

**Congress and Civil Rights:
The Early Reconstruction Era, 1865-1871**

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The civil rights initiatives enacted by Republican majorities in Congress during the first six years of Reconstruction (1865-1871) stand as revolutionary changes to the political and social structure of the country. The 14th and 15th Amendments in particular, rightly stand as monumental achievements. Yet these Republican victories also motivated a counter-revolution which would precipitate the party's downfall and usher in the era of "Redemption," during which southerner Democrats reestablished "home rule." We explore the political contestation and policy outcomes of these pivotal years, as the Republicans in Congress battled internally (idealistic Radicals vs. pragmatic moderates), as well as against congressional opposition allied with intransigent president (Andrew Johnson).

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Introduction

The post-Civil War reconstruction of ex-Confederate states lasted from 1865-1877, and scholars of the era typically divide those pivotal years into discrete periods. “Presidential reconstruction,” describes a brief period between 1865-1866 when Andrew Johnson unilaterally created provisional southern governments, and worked to set the terms for readmission of the rebellious states. Yet Johnson’s political miscalculations, and widespread dissatisfaction with the leniency he exhibited toward southern “traitors,” soon inspired a backlash. Beginning in 1866, Republicans in Congress challenged Johnson’s political authority by nearly impeaching him. More importantly, perhaps, they also fought to set reconstruction policy despite multiple presidential vetoes. Republicans in Congress are thus rightly seen as responsible for the 14th and 15th Amendments, landmark bills guaranteeing equal protection of the law and enfranchising black men. They are also responsible for a number of supplementary statutes aiming to protect freedmen from the recrudescence of the “slave power.”

Despite these legislative victories, however, all was not well within the Republican Party. In 1865 the political and moral clarity provided by the war gave way to more complicated circumstances. At war’s end, Republicans had not yet developed a plan for determining the political status of millions of ex-slaves, or a process for readmitting the former-Confederate states. Complicating efforts to deal with these issues were significant ideological disagreements within the party. Radical Republicans—those with ties to the abolitionist and Free Soil movements—sought the immediate guarantee of full civil and political rights for ex-slaves. They also advocated federal intervention into the states for the purpose of providing aid and education to the freedmen. Finally, they sought to punish the south by prohibiting ex-confederates from participating in the political process. As “idealists,” they frequently condemned pragmatism and

compromise. Moderate and conservative Republicans, on the other hand, were more suspicious of additional federal action. Like their radical co-partisans, they believed that the lives and property of blacks and loyal whites must be protected. Yet they did not believe that the federal government held the authority to provide substantive equality within the states, nor did they believe that ex-slaves were prepared to enter the polity as full voting citizens. They also prioritized readmission of southern states, and a “return to normalcy,” over punishment for the rebellion.

Once Congress took primary responsibility for determining the course of Reconstruction from President Johnson, policymaking became a push-and-pull contest of strength between these different ideological groups within the party. While no single faction controlled the congressional majority, the preponderance of Republican “moderates” meant that their political preferences were usually written into successful policy enactments. Yet radicals held enough power to block any bill they believed to be too conservative and because they were frequently aided by Democrats hoping embarrass the majority, the radical agenda was not completely neglected. The willingness of radicals to side with minority party Democrats forced Republican party leaders to frequently cobble together majorities on the fly. Successful policy enactments were written to generate compromise at the expense of clarity. As a consequence, they set the stage for later fights over implementation and enforcement.

In other words, civil rights policymaking during the early Reconstruction years was particularly “developmental.” Legislating was a day-by-day (sometimes hour-by-hour) sequence of negotiations during which the range of policy options was progressively narrowed. Very often members would need to revisit the issues confronted in successful policy enactments because their purposes were not fully achieved (in the case of the 15th Amendment taking up where the

14th Amendment left off), or because of unanticipated reactions by the public (in the case of the Enforcement Acts). During the six years between 1865-1871, congressional Republicans instigated revolutionary changes to the political and social structure of the country. Some of their accomplishments, the 14th and 15th Amendments in particular, rightly stand as monumental achievements. Yet the decisions made during this brief period of time also helped to precipitate the “redemption era,” a period of time during which popular backlash against the Republican agenda led to the enactment of Jim Crow laws throughout the south. In what follows we explore the political contestation and policy outcomes of these pivotal years.

Our analysis focuses on the three Congresses in session between 1865-1871: the 39th (1865-77), 40th (1867-69), and 41st (1869-71). In detailing the civil-rights related initiatives passed during these years, we examine the congressional proceedings, individual roll-call votes, and eventual legislative outcomes. To guide the analysis, we break the remainder of the paper into seven sections, each of which focuses on a particular bill or constitutional amendment: (1) the prolonged effort to guarantee voting rights in Washington D.C.; (2) the failed attempt to extend the life of the Freedman’s Bureau; (3) passage of the Civil Rights Bill of 1866; (4) the successful enactment of the 14th Amendment; (5) passage of the first Reconstruction Act; (6) successful enactment of the 15th Amendment; and (7) passage of the first three Enforcement Acts.

Voting Rights in Washington, DC

During the 39th Congress political battles of consequence occurred *within* the Republican Party rather than *between* Republicans and Democrats. For the defeat of the radical Wade-Davis reconstruction plan had not clarified the Republican Party’s position on reconstruction, or determined once and for all which faction would lead the party. When the 39th Congress

convened in December 1865, radicals aimed to overcome their latest defeat by immediately taking the initiative on the issue of black voting rights. At the time, opinions on black suffrage among Republicans were mixed. Radicals, unsurprisingly, insisted on immediate and unqualified voting rights for all freedmen. President Johnson's position, on the other hand was that universal suffrage "would breed a war of the races."¹ Moderates in Congress had yet to take a side but they were committed to avoiding any conflict with the president.² In January 1866, radicals orchestrated a fight over suffrage rights in Washington, DC that threatened to immediately upend the alliance Johnson had forged with Senate moderates.

On January 10, the House began consideration of a bill that aimed to strike the word "white" from the laws governing voting rights in Washington, D.C. and to stipulate that nobody be disqualified from voting on account of race or color.³ Tempers immediately flared as conservatives, moderates, and radicals battled over potential amendments. In order to put together a compromise that could win majority support, Republicans met as a caucus and appointed a special committee for the purpose of drafting a new bill that would appease all sides.⁴ Yet the committee failed to work out a deal.

On January 18, amid much confusion about where members stood, majorities voted against postponing debate on the bill or recommitting the bill to the Judiciary Committee with instructions to add a literacy test for all "new voters" who had not served in the Union Army.⁵ Both of these votes failed. As Table 1 makes clear, though, the majorities arranged against any delay were comprised of Democrats and Republicans. In this case, conservative Democrats—

¹ Edward McPherson, *The Political History of the United States of America During the Period of Reconstruction* (Washington, D.C.: James J. Chapman, 1880), 49.

² Michael Les Benedict, *A Compromise of Principle: Congressional Republicans and Reconstruction, 1863-1869* (New York: W.W. Norton & Company, 1974), 145.

³ *Congressional Globe*, 39th Congress, 1st Session (January 10, 1866), 162.

⁴ Benedict, *A Compromise of Principle*, 146.

⁵ *Congressional Globe*, 39th Congress, 1st Session (January 18, 1866), 311.

believing that they would win political advantage by helping force a final vote on the bill—worked with radical Republicans to do just that. They miscalculated, however, and angry moderates ended up voting with radicals to pass the bill. When the bill moved over to the Senate, Republican moderates buried it in the Committee on the District of Columbia. It would languish there for almost a year, when it would be revived and enacted over Johnson’s veto (See Table 1).

Separate from the substantive significance of the DC suffrage bill, the political dynamics it highlights serve as an analogue for more consequential battles occurring during the 39th Congress. Radicals pursued the D.C. suffrage bill at the outset of the 39th Congress heedless of public opinion, the preferences of moderates, or the desires of the president. Their aims were promoted by Democrats who, miscalculating, believed they could create a rift within the party. Once the bill passed, however, a more circumspect group in the Senate squashed the bill in order to pursue a more incremental strategy. One year later, following Johnson’s political decision to alienate congressional Republicans and after a major electoral victory, the bill was enacted. Here we see, in the fate of one bill, the political dynamic at work between 1865 and 1867: (1) increasing congressional assertiveness; (2) a creeping awareness among congressional moderates that they would need to turn to radicals—not Johnson—to see their agenda enacted; (3) the counter-productive political missteps of President Andrew Johnson.

The Freedman’s Bureau and Civil Rights Bills (1866)

The Freedman’s Bureau and Civil Rights bills of 1866 reflected Congress’ response to a specific problem: the enactment of so-called “black codes” by the legislatures of ex-Confederate states. In November 1865, Mississippi enacted a law intended to “regulate the relation of Master and Apprentice to Freedmen, Free Negroes, and Mulattoes.” Among other things, this law empowered “masters” to “inflict such moderate corporeal chastisement” on their apprentices “as

a father is allowed to inflict on his or her child or ward.” It also allowed masters to “recapture” apprentices who left work without explicit consent.⁶ Elsewhere, the state legislature of Georgia amended its penal code so as to make it lawful for black residents to be imprisoned or sentenced to manual labor for the crime of “strolling about in idleness,” or “leading an idle, immoral or profligate life.”⁷ According to historian Eric McKittrick, by December 1865 “public awareness of this legislative trend in the South had become general [...] and unusually hostile.”⁸ Northern citizens (rightly) feared that Southern legislatures were reviving slavery under a different name, and public opinion moved in the direction of federal action to protect freedmen.

As Chairman of the Senate Judiciary Committee, Lyman Trumbull (R-IL) took the lead in shepherding both the Freedman’s Bureau Bill and the Civil Rights Bill through the Senate. He introduced S. 60—“A bill to enlarge the powers of the Freedman’s Bureau”—on January 12, 1866.⁹ The Freedman’s Bureau, initially created by Congress in March 1865, provided food, established schools and hospitals, and monitored labor contracts throughout the South. Agents of the Freedman’s Bureau were mostly Union Army officers who were also responsible for settling the newly “freedmen” on land abandoned or confiscated during the war.¹⁰ Yet the original act creating the Bureau specified that it would remain in existence until one year after the conclusion of hostilities. S. 60 excised the sunset clause and replaced it with language specifying that the

⁶ McPherson, *Political History of the United States of America During Reconstruction*, 29.

⁷ McPherson, *Political History of the United States of America During Reconstruction*, 33.

⁸ Eric L. McKittrick, *Andrew Johnson and Reconstruction* (Chicago, IL: University of Chicago Press, 1960): 277.

⁹ *Congressional Globe*, 39th Congress, 1st session (January 12, 1866), 209.

¹⁰ For a summary of the powers and responsibilities of the Freedman’s Bureau see: David Herbert Donald, Jean Harvey, and Michael F. Holt, *The Civil War and Reconstruction* (New York: W.W. Norton & Company, 2001): 530-532; Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: Harper Collins, 2002): 153-170.

Bureau “shall continue in force until otherwise provided by law,” while also providing the Bureau with federal funds.¹¹

Trumbull’s bill also sought to “enlarge” the powers of the Bureau by authorizing it to serve freedmen around the country, not just in the ex-Confederacy. Then it empowered the president to distribute to freedmen parcels of land in Florida, Mississippi, and Arkansas freedmen to pay rent (at antebellum rates). Finally, the bill provided the Bureau—and by extension the federal government—new power to guarantee freedmen some civil rights protections. Section 7 made clear that it would be the “duty of the President of the United States, through the commissioner [of a state bureau], to extend military protection and jurisdiction” to anybody denied the right to “make and enforce contracts, to sue, to be parties, and give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property, and to have full and equal benefit of all laws.” Section 8 bolstered these protections by allowing freedmen to pursue legal action in cases of discrimination in military courts administered by Bureau agents. Those judged guilty of discrimination could be fined, sent to prison, or both.¹²

Even as S. 60 provided new federal protections for black citizens, it also illustrated Trumbull’s political moderation and his pragmatic attention to President Johnson’s political preferences. Indeed, when advocating for the bill, Trumbull took care to argue that Sections 7 and 8 were wartime necessities, rather than permanent expansions of federal power. “The military power governs and controls where no courts can exist,” he argued, and “it is under this provision of the Constitution, authorizing judicial powers to be conferred upon military tribunals that [...] is now to be conferred upon the officers and agents of the Freedman’s Bureau.”¹³ Once

¹¹ For the full text of S. 60, see McPherson, *Political History of the United States of America During Reconstruction*, 72-74.

¹² McPherson, *Political History of the United States of America During Reconstruction*, 74.

¹³ *Congressional Globe*, 39th Congress, 1st Session (January 25, 1866), 420.

southern states were “readmitted” to the Union, the federal authorities created by these parts of the bill would disappear. This caveat allowed Trumbull and Senate moderates to provide some protection to freedmen without sacrificing their commitment to constitutional federalism.

Opposition to S. 60 in the Senate came primarily from Kentucky’s Garrett Davis. A conservative from a border state, Davis was a member of the Unionist party until 1867. That year Davis declared himself a Democrat. Davis gave voice to the conservative position by condemning the Reconstruction project generally while simultaneously objecting to this particular bill. Like many conservatives, he denied Congress’s authority to enact laws governing those residents of states not seated in Congress. More specifically, however, he repeatedly attacked S. 60 for what he believed was a “fearful, tremendous, and most unauthorized investiture of judicial powers in a mere executive bureau of the government.”¹⁴ Between January 22 and January 25, Davis introduced 7 amendments, each of which aimed to restrict Bureau’s judicial authority. His amendments won only the support of the few Senate Democrats and each failed in lopsided votes.

On January 25, 1866, after fending off Davis’ amendments and rejecting some informal requests to delay consideration of the bill, Trumbull brought S. 60 to a vote. It passed with unanimous Republican support (See Table 2).¹⁵ Despite the bill’s moderation, it even won praise from the *Chicago Tribune*, a newspaper associated with congressional radicals. “[T]hough, perhaps, not perfect,” argued the editors, the bill reflected Trumbull’s effort to “secure a law that would confer the greatest attainable benefit upon the freed people, and at the same time be so framed as to insure its passage through the Senate, and its final approbation by the President.”¹⁶

¹⁴ *Congressional Globe*, 39th Congress, 1st Session (January 25, 1866), 416.

¹⁵ *Congressional Globe*, 39th Congress, 1st Session (January 25, 1866), 421.

¹⁶ “From Washington: Senator Trumbull’s Freedman’s Bill,” *Chicago Tribune*, January 26, 1866: 2.

