because of Democratic dominance, made the general election practically obsolete and nothing more than a formality (Hine 372). The mandatory primary statute that Alexander W. Terrell had proposed materialized when in 1905 the state legislature adopted a statute that permitted Democratic county executive committee chairmen to implement voting qualifications, which also effected the voting in primary elections. It should be stated that the statutes did not target African-Americans specifically, and that white Democrats never were in complete agreement that this method of African-American disenfranchisement would be effectively enforceable. Many county executive committee chairmen opposed these measures and continued to campaign for the African-American vote. These rifts between Democrats created a climate in which dissenting voices were ousted, while the Democratic Party intensified its quest for universal African-American disenfranchisement (Hine 373).

In 1923, Texas state legislature implemented a law that stated: "In no event shall a negro be eligible to participate in a Democratic Party primary election held in the State of Texas, and should a negro vote in a Democratic primary election, such a ballot shall be void and election officials shall not count the same (Hine 373)." This decision led to a series of lawsuits, of which the first two Supreme Court decisions seemed in favor of Texas' African-Americans. The first Supreme Court case, *Nixon v. Herndon*, took place in 1927, and unanimously declared the new Texas law unconstitutional. This decision meant that the state of Texas was not allowed to enact a law that barred African-Americans from the Democratic primary elections. It did, however, not provide transparency on the issue of whether African-Americans were allowed to vote in the Democratic primaries or not. The Texas state legislature then proceeded to repeal the law and then gave the executive committee of the Democrats the authority to determine its own membership qualifications and voter

requirements. This act was followed by a second Supreme Court case in 1932, *Nixon v. Condon*, in which the court declared that the state of Texas had simply shifted its responsibility to a quasi-public organization and that actions taken by the Democratic executive committee were an extension of the authority of the state (Hine 374). What followed after these two African-American victories were a string of Supreme Court cases in which the African-American outlook took a darker turn, and that eventually culminated in the case of *Grovey v. Townsend* in 1935. The lawsuit revolved around the premise that County clerk Albert Townsend had denied R. R. Grovey an absentee ballot to vote in the Democratic primary, and that Townsend, by doing so, was in violation of the Fourteenth and Fifteenth amendment because he was an elected official of the state of Texas and not an official of the Democratic Party (Hine 385). On this issue, the Supreme Court stated: "We find no ground for holding that the respondent has in obedience to the mandate of the law of Texas discriminated against petitioner or denied him any right guaranteed by the Fourteenth and Fifteenth Amendments (Hine 386)." This decision meant that the barring of African-Americans from Democratic primaries by party regulations was founded on firm constitutional grounds in states where the primary election was financed and administered by the party (Weeks 502).

The constitutional foundation on which the disenfranchisement of the Texan African-American was built proved to be fragile however. In 1941, the Supreme Court held that a primary in which candidates for Congress were nominated was a part of the election process that led to the general election, and that Congress could regulate these primaries for federal offices as a part of its authority to legislate in regard to general elections. This case did not deem the barring of the African-American vote in Texas' Democratic primaries unconstitutional, it did however pave the way for the case of *Smith v. Allwright* of 1944, which reversed the case of *Grovey v. Townsend*. In *Smith v. Allwright*, the Supreme Court decided that the white primary rule of the Texas state Democratic convention was an act of the state and therefore unconstitutional (Weeks 502). African-Americans could now participate in the Democratic primaries in the state of Texas, yet they still had to pay poll taxes and they still faced opposition when it came to casting their ballot.

Many of the other southern states faced the same situation as Texas. The states of Louisiana, North Carolina, Virginia, Florida, Alabama, Arkansas, Georgia, Mississippi and South Carolina all knew some variation of white Democratic primaries, albeit in different variations. Louisiana's Democratic Party had already repealed its white primary statute when the *Smith v. Allwright* decision in Texas was made, while North Carolina only had white

primary rules in some counties (Weeks 503). Virginia's white primary statute was repealed in the Federal District Court case of *West v. Bliley* in 1929, which was accepted that early by the Democratic Party because they believed that their poll taxes, as well as hostility of local registrars, was enough to dissuade African-Americans from casting their ballot (Johnson 211). Florida's white Democrat primary law was in place until 1945, when state courts opened the Democratic primaries to African-Americans and the Supreme Court decided that African-Americans were entitled to be registered as a Democrat voter, if qualified under state law, regardless of Democrat executive committee statutes. These decisions relied on the case of *Smith v. Allwright* to act as a controlling power (Weeks 503).

