

How to Ban Muslims without Mentioning Muslims

by David B. Parker

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[Syrian refugees and migrants pass through Slovenia](#),

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In *The Promise of the New South*, Edward Ayers tells of James Z. George, a U.S. senator from Mississippi, who predicted that in 1890 (just a year away) the number of African Americans in the state would exceed that of whites by half a million. George was worried about what this meant for the state's political future. Democrats had controlled Mississippi since the end of Reconstruction, but now, the black population was growing so ominously and Republicans (at the time, the more civil rights-oriented party) had just gained control of both Congress and the White House. George was not the only white Democrat worried. If only there were some way to limit—or even better, to eliminate!—the black vote, they would be safe. If only they could pass a law that said, “Negroes may not vote in Mississippi,” that would settle it. But the Fifteenth Amendment prohibited states from denying anyone the right to vote “on account of race, color, or previous condition of servitude.” So this is the conundrum George and other white Mississippians faced: how to cut out the black vote without looking like you were cutting out the black vote.



In 1890, the state called for a special convention to revise the state constitution and add a set of new voting qualifications. The purpose of these new qualifications was clear. S. S. Calhoun, the president of the convention, said, “We want them [African Americans] here, but their own good and our own demand that we shall devise some means by which they shall be practically excluded from the government control.” W. S. Eskridge, a delegate from Tallahatchie County, noted that “the white people of the State want to feel that they are protected not only against the probability but the possibility of negro rule and negro domination.”

First among the new voting qualifications: a prospective voter had to prove that he (all voters were “he” at this point; the Constitution would not prohibit the denial of voting rights on account of gender until 1920) had lived in the state for two years, and in the voting district for one. This cut out people who moved frequently, such as African American sharecroppers. Second, men convicted of certain crimes were denied the right to vote. Those crimes included arson, bigamy, theft, and similar crimes that had a much higher conviction rate among blacks. A literacy requirement fell most heavily on African Americans. Prior to the Civil War, it had been illegal to teach Mississippi slaves to read, and public education after the war was very poor—for both races, but especially for blacks. An “understanding clause” allowed registrars to approve anyone who, though illiterate, was smart enough to understand a portion of the state constitution when it was read to him. This was a loophole that allowed illiterate whites to register. (One delegate noted that “the registrar could determine who would qualify by choosing hard or easy sections of the constitution” to be understood.) Finally, payment of a poll tax

became a pre-requisite for voting. Though the tax was fairly small (two dollars), poor Mississippians found it to be a significant hurdle to registration.

The new voting qualifications were terribly effective. During Reconstruction, almost seventy percent of adult black males in the state were registered to vote; in 1892, two years after the new constitution, the figure was a dismal six percent. And yet the “Mississippi Plan” (as it came to be known) was perfectly legal, at least according to *Williams v Mississippi* (1898). In that case, the U.S. Supreme Court ruled that the new voting requirements did not violate the Fifteenth Amendment, because “they do not on their face discriminate between the races.” Nowhere does the word “black” or “Negro” appear in this section of the constitution. The state of Mississippi denied Henry Williams, the African American plaintiff in the case, the right to vote because he was unable to pass the literacy and poll tax requirements, not because of his race.

So here was the answer to the question of how to legally and effectively deny African Americans the right to vote. Other states quickly followed Mississippi’s lead, sometimes with their own innovations: Louisiana introduced the infamous “grandfather clause,” for example, which allowed a man to vote if his father or grandfather could vote on January 1, 1867 (which was before the Fifteenth Amendment enfranchised African Americans), and Georgia added a “good character clause” (“all persons who are of good character, and understand the duties and obligations of citizenship under a republican form of government”). By the early twentieth century, the African American vote was no longer a threat in the South, and it was all perfectly legal.

Fast forward now to 2016. Donald Trump, campaigning for the Republican nomination for president, called for “a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on.” He won the nomination, and then the election, and he asked his friend and supporter Rudolph Giuliani how he might legally accomplish a ban on Muslims entering the country, especially in light of the First Amendment and its requirement that the government not favor one religion over another. Giuliani, who had been a political science major at Manhattan College, perhaps remembered the Mississippi Plan and suggested that one might effectively and legally begin a ban on Muslim immigration as long as one did not specifically mention the word “Muslim.” President Trump followed that advice and on January 27 issued an executive order temporarily banning immigration from seven nations that happened to have Muslim-majority populations. The order had a Christian loophole, “prioritize[ing] refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality.” (In a Muslim-majority country, Christians are “a minority religion.”)

So like the Mississippi Plan, Trump’s executive order never mentioned the targeted group (African Americans and Muslims) and it included a loophole for the “right” kind of people (poor whites and Christians). Unlike the Mississippi Plan, several federal judges took issue with Trump’s executive order and temporarily halted it. Now Trump is preparing to release a revised order. We have yet to see the details, but it is a pretty safe bet that it will still be a ban on Muslims without mentioning the word “Muslim.” It will still be Mississippi all over again.

In his classic *Origins of the New South*, C. Vann Woodward titled the disfranchisement chapter of the book “The Mississippi Plan as the American Way.” He was righter than he knew.