Radical Republicans in the House of Representatives, however, were not yet prepared to support the measure. Representative Ignatius Donnelly (R-PA), for example, sought to further expand the power of the Freedman’s Bureau by allowing it to provide a free education to freedmen so as to “fit them eventually for the right of suffrage.”¹⁷ Donnelly’s education proposal never came to a vote. Instead it was incorporated into an amendment introduced by Pennsylvania’s Thaddeus Stevens which he intended to serve as a substitute for S. 60.¹⁸

Stevens’ proposed substitute served as a vehicle for House Radicals to push their agenda. Not only did it empower the Freedman’s Bureau to provide free education to the children of ex-slaves, but it also would have ensured their control of land in the South. Where Trumbull’s bill allowed freedmen to rent public land at the antebellum price, Stevens proposed limiting rent to a maximum of two cents per acre per year. Stevens also rejected language in S. 60 that would allow the president to pardon one-time confederate soldiers and then return to them any land that was seized during the war. According to Stevens, this provision would evict “sixteen thousand freedmen [...] who have built their houses, their churches, their schoolhouses” on confiscated land in order to make room for “reeking rebels.”¹⁹

House Republicans recognized that Stevens’ substitute amendment would never pass the Senate. When it came up for a vote on February 6, only 37 of 122 voting Republicans supported it (See Table 2). House Republicans also unanimously opposed an amendment offered by Green Clay Smith—a member of Kentucky’s Unionist Party—that would have exempted his home state

¹⁷ *Congressional Globe*, 39th Congress, 1st Session (February 1, 1866), 588.

¹⁸ *Congressional Globe*, 39th Congress, 1st Session (February 5, 1866), 655.

¹⁹ *Congressional Globe*, 39th Congress, 1st Session (February 5, 1866), 655; also see: Benedict, *A Compromise of Principle*, 150.

from S. 60. After dispensing with these amendments, the House passed S. 60 by a vote of 137-33.²⁰

Even as he was fighting to extend the Freedman’s Bureau, Trumbull was also working to pass the next component of the centrist agenda: The Civil Rights Act of 1866. Trumbull introduced S. 61, a bill to “protect all persons in the United States in their equal rights and furnish the means of their vindication,” on January 12, 1866 (the same day he introduced the Freedman’s Bill).²¹ The Civil Rights bill represented Congress’s first effort to “give meaning” to the Thirteenth Amendment by defining “in legislative terms the essence of freedom.”²² In particular, S. 61 guaranteed equal rights to citizens “of every race and color without regard to previous condition of slavery or involuntary servitude.” In cases involving the denial of these rights, or in cases of unequal treatment before the law, the bill allowed plaintiffs to move the proceedings to federal courts. The bill also empowered federal officials to punish—with fines, imprisonment, or both—those found to be violating the rights specified. In short, this bill aimed primarily to protect freedmen from discriminatory state laws.²³

Here again, Trumbull balanced radical preferences for new federal powers to protect freedmen against the skepticism toward federal intervention expressed by Republican moderates. The provisions allowing citizens to take their cases from state courts to federal courts, for example, only went into effect if it could be proven that state laws did not provide equal protection. “Once states enacted color blind laws,” Foner explains, “these courts, despite their

²⁰ *Congressional Globe*, 39th Congress, 1st Session (February 5, 1866), 688.

²¹ *Congressional Globe*, 39th Congress, 1st Session (January 12, 1866), 211.

²² Foner, *Reconstruction*, 244.

²³ The list includes: “the right to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal benefit, and to full and equal benefit of all laws and proceedings for the security of person and property.” A general summary of the bill can be found here: *Congressional Globe*, 39th Congress, 1st Session (January 12, 1866), 211-212.

expanded jurisdiction, would probably find it difficult to prove discrimination.”²⁴ In the words of Trumbull himself, the law would “have no operation in any state where all persons have the same civil rights without regard to color or race.”²⁵ Here again, Trumbull aimed to offer freedmen as much protection as possible with as little federal coercion as possible.²⁶

The Senate’s few opponents of S. 61 made their stand on the idea that the bill undermined the federated structure of the Constitution. Delaware’s Democratic Senator Willard Saulsbury, seemingly not inclined to understatement, characterized the bill as “one of the most dangerous that was ever introduced into the Senate of the United States.” From his perspective, it undermined “one principle more clearly recognized than [any] other, that the federal courts will not attempt to administer state laws, and neither will state courts attempt to administer federal laws.”²⁷ Saulsbury also believed S. 61 to be a disguised attempt to grant freedmen voting rights. Formalizing his objection to this idea, Saulsbury introduced an amendment that explicitly disclaimed any intent to grant such rights to black citizens. It failed 7-39.

With a similar lack of subtlety, Thomas Hendricks (D-IN) portrayed the bill’s enforcement provision, which allowed presidentially appointed “commissioners” to pursue those convicted of discrimination, as analogous to the Fugitive Slave Act. Hendricks then forced the Senate to vote on an amendment that would have excised all mechanisms for enforcing S. 61. It failed, 12-34, with unanimous Republican opposition.²⁸

Trumbull himself offered the only successful amendment to S. 61. As written, it declared that “all persons born in the United States, and not subject to any foreign Power, excluding

²⁴ Foner, *Reconstruction*, 245.

²⁵ *Congressional Globe*, 39th Congress, 1st Session (January 29, 1866), 476.

²⁶ For a longer analysis of the “conservative” aspects of the Civil Rights Bill, see: Michael Les Benedict, “Preserving the Constitution: The Conservative Basis of Radical Reconstruction,” *The Journal of American History* 61 (June 1974): 80-82.

²⁷ *Congressional Globe*, 39th Congress, 1st Session (January 29, 1866), 476; 480.

²⁸ Both votes can be found here: *Congressional Globe*, 39th Congress, 1st Session (February 2, 1866), 606.

Indians not taxed, are hereby declared to be citizens of the United States, with distinction of color.” Here the senator aimed to make very clear that all black people born in the United States are citizens of the country. While such language seems obvious enough to not need formal statutory language, Trumbull explained why he felt it must be included:

I think that the declaration that “all men are created equal,” applied as much to the black as to the white man; but the Senator from Kentucky [Mr. Davis] will not admit that. I think it is best, therefore, when we are enacting a statute on this subject declaratory of what the law is [...] to put it beyond question.²⁹

The Civil Rights bill, in other words, would stipulate that all native born freedmen were both national and state citizens. On February 1, Trumbull’s amendment passed by a vote of 31-10. One day later, the Senate passed the entire bill by a vote of 33-13.³⁰

The House did not begin debate on the Civil Rights bill until the beginning of March, and when it did those who sought its enactment were almost immediately disappointed. As a member of the Joint Committee on Reconstruction, Ohio Republican John Bingham played an influential role in determining the outcome of any relevant legislative proposal. Bingham proved to be a determined opponent of the bill. He believed that if enacted, S. 61 would “strike down by congressional enactment every state constitution which makes a discrimination on account of race or color.” From his perspective, then, any governor who obeyed a discriminatory state law would be subject to criminal prosecution. Such federal intervention into state authority, Bingham argued, was clearly unconstitutional.³¹ In order to address this concern, Representative Bingham introduced a motion to recommit the bill to the House Judiciary Committee with instructions to cut out the language forbidding state-level legal discrimination. On March 9, his motion passed 82-70. As Table 3 makes clear, Bingham had the support of a significant number of Republicans.

²⁹ *Congressional Globe*, 39th Congress, 1st Session (February 1, 1866), 569; 573-574.

³⁰ *Congressional Globe*, 39th Congress, 1st Session (February 1, 1866), 575; *Congressional Globe*, 39th Congress, 1st Session (February 2, 1866), 607.

³¹ *Congressional Globe*, 39th Congress, 1st Session (March 9, 1866), 1291.

According to Michael Benedict, Bingham's success terrified Republicans who were left to contemplate a fall election season with little to offer voters.³² To address this fear, House Judiciary Chairman James Wilson (R-IA) worked diligently to alter the bill so that it could win the support of conservative Republicans in the House. On March 13, the House considered a new bill narrowing the rights guaranteed to black citizens, thereby limiting their power to challenge discriminatory laws. Without any additional debate, the House immediately moved to a vote and the bill passed 111-38.³³ Two days later, the Senate concurred to the House amendments and passed the amended bill.³⁴

Attention now turned to President Johnson. During Senate debate over S. 60, centrist Republicans frequently stressed the need to retain Johnson's support. Senator Fessenden even took the floor to put all rumors of an impending split between the president and congressional Republicans to rest.³⁵ And, in a personal letter to a friend, Fessenden wrote of his belief that "the President desires, and means, to stand by those who elected him, and I am resolved to keep him there, if it can be done consistently with the best interests of the country, as I think it can."³⁶ Newspapers also wrote of Johnson's "repeated assurances that he entirely approves the bill in its present comprehensive form."³⁷ In short, Republicans in Congress and the public at large had good reason to believe that Johnson would sign both the bills.³⁸

Yet on February 19, six days after receiving S. 60, the president vetoed it. Johnson's veto signaled his opposition to even "moderate" civil rights protections. Moreover, the tenor of the

³² Benedict, *A Compromise of Principle*, 162.

³³ *Congressional Globe*, 39th Congress, 1st Session (March 13, 1866), 1366; 1367.

³⁴ Only one of the changes made by the House to S. 61 received a roll call vote in the Senate. It passed 30-7 with all Republicans voting yes and all Democrats voting no. See: *Congressional Globe*, 39th Congress, 1st Session (March 15, 1866), 1413.

³⁵ *Congressional Globe*, 39th Congress, 1st Session (January 23, 1866), 364-367.

³⁶ McKittrick, *Andrew Johnson and Reconstruction*, 284.

³⁷ "The Freedmen," *Chicago Tribune*, February 3, 1866: 2.

³⁸ McKittrick, *Andrew Johnson and Reconstruction*, 284; Benedict, *A Compromise of Principle*, 155.

veto cast further doubt on his willingness to work with congressional Republicans. In the message he transmitted to Congress on February 19, Johnson made clear his belief that Congress had no right to “shut out, in time of peace, any state from the representation to which it is entitled by the Constitution.” In so doing, he suggested that Congress lacked the authority to pass legislation until the ex-Confederate states had been readmitted to Congress.³⁹ Johnson also went out of his way to condemn the provisions that offered federal aid to freedmen. “The idea on which the slaves were assisted to freedom,” he argued, “was that on becoming free they would be a self sustaining population. Any legislation that shall imply that they are not [...] must have a tendency injurious alike in to their character and their prospects.” His message also appealed explicitly to states rights, claiming that freedmen “should be protected by the civil authorities, especially by the exercise of all the constitutional powers of the courts of the United States and of the states.”⁴⁰

On the day after the Senate received Johnson’s veto message, Trumbull took the floor to defend the bill and force an override vote. After expressing his “surprise and regret” at the veto message itself, Trumbull made a long speech that distilled the moderate position on civil rights protections. Once again, he portrayed federal jurisdiction over legal proceedings in the ex-Confederacy as a “wartime” measure to be lifted as each southern state was “restored to [its] constitutional relations and when the courts of the United States and the states are not interrupted or interfered with in the peaceable course of justice.” He then argued that the federal aid

³⁹ For a general analysis of Johnson’s veto message see: McKittrick, *Andrew Johnson and Reconstruction*, 288-290; Benedict, *A Compromise of Principle*, 155-156; John H. and LaWanda Cox, “Andrew Johnson and His Ghost Writers: An Analysis of the Freedman’s Bureau and Civil Rights Veto Messages,” *The Mississippi Valley Historical Review* 48 (December 1961): 460-479.

⁴⁰ Johnson’s Veto Message is reprinted in McPherson, *Political History of the United States of America During Reconstruction*, 68-71.

provided by the Freedman's Bureau itself was just a temporary solution, necessary because freedmen

do not know where to go; they have no means to pay for subsistence by the way; they do not know whither the railroads lead; the railroads would not carry them if they did, and were able to pay [...] They cannot read the finger-boards by the wayside; and where are they to go, and what is to be done with them? They are to go to the same place [...] they are to be taken and reduced to slavery again or they are to perish and die for want of subsistence, or somebody must temporarily look after and provide for them.⁴¹

Despite the temporary nature of both federal judicial protection and federal aid provided by the bill, Trumbull could not convince two-thirds of the Senate to override Johnson's veto. With seven conservative Republicans voting against override, the vote failed 30-18 (See Table 2).⁴²

Johnson's veto of the Freedman's Bureau clearly angered congressional Republicans; some believed that he would sign the Civil Rights bill in order to calm them. On March 17, for example, Senator John Sherman (R-OH) told a gathering of Ohio Republicans that he anticipated the president's support.⁴³ Echoing Sherman, James Bennett, editor of the pro-Johnson *New York Herald*, published an article arguing that because "we can find nothing in [S. 61] conflicting with the constitution as it now stands, and nothing in conflict with the declared opinions and policy of President Johnson, we have no doubt that he will approve the measure." Johnson once again disappointed his co-partisans in Congress and, on March 27, sent them yet another veto message.

Long and "dyspeptic," Johnson's message vetoing the Civil Rights bill signaled to Republicans that they could no longer trust the president to lead the Reconstruction effort.⁴⁴ For not only did the president reiterate his opposition to congressional action prior to the readmission of the southern state, but he also objected to the bill itself using stridently racist language. He

⁴¹ *Congressional Globe*, 39th Congress, 1st Session (February 20, 1866), 939.

⁴² *Congressional Globe*, 39th Congress, 1st Session (February 20, 1866), 943.

⁴³ Both Sherman and Bennett are quoted in McKittrick, *Andrew Johnson and Reconstruction*, 163; 306.

⁴⁴ Donald, Baker, and Holt, *The Civil War and Reconstruction*, 533.

condemned Congress for attempting to “fix by federal law” a “perfect equality of the white and colored races,” and he accused Republicans of seeking to establish “for the colored race safeguards which go infinitely beyond any [...] ever provided for the white race.” Then he concluded with an argument nearly identical to the position taken by opponents of the bill in the Democratic Party:

It is another step, or rather stride, towards centralization, and the concentration of all legislative powers in the national government. The tendency of the bill must be to resuscitate the spirit of rebellion, and to arrest the progress of those influences which are more closely drawing around the states the bonds of union and peace.⁴⁵

By accusing even moderate Republicans of rebellious tendencies, and by casting doubt on any federal effort to protect the rights of freedmen, Johnson seemed to repudiate the policy goals of his co-partisans in Congress.