The outcomes of the white Democratic primary debates were less clear cut in Alabama and Arkansas. Alabama saw practical obstruction to African-American voting in primaries in 1944 in various counties and in 1946 the Alabama Democratic executive committee opened its primaries to the African-American vote. State legislature had, however, already initiated and ratified the Boswell amendment, which made literacy requirements more strict and also stated that : " No person shall be entitled to register as electors except those who are good of character and who understand the duties and obligations of good citizenship under a republican form of government (Weeks 504)." When in 1947 an African-American citizen was denied registration as a Democrat voter, a federal district court held that registration could not be denied on the foundation of race or discrimination. Alabama statutes did however state that registrars were permitted to: "... make such rules and regulations as it deems proper for the receipt of applications for registration (Weeks 504)." This illustrates how the state legislature of Alabama enacted laws that gave local registrars the authority to be of greater discretion (Johnson 212). The Democratic Committee of Arkansas responded to the decision of *Smith v. Allwright* by altering its party regulations in such a manner that local registrars could challenge African-Americans on the grounds of 'party loyalty' and later in 1944 the party stated that African-Americans were to be admitted if they met 'party loyalty' requirements. The state's situation changes in 1945 when the Arkansas state legislature provided for separate primaries for federal functions, by which it stated that: "No citizen shall be denied the right to vote ... on any ground prohibited by the Fifteenth Amendment to the Federal Constitution (Weeks 504)." State legislature also held that the counties were responsible for the costs of the federal primary, and that state and local primaries were continued to be financed by the party. This construction, however, was repealed after being applied in only one election, and the nominations for Congress were again to be voted for in the regular primary. This all lead to a situation in which enforcement of African-American

voting rights in Democratic Party primaries was not necessarily guaranteed although many African-Americans had registered for the Democratic primaries of 1946 (Weeks 505).

The developments in Georgia, Mississippi and South Carolina were even more complex and convoluted. In 1944, Georgia had repealed its poll tax requirement from voting and otherwise had improved its implementation of voting rights. Meanwhile, at the same time, the Georgia state legislature had removed all of her provisions towards primary elections in an effort to remove primaries from state control. In the same year, the Georgia Democratic committee, assuming that the *Smith v. Allwright* decision did not apply to Georgia, stated that only qualified white Democrat voters were allowed to cast a ballot in the primary, and African-American voters were generally refused voting ballots as a result (Weeks 505). It was the Fifth United States Circuit Court that, upon appeal, held the belief and furthered the notion that the state did not require a primary and that it was not responsible for the financing of the primaries, and that Georgia thus was in a different position from Texas and Louisiana where primaries were part of state legislature. The court did however recognize that certain features of the law suggest that, when a party calls a primary, the state associates itself with the party holding the primary, and that the state thus adopts the primary as a part of the public election machinery. In this manner, the court acknowledged the authority of the *Smith v. Allwright* decision, yet left a way open to the state to repeal all statutes regarding primary elections. This then led to a situation in which the state gave the authority to the parties to control membership and nominations. The Georgia Democratic executive committee allowed African-Americans to vote for the primary of 1946, in which nearly 125,000 African-Americans were registered. Democrat resistance, however, was fierce as victorious Democrat nominee Eugene Talmadge followed these developments up by proclaiming a doctrine of white supremacy (Weeks 506). Prior to the 1946 primary, Talmadge had led a campaign to purge more than 16,000 African-Americans from voter rolls, and Joseph Bernd contends that Talmadge would have been defeated in the 1946 primary without the purge (Henderson 27). Voter purges, election officials' hostility, intimidation by the Ku Klux Klan and a general lack of enthusiasm led to a steady decline of African-American voter participation, with approximately 43,000 voting African-Americans in the 1950 gubernatorial primary (Henderson 28).

Another element in the decline of African-American voter participation, and another aspect of voter suppression in Georgia, can be observed in the implementation of the Voter Registration Act of 1949. This act required the state's 1.2 million voters, including 150,000 African-American registered voters, to re-register every two years and to either answer ten of

thirty factual questions or to pass a literacy test. It should be noted that efforts to reregister all voters were abandoned after experiencing difficulties implementing it (Henderson 28).

The decision of the Supreme Court in the case of *Smith v. Allwright* saw major political repercussions in Mississippi and South Carolina, two southern states with the largest African-American population percentages (Klarman 91). South Carolina state senator Burnet Maybank had proclaimed that white Southerners were not going to accept interference from the Supreme Court, and that the South would maintain its political institutions as they believed it to be in the best interest of white Southerners. South Carolina state governor Olin Johnston urged state legislature to repeal all the laws that were meant to regulate the Democratic Party, which he hoped would enable the party to keep its white primaries without breaking the constitution. Johnson also stated: "We South Carolinians will use the necessary methods to retain white supremacy in our primaries and to safeguard the homes and happiness of our people ... White Supremacy will be maintained in our primaries. Let the chips fall where they may (Klarman 91)!" The tactic of the Democratic Party to circumvent court rulings regarding white primaries had angered South Carolina judge Waring, who had ordered party officials to allow for African-American voter registration. Waring then proceeded to warn party officials that any future violations of the *Smith v. Allwright* ruling were going to be punished by imprisonment (Klarman 95). The efforts of judges and courts eliminated white primaries from the South Carolinian political landscape.

The case of *Smith v. Allwright* found similar resistance in Mississippi, where whites were reinvigorated in their commitment to keep white political supremacy. Mississippi state senator Theodore Bilbo, running for reelection in 1946, vowed: "... red-blooded white man to use any means to keep the niggers away from the polls (Klarman 93)." These speeches by Bilbo generated its own backlash, coming from the general public and media. These developments motivated Mississippi's African-Americans to register to vote, and in 1947 African-American voter registration rose by 50 percent (Klarman 94).

## 2. Voter Suppression between 1996-2012

Voter turnout is one of the core elements of the democratic process on which the political foundation of the United States is built. As John Aldrich has stated: "Turning out to vote is the most common and important act citizens take in a democracy, and therefore, is one of the most important behaviors for scholars of democratic politics to understand." Voter turnout is, however, still under fire in today's political landscape, and is negatively impacted by a plethora voter suppression instruments such as voter identification laws and felon disenfranchisement.

One of the more recent cases of voter suppression can be found when examining the conditions surrounding early voting during the 2012 General Election in Florida. Early voting entails any system in which it is possible to cast a ballot before the official Election Day. Variants of early voting include *early in-person voting*, *no-excuse absentee voting*, and *vote-by-mail*. *Early in-person voting* allows for voters to cast early ballots at local elections offices while *no-excuse absentee voting* allows voters to request an absentee ballot without any excuse. *Vote-by-mail* is a system in which voters generally receive their ballot via mail and may cast their ballot in person or via mail. Florida uses the *early in-person voting* and *no-excuse absentee voting* systems (Gronke, Galanes-Rosenbaum, and Miller 639). Paul Gronke, Eva Galanes-Rosenbaum and Peter A. Miller state that previous scholarly work found a positive impact of early voting reforms on turnout. The researchers also state that their analysis found a positive impact of early voting reforms on turnout and that much of the literature has found, at best, a small positive effect of early voting on voter turnout (Gronke, Galanes-Rosenbaum, and Miller 643).

Given the impact created by early voting and the bipartisan support for the expansion of early voting in 2004, it came as a surprise when in May 2011 the Florida state legislature decided to limit early voting. The Republican-controlled legislature passed House Bill 1355, which reduced the number of days that were open to early voting, as well as the number of hours that the Supervisors of Election were required to offer. The early voting period was reduced from fourteen to eight days and the possibility for Supervisors of Elections to offer early voting on the Sunday immediately preceding Election Day was eliminated. The bill also restricted voter registration drives by civic organizations and individuals, and required provisional ballots to be cast by voting citizens who moved from county to county within the state of Florida. Republican state lawmakers stated that the bill was designed to fight voter fraud and to help election supervisors (Herron and Smith 648). However, former Florida

Republican Party chairman Jim Greer stated that the Republican Party believed that early voting is bad for Republican candidates and that the mention of voter fraud was merely a way to win public opinion (Herron and Smith 647). Research by Michael C. Herron and Daniel A. Smith found that the voting rights of racial and ethnic minorities appeared to have been affected disproportionately in a negative manner by the restriction of early voting. It is argued by Herron and Smith that minorities, as well as Democrats and unaffiliated voters, were disproportionately less likely to vote in 2012 than in 2008 as a result of early voter restriction. Herron and Smith state: "These changes by the Florida legislature clearly made early voting less convenient and less accessible for Florida voters with inflexible schedules, and this is consistent with our analysis that reveals that early voters who cast their ballots on the final Sunday of early voting in 2008 were considerably less likely to turn out to vote in 2012 (Herron and Smith 662)."

The findings of Herron and Smith regarding the 2012 early voting case of Florida correspond with the outcome of the research done by Keith G. Bentele and Erin E. O'Brien. In an effort to find empirical clarity and to bring epistemological standards to a deeply-charged, partisan debate they found that proposal and passage of restrictive voter access legislation from 2006-2011 are highly partisan, strategic, and racialized occurrences. Bentele and O'Brien focused on the increasing proposal and passage of state laws that restrict both voter registration and the casting of the ballot. These cases include strict voter identification laws, regulation of groups or individuals who aim to register new voters, or voter registration drives, shortened early voting periods, repeal of same-day voter registration, and restrictions on voting by felons (Bentele and O'Brien 1088). What also corresponds between the findings of Michael C. Herron and Daniel A. Smith and those of Bentele and O'Brien is that it is the Republican Party that is most involved in the suppressing of voters, and that minorities are disproportionately affected in a negative manner. Bentele and O'Brien state on this subject: " In response to a changing electoral environment, the GOP has become the central driver of restrictive changes to election laws and the primary perpetrator of a wide range of suppression efforts. In short, this literature is explicit about which political party is more likely to engage in suppression in the current era, the groups likely to be targeted by such efforts, and the likelihood that voter demobilization will be "accomplished by legal and administrative subterfuge, with justifications that proclaim the rules and practices to be essential in safeguarding American democracy (Bentele and O'Brien 1092).