Johnson’s veto of S. 61 proved to be a significant political miscalculation. The decision and the tenor of his message led to a political break between Johnson and moderate congressional Republicans. Consequently, they began to work around rather than with the president. One week after Congress received the president’s veto, Senator Trumbull once again took the floor to defend his authorship and Congress’ work. In this speech, however, Trumbull also channeled the frustration of the president’s one-time Republican allies. First noting that the veto was “calculated to alienate [Johnson] from those who elevated him to power,” Trumbull then undertook a point-by-point refutation of the president’s veto message. His argument characterized Johnson’s position as illogical and hypocritical. Senator Trumbull also went out of his way to call into question Johnson’s integrity—by charging that he will “approve no measure” designed to protect freedmen—and his loyalty to the constitution—by condemning him for yet

⁴⁵ McPherson, *Political History of the United States of America During Reconstruction*, 74-78.

again vetoing a bill that won large majorities in both houses of Congress.⁴⁶ With moderate Republicans now on his side, Trumbull successfully orchestrated a veto override, which passed 33-15 on April 9, 1866. The House followed suit later that day in a lopsided 122-41 vote.⁴⁷

The 14th Amendment

The Fourteenth Amendment is one of the most significant laws ever passed by Congress.⁴⁸ Yet at the time of its enactment, the amendment failed to generate much enthusiasm among members of Congress or the public at large. Indeed, as McKittrick's study of the Reconstruction era illustrates, most observers recognized it for "what it actually was—a compromise that commanded no overwhelmingly fervent support from any particular viewpoint."⁴⁹ Many Contemporaneous observers failed to recognize the amendment's importance.

With this single proposal, Republicans in Congress attempted for the first time to comprehensively answer the most significant outstanding political questions generated by the conclusion of the war: (1) how and to what extent should the federal government intervene in the states in order to guarantee civil rights to ex-slaves?; (2) how and to what extent should the rules governing apportionment and representation change so that southern political influence would not increase now that the Three-Fifths Compromise was no longer in effect?; (3) how and to what extent should ex-Confederates be banned from office-holding?; (4) should the federal government grant freedmen the right to vote?; (5) what should be done about the financial debts incurred by the war?⁵⁰ Answers to all of these questions cut across ideological and geographical

⁴⁶ *Congressional Globe*, 39th Congress, 1st Session (April 4, 1866), 1755-1760.

⁴⁷ *Congressional Globe*, 39th Congress, 1st Session (April 9, 1866), 1809; 1861.

⁴⁸ Bruce Ackerman calls the Thirteenth and Fourteenth Amendment "revolutionary reforms." See: Bruce Ackerman, *We The People: Transformations* (Cambridge, MA: The Belknap Press of Harvard University, 1998), 121.

⁴⁹ McKittrick, *Andrew Johnson and Reconstruction*, 355.

⁵⁰ As this analysis focuses on civil rights, we limit our attention to those aspects of the Fourteenth Amendment implicating black citizens.

divisions within the Republican Party. As a consequence, any proposal would need to win the support of the party's contending factions, and the result was an ambiguous bill intended to make all sides "happy enough."

The process by which the Fourteenth Amendment came to be reflects the fact that the Republican Party in early 1866 had not yet settled on a plan for managing Reconstruction. No single committee took the lead in crafting a comprehensive proposal addressing the questions listed above. Instead, sections of what would become the 14th Amendment appeared as stand-alone bills and constitutional amendments beginning as early as December 1865.

Representative Thaddeus Stevens introduced the first of such measures on December 5—only the second day of the 39th Congress. His proposal took up the linked issues of apportionment and representation. It stipulated that seat shares in Congress would in the future be based on the number of "legal voters" living within a given state, and Congress would "provide for ascertaining the number of said voters."⁵¹ In short, Stevens' proposal would leave it up to the states to determine voting requirements while "indirectly promoting black suffrage."⁵² One consequence of this resolution, however, would be to reduce New England's representation in Congress. As Representative James Blaine (R-ME) would point out in a floor speech given on January 8, the westward migration of many northeastern males, combined with a larger population of immigrants meant that this provision would unfairly diminish the political power of his region. Blaine's opposition and threat of a northeastern revolt convinced Stevens and his supporters to forego further consideration of Stevens' bill.⁵³ The debate between Stevens and Blaine calls attention to the Republican Party's geographical fault lines.

⁵¹ *Congressional Globe*, 39th Congress, 1st Session (December 5, 1865), 10.

⁵² Foner, *Reconstruction*, 252.

⁵³ Benjamin B. Kendrick, *The Journal of the Joint Committee of Fifteen on Reconstruction* (New York: Columbia University Press, 1914): 41-42; McKittrick, *Andrew Johnson and Reconstruction*, 337.

Further complicating the picture was Representative Roscoe Conkling (R-NY), who argued that there existed only two straightforward methods for dealing with the problem of apportionment: basing it on the representation of the entire population of a state, or on the legal voting population of a state.⁵⁴ As neither option would please Republicans from every region of the country, the Joint Committee on Reconstruction set about developing a compromise proposal. On January 22, 1866, Senator William Fessenden (R-ME) and Representative Stevens introduced House Joint Resolution 51 (H.J. Res. 51)—a stand-alone apportionment amendment with the support of the Joint Committee—in their respective houses. The amendment stated that

Representatives and direct taxes shall be apportioned among the various states which may be included within this Union, according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed; provided that whenever the elective franchise shall be denied or abridged in any state on account of race or color, all persons of such race or color shall be excluded from the basis of representation.⁵⁵

In this way, the Committee made it possible for New England states to continue to set voting restrictions without penalty while also making it impossible for the South to benefit from the disenfranchisement of black residents.

The House debated H.J. Res. 51 for one week after its introduction. In the end, House members made a small textual change—excising the words “direct taxes” from the first line (without a roll call vote)—before passing it on January 31 by a vote of 120-46.⁵⁶ The support of all but six Republicans helped this proposal achieve the support of two-thirds of voting members necessary for it to pass (See Table 4)

In the Senate, however, H.J. Res. 51 met insurmountable opposition in the person of Senator Charles Sumner (R-MA). On February 5 and 6, and on March 7, Sumner took the floor

⁵⁴ Conkling’s position is summarized in Kendrick, *Journal of the Joint Committee*, 199.

⁵⁵ *Congressional Globe*, 39th Congress, 1st Session (January 22, 1866), 337; 351.

⁵⁶ *Congressional Globe*, 39th Congress, 1st Session (January 31, 1866), 538.

to launch prolonged attacks on the amendment. Claiming that any explicit reference to citizens race or color would do an injustice to the constitution itself, Sumner implored fellow Republicans to oppose H.J. Res. 51. In its stead, he supported a resolution granting full political and civil equality for black and white alike.⁵⁷ Senator Fessenden, leader of the Joint Committee on Reconstruction in the upper house, countered Sumner's claims with an explicit appeal to pragmatism. "My constituents did not send me here to philosophize," Fessenden argued, "they sent me here to act [...] and they are not so short-sighted as to resolve that if they cannot do what they would, therefore they will do nothing."⁵⁸

Despite Fessenden's appeals, as well as the strong show of support from the House of Representatives, 11 Republicans voted with Sumner to oppose the bill and it failed to achieve the necessary two-thirds support.⁵⁹ Between March 9 and March 27, Senators Sumner, Grimes (R-IA), and Stewart (R-NV) each introduced proposals to deal with the issue of apportionment and representation.⁶⁰ None of these proposals received a roll call vote, but Sumner and Grimes' ideas would reappear when Congress considered the proposal that would become the 14th Amendment.

From January through March 1866 the Joint Committee also considered a stand-alone amendment endowing the federal government with the authority to guarantee civil rights protections to all citizens. On February 3, committee members voted 7-6 to endorse a resolution stating:

The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each state all privileges and immunities of citizens in the several states (Article 4, Section 2); and to all persons in the several states equal protection in the rights of life, liberty and property.⁶¹

⁵⁷ *Congressional Globe*, 39th Congress, 1st Session (February 5; 6; March 7, 1866), 673-687; 1124-1132.

⁵⁸ *Congressional Globe*, 39th Congress, 1st Session (February 7, 1867), 705.

⁵⁹ *Congressional Globe*, 39th Congress, 1st Session (March 9, 1866), 1289.

⁶⁰ For a summary of these proposals see: Kendrick, *Journal of the Joint Committee*, 252-255; McKittrick, *Andrew Johnson and Representation*, 340-343.

⁶¹ Kendrick, *Journal of the Joint Committee*, 214.

Then, on February 13, Representative John Bingham introduced the committee proposal as a stand-alone constitutional amendment in the House.⁶² Bingham could not convince members to open debate on his proposal until February 26. That day he took to floor to defend the committee's bill, as an effort to "enjoin every officer of every state" to protect the civil rights of residents.⁶³

According to Kendrick, Bingham realized soon into the debate that his proposal would not garner two-thirds support in the House. Republicans especially opposed the measure because they "considered it poor political ammunition, and feared it would have an adverse effect on the Connecticut election which was then held in early April."⁶⁴ Bingham conceded to his party's opposition and agreed to delay further consideration of H.R. 63.⁶⁵ Congress would not consider the language of this proposal again until it appeared as Section 1 of the 14th Amendment.

At the end of March, congressional Republicans appeared to be losing on all fronts. They had passed an extension of the Freedman's Bureau but failed to override President Johnson's veto. Johnson had also vetoed the Civil Rights bill and there was no guarantee that Congress had the votes for an override. They had failed to shepherd two constitutional amendments backed by the Joint Committee on Reconstruction through both houses of Congress. It seemed at the time that internal party politics would undermine public support for the Republicans right before the fall midterm elections. Giving voice to this concern, *The Nation* published an editorial warning that

[t]he more people reflect, the better satisfied they are that Congress [...] is the branch which has and ought to have most to do with such a work of reorganization as is now before us [...] But then it was assumed that Congress

⁶² *Congressional Globe*, 39th Congress, 1st Session (February 13, 1866), 813.

⁶³ *Congressional Globe*, 39th Congress, 1st Session (February 26, 1866), 1034.

⁶⁴ Kendrick, *Journal of the Joint Committee*, 215.

⁶⁵ *Congressional Globe*, 39th Congress, 1st Session (February 26, 1866), 1033.

would have a policy. It has now, however, sat for nearly four months, and has nothing of the kind.⁶⁶

Members of the Joint Committee recognized the political and policy dilemma now facing all Republicans, and they committed themselves to a new approach: a comprehensive amendment that would allow members to distance themselves from an increasingly unpopular Andrew Johnson.

The foundation for such a plan came from somebody not serving in Congress. Robert Dale Owen was an activist who was elected to a state-level position in Indiana and then worked for the Freedman's Bureau. In April 1866 he met with Stevens and offered him a plan for an amendment that dealt with black voting, civil rights, apportionment, and the confederate debt. According to an article written by Owen himself, and published in an 1875 issue of the *Atlantic Monthly*, all Republicans on the Joint Committee expressed to him a very favorable attitude toward his proposal.

Yet after three days of amendments within the Committee, Owen's plan was significantly altered. In particular, the Committee removed language from two sections outlawing all voting discrimination based on "race, color, or previous servitude." According to Owen, Representative Stevens reported that a caucus of members from northeastern and Midwestern states met to consider "whether equality of suffrage, present or prospective, out to form a part of the Republican programme [sic] for the coming canvass." "They were afraid," he went on, that voting rights for black citizens would be used against them as an "electioneering handle," so they cut all relevant language from the bill. In this way, practical politics and the Republican Party's disagreement over the political status of ex-slaves help to explain why the 15th Amendment

⁶⁶ Article quoted in McKittrick, *Andrew Johnson and Reconstruction*, 344.

became necessary.⁶⁷ Despite these significant changes, however, Owen’s proposal served as the “forebear of the present Fourteenth Amendment.”⁶⁸

Fessenden and Stevens introduced H.J. Res. 127—the Joint Committee’s draft amendment—on April 30, 1886.⁶⁹ The most notable aspect of their proposal is the fact that it completely avoids the issue of black voting rights. Section 1 provided for “equal protection of laws.” Section 2 developed convoluted formula whereby representatives would be apportioned based on the total population of a state, but if a state denied voting rights to any adult males it would have its “representation reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens.” More straightforwardly, Section 2 implied that

[i]f two-fifths of a state’s potential voters were African Americans and if that state refused to enfranchise them, it would lose two-fifths of the members it would have been allotted in the House of Representatives and suffer a proportionate reduction in its electoral vote for president.⁷⁰

Section 3 prohibited ex-Confederates from voting until July 4, 1870. Section 4 prohibited Democrats from refusing to pay down war debt and from compensating slaveholders. Finally, Section 5 granted Congress the power to “enforce by appropriate legislation the provisions of this article.”

Debate on the proposed amendment did not begin until May 8, when Thaddeus Stevens took the House floor to explain his support for the measure. The bill “falls short of my wishes but it fulfills m hopes,” Stevens argued. More importantly, he claimed, it is all that can be obtained in the present state of public opinion.”⁷¹ Opponents of the bill, meanwhile, took aim at

⁶⁷ After March 1866, “[T]he crucial argument for settling a clash on everything would tend more and more to come down to this question: ‘Will it win or lose us votes in November?’” McKittrick, *Andrew Johnson and Reconstruction*, 336 (emphasis in original).

⁶⁸ All information relevant to Owen and his proposal can be found in Kendrick, *Journal of the Joint Committee*, 296-303.

⁶⁹ *Congressional Globe*, 39th Congress, 1st Session (April 30, 1886), 2265; 2286-2287.

⁷⁰ Donald, Baker, and Holt, *The Civil War and Reconstruction*, 547.

⁷¹ *Congressional Globe*, 39th Congress, 1st Session (May 8, 1866), 2459.

the language proscribing the political participation of ex-Confederates (Section 3). Giving voice to this position, William Finck (D-OH) characterized it as a “scheme to deny representation to eleven states; to prevent indefinitely a complete restoration of the Union and perpetuate the power of a sectional party.”⁷² Republicans, too, proved to be skeptics when it came to this aspect of the bill. Their opposition grew out of a principled position against banning political participation or from their belief that the provision could not be enforced.⁷³

In response, Stevens vehemently defended the proposal. “Give us the third section or give us nothing,” he argued, “do not balk us with the pretense of an amendment which throws the union into the hands of the enemy before it becomes consolidated.”⁷⁴ Thanks to the support of 14 Democrats who voted to preserve Section 3 because they thought it might sink the entire bill, the House voted 85-79 to keep the prohibition (See Table 4).⁷⁵ Then, on May 10, 1866, the House voted 127-37 to pass the measure (See Table 4).