One of the more relevant debates regarding voter suppression focuses on the subject of felon disenfranchisement. The origin of the matter can be found in 1947, when the United

States Supreme Court had already decided that all state criminal disenfranchisement laws are constitutional except those explicitly motivated by racism and discrimination. Discussions on the matter have intensified over the last couple of decades, however, it should be stated that in the last two decades, many states have either relaxed their felon disenfranchisement laws or made significant changes to voter rights restoration procedures, which made eligible hundreds of thousands of Americans in 2008 who could not vote in 2000 (Ewald 527) In 2002, 2.3% of the United States voting-age population were denied the right to vote because of felon disenfranchisement laws. Goldman states on this: "The incarceration boom of the past three decades, combined with the corresponding collateral consequences stemming from criminal convictions, has ingrained into modern society a minority underclass resembling that of the stratified societal structure present during the Jim Crow era (Goldman 612)." Goldman goes further by explaining how the structure and consequences of felon disenfranchisement is similar to the literacy tests of the Jim Crow era, and that felon disenfranchisement laws discriminate and politically exclude minorities in very similar ways.

Felon disenfranchisement is applied in some form in every state, except for Maine and Vermont. Most states disenfranchise felons during periods of incarceration and restore voting rights after release or upon completion of probation or parole (Miles 85). Numerous researchers have noted that African-Americans are disproportionately affected by felon disenfranchisement laws (Miles 86). What Miles states, however, is that ex-felon disenfranchisement laws do not necessarily reduce voter turnout rates on a local level. An alternative explanation that Miles offers is that members of the demographic groups most likely to be disenfranchised do not tend to vote as much as other groups. With this in mind it can be stated that relatively low voter turnouts among African-American men are not the direct consequence of felon disenfranchisement laws (Miles 87). Results of Miles' paper ultimately reveal the notion that disenfranchisement has no direct correlation to voter turnout on state-level and that on average. Felons belong to demographic groups that use their right to vote infrequently, and thus does Miles contend that the impact of felon disenfranchisement laws are more modest than generally thought (Miles 85).

Research done by Alec C. Ewald analyzes the impact of the recent changes in felon disenfranchisement laws. By focusing on the states that had relaxed their restoration policies, he was able to determine that the relaxation of felon disenfranchisement led to an considerable expansion of the voter pool (Ewald 530). These outcomes, compared with those of the research done by Miles, may suggest that an expanded voter pool does not guarantee a higher voter turnout. Another possibility is that the affected group is more likely to participate

in an election on a national level, and is less likely to vote on county or state level. Ewald also focuses on the growing partisan shape of the recent felon disenfranchisement debates, which led to the conclusion that the affected group shares many of the socioeconomic characteristics of the Democratic Party. It is hereby concluded that felon disenfranchisement laws and other voter suppression laws have helped the Republicans win several close elections over the last thirty years, which also includes the presidential election of 2000 (Ewald 530). Press accounts shared the same sentiment and determined that reform of felon disenfranchisement laws benefited Democrats heading into the 2008 election. Democrats were also much more likely to reform felon disenfranchisement laws in situations in which the partisan balance was relatively close (Ewald 530).

The developments described by Ewald surrounding felon disenfranchisement policies over the last two decades suggest that legislators are moving towards a more liberal stance regarding the matter. In the period between 1998 and 2007, twelve states, including the southern states of Alabama, Florida and Tennessee, had started to relax their disenfranchisement laws for former felons. Since 2001, nine of these twelve reform states, again including Alabama, Florida and Tennessee, had tried to introduce legislature that would have gone even further in the enfranchisement of former felons. Ewald suggests that pressure created by public opinion, and the fact that the unusually restrictive nature of the policies draws the most attention from critical reformers are the driving forces behind these developments (Ewald 533). Influence of public opinion and the role of critical reformers can be observed in the positions that governors and other high ranked state government officials took on the matter. In 2004 and 2007, Florida Republican governors Jeb Bush and Charlie Crist implemented substantial changes in ex-felon disenfranchisement legislation while also being involved in public-opinion campaigns. The Democrat governors of Kentucky and Virginia, who gained their positions in states that employed blanket post-sentence disenfranchisement, also took substantial steps towards future post-sentence enfranchisement. Ewald does however state that some felon disenfranchisement laws are more restrictive and more severe than others, and that this allows for a space in which legislators are willing to adopt less restrictive disenfranchisement laws, while stopping well short of automatic restoration of post-prison voting rights (Ewald 533).

It should also be noted that it was mostly because of African-American legislative entrepreneurship and coalitional advocacy that these reforms took place. African-American legislators were the main contributors and sponsors of bills that promoted post-sentence enfranchisement in multiple states, although most of these bills ultimately failed. Two of the

eleven successful disenfranchisement-relaxing statutes were sponsored by whites exclusively, while African-American and Latino legislators were primary sponsors of four. Mixed-raced sets of sponsors were responsible for five bills, although it should be noted that these coalitions were composed of mostly African-Americans. This is a pattern that can be observed in five states, of which its most southern representatives are Alabama, Florida and Virginia. Each of these states have had their felon disenfranchisement legislation altered at least six times since 2001, and in the majority of cases those bills have been sponsored by African-Americans and Latinos (Ewald 534).