Debate in the Senate did not begin until two weeks later. On May 23, 1866, Senator Jacob Howard (R-MI) took the floor to lead discussion of the bill because Senator Fessenden had fallen ill. Like Stevens in the House, Howard framed his advocacy for this compromise measure as a concession to political circumstances. For example, on the issue of black voting, Howard claimed: “if I could have my own way, if my preferences could be carried out, I certainly should secure suffrage to the colored race.” But, he argued, “the committee were of opinion that the States are not yet prepared to sanction so fundamental a change as would be the concession of the right of suffrage to the colored race.” Importantly, Senator Howard also made very explicit his opposition to Section 3 of the bill. “I do not believe if adopted, [Section 3] will be of any

⁷² *Congressional Globe*, 39th Congress, 1st Session (May 8, 1866), 2462.

⁷³ For a summary of these arguments see: Kendrick, *Journal of the Joint Committee*, 307.

⁷⁴ *Congressional Globe*, 39th Congress, 1st Session (May 10, 1866), 2533; 2545.

⁷⁵ *Congressional Globe*, 39th Congress, 1st Session (May 10, 1866), 2545.

practical benefit to the country,” he argued, “Rather than this I should prefer a clause prohibiting all persons who have participated in the rebellion, and who were over twenty-five years of age at the breaking out of the rebellion” from holding elective office.⁷⁶ Howard’s objection is notable because he signaled to Republicans in the Senate that this provision would need to change in order for the bill to be passed.

Over the next 6 days, Senate Republicans convened a series of caucus meetings for the purpose of agreeing on a final draft. Together, they decided to rewrite Section 3 such that only ex-Confederates who had broken their oath to defend the Constitution were barred from holding elective office. This amendment passed by a vote of 32-10 on May 31, 1866 (See Table 4). Senate Republicans also made a minor textual change to the Section 2 (Apportionment)—that amendment passed on June 8, 1866 by a vote of 31-11.⁷⁷ With these changes in place, the Senate passed H.J. Res 127 on June 8 by a vote of 33-11 (See Table 4).⁷⁸ Five days later, the House concurred to the Senate amendments and the 14th Amendment went to the states for enactment.⁷⁹

The Republicans correctly predicted that the fall elections would serve as a referendum on the 14th Amendment. Indeed, an article published in the *New York Times* not long before voters went to the polls declared it a campaign in “exclusive reference” to the amendment.⁸⁰ Having now successfully developed a plausible reconstruction plan, and thanks to Johnson’s politically disastrous campaign “swing around the circle,” Republicans won in a landslide. Not only did they protect their veto-proof majorities in both houses of Congress, but they also won in

⁷⁶ *Congressional Globe*, 39th Congress, 1st Session (May 23, 1866), 2766; 2768

⁷⁷ *Congressional Globe*, 39th Congress, 1st Session (May 31, 1866), 2921; *Congressional Globe*, 39th Congress, 1st Session (June 8, 1866), 3042.

⁷⁸ *Congressional Globe*, 39th Congress, 1st Session (June 8, 1866), 3042.

⁷⁹ *Congressional Globe*, 39th Congress, 1st Session (June 13, 1866), 3149.

⁸⁰ The *New York Times* story is quoted in Foner, *Reconstruction*, 267.

every non-Confederate state save Delaware, Kentucky, and Maryland.⁸¹ What the campaign did not do, however, was convince Andrew Johnson to reconcile with his co-partisans in Congress, or accept that the 14th amendment was a done deal. Instead, Johnson and his advisers encouraged southern states not to ratify. They believed that refusal would lead radicals to overreact and try to force through Congress legislation that would split the party.⁸² When the 2nd session of the 39th Congress convened in December, therefore, yet another confrontation within the Republican caucus and between Johnson and Congress would erupt almost immediately. The outcome would be “radical,” “military” reconstruction and black suffrage in the South.

The Military Reconstruction Acts

Southerners did not wait long to squash moderate hopes for quick ratification of the 14th amendment.⁸³ During the winter of 1866-1867, each of the ten remaining ex-Confederate states rejected it. Making matters worse for moderates were widely read, graphic descriptions of summer riots in Memphis, Tennessee and New Orleans, Louisiana. In both cases, the police murdered white “loyalists” and black freedmen. Together, these developments motivated radicals to argue that more extreme measures were necessary to protect black citizens.

To that end, on January 3, 1867, Thaddeus Stevens introduced H. 543.⁸⁴ This bill aimed to dissolve the provisional governments of southern states brought by declaring them “illegally formed in the midst of marshal law.” The bill then required that new elections be held in May 1867 for the purpose of sending delegates to state constitutional conventions where they would

⁸¹ Donald, Baker, and Holt, *The Civil War and Reconstruction*, 555.

⁸² Benedict, *A Compromise of Principle*, 212; McKittrick, *Andrew Johnson and Reconstruction*, 462.

⁸³ According to Benedict and McKittrick, most Republican moderates believed that ratification was the only precondition for readmission to the Union. Yet Kendrick argues that no guarantees were in place. However, Tennessee successfully ratified in July 1866 and was promptly readmitted. Benedict, *A Compromise of Principle*, 211-212; McKittrick, *Andrew Johnson and Reconstruction*, 452-455; Kendrick, *Journal of the Joint Committee*, 327.

⁸⁴ *Congressional Globe*, 39th Congress, 2nd Session (January 3, 1867), 250.

re-write founding documents. Importantly, all male citizens over the age of 21 living in each state for one year or more would be allowed to participate. Banned from participation, however, were all men over twenty-one at the time of Lincoln's inauguration who demonstrated loyalty to the Confederacy. Finally, the bill provided that until these obligations were met, and until Congress decided to re-admit each state, the military would be in charge.

Debate on H. 543 began January 3, 1867 when Stevens took the floor to defend his proposal. He began by imploring Congress to protect freedmen from "the barbarians who are now daily murdering them; [...] who are daily putting into secret graves not only hundreds but thousands of the colored people of that country." Then, channeling radical sentiment, he argued that ratification of the Fourteenth Amendment was insufficient for readmission. Instead, the rebel states should be "placed under the guardianship of loyal men."⁸⁵

Further consideration of Stevens' proposal was delayed until January 16, when Representative Bingham took the floor to mount a sustained attack on the bill. Characterizing H. 543 as an attempt to "patch up a restoration by the usurpation of powers which do not belong to the Congress," Stevens' bill would "subject the future of this republic to all those dread calamities which have darkened its recent past."⁸⁶ Bingham then aimed to kill Stevens proposal by recommitting it to the Joint Committee on Reconstruction where it would be buried. On January 28th—at Stevens' urging—the House held a vote on recommitting the bill. It passed 88-65.⁸⁷ As Table 5 indicates, Bingham had the support of 53 Republicans and Unionists. It appeared that the radicals lacked the votes needed to pass on Stevens' proposal, even if more than half of the Republican caucus voted with Stevens. Unfortunately for Bingham, the fight did not end there.

⁸⁵ *Congressional Globe*, 39th Congress, 2nd Session (January 3, 1867), 251.

⁸⁶ *Congressional Globe*, 39th Congress, 2nd Session (January 16, 1867), 500-501.

⁸⁷ *Congressional Globe*, 39th Congress, 2nd Session (January 28, 1867), 817.

Once the House voted to recommit his reconstruction bill, Stevens threw his support behind a proposal developed by George Julian (R-IN). Julian's bill, H. 1143, would have simply imposed military rule throughout the South, thereby delaying any decision about readmission criteria until the 40th Congress—with more radical membership—convened. Representative George Williams (R-OR) introduced the proposal on February 6, and on February 13 debate ensued over an amendment proposed by Representative Blaine (R-ME). Blaine aimed to end all mystery about the qualifications for state readmission by formally stipulating that ex-Confederate states would be welcomed back once they ratified the Fourteenth Amendment and guaranteed black residents equal voting rights. Blaine then sought to have H. 1143 recommitted to the Judiciary Committee with his amendment attached, and with instructions for it to be immediately reported back to the floor for a final vote.⁸⁸

At this point, Representative Stevens gave a “masterpiece” of a speech in opposition to Blaine's proposal.⁸⁹ Calling it “universal amnesty and universal Andy Johnsonism”, Stevens convinced enough Republicans to oppose the measure. The House then voted 109-55 to pass Julian's original bill unchanged.⁹⁰ On this vote, the Democratic Party's commitment to obstruction resulted in a significant miscalculation. For they believed that moderate Republicans would join them in opposing Julian's bill, thereby making it more likely that the Congressional session would end without Congress enacting any reconstruction-related policy. What the Democrats misjudged, however, was the Republican Party's willingness to “take a military bill rather than allow the opposition to achieve a stalemate.”⁹¹

⁸⁸ *Congressional Globe*, 39th Congress, 2nd Session (February 13, 1867), 1213.

⁸⁹ McKittrick, *Andrew Johnson and Reconstruction*, 480.

⁹⁰ *Congressional Globe*, 39th Congress, 2nd Session (Feb 13, 1867), 1213; 1215.

⁹¹ McKittrick, *Andrew Johnson and Reconstruction*, 481.

Even before they passed Julian’s bill, House Republicans also orchestrated enactment of a more radical proposal offered by Thomas Eliot (R-MA) and Samuel Shellabarger (R-OH). Eliot and Shellabarger led an inquiry into the New Orleans riot from the previous summer, and one aspect of this inquiry was a bill providing a blueprint for establishing a new government in Louisiana.⁹² Their bill, H. 1162, obligated President Johnson to appoint a governor and city council—subject to congressional approval—comprised of Louisiana residents who had “never indicated approval of secession or support for the rebellion.”⁹³ These appointees would have complete legislative power in Louisiana. The bill then mandated that an election would be held in June 1877, and all adult males over two would be legally allowed to participate, save those determined to have been loyal confederates. This election would send delegates to a constitutional convention in which a new state charter explicitly outlawing legal discrimination would be written. All of these steps were to be overseen by a military commander. Having passed this bill through the House, radicals believed it might serve as a plan for nine additional ex-Confederate states.⁹⁴

The Reconstruction bills debated left the Senate with three options to consider: (1) the un-amended military government bill written by Representative Julian; (2) the Julian proposal amended to include provisions regarding equal suffrage and ratification of the 14th amendment; (3) the Eliot-Shallabarger plan. Of these three options, conservative and moderate Republicans found the Julian-Blaine bill approach most appealing. For the readmission conditions it set—even with voting protections for freedmen included—were very lenient. Radicals preferred the Eliot-Shallabarger proposal, but they would settle for a basic military reconstruction bill as long as it did not include the conditions for readmission proposed by Blaine.

⁹² Foner, *Reconstruction*, 274.

⁹³ Benedict, *A Compromise of Principle*, 228.

⁹⁴ *Congressional Globe*, 39th Congress, 2nd Session (February 12, 1867), 1175.

Speaking for each faction when the Senate began opened discussion these proposals on February 14 were Senator's Fessenden and Sumner. Fessenden immediately signaled moderate skepticism toward the Eliot-Shallabarger plan. The bill is "narrow in its application," he argued, and "it is a matter of serious doubt whether if passed it should go beyond the state of Louisiana." The military government bill, on the other hand, "is as reasonable and perfect as any bill of this kind can be made." Fessenden then went on to suggest that the Senate add an amendment like the one Blaine offered in the House so as to make the bill "as complete a system [...] as could possibly be offered now."⁹⁵ Sumner praised H. 1162 and H. 1143, characterizing "one [as] the beginning of a true reconstruction" and the other as "the beginning of a true protection." "Both must be had," he went on.⁹⁶

Formal debate on the reconstruction bills began the following day, February 15, and quickly spun out of control. The previous day, Senators Wade and Sumner asked for senators to limit the number of amendments they offered so that passage could be expedited. That request was promptly ignored as conservative opponents of military reconstruction sought to change the bill in ways that were unpalatable to radicals.⁹⁷ After many hours of discussion, Republicans met as a caucus and decided to task a seven-member committee with putting together a compromise proposal. The result of their effort was a bill that incorporated aspects of each of the three plans listed above.

To appease the radicals, the bill mandated constitutional conventions populated with delegates chosen through a voting process open to all adult males. For moderates, it stipulated that ex-Confederate states would be readmitted, with congressional approval, as long as the new constitutions incorporated the 14th amendment. Finally, in keeping with the spirit of "military"

⁹⁵ *Congressional Globe*, 39th Congress, 2nd Session (February 14, 1867), 1304.

⁹⁶ *Congressional Globe*, 39th Congress, 2nd Session (February 14, 1867), 1303.

⁹⁷ *Congressional Globe*, 39th Congress, 2nd Session (February 15, 1867), 1364-1398.

government, the bill divided ex-Confederate states into military districts and then empowered the army to protect people and property within those districts, and to try all accused criminals in military courts. Once states were readmitted, however, the military provisions of the bill would no longer apply.⁹⁸ Radicals were displeased by the compromise, but the only ground they could make up was to convince the caucus to stipulate that state constitutions in reconstructed states guarantee “universal suffrage.” Senator Sumner was so disappointed by the caucus bill that he “left the Senate in a rage and refused to vote on the bill.”⁹⁹ When the amended version of H.R. 1143 came up for a vote on February 16, 1867, it passed 30-11 (See Table 5), with Democrats and three radical Republicans voting in opposition.¹⁰⁰ It then moved back to the House where an incensed Thaddeus Stevens lay in wait.

The Senate had almost completely undermined Stevens’ efforts to prevent “unreconstructed” states from re-entering the Union, and to disqualify ex-Confederates from participating in the process of reconstruction. He planned to fight these changes by defeating the motion to concur to Senate amendments, and to instead insist on a conference committee so that House radicals could try to improve the bill. Stevens’ allies spent most of February 18 characterizing the bill as “fraught with great and permanent danger to the country.” This bill, they believed, allowed “disloyal men” to play a direct role in the reconstruction of ex-Confederate states.¹⁰¹

More conservative advocates of the compromise once again appealed to pragmatism. James Garfield, for example, denounced Stevens’ allies for characterizing any incremental effort

⁹⁸ For a summary of the compromise bill see: Benedict, *A Compromise of Principle*, 235.

⁹⁹ Benedict, *A Compromise of Principle*, 236.

¹⁰⁰ *Congressional Globe*, 39th Congress, 2nd Session (February 16, 1867), 1469.