On partisanship, Ewald states: "While no causal relationship emerges in the regression data, partisanship does help explain recent disenfranchisement reform. Comparing final votes on rights-relaxation bills with the partisan breakdown of each legislative chamber, we see that while sponsors of such measures have almost universally been Democrats, final votes have ranged from almost perfectly partisan to unanimous (Ewald 534)." What this entails is that, while Democrats have been the dominant force behind post-sentence enfranchisement, Republicans certainly did not shy away from supporting these reforms, which is also exhibited by the positions that Republican governors Jeb Bush and Charlie Crist took on felon disenfranchisement. In this regard, Ewald plays up the notion that many Republicans believe that the issue of felon disenfranchisement is a political winner for them, and contends more importantly that Republicans allow Democrats to assume the role of the dominant force behind the felon disenfranchisement issue in order to embed into the general public that felons support Democrats, and vice-versa. Republicans would be benefitting from so-called "negative political leverage" that criminal offenders possessed in American politics during recent decades, while also capitalizing on the image that Democrats merely support post-sentence enfranchisement in order to gain more votes (Ewald 535). However, in most southern states, Republicans and Democrats showed that the debate surrounding felon disenfranchisement was still very much partisan. Alabama's vote for reform in 2003 saw no support from Senate Republicans and gained only two votes from House Republicans, while votes in Tennessee were decided almost exactly along party lines (Ewald 534). One Alabama Republican official had even stated: "As frank as I can be, we're opposed to it because felons don't tend to vote Republican (Ewald 535)." Another official, Alabama's Republican Party Chair said: "If the public sees voting machines being rolled behind the walls of Alabama's prisons, the Democrats will see some serious repercussions at the ballot box (Ewald 535)." These statements illustrate the partisan sentiments that played a key role during felon disenfranchisement debates in many states.

The laws regarding voter identification are perhaps the most discussed and most analyzed instrument of voter suppression in recent years. At least thirty-two states have some form of photo identification implemented. The only southern states without any voter identification requirements are North Carolina and New Mexico. Indiana is one of the states with the most extensive voter identification laws in the nation . Voters in Indiana are required to present up-to-date photo identification issued by state or federal authority in order to exercise their right to vote (Barretto, Nuno and Sanchez 111). During the United States Supreme Court case Crawford v. Marion County Election Board in 2008, plaintiffs argued that the requirements formulated by the state of Indiana posed significant and unequal obstacles to the right to vote. The state of Indiana responded by stating that the measures were aimed against voter fraud and that it was within their constitutional rights to implement those measures. The Supreme Court ultimately decided that the laws were justified, and that the laws protected the reliability and integrity of the election in order to promote voter confidence. The notion that the measures are aimed against voter fraud follows a line of argumentation that can be observed in many states that have imposed similar legislation, which often goes hand in hand with the debate surrounding undocumented immigrants or African-American felons (Barretto, Nuno and Sanchez 111)

Prior to the current Indiana voter identification law, voters who had voted before were required to sign a poll book in which the signature was matched to the earlier documented signature (Barreto, Nuno, and Sanchez 111). This was a method that presented virtually no barriers to the voting process and that put little strain on the resources of the voter. The poll book method supposedly helped voter participation, an argument which is strengthened by earlier research that suggested that turnout rates are higher when costs associated with voting are low (Barreto, Nuno, and Sanchez 111). The current use of voter identification laws, however, represent a set of administrative duties that are considered to be one of the greatest sources of cost to potential voters. The acquiring of an up-to-date photo identification requires time and political knowledge on how to engage with multiple levels of government, while disproportionately affecting potential voters who have less education, smaller social groups, less education and are generally more isolated from government institutions. Among the disproportionately affected are the senior citizens, immigrants, ethnic and racial minorities, and overall groups with less education and lower incomes (Barreto, Nuno, and Sanchez 111). It is also interesting to note how diverse and convoluted some of the voter identification laws are across the United States. The states of Tennessee, Texas and South Carolina do not accept student ID, even if those identification cards are issues by the state itself. This rule

unnecessarily affects a large amount of college students who are living hundreds of miles away from their home state or home town. South Carolina only accepts photo identification issued by either the state itself or the United States, which 2.7 million registered South Carolina voters do not have. The state also requires a birth certificate when an individual wants to obtain state-issued photo identification, which creates another set of problems, particularly for older African-Americans (Haygood 1053).

Research has shown that among eligible adults in Indiana, 83.2% of whites have the required photo identification, which is significantly more compared to the 71% of African-Americans who possess the correct credentials. Even when only considering people who had voted consistently throughout the years, 84.2% of whites had the correct identification credentials compared to the 78% of African-Americans. Thus, when Indiana voter identification laws are strictly adhered to, 14% of consistent whites voters could be denied to cast their ballot and more than 20% of African-Americans could be denied (Barreto, Nuno, and Sanchez 113). Numbers presented by Ryan P. Haygood show a similar story. He states that on a national level 25% of African-Americans, 6.2 million potential voters, and 16% of Latinos, 2.96 million potential voters, do not possess valid photo identification. Compare that to percentage of whites who do not possess valid photo identification, which is 8%. Additionally, 19% of African-Americans do not have a driver's licence, compared to 3% of whites. Minorities also show a higher geographical mobility rate, which means that they are less likely to have up-to-date photo identification that is valid (Haygood 1055). Minorities are also disproportionately impacted when it comes to enforcement of the voter identification laws. 65% of all Latino voters and 70% of all African-American voters were asked to present their photo identification when casting their ballot during the 2008 election. In comparison, the percentage among whites was 51% (Haygood 1055).