¹⁰¹ *Congressional Globe*, 39th Congress, 2nd Session (February 18, 1867), 1316.

to improve the lives of freedmen in the South as “poor and mean and a surrender of liberty.”¹⁰² Despite the best effort of moderates, however, a coalition of Stevens’ allies and Democrats—once again hoping to block all congressional action—defeated the motion to concur 98-73 (See Table 5).¹⁰³ The House then immediately agreed to Stevens’ motion to convene a conference committee.

By this time, however, senators from both sides of the debate believed that a conference committee would not guarantee them a better deal. Radicals in particular believed that a bill crafted by incoming 40th Congress would prove stronger than any compromise.¹⁰⁴ On February 19, without a roll call vote, the Senate rejected the House request for a conference.¹⁰⁵ House Republicans now found themselves facing a dilemma: either concur to the Senate amendments or end the session without passing anything.

Then, on February 20, Representative James Wilson (R-IN) struck a compromise. Wilson offered an amendment disenfranchising those residents of the ex-Confederate states who the Fourteenth Amendment barred from holding office. When combined with an additional amendment from Stevens and Shallabarger declaring current state governments “provisional and subject to the authority of Congress,” the bill now had radical support.¹⁰⁶ It then passed 126-46 (See Table 5).¹⁰⁷ Later that day the Senate concurred to the House amendments in a 35-7.¹⁰⁸ In keeping with his opposition to any Congress-led reconstruction effort, Johnson promptly vetoed

¹⁰² *Congressional Globe*, 39th Congress, 2nd Session (February 18, 1867), 1320.

¹⁰³ *Congressional Globe*, 39th Congress, 2nd Session (February 18, 1867), 1340.

¹⁰⁴ Benedict, *A Compromise of Principle*, 238.

¹⁰⁵ *Congressional Globe*, 39th Congress, 2nd Session (February 19, 1867), 1570.

¹⁰⁶ For a summary of the compromise see: Benedict, *A Compromise of Principle*, 238.

¹⁰⁷ *Congressional Globe*, 39th Congress, 2nd Session (February 20, 1867), 1400.

¹⁰⁸ *Congressional Globe*, 39th Congress, 2nd Session (February 20, 1867), 1645.

the bill. Both houses of Congress overrode his veto on March 2, 1867 and the First Reconstruction Act became law (See Table 5).¹⁰⁹

Viewed as a whole, the First Reconstruction Act represents a deal made between radical and moderate factions of the Republican Party. It divided ex-Confederate states into military districts and put army commanders in charge of protecting lives and property. It also stipulated the conditions under which Congress would readmit each state: hold elections in which all men of voting age select delegates to attend new constitutional conventions; charge these conventions with re-writing state charters that guarantee universal manhood suffrage in all future elections; put these new state charters up for approval by a majority of eligible voters; and ratify the 14th Amendment. In addition, it barred any participation from white southerners prohibited from holding office by the 14th Amendment.¹¹⁰ Here we see the clear link between congressional reconstruction policy and civil rights. For the only way that southern states would concede to ratification of the 14th Amendment, or to protect black voting rights, was if such terms were imposed by the federal government.

Over the next year Congress passed three supplementary Reconstruction Acts, each of which was designed to ensure that the goals set out in the first bill would be achieved. As none of these bills significantly altered the agenda set out by the bill enacted over Johnson's veto on March 2, 1867, we will forego detailed discussion of them here. In short, therefore, by March 1867 Congress had decided on a course of action that blended the idealism of the radicals with the pragmatism of the moderates. The primary benefit for ex-slaves was the power of the ballot—a right of citizenship never before held by black residents. Yet by the time Congress provided for black suffrage, even it appeared as a moderate alternative to prolonged federal

¹⁰⁹ *Congressional Globe*, 39th Congress, 2nd Session (March 2, 1867), 1733; 1976.

¹¹⁰ Foner, *Reconstruction*, 276-277; Donald, Baker, and Holt, *The Civil War and Reconstruction*, 559.

intervention. For it provided ex-slaves with an opportunity to “defend themselves against abuse, while relieving the nation of that responsibility.”¹¹¹

The 15th Amendment

The 1868 elections were a mixed bag for the Republicans. On the one hand, Ulysses S. Grant was elected president with a resounding Electoral College victory, and the Republicans retained control of both chambers of Congress. On the other hand, Grant’s popular vote margin over Democratic challenger Horatio Seymour (NY) was much closer; Grant won several Northern states (California, Connecticut, Indiana, Nevada, and Pennsylvania) by narrow margins, while losing others (New Jersey, New York, and Oregon). And on the congressional side, the Democrats performed well, picking up over 20 House seats for the 41st Congress, which would convene in March 1869.

The Republicans, in fact, had been struggling electorally since the Fall elections of 1867, when the GOP’s Reconstruction efforts (following the 1866 Civil Rights Act, the 14th Amendment, and the 1867 Reconstruction Acts) hit a wall. Electoral defeats in Ohio, New York, and Pennsylvania, where the Democrats took the state legislature in the first two and the entire state government in the third, highlighted to moderate Republicans that the GOP’s Reconstruction agenda had likely veered too far in a radical direction. They believed the GOP had overreached in trying to impeach Andrew Johnson, argue in favor of general confiscation of rebel land in the South, and promote black suffrage. On the latter point, the Republicans were successful in creating a right to vote for blacks in the ex-Confederate states (via the first Reconstruction Act), the federal territories (via the Nebraska Territory Act) and the District of Columbia—but they were stopped cold in their attempts to extend black suffrage into the North,

¹¹¹ Foner, *Reconstruction*, 278.

as referenda were defeated in Colorado Territory, Connecticut, Wisconsin, Kansas, Minnesota (twice), and Ohio.¹¹²

The Republicans' electoral performance in 1868 was helped by the return of seven Southern states to the Union: Arkansas, Florida, North Carolina, Louisiana, South Carolina, Alabama, and Georgia.¹¹³ Grant and the Republicans benefitted greatly from the high turnout of newly enfranchised Southern blacks (and the temporary disenfranchisement of some whites). But their hope at creating a broad bi-racial electoral coalition was having a hard time getting off the ground. And while Grant carried Alabama, Arkansas, Florida, North Carolina, and South Carolina, both Georgia and Louisiana went for Seymour.

The Democratic victories in Georgia and Louisiana—and partial electoral recoveries in Tennessee, South Carolina, Mississippi, and Florida—were in part the result of increased (conservative) white turnout, but also strategic black demobilization efforts by domestic terrorist organizations like the Ku Klux Klan (a secret society of former Confederates and their allies who were intent on restoring white home rule). Klan activities (violence, threats, and intimidation) reduced black turnout considerably in select areas of the South, which drew the attention and concern of national Republican leaders. In addition, political activities in Georgia were even more troubling, as two months prior to the presidential election some white Republican state legislators, under intense social pressure, joined with Democratic state legislators to oust 28

¹¹² William Gillette, *The Right to Vote: Politics and the Passage of the Fifteenth Amendment* (Baltimore: The Johns Hopkins Press, 1965), 25-26. A similar black-enfranchisement referendum was also defeated in the District of Columbia in December 1865, prior to Congress legislating the right in December 1866.

¹¹³ The readmission of these seven states would result in 28 House seats and 12 Senate seats being added to the Republican column (against only 4 Democratic/Conservative House seats) in the 40th Congress. Georgia would only have members seated in the House; one of its House seats and both of its two Senate seats remained vacant through the remainder of the 40th Congress.

black state legislators on the grounds that the new Georgia constitution only provided blacks with the right to vote, *not* the right to hold office.¹¹⁴

The difficulties in Louisiana and Georgia were extreme cases of a more general pattern throughout the South. While the Republicans were technically successful in the 1868 elections, there were clear undercurrents of white conservatism throughout the South, as well as indications of black electoral vulnerability that threatened future GOP success in the region. Moreover, the Democratic gains throughout the North suggested Republican strength there was also being eroded. In the aftermath of the 1868 elections, then, Republican leaders believed the party was under attack on two fronts, and a new strategy was quickly needed to maintain their hold on the federal levers of power.

Republican strategy, in response, was a return to the recent past. More specifically, they decided that a new initiative to enfranchise blacks was necessary (and even critical). And this initiative would take the form of a new (15th) Amendment to the Constitution. Similar to their argument regarding the 14th Amendment, Republican leaders contended that an amendment would protect black voting rights for all time, and not leave them vulnerable to any temporary majorities that might seek to eliminate them with a simple statute. In this way, the amendment clearly serves as a legislative response to the Democrats' recent electoral reemergence in the south.

In addition, an amendment would extend black voting rights *outside* of the South, into Northern areas that had been resistant to the granting of such rights. Republican leaders believed that additional black votes would help preserve the narrow Northern victories the party enjoyed

¹¹⁴ See Alan Conway, *The Reconstruction of Georgia* (Minneapolis: University of Minnesota Press, 1967), 162-81. Twenty-five of these black legislators were from the lower house, and three were from the upper house. The situation grew so dire that Congress in December 1869 denied the state further representation and returned it to military rule. Georgia would rejoin the Union in July 1870, after the black legislators were reinstated and all the white legislators with Confederate backgrounds were removed.

in 1868, add votes in other Northern areas that were lost (like New Jersey and New York), and perhaps even make the Border states (like Kentucky, Maryland, Missouri, and Delaware, where the Republicans were competitive but ultimately unsuccessful) viable for GOP electoral success. Thus, a black-enfranchisement amendment would effectively be a federal end-run around state electorates in the North that had proved unwilling to “play ball” to that point.¹¹⁵

Republican leaders also felt that the timing for such an amendment was right. They intended to use the lame-duck session of the 40th Congress (after the presidential election, but *before* the Democratic House gains from the 1868 elections could be realized) to get the amendment enacted. This forum would give them the greatest wiggle room, as while Republican support for such an amendment was strong, significant differences of opinion on what the amendment should look like (and contain) definitely existed within the party.

The Republicans officially began their legislative pursuit of the 15th Amendment on January 11, 1869, when Rep. George Boutwell (R-MA), acting on behalf of the Judiciary Committee, introduced the proposed constitutional amendment (H.J. Res. 402),¹¹⁶ which amounted to two sections and read:

Section 1. The right of any citizen of the United States to vote shall not be denied or abridged by the United States or any State by reason of the race, color, or previous condition of slavery of any citizen or class of citizens of the United States.

Section 2. The Congress shall have the power to enforce by proper legislation the provisions of this article.¹¹⁷

¹¹⁵ Amid the GOP’s somewhat disappointing electoral performance in 1868, black-enfranchisement referenda were successful in Iowa and Minnesota. See Gillette, *The Right to Vote*, 26.

¹¹⁶ Histories of the legislative proceedings on the 15th Amendment include A. Caperton Braxton, *The Fifteenth Amendment: An Account of Its Enactment* (Lynchburg, VA: J. P. Bell Company, 1903); John Mabry Mathews, *Legislative and Judicial History of the Fifteenth Amendment* (Baltimore: The Johns Hopkins Press, 1909); Gillette, *The Right to Vote*; Michael Les Benedict, *A Compromise of Principle: Congressional Republicans and Reconstruction, 1863-1869* (New York: Norton, 1974); 327-35; Earl M. Maltz, *Civil Rights, the Constitution, and Congress, 1863-1869* (Lawrence: University Press of Kansas, 1990), 142-56.

¹¹⁷ See *Congressional Globe*, 40th Congress, 3rd session (January 11, 1869), 285-86.

Boutwell’s proposed legislation faced two amendments, offered by Reps. Samuel Shellabarger (R-OH) and John Bingham (R-OH), both of which sought to substitute different criteria for Section One. Shellabarger argued that Boutwell’s provision for “impartial suffrage” did not go far enough in protecting black voting rights, and noted that race-neutral tests based on education or property could be adopted to effectively produce race-based disfranchisement. In response, Shallabarger advocated for “universal suffrage” except as it extended to ex- or future-rebels. The text of his substitute to Section 1 read thus:

No State shall make or enforce any law which shall deny or abridge to any male citizen of the United States of the age of twenty-one years or over, and who is of sound mind, an equal vote at all elections in the State in which he shall have his actual residence, such right to vote to be under such regulations as shall be prescribed by law, except to such as they have engaged, or may hereafter engage, in insurrection or rebellion against the United States, and to such as shall be duly convicted of infamous crime.¹¹⁸

Bingham also proposed a form of universal suffrage, with a short-term residential requirement, an allowance for state registration laws, and proscriptions only for those who might engage in *future* acts of rebellion or insurrection. The text of his substitute to Section 1 read:

No State shall make or enforce any law which shall abridge or deny to any male citizen of the United States of sound mind and twenty-one years of age or upward the equal exercise, subject to such registration laws as the State may establish, of the elective franchise at all elections in the State wherein he shall have actually resided for a period of time of one year next preceding such election, except such of said citizens as shall engage in rebellion or insurrection, or who may have been, or shall be, duly convicted of treason or other infamous crime.¹¹⁹

The Shallabarger amendment was the most radical option, as it would have eliminated all state restrictions (literacy tests, poll taxes, registration requirements, etc.), while keeping Confederates and Confederate sympathizers (i.e., active insurgents) under wraps; as such, it was designed mainly to protect the voting rights of blacks in the South. The Bingham amendment

¹¹⁸ *Congressional Globe*, 40th Congress, 3rd session (January 29, 1869), 728.

¹¹⁹ *Congressional Globe*, 40th Congress, 3rd session (January 29, 1869), 728.

was more conservative, as it would have eliminated various state restrictions (education and property requirements, along with religious requirements, a hobby horse of Bingham's during the congressional debate), while allowing states to adopt particular registration laws and enfranchising ex-Confederates.¹²⁰ Boutwell's bill was mainly designed to steer a moderate course, and gain for the GOP electoral access to black citizens *outside of the South*—in the ex-slave Border states and in the North—who were currently denied the vote because of their race.

Boutwell sympathized, with some of the arguments raised by Shallabarger and Bingham, especially with regard to the potential malevolent application of race-neutral conditions in pursuit of racial disfranchisement. But he contended that proscriptions of various state-level restrictions could not be realistically achieved, and might even put the whole enterprise at risk. Indeed, Bingham argued that “if we should attempt to grasp at too much we shall lose the whole. I believe that if we adhere to the proposition to protect the people of this country against distinction on account of race, color, or previous condition of slavery we undertake all that is probably safe for us to undertake now.”¹²¹

Voting on the proposed Boutwell constitutional amendment (H.J. Res. 402)—and amendments thereof—commenced on January 30, 1869.¹²² (House vote totals for these and subsequent roll calls related to the 15th Amendment appear in Table 6.) The Shallabarger amendment was considered first, and failed 62-125. All Democrats voted against it, chafing at the ex-Confederate restrictions, along with most Republicans (with only the most Radical members voting in favor). The Bingham amendment was then considered, and it failed by an even larger margin, 24-160. Some Democrats supported the legislation, thanks to its

¹²⁰ Earl Maltz refers to Bingham's amendment as evoking “universal suffrage and universal amnesty.” Maltz, *Civil Rights, the Constitution, and Congress*, 148.