On partisanship, researchers state: "Registered voters in Indiana who identify as Republican were more likely to have proper ID credentials than those who identified as Democrats. While the gap of 4-5 point is not huge, it is large enough to affect election results in a close or competitive contest (Barreto, Nuno, and Sanchez 114)." The partisan breakdown is 26% independent, 33% Democrat, and 42% Republican among those who possess correct photo identification. Among those without the correct identification, 27% are independent, 38% are Democrat, and 27% are independent (Barreto, Nuno, and Sanchez 114). Another side of this partisan issue focuses on the notion that the Republican Party is mostly responsible for the introduction of voter identification legislation. Hicks and his colleagues contend that the Republican Party, by embracing several restrictive voter identification laws, acts in a manner

that is designed to minimize the participation of voters who are typically supportive of the Democratic Party. And while the effort of the Republicans to, for example, cut back on early voting days is obvious in how it is a partisan power move, restrictive voter identification laws at least hold the appearance of ensuring the security of the voting process (Hicks et al. 29).

### 3. Two periods of voter suppression: a comparison

Now that we have properly identified and analyzed a variety of the elements of voter suppression, and have established what previous research has found, it is possible to juxtapose the Jim Crow era with the period between 1996 and 2012. The previously described elements of voter suppression show similarities, dissimilarities, continuities and general trends when it comes to actors, partisanship, affected groups, effectiveness, overtness, and motivation. It is now important to pinpoint what the unifying, or dividing, elements of the designated periods are, and how they contribute towards a general consensus.

One of the most important continuities that can be observed between the two periods is the strength of public opinion and how it affected change in legislation. The impact of public opinion can be observed in the abolishment of white primaries in the Jim Crow era, the relaxation of felon disenfranchisement laws, but also in the justification of more stringent voter identification laws. When African-American Mississippians had to endure racial violence after Republican senator Theodore Bilbo expressed that whites had to use "any means" to keep African-Americans from voting, public opinion definitively turned against him and the idea of white primaries. Michael J. Klarman states on this: "Dominant public opinion in the nation simply could not bear Bilbo's thinly veiled exhortations to violence. A white man from McAlester, Oklahoma, informed Bilbo that his speech was reminiscent of sentiments emanating from that "late departed and unlamented jerk in Germany" and admonished the Senator that "the time for this narrow-minded race hatred stuff is out (Klarman 93)."Developments like this one illustrate how American society was slowly shifting towards a less racialized society, and that these obviously racist views did no longer necessarily correspond with the general public, and that racism and discrimination was no longer viable as a political strategy. In the period between 1996 and 2012, public opinion also fought against felon disenfranchisement. Through a survey conducted in 2002, researchers established that the majority of the survey responders believed that an offender's right to vote should be restored in a post-sentence situation (Uggen and Manza 794). This corresponds with the substantial changes that Republican governors Jeb Bush and Charlie Crist enacted regarding post-sentence enfranchisement amidst public opinion campaigns in 2004 and 2007. However, it should be stated that these positive developments motivated by public opinion could be placed within a Republican strategy in which the party adopts less restrictive disenfranchisement laws in order to relieve public pressure, while not coming close to automatic post-prison restoration (Ewald 533).

Whether or not public opinion played a definitive negative role in the case of post-sentence enfranchisement remains a matter of speculation on Ewald's part. It is however clear that public opinion played a negative role in the justification of stricter voter identification laws. William D. Hicks and his colleagues state on this: "Not only can these laws be framed as a valence issue- indeed, the GOP and their allies often try to frame the requirement to have voters show state-issued photo identification at the polls as necessary to deter voter fraud- it also receives sizable success in the court of public opinion. In fact, as long as the majority of voters favor restrictive voter ID laws as a means to prevent fraud and hence protect the right to vote from potential political corruption, Republicans have every incentive to continue pushing for such measures (Hicks et al. 29)." What gives these developments a negative connotation is the fact that claims of voter fraud are largely unfounded, which suggests that the implementation of stricter voter identification laws are largely symbolic and a way of pandering to the general public. Cases of in-person voter fraud, which would be most effectively combated by voter identification, are rare. One statewide survey, for example, that took place in Ohio in 2002 and 2004 found that out of 9 million votes cast, four were considered fraudulent (Haygood 1056). That stricter voter identification laws are merely a tool to relieve public pressure is compounded by the fact that federal law already has provisions that act as a deterrent, and by the fact that voter fraud is an extremely inefficient way to realistically influence the results of an election (Haygood 1058). One could argue that the way in which the Republicans in the period between 1996 and 2012 capitalized on the misconception of, for example, race and voter fraud is reminiscent of the way in which the Democrats capitalized on misconceptions of race and racism during the Jim Crow era.