¹²¹ *Congressional Globe*, 40th Congress, 3rd session (January 29, 1869), 727.

¹²² The relevant roll calls can be found in *Congressional Globe*, 40th Congress, 3rd session (January 30, 1869), 744-45.

Confederate amnesty provision, but nearly all Republicans opposed it. Finally, the vote on the underlying Boutwell proposal was had, and it passed 150-42. All Democrats opposed it, and all but four Republicans voted in favor. Moderate Republicans celebrated, as they achieved the 2/3 necessary for a successful amendment. H.J. Res. 402 now moved on to the Senate.

While the House was considering the Boutwell proposal, the Senate was pursuing its own constitutional amendment, spearheaded by Sen. William M. Stewart (R-NV), acting on behalf of the Upper Chamber's Judiciary Committee. Stewart's proposal was slightly more radical than Boutwell's in that it included office holding rights (in response to the purge of black legislators in Georgia) as well as voting rights.¹²³ Stewart faced a more dilatory environment, however, and his proposed amendment did not get to the voting stage by the time Boutwell's passed. Thus, Stewart pursued the pragmatic route, shelving his own amendment (for the time being) and throwing his support—and floor leadership—behind the Boutwell amendment.

After nearly a week of debate, Stewart sought to bring things to a close and vote on the underlying measure. A host of amendments would be tried on February 8 and 9, some of them offered by Democrats with little chance of success. The larger concern was the heterogeneity within the Republican ranks. Historian William Gillette usefully lays out the factions and interests at stake:

Moderate Republicans, especially from the Northeast and from the West, wanted Negro voting but also wished to retain freedom of state action either in conferring suffrage and setting voting qualifications, especially the literacy test, or in restricting Irish or Chinese by the nativity test. In short, moderates were not at all agreed on the price worth paying for Negro suffrage. Radical Republicans from the North championed Negro suffrage and wanted firm guarantees that it would be permanent and effective, but they were not in agreement on the form required or on the scope of reform desired. Those from the South, with varying gradations of radicalism, were primarily interested in keeping and protecting southern Negro

¹²³ *Congressional Globe*, 40th Congress, 3rd session (January 28, 1869), 668.

voting, but there was less cohesion on the means to secure it, and still less on guaranteeing Negro officeholding and the means to be undertaken to achieve it.¹²⁴

This then was the legislative environment that Stewart faced. While Boutwell certainly encountered different GOP perspectives in the House, he was able to make the case for an amendment based on impartial suffrage by persuading Republicans that such a measure (a) would yield a partisan benefit (enfranchising blacks in the North, while also better protecting black voters in the South) and (b) could be ratified by three-quarters of the states. Stewart would find such pragmatic arguments to be a more difficult sell in the Senate.

Stewart achieved an initial victory when Jacob Howard (R-MI) sought to amend H.J. Res. 402, by altering the language to create an affirmative right: “Citizens of the United States of African descent shall have the same right to vote and hold office in States and Territories as other citizens electors of the most numerous branch or their respective Legislature.” Howard could only draw support from strong anti-slavery advocates from the Northeast and some Republicans on each coast who sought to limit Chinese and Irish voting power, respectively, and his amendment was easily defeated, 16-35.¹²⁵ (Senate vote totals for these and subsequent roll calls related to the 15th Amendment appear in Table 7.) A more daunting challenge, however, lay ahead.

Similar to the House, various Republican senators raised concerns that the Boutwell amendment’s focus on impartial suffrage would not prevent race-neutral criteria from being used to disenfranchise black voters. In this vein, Henry Wilson (R-MA) gained the floor and proposed a comprehensive suffrage amendment:

There shall be no discrimination in any State among the citizens of the United States in the exercise of the elective franchise in any election therein, or in the

¹²⁴ Gillette, *The Right to Vote*, 56-57.

¹²⁵ Gillette, *The Right to Vote*, 58; *Congressional Globe*, 40th Congress, 3rd session (February 8, 1869), 1012.

qualifications for office in any State, on account of race, color, nativity, property, education, or religious belief.

The Wilson amendment drew some support, but it went down to defeat, 19-24.¹²⁶ Republicans were almost evenly split on allowing states the discretion to restrict voting in non-racial ways, and thus Democrats were pivotal in defeating the measure.

Several hours later, Wilson offered a “modification” of his earlier amendment, one that he considered “more comprehensive” (among other things):

No discrimination shall be made in any State among the citizens of the United States in the exercise of the elective franchise or in the right to hold office in any State on account of race, color, nativity, property, education, or religious creed.¹²⁷

This modified Wilson amendment, per William Gillette, “guaranteed the right to hold office but did not, as in the preceding version, bar states from setting qualifications for holding office.”¹²⁸ It was thus slightly less extreme, while maintaining a comprehensive flavor. And this was apparently enough, as the modified Wilson amendment passed, 31-27.¹²⁹ The pivotal swing on this vote resulted from a change among Southern Republicans, as six senators from the party’s Southern wing joined the “yea” side (four of whom had previously voted “nay” and two of whom had previously abstained).¹³⁰ In all, ten of the thirteen Republican senators from the former-Confederate states supported the modified Wilson amendment (with one voting nay and two not voting).¹³¹

While Stewart and moderate senators were dismayed by the radical turn in the suffrage amendment voting, they saw little alternative but to support H.J. Res. 402 as amended. A

¹²⁶ *Congressional Globe*, 40th Congress, 3rd session (February 9, 1869), 1029.

¹²⁷ *Congressional Globe*, 40th Congress, 3rd session (February 9, 1869), 1035.

¹²⁸ Gillette, *The Right to Vote*, 60.

¹²⁹ *Congressional Globe*, 40th Congress, 3rd session (February 9, 1869), 1040.

¹³⁰ Gillette mistakenly characterizes this swing of six Republicans to the “yea” column coming from three “nay” voters and three non-voters on the original bill. See Gillette, *The Right to Vote*, 60.

¹³¹ Gillette argues that this swing between the two Wilson amendments “showed that [southern Republicans] seemed to care more about Negro voters electing whites to public office than about Negro voters electing Negro officials.” Gillette, *The Right to Vote*, 61.

positive (two-thirds) vote would keep the constitutional amendment alive, and allow the House to potentially undue the damage that Wilson and his advocates created. Thus, the Republicans circled the wagons and produced a 40-16 win for the amendment; forty of the 46 Republicans who voted ended up supporting H.J. Res. 402 with the modified Wilson amendment attached.¹³² The ball was now back in the House's court.

The House did not take long to act. On February 15, at Boutwell's urging, the House failed to concur in the Senate amendments to H.J. Res. 402—rejecting the Wilson-amended version by a large margin, 37-133, and asking for a conference to sort things out.¹³³ Stewart decided to push forward on the pending legislation (rather than go the conference route), and debate and disagreement began anew. Hope for a positive outcome seemed to emerge on February 17, when the Senate voted 33-24 to recede from its former amendments; Wilson's universal suffrage addition had been excised.¹³⁴ More than two-thirds of GOP senators supported receding; only a few Northern Radicals and several Southern Republicans fought the move.

The key vote was at hand when members considered the original Boutwell measure (H.J. Res 402, un-amended), which the House passed on January 30. And, here, Stewart and his allies hit a wall, as the 31-27 vote failed to achieve the 2/3 necessary for a constitutional amendment.¹³⁵ The coalition of Northern Radicals and Southern Republicans re-formed, this time (combining with all Democrats) in a successful effort to prevent impartial suffrage from winning the day. Frederick Sawyer (R-SC), shortly before the vote, summarized the Republican dissidents' feelings on the matter:

I am not obliged here, I do not feel bound here, to vote for an amendment to the Constitution which accomplishes nothing and under which any State may pass a

¹³² *Congressional Globe*, 40th Congress, 3rd session (February 10, 1869), 1044.

¹³³ *Congressional Globe*, 40th Congress, 3rd session (February 15, 1869), 1226.

¹³⁴ *Congressional Globe*, 40th Congress, 3rd session (February 17, 1869), 1295.

¹³⁵ *Congressional Globe*, 40th Congress, 3rd session (February 17, 1869), 1300.

law which shall disfranchise four fifths of the colored population without mentioning the word ‘color;’ and I do not hold myself ready to answer to the appeal which has been made by the distinguished senator from Nevada [Stewart] to vote for this or we shall have nothing. I had rather have nothing than to have this; and when I go back to my constituents they will say to me that I voted right.¹³⁶

The Boutwell amendment, for all practical purposes, was dead. But the larger game was not over.

With the defeat of H.J. Res. 402, the Senate immediately resumed consideration of Stewart’s *original* constitutional amendment (S.J. Res. 8), which had been bypassed when the House passed the initial Boutwell amendment on January 30. Stewart’s amendment read thusly:

The right of citizens of the United States to vote and hold office shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

The Congress shall have the power to enforce this article by appropriate legislation.¹³⁷

Debate was fierce and continued for twelve hours. A series of amendments was defeated along the way, before a final-passage vote on the “clean” Stewart amendment was had. It passed 35-11.¹³⁸ As William Gillette notes, “This measure was just enough more radical than Boutwell’s because of the mild office-holding provision to win twelve additional votes;” many of these votes came from Southern Republicans, consistent with their support for the modified Wilson amendment more than a week earlier. S.J. Res. 8 now made its way to the House, as the Senate asked for concurrence rather than a conference.¹³⁹

Boutwell now found himself working on Stewart’s measure, rather than the other way around, and he did his best to move things forward, even as intra-Republican disagreement continued to occur. First up was an amendment offered by John Logan (R-IL) to strike the office

¹³⁶ *Congressional Globe*, 40th Congress, 3rd session (February 17, 1869), 1300; portions also cited in Benedict, *A Compromise of Principle*, 333.

¹³⁷ *Congressional Globe*, 40th Congress, 3rd session (February 17, 1869), 1300.

¹³⁸ *Congressional Globe*, 40th Congress, 3rd session (February 17, 1869), 1318.

¹³⁹ *Congressional Globe*, 40th Congress, 3rd session (February 18, 1869), 1329.

holding right. Logan justified the deletion using a states' rights argument, as he contended that such decisions (as to whom could hold office) were not the province of the federal government. Earl Maltz suggests that deeper race-based concerns were behind Logan's offering: "To allow blacks to vote was one thing, to be ruled by them was another."¹⁴⁰ And while Logan's amendment garnered some support, as 35 Republicans broke ranks and joined with all of the Democrats, it ultimately failed, 70-95.¹⁴¹

But Boutwell was not out of the woods. John Bingham—his adversary in the earlier drama—emerged again, proposing an amendment that would add "nativity, property, and creed" as additional criteria (beyond race, color, or previous condition of servitude) that could not be used to restrict voting and office holding rights. Interestingly, Bingham did not specify education as a fourth additional criterion, suggesting that literacy tests were fair game. And this "omission" was critical, as it allowed the amendment to pass, 92-71.¹⁴² The Republicans were split 68-64. Radicals and some moderates voted in favor and Southern Republicans and some moderates voting against. This support was enough to guarantee success for nearly all Democrats also voted for the amendment.¹⁴³

While moderates like Boutwell and even some Radicals like Benjamin Butler (R-MA) believed Bingham was making the amendment more extreme in an attempt to kill it, he in fact stopped short of pushing for "true" universal suffrage, as he did earlier in the session. As Maltz argues, "[Bingham's] language was something of a compromise, allowing states to continue to disfranchise citizens on the basis of educational qualifications. The change from the Wilson

¹⁴⁰ Maltz, *Civil Rights, the Constitution, and Congress*, 151. William Gillette agrees with Maltz, viewing Logan's measure as "no doubt accurately reflecting the will of his constituency, where opinion against Negro officeholding ran strong, as it did in Indiana, Ohio, West Virginia, Pennsylvania, and Connecticut." Gillette, *The Right to Vote*, 68.

¹⁴¹ *Congressional Globe*, 40th Congress, 3rd session (February 20, 1869), 1428.

¹⁴² *Congressional Globe*, 40th Congress, 3rd session (February 20, 1869), 1428.

¹⁴³ As Gillette notes, "the Democrats—with the sweetener that education tests, which would bar southern Negroes, would not be banned—joined the radical Republicans to effect a radical result." Gillette, *The Right to Vote*, 69.

language was deliberately calculated to win approval not only in Congress but also in the ratification process.”¹⁴⁴ Disappointed or not, Boutwell and his compatriots closed ranks and voted for S.J. Res 8, as amended by Bingham, in order to keep the measure alive – and it easily achieved the necessary two-thirds, 139-37.¹⁴⁵

Both the House and Senate, by this point, had tired of the cross-chamber game of ping – pong. Members voted instead to delegate further legislative action to a conference committee.¹⁴⁶ Six members were appointed to the conference, three from each chamber: Bingham, Boutwell, and Logan from the House, and Stewart, Roscoe Conkling (R-NY), and George Edmunds (R-VT) from the Senate. On its face, the committee was constructed to produce a moderate outcome; no Southern Republicans and no die-hard Radicals were chosen. Bingham was the only advocate of universal suffrage. And while some believed that conferees would be obligated to report a less-than-moderate bill to the floor, given that the right of office holding was in both House and Senate bills and the prohibition of additional voting/office-holding qualifications (beyond race, color, or previous condition of servitude) was in the Senate bill, no such norm would be followed.

On February 24, the conference committee met and, after some internal disagreement and politicking, reported an amendment that was similar in many ways to the *initial* Boutwell and Stewart amendments.¹⁴⁷ The text of the amendment read:

¹⁴⁴ Maltz, *Civil Rights, the Constitution, and Congress*, 151.

¹⁴⁵ *Congressional Globe*, 40th Congress, 3rd session (February 20, 1869), 1428.

¹⁴⁶ On February 23, the Senate voted 32-17 to disagree to the House’s amendment and request a conference, with Republicans voting 32-11 and Democrats 0-6. See *Congressional Globe*, 40th Congress, 3rd session (February 23, 1869), 1481. Most of the GOP nay voters were from the South, perhaps fearing that the office holding right might be eliminated in conference. On this point, see Maltz, *Civil Rights, the Constitution, and Congress*, 154. That same day, the House agreed to accept the Senate’s request for a conference on a 117-37 vote, with all but two Republicans dissenting. See *Congressional Globe*, 40th Congress, 3rd session (February 23, 1869), 1470.