This brings us to perhaps the most obvious continuity between the Jim Crow era and the period between 1996 and 2012, which is the partisan divide. Southern states were firmly in control of the Democrat Party during the Jim Crow era, and these Democrats were responsible for virtually all official laws regarding of voter suppression. Poll taxes, literacy tests, and financial requirements were all designed to consolidate Democrat power in the South at cost of the Populist Party, and the Republican Party (Brewer 261). The political landscape of Texas was dominated by Democrats when the state saw implementation of the poll tax, and that dominance was consolidated through the implementation of white primaries. Democrat officials in Georgia and Louisiana used poll taxes to acquire political power when Huey Long and Eugene Talmadge rose to power (Brewer 264). Democrats also were the only party who had barred African-Americans from primaries. Not only were they the sole perpetrators when it came to white primaries, the Democrats also refused to acknowledge the

decision of the Supreme Court in the case of *Smith v. Allwright*, which stated that the white primary measure of the Texas state Democratic convention was unconstitutional (Weeks 502). Obstruction in that matter can be seen, for example, in the Boswell amendment, which immediately tightened literacy requirements after Alabama Democrats realized white primaries were not going to hold (Weeks 504). Even the Democratic governors of the states of Mississippi and South Carolina publically denounced the Supreme Court ruling.

A similar lopsided, partisan pattern can be observed in the period between 1996 and 2012, when the Republican Party was the driving force behind several voter suppression laws. The Republican-controlled legislature passed the bill that restricted early voting in Florida, dismissive of the fact that early voting has a positive effect on voter turnout (Gronke, Galanes-Rosenbaum, and Miller 643). Minorities, Democrats and unaffiliated voters were less likely to vote in 2012 compared to 2008 as a result of the Republican decision to restrict early voting (Herron and Smith 662). The introduction and passage of measures that restrict early voting in the period between 2006 and 2011 were highly partisan, strategic, and racialized occurrences (Bentele and O'Brien 1088). Republicans were the ones who profited from felon disenfranchisement laws, while African-American and other minorities were disproportionately impacted. Alex C. Ewald concludes that the group affected by felon disenfranchisement shares many of the socioeconomic characteristics of the Democratic Party. He also states that felon disenfranchisement laws and other means of voter suppression have helped the Republicans win several close elections, which also includes the presidential election of 2000 (Ewald 530). African-Americans and other minorities, on the other hand, were largely responsible for the legislative fight against post-sentence felon disenfranchisement. African-Americans and Latinos were primary sponsors of four disenfranchisement-relaxing statutes while whites were the primary sponsors of only two. The final votes on these statutes show that Democrats generally were the primary proponents of post-sentence felon disenfranchisement (Ewald 534). Strict voter identification laws disproportionately affect African-Americans and other minorities, while also being fiercely partisan. Of the people who possess correct voter identification, 33% are Democrats, while Republicans represent 42% (Barreto, Nuno, and Sanchez 114). Republicans are also largely responsible for the introduction of voter identification laws, and it is argued that these laws act in a manner that is designed to minimize voter turnout among people who support the Democratic Party (Hicks et al. 29)

By looking at the partisan politics that formed, abolished and perpetuated voter suppression laws, it becomes clear that the names of the parties that have advocated and

perpetuated voter suppression laws have obviously changed, but the motivation and targeted groups still remain largely the same.

Another manner in which the Jim Crow era and the period between 1996 and 2012 show similarities is the way in which deception tactics are used to lower voter participation among minorities. Deceptive practices are defined as intentionally false or misleading in order to prevent an eligible voter from casting their ballot. Tactics like these were widespread during the Jim Crow era, and have been used during the 2010 campaign for the governorship of Maryland. Members of Republican Robert L. Ehrlich's campaign were accused of directing anonymous automated telephone messages that stated: "Hello. I'm calling to let everyone know that Governor O'Malley and President Obama have been successful. Our goals have been met. The polls were correct and we took it back. We're okay. Relax. Everything is fine. The only thing left is to watch it on TV tonight. Congratulations and thank you (Haygood 1058)." These phone calls went out to more than 110,000 voters, who lived in neighborhoods that were mostly African-American, and who favored Democratic candidate Martin O'Malley. The Maryland State Prosecutor indicted both Julius Henson, a political operative who employed was by the Republican campaign, and one of the campaign managers on several counts of state election law violations, which included the attempt to influence a voter's decision to cast a ballot through the use of fraud (Haygood 1058). The indictment also described a document in which a statewide election strategy was outlined which stated that Ehrlich's campaign was meant to promote confusion and frustration among African-Americans, and focused on precincts that housed mostly African-Americans. The document also states: "The first and most desired outcome ... is voter suppression (Haygood 1059)."