¹⁴⁷ Bingham and Logan opposed a right to hold office, and brought along Stewart and Conkling (who felt that a right to hold office was assumed by a right to vote). All four also agreed to delete the additional qualifications (nativity, property, and creed). Edmunds objected, but he was outnumbered. In disgust, Edmunds refused to sign the report.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State an account of race, color, or previous condition of servitude.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.¹⁴⁸

The House considered the conference report first, on February 25, and adopted it without debate, 143-44—thereby achieving the necessary two-thirds.¹⁴⁹ Only three of 144 Republicans defected.¹⁵⁰ Angry debate would definitely be had in the Senate, however, as a variety of Republicans voiced their displeasure about the removal of the office holding right (and, more generally, the arrogance of the committee to ignore the decisions of both chambers of Congress). Stewart continued to argue for the pragmatic necessity of a moderate amendment—if adoption before the end of the lame-duck session and subsequent ratification in the states was indeed the goal—and continued to argue that the right to vote guaranteed the right to hold office. Stewart’s pragmatic appeal found support in statements made by Jacob Howard, Henry Wilson, and Oliver Morton (R-IN), who all expressed their displeasure with the conference report but also their intent to vote for the amendment as the best that could practically be achieved.¹⁵¹ Finally, a vote was taken, and the Senate agreed to concur in the conference report, 39-13, thus achieving the two-thirds requirement.¹⁵² Only five of 44 Republicans voted against the report.¹⁵³

And so the moderate Republican position (impartial suffrage) won out. It achieved everything that the moderates had set out to do: (1) enfranchise blacks in areas where they were not allowed to vote; (2) protect black suffrage in areas like the South, where opponents (should

See Gillette, *The Right to Vote*, 71; Benedict, *A Compromise of Principle*, 334; Maltz, *Civil Rights, the Constitution, and Congress*, 154.

¹⁴⁸ See *Congressional Globe*, 40th Congress, 3rd session (February 26, 1869), 1623.

¹⁴⁹ *Congressional Globe*, 40th Congress, 3rd session (February 25, 1869), 1563-64.

¹⁵⁰ These three were Isaac Hawkins (TN), William Loughridge (IA), and Rufus Mallory (OR).

¹⁵¹ For the Senate debate, including remarks by Stewart, Howard, Wilson, and Morton, see *Congressional Globe*, 40th Congress, 3rd session (February 26, 1869), 1623-33, 1638-41.

¹⁵² *Congressional Globe*, 40th Congress, 3rd session (February 26, 1869), 1641.

¹⁵³ These five were James Dixon (CT), James Doolittle (WI), Joseph Fowler (TN), Daniel Norton (MN), and John Pool (NC).

they come to power) seek to eliminate such rights with a simple statute; and (3) leave open the possibility that additional qualifications (beyond race) could be employed to limit the right to vote generally. The latter point was important, in order to make the amendment palatable to Northern states in the ratification process.

And the gambit was successful, as the conference report on S.J. Res. 8 won approval of 28 states (or three-quarters of the 37) a little less than a year later,¹⁵⁴ and Secretary of State Hamilton Fish certified the amendment at the end of March 1870. Ratification was a struggle in some states, and Republicans used their influence where it counted—for example, President Grant strongly endorsed the amendment, while Congress made its ratification a condition for the four ex-Confederate states (Virginia, Mississippi, Texas, and Georgia) still seeking to rejoin to the Union.

Radicals' fears regarding the use of race-neutral qualifications to disenfranchise black votes would be realized, beginning two decades in the future. But during the still-early part of Reconstruction, the Republicans had their victory and blacks – North and South – seemed to have their guarantee. The enforcement provision of the 15th Amendment (as well as the 14th Amendment) would soon be put to the test, however, as Congress would soon have to address the constant acts of “white terror” in the South.

The Enforcement Acts

The passage of the 15th Amendment produced a range of celebrations in the country. Key interests—blacks and anti-slavery groups—reveled in the Amendment's success and looked hopefully to the future. The Northern public also cheered the Amendment, not just for what it protected but also as a signal that Reconstruction policy making might be at an end.

¹⁵⁴ Iowa became the 28th state to ratify the amendment on February 3, 1870. Nevada was the first on March 1, 1869.

Hope was also present in Congress. Moderate Republicans were satisfied that they had achieved their desired goal of protecting black voting rights (and assuring the GOP of a consistent block of electoral support going forward) while stopping short of adopting universal suffrage. Moreover, many moderates also felt that active Reconstruction work was at an end, and that blacks now had everything they needed to be successful and protect what was theirs. And despite the Radicals' belief that the Amendment fell far short of what was necessary to truly protect black political rights, they came to recognize its symbolic importance, even as they worried about loopholes (race-neutral voting qualifications) that could be used at some future point to disenfranchise blacks.¹⁵⁵

But hope gave way to reality, as organized violence toward blacks ramped up in 1869 and 1870. Republicans were already aware of the existence of paramilitary groups like the Klan, based on their successful efforts at depressing GOP vote totals in Georgia and Louisiana in 1868. But now the Klan and similar groups—the Knights of the White Camelia; the White Brotherhood—had stepped up its efforts, and operated at peak efficiency in nearly every Southern state. Republican governments in the South, hampered in part by restrictive constitutions, were largely incapable of responding effectively to the Klan's actions and petitioned the federal government (Congress and President Grant) for help.¹⁵⁶

As the Republicans convened in the 41st Congress, the reports out of the South convinced them that something needed to be done. Their legislative achievements and the rights and aspirations of blacks were in danger of being repudiated by intransigent white Southerners

¹⁵⁵ For a summary of reactions to the 15th Amendment, see Xi Wang, "The Making of Federal Enforcement Laws, 1870-1872," *Chicago-Kent Law Review* 70 (1995): 1013-58; Xi Wang, *The Trial of Democracy: Black Suffrage and Northern Republicans, 1860-1910* (Athens: University of Georgia Press, 1997), 50-53.

¹⁵⁶ For descriptions of Klan violence in the South during this time, see Allen W. Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (Baton Rouge: Louisiana State University Press, 1971), 191-273; Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, 425-30.

who were attempting to “win the peace” and make the many Northern sacrifices during the Civil War for naught. Federal enforcement of the 15th Amendment (and the 14th Amendment) was necessary, and Section 2 (Section 5) provided the vehicle.

Between 1870 and 1872, the Republicans in Congress would pass five Enforcement Acts, which were designed to protect both Southern and Northern voting rights and to prevent abuses in the electoral process.¹⁵⁷ The first three were enacted in the 41st Congress, and are the subject of this essay. (The remaining two were enacted in the 42nd Congress, and will be covered in a future essay.) Much like the debate over the 15th Amendment, however, there was a difference of opinion within the GOP as to how enforcement should be structured, what provisions should be included in the law, and how far to extend federal power in the pursuit of noble and widely shared goals.

The First Enforcement Act

Congressional debate over what would become the First Enforcement Act began in both chambers in May 1870. The chamber bills and proceedings would be quite different, however, as the House bill was considerably shorter and House debate was much more expeditious. The bill managers in both chambers would also look familiar to recent political observers: Rep. John Bingham (R-OH) and Sen. William Stewart (R-NV). Bingham’s bill (H.R. 1293), which strove “to enforce the right of citizens of the United States to vote in the several States of this Union who have hitherto been denied that right on account of race, color, or previous condition of servitude,” was national in scope, and sought to respond to abuses both North and South.¹⁵⁸ On May 16, Bingham offered it while seeking to suspend the rules—which if garnering a two-thirds

¹⁵⁷ For a short, useful summary of the five Enforcement Acts, see William Gillette, *Retreat from Reconstruction, 1869-1879*, 25-26.

¹⁵⁸ Indeed, when reporting the bill, Bingham spoke to rights “definitely denied in his own State [of Ohio] as well as in others...” See *Congressional Globe*, 41st Congress, 2nd session (May 16, 1870), 3503.

vote would have effected both suspension and passage of H.R. 1293, while forestalling any debate or amendments. Bingham hoped to take advantage of the still-large Republican majority (even after suffering losses in the 1868 elections), and his ploy was successful. The GOP easily defeated a Democratic motion to adjourn (45-121) and then voted 131-44 to suspend the rules and pass H.R. 1293.¹⁵⁹ (House and Senate vote totals for this roll call and subsequent ones related to the First Enforcement Act appear in Table 8.) Every Republican who voted, except one (Isaac Hawkins, TN), supported suspension/passage.

Bingham's bill contained ten sections,¹⁶⁰ and was aimed mostly at punishing state and federal officials who failed to enforce blacks' right to vote. But it also contained provisions to punish individuals who prevented black voting by use of force and violence. Finally, it was broad in coverage, extending to federal, state, and municipal elections. In terms of enforcement itself, it vested all power in federal circuit and district courts. Thus, charges and cases would need to be brought, and no additional enforcement infrastructure was created in the bill to ensure this was accomplished.

H.R. 1293 was then sent to the Senate, where that body was debating an enforcement bill of its own. Stewart, in consultation with Charles Sumner (R-MA) and John Sherman (R-OH), decided to amend the House bill by striking everything after the enacting clause and substituting in its place the entirety of the Senate bill.¹⁶¹ The Senate bill (S. 810) contained seventeen sections and was more comprehensive than the House bill.¹⁶² S. 810 interpreted voting rights broadly, and extended them to the act of registering as well; state and federal officials would thus be sanctioned if prerequisites for voting were infringed due to race. The Senate bill also moved

¹⁵⁹ *Congressional Globe*, 41st Congress, 2nd session (May 16, 1870), 3504.

¹⁶⁰ See *Congressional Globe*, 41st Congress, 2nd session (May 16, 1870), 3503-04.

¹⁶¹ *Congressional Globe*, 41st Congress, 2nd session (May 17, 1870), 3518; (May 18, 1870), 3560-63.

¹⁶² *Congressional Globe*, 41st Congress, 2nd session (May 18, 1870), 3561-62.

beyond punishing individuals who used violence and intimidation to prevent blacks from voting, and incorporated language to cover conspiracies as well. In this way, S. 810 made allowances for the reality of the times, and gave federal officials the ability to go after the Klan and other paramilitary groups. The Senate bill also established a strong enforcement apparatus, by allowing judges to appoint election supervisors and deputies to oversee registration and voting and make arrests if necessary; the president was also provided with the power to use military force in the pursuit of violations of the law. Finally, S. 810 also enforced elements of both the 14th Amendment and the 1866 Civil Rights Act, by continuing to disenfranchise rebels and remove them from office (if necessary) and to punish the Klan for actions taken outside of the polling places.¹⁶³

Before voting on the substitute, however, the Senate worked to perfect it through a host of amendments. Several were successful, the most important being one offered by John Sherman. Upon gaining the floor, Sherman took the debate and proceedings on enforcement in a different direction:

Mr. President, there is one other grievance that I feel ought to be dealt with at this very moment, as we have this bill before us; a grievance that has become of greater magnitude even than the denial of the right to vote to the colored people; and that is the open, glaring, admitted frauds by wholesale in the great cities of this country, by which our Government is about to be subverted.¹⁶⁴

Sherman then went on to speak of the scope of fraud he believed was committed in New York City during the recent (1868) presidential election—“there were thousands and tens of thousands of illegal votes, and liberty and law were subverted”¹⁶⁵—which allowed Horatio Seymour, the Democratic nominee, to win the state by a narrow margin.

¹⁶³ These points are covered in great detail in Wang, *The Trial of Democracy*, 59.

¹⁶⁴ *Congressional Globe*, 41st Congress, 2nd session (May 20, 1870), 3663.

¹⁶⁵ *Congressional Globe*, 41st Congress, 2nd session (May 20, 1870), 3664.

Sherman's proposed amendment listed a variety of fraudulent activities and behaviors in elections and stipulated that the punishment upon conviction would involve a fine up to \$500, three years in jail, or both.¹⁶⁶ Democrats cried foul and charged Sherman with injecting extreme partisanship into the proceedings. But they did not have the numbers, or arguments, to stop him. On May 20 the Senate approved his amendment, 33-12.¹⁶⁷ No Democrats supported the amendment, and only four Republicans defected. In terms of impact, Xi Wang argues: "Sherman's sections on election fraud actually opened up a new vista for enforcement, which would become a major issue in the debates over the new two enforcement laws and for the next two decades."¹⁶⁸

Later that day, after amending activity brought the number of sections in S. 810 to twenty-one, Stewart sought to move things forward by calling on the Senate to concur in the amendment (S. 810) to Bingham's bill (H.R. 1293), which would in effect substitute S. 810 for the contents (under the enacting clause) of H.R. 1293. The Senate responded in the affirmative, voting 40-9 to concur.¹⁶⁹ All but one Republican (Joseph Fowler, TN) opposed all Democrats. Now, the amended H.R. 1293 (embodying S. 810 as a substitute) was sent back to the House for its concurrence.

House Republicans, though, wanted to discuss the specifics of the bill, and decided instead to non-concur and seek a conference with the Senate.¹⁷⁰ Conferees were chosen in each

¹⁶⁶ Sherman's initial proposal covered all Representatives and Delegates to Congress as well as Presidential and Vice-Presidential Electors. Over the course of the debate, he agreed to restrict the amendment exclusively to the former.

¹⁶⁷ *Congressional Globe*, 41st Congress, 2nd session (May 20, 1870), 3678.

¹⁶⁸ Wang, *The Trial of Democracy*, 65.

¹⁶⁹ *Congressional Globe*, 41st Congress, 2nd session (May 20, 1870), 3687.

¹⁷⁰ *Congressional Globe*, 41st Congress, 2nd session (May 23, 1870), 3726.

chamber,¹⁷¹ and a conference report was quickly produced. The report was completed and sent back to the chambers the next day (May 24).¹⁷² Changes were minimal. Aside from a few words being altered throughout the report, three sections were added and one was deleted, leaving the total number at twenty-three. The new sections were written to be more specific about evidentiary standards in cases involving suspected vote fraud or irregularities.¹⁷³ As a result, the reports easily achieved the two-thirds necessary in both the House and Senate, on pure party line votes (except for one GOP defection in each chamber).¹⁷⁴ On May 30, 1870, H.R. 1293 became law (the first Enforcement Act) with President Grant's signature.