Felon disenfranchisement has already been linked once to the Jim Crow era through the continuities in the impact of public opinion. Daniel S. Goldman contends that there is a second link, and argues that there are several continuities to be observed between felon disenfranchisement laws and literacy tests. Felon disenfranchisement laws and literacy tests are both justified as instruments that are entirely separate from race because, theoretically, they are neutral on the surface. Goldman states however that felon disenfranchisement shows two similarities when compared to literacy tests. The similarities are, Goldman states: "... they each depend on racial discrimination in other relevant areas of American society to produce a racially disparate impact, and (2) the racial bias associated with discretionary implementation of each regulation serves to exclude minorities, particularly African-Americans, from the political process (Goldman 614)." He goes on by stating that literacy tests were incorporated in times of unequal education and segregated schools, which

can be compared with the fact that felon disenfranchisement laws were incorporated in times when the criminal justice system disproportionately affected African-Americans and other minorities. Another interesting note made by Goldman states that the rhetoric that was used to justify both types of measures is based on false stereotypes and incorrect assumptions about minorities (Goldman 614). This notion also strengthens the idea that the way in which Democrats capitalized on misconceptions of race in the Jim Crow era is reminiscent of how Republicans capitalized on misconceptions of race when pushing for stricter voter identification laws, which was mentioned earlier in this chapter. Another, more general conclusion that could be drawn from this is that racism in the period of 1996-2012 was still an important motivator for voter suppression, and that policies based on racism are, although slightly less, still prevalent in the period between 1996 and 2012.

## Conclusion

The comparisons and continuities described in the previous chapter bring us to the definitive final answer of the research question. This thesis set out to determine if it is possible to compare the partisan political landscape and subsequent voter suppression laws of the Jim Crow era successfully to the voter suppression laws and increasingly partisan political landscape of the period between 1996 and 2012. What has been uncovered is that there are many continuities between the periods and that many of the actors, motivations, and affected groups stayed the same. These continuities and similarities prove that the Jim Crow era and the period of 1996-2012 can indeed be successfully compared. Elements of deception tactics for example can be found throughout both periods, while for instance felon disenfranchisement and literacy tests also bear major similarities.

The biggest continuity is that the partisan divide and desire to undermine the opposing party are the foundation of voter suppression in both the Jim Crow era and the period of 1996-2012. In the Jim Crow era, Democrats used voter suppression to gain and consolidate power in the South. In the period of 1996-2012, Republicans used voter suppression in order to maintain their position and undermine their opponent. The biggest differences between the periods can be found in the prevalence of racism and overtness. Jim Crow Democrats were motivated by racism, which also coincided with the suppression of groups that were most likely to vote for their opponents. Voter suppression matters introduced by Republicans between 1996 and 2012 were only aimed against Democrats, but affect minorities disproportionately. This illustrates that, although overt racism has mostly disappeared, the outcomes of voter suppression from both periods are largely the same. Differences in overtness can be easily explained by pointing towards the proclamations of white supremacy and instigations of racial violence during the Jim Crow era. Many high-placed, Democratic officials of that era, including governors, were very vocal in their quest for pure, white elections. This is one element of the Jim Crow era that we can say has been truly done away with, largely thanks to a shifting public opinion towards a less racialized society. It should also be stated that the effectiveness of voter suppression laws has become less and less. The Jim Crow era experienced a layering of voter suppression measures. Texas, for example, had at one point both white primaries and poll taxes. These combinations made sure that, for a long time, African-Americans were unable to get a foot in the door in southern politics. More modern measures like felon disenfranchisement, restriction of early voting, and voter identification laws are less effective in empowering the Republican Party.

This does not take away from the fact that African-Americans and other minorities were disproportionately affected by measures enacted in both the Jim Crow era and the period between 1996 and 2012. As mentioned, the motivation might have been altered, but the outcome remains the same. It is also important to take into account that the disproportionately affected groups share many of the socioeconomic characteristics of the Democratic Party. This then meant that Republicans were disproportionately affected during the Jim Crow period, while Democrats were disproportionately affected during the period of 1996-2012.

The Democrats were also the ones who fought most against voter suppression. The Republicans did in fact play a huge role in the abolishment of some voter suppression practices, but this has to be seen in relation to the power of public opinion, which also played a part in the abolishment of some voter suppression practices during the Jim Crow era. The power of public opinion also played a negative role in the justification of voter suppression measures such as early voting and voter identification laws, which makes it a continuity nonetheless. Public opinion did obviously also play a huge role in the creation of voter suppression measures in the Jim Crow era, as public support was always needed in some form when it comes to introducing legislation.

It is of course interesting to note that the Democratic Party and Republican Party have changes position, but that motivations and affected demographics stayed the same. This is however not relevant in the light of what the research question asked. It is perhaps interesting for other research to focus on the partisan switch, and how the switch played a role in regard to voter suppression. The specific case of felon disenfranchisement could also be relevant for future research. Will the positive developments of post-sentence enfranchisement push through? Or will these developments die down once other subjects garner more attention from the general public and public opinion shifts. The presidency of Donald Trump and how he manifests himself in the fight against voter fraud is also a polarizing subject, on which research will be done undoubtedly. Will Trump use public opinion to impose stricter voter identification laws? Will the Trump administration enact any new measures to combat the almost non-existent problem of voter fraud? It is obvious that there are multiple avenues for future research. The debates on voter suppression will continue to enthrall researchers for years to come.

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