The Second Enforcement Act

Roughly two weeks after Grant signed the first Enactment Act into law, Congress began work on the second Enforcement Act (otherwise known as the Naturalization Act). This stemmed directly from that portion of the first Enforcement Act debate that dealt with voting in Northern cities and the amendments offered (and accepted) by John Sherman. Republicans, as Sherman noted, were still enraged by the party's loss in New York in 1868, which they believed was affected by widespread Democratic fraud in the electoral process. And they determined to do something about it. As Xi Wang notes: "With the elections of 1870 coming, the elimination of fraud in Northern elections became an urgent issue for the Republicans. The Republicans in

¹⁷¹ Bingham, Noah Davis (R-NY), and Michael Kerr (D-IN) represented the House, while Stewart, George Edmunds (R-VT), and John Stockton (D-NJ) represented the Senate. See *Congressional Globe*, 41st Congress, 2nd session (May 23, 1870), 3726, 3734.

¹⁷² The conference report was read in its entirety prior to the vote in each chamber. See *Congressional Globe*, 41st Congress, 2nd session (May 24, 1870), 3752; (May 26, 1870), 3853.

¹⁷³ Stewart carefully discussed the changes in the Senate, prior to the conference vote. See *Congressional Globe*, 41st Congress, 2nd session (May 24, 1870), 3753-54.

¹⁷⁴ *Congressional Globe*, 41st Congress, 2nd session (May 25, 1870), 3809; (May 27, 1870), 3884. The two Republican defections were, once again, the Tennesseans Fowler and Hawkins.

Congress proposed to make the process of naturalization a federal matter and to eliminate such corruption in elections.”¹⁷⁵

Naturalization was the process by which a non-citizen (or “alien”) might acquire citizenship. While the first federal naturalization law was adopted in 1790, the process of naturalization was typically left to the states. And the manner by which naturalization was applied to aliens, and the degree to which aliens (naturalized or having declared the intention to be naturalized) could vote, often varied considerably by state.¹⁷⁶ Thus, if one party (like the Democrats) controlled the process of naturalization in places that saw a huge influx of immigrants (like big cities in the North), the system could be rigged to expedite suffrage rights and/or permit wholesale fraud (voting by non-naturalized persons, repeat voting based on bogus identities/certificates, etc.) in the electoral process. In seeking to establish a national system for naturalizing aliens, and establishing severe punishments for fraud in the naturalization process, the GOP hoped to dampen the Democrats’ urban electoral advantage.

The Republicans’ naturalization campaign began in the House on June 13, 1870, when Noah Davis (R-NY) introduced a four-section measure, and moved to suspend the rules and pass it. Davis’s bill elaborated punishments for fraudulent actions by individuals in applying for citizenship or using bogus naturalization certificates (in the range of one to five years in prison, with fines up to \$1,000), and specified that federal (not state) courts would handle cases involving allegations of such fraudulent actions. One stipulation in the second section specifically covered the possibility of fraudulent certificates (or other bogus evidence of citizenship) being used “for the purpose of registering as a voter, or as evidence of a right to

¹⁷⁵ Wang, *The Making of Federal Enforcement Laws*, 1035.

¹⁷⁶ See Wang, *The Making of Federal Enforcement Laws*, 1035 *fn.* 86.

vote.”¹⁷⁷ By moving for suspension, which required a two-thirds vote, David sought to forestall debate and amendments, and he was successful – as the House voted 130-49 to suspend the rules and pass the bill. (House vote totals for roll calls related to the Second Enforcement Act appear in Table 9.) It was then sent on to the Senate.

In the Senate, on June 25, Roscoe Conkling (R-NY), representing the Judiciary Committee, offered an amendment to H.R. 2201 in the form of a substitute. Conkling’s proposed substitute amendment was considerably more elaborate than Davis’s House bill.¹⁷⁸ Eleven of the bill’s 13 sections dealt with procedures and qualifications for naturalization and citizenship, as well as punishments for fraud in the naturalization process and the domain of authority in hearing cases (which was the exclusive focus of Davis’s bill). The final two sections dealt strictly with enforcement issues with regard to congressional elections. In cities with more than 20,000 inhabitants, federal judges could designate two citizens (one from each party) as deputies at the polls, to watch registration, voting, and the counting of votes; these deputies would also have the power to challenge at each stage (12th section). In addition, U.S. marshals in those same cities were granted the power to appoint as many special deputies as necessary to keep the peace at the polls and preserve order in the voting process (13th section).

While Conkling’s bill as a whole was structured as a means to federalize citizenship, the last two sections were specifically designed to address the problems the GOP faced in urban centers controlled by the Democrats—of the nation’s 68 cities with populations of 20,000 or more, 63 were outside of the former Confederacy.¹⁷⁹ These sections gave the Republicans a set of mechanisms to challenge non-naturalized voters and prevent shenanigans at the polling place.

¹⁷⁷ For the full text of Davis’s bill, see *Congressional Globe*, 41st Congress, 2nd session (June 13, 1870), 4366-67.

¹⁷⁸ For the full text of Conkling’s substitute, see *Congressional Globe*, 41st Congress, 2nd session (June 25, 1870), 4834-36.

¹⁷⁹ David Herbert Donald, Jean Harvey Baker, and Michael F. Holt, *The Civil War and Reconstruction* (New York: Norton, 2000), 613.

And while Democrats saw these two sections as the raw partisan play they were intended to be, their small numbers in the Senate prevented them from raising a serious challenge. Conkling would face problems within his own party, however, as western Republicans whose states benefited from immigration blanched at the attempt to federalize naturalization procedures and qualifications. These senators preferred to keep decision-making on naturalization matters at the state level.

Debate on Conkling's amendment was drawing to a close when Charles Sumner (R-MA) was recognized and offered an amendment (creating a new section) that would change the entire dynamic in the Senate—and put the entire naturalization bill at risk. Sumner's amendment read:

*And be it further enacted, That all acts of Congress relating to naturalization be, and the same are hereby, amended by striking out the word "white" wherever it occurs, so that in naturalization there shall be no distinction of race or color.*¹⁸⁰

A number of Republicans rose quickly to oppose Sumner's amendment. The concern related to Chinese immigrants, who were contract laborers on the west coast. Several Republicans worried that Sumner's amendment, if passed, would encourage a great flow of Chinese into the country, and they would seek citizenship and then the right to vote. (Note that the right to vote conveyed in the just-passed 15th Amendment referred to "citizens" and not "persons.")

Fear was at the heart of these Republican concerns – relating to culture, religion, and customs, as well as general labor issues. But practical politics was also very much in play. As Andrew Gyory writes:

Unlike black suffrage, Chinese naturalization promised scant electoral benefits. With most of the Chinese congregated in the small states of California, Oregon, and Nevada, Republicans had little incentive to push for Chinese citizenship. Without this pressure, many of the egalitarian principles that had inspired Radical Reconstruction began to wane.¹⁸¹

¹⁸⁰ *Congressional Globe*, 41st Congress, 2nd session (July 2, 1870), 5121.

¹⁸¹ Andrew Gyory, *Closing the Gate: Race, Politics, and the Chinese Exclusion Act* (Chapel Hill: University of North Carolina Press, 1998), 52.

Finally, after some hand-wringing and angry word, the Senate voted on Sumner's amendment, and it failed by a single vote, 22-23.¹⁸² (Senate vote totals roll calls related to the Second Enforcement Act appear in Table 10.) Republicans were split, but most stuck to their beliefs (on equal rights and racial justice) and backed Sumner (22-15). The amendment was lost thanks to unanimous Democratic opposition (0-8).

With Sumner's amendment out of the way (for the time period), the Senate turned to Conkling's amendment. Conkling had recognized that some party members opposed his bill's federalization of the naturalization process, and tried to persuade them to support the bill now and various concerns could be worked out in conference. But he was not in the end persuasive, as a majority of his fellow Republicans voted against him, and his substitute was defeated, 17-33.¹⁸³

Conkling immediately regrouped and moved that the last two sections of his substitute be added as an amendment to H.R. 2201 (Davis's bill). This was the course that several Republican senators had recommended earlier, but Conkling was intent to try out his full substitute first. That having failed, he was now ready to compromise and get what he could. And he was successful, as the Senate voted 37-9 to add his enforcement sections to H.R. 2201.¹⁸⁴ Only one of 38 Republicans opposed the amendment, as greater election enforcement in Northern cities seemed like a winning issue for the party.¹⁸⁵

Before Conkling could celebrate, however, Sumner was recognized and again moved his anti-discriminatory amendment—now to the enforcement-amended H.R. 2201. And this time,

¹⁸² *Congressional Globe*, 41st Congress, 2nd session (July 2, 1870), 5123.

¹⁸³ *Congressional Globe*, 41st Congress, 2nd session (July 2, 1870), 5123.

¹⁸⁴ *Congressional Globe*, 41st Congress, 2nd session (July 2, 1870), 5123.

¹⁸⁵ The one defector was Arthur Boreman (R-WV).

he was victorious, as the Senate adopted his amendment, 27-22.¹⁸⁶ Sumner picked up five additional Republican votes, and that proved decisive.¹⁸⁷ Consternation gripped several members, most notably William Stewart (R-NV), who argued passionately (with a kind of racist paternalism) that the Chinese, as a result of this vote

will be persecuted—persecuted to an extent that will make humanity blush. I know what the result will be. The fact that we are trying to do an unreasonable thing; the fact that we are trying to make American citizens out of pagans, who are bound by obligations such as no other race are—obligations which will make them sacrifice themselves and their families—will only result in their oppression and slaughter.¹⁸⁸

Of course, Stewart was a bit overheated, as no law had yet been passed. In fact, Senate had not even approved a bill.

The Senate returned to the naturalization legislation two days later, on July 4. An entire morning session was spent discussing the naturalization issues. Highlights included Stewart made lengthy arguments about the dangers association with naturalizing the Chinese; George H. Williams (R-OR) argued that Chinese naturalization threatened American (Republican) free labor ideology; and Carl Schurz (R-MO) felt, given all the arguments being made from fellow Republicans, that perhaps the time was not right for such a move.¹⁸⁹

In the evening, after a short debate, voting commenced. Up first: a motion made by Conkling, to reconsider the Sumner amendment vote from two days prior. And the Senate (in Committee of the Whole) agreed to reconsider, 27-14.¹⁹⁰ A majority of Republicans, it seemed, had been persuaded that reconsideration was the right course of action. Sumner's amendment

¹⁸⁶ *Congressional Globe*, 41st Congress, 2nd session (July 2, 1870), 5124.

¹⁸⁷ Only two Republicans switched their votes, however. Abijah Gilbert (R-FL) and Timothy Howe (R-WI) voted “nay” on Sumner's initial amendment and then voted “yea” on the follow-up amendment. Twenty-one Republican senators voted “yea-yea” and thirteen voted “nay-nay.” The remaining Republican votes came from senators who abstained on one of the two roll calls.

¹⁸⁸ *Congressional Globe*, 41st Congress, 2nd session (July 2, 1870), 5125.

¹⁸⁹ For the entirety of the debate, see *Congressional Globe*, 41st Congress, 2nd session (July 4, 1870), 5148-67.

¹⁹⁰ *Congressional Globe*, 41st Congress, 2nd session (July 4, 1870), 5173.

was then voted down, 14-30.¹⁹¹ To perhaps save face for the party, as they fought against Sumner's efforts to strike "white" from the naturalization laws, Willard Warner (R-AL) then offered the following amendment:

And be it further enacted, That the naturalization laws are hereby extended to aliens of African nativity and to persons of African descent.¹⁹²

Warner's amendment passed by the slimmest of margins, 21-20. And while its contents, in time, would become important for the immigration of blacks to the United States, Republicans felt that such an inflow was likely to be small;¹⁹³ thus, as Xi Wang asserts, "[this] section served largely as a political gesture to accord with what Warner called 'a ripened public opinion' on black rights rather than a sincere policy to attract Africans to America."¹⁹⁴

The proceedings were now hurtling toward a conclusion. The body first moved from the Committee of the Whole back to the Senate, and concurred in all amendments to that point.¹⁹⁵ At that point, Sumner's tried his amendment one last time. Prior to the vote, Trumbull made a passionate plea for Chinese naturalization, asking his fellow senators whether they truly wanted "to deny the right of naturalization to the Chinaman, who is infinitely above the African in intelligence, in manhood, and in every respect?"¹⁹⁶ The answer was "yes," as the Senate voted 12-26 to defeat the Sumner amendment.¹⁹⁷ Not to be undone, and wishing to put the membership *explicitly* on the record vis-à-vis Chinese naturalization, Lyman Trumbull (R-IL) then rose to offer an amendment to Warner's earlier amendment, such that the words "or person born in the Chinese empire" would be added. The full amendment, as proposed, would now read:

¹⁹¹ *Congressional Globe*, 41st Congress, 2nd session (July 4, 1870), 5176.

¹⁹² *Congressional Globe*, 41st Congress, 2nd session (July 4, 1870), 5176.

¹⁹³ On Republicans' beliefs about African immigration, see the comments made by Oliver Morton (R-IN) during the debate. *Congressional Globe*, 41st Congress, 2nd session (July 4, 1870), 5177.

¹⁹⁴ Wang, *The Trial of Democracy*, 76.

¹⁹⁵ *Congressional Globe*, 41st Congress, 2nd session (July 4, 1870), 5176-77.

¹⁹⁶ *Congressional Globe*, 41st Congress, 2nd session (July 4, 1870), 5177.

¹⁹⁷ *Congressional Globe*, 41st Congress, 2nd session (July 4, 1870), 5177.

That the naturalization laws are hereby extended to aliens of African nativity, and to persons of African descent, and to persons born in the Chinese empire.¹⁹⁸

Uncowed, the Senate roundly rejected Trumbull's amendment to Warner's amendment, 9-31.¹⁹⁹

Only 9 of 33 Republicans were willing to vote for Chinese naturalization.

The Senate now moved to consider the amended H.R. 2201 – which, at this point, was essentially the first four sections of the original House bill with Conkling's two enforcement sections and Warner's naturalization section tacked on – and voted 33-8 to pass it. All Republicans (except one) opposed all Democrats.²⁰⁰ The bill was then sent back to the House, where it was taken up on July 11. Rather than ask for a conference, the House proceeded to suspend the rules and concur in the Senate amendments, and the bill was passed, 132-53.²⁰¹ Only two of 133 Republicans voted in opposition.²⁰² Three days later, President Grant signed it, and it became law (the Second Enforcement Act).

The Second Enforcement Act had the interesting effect of linking the topics of suffrage, race, citizenship, and naturalization. While party support for black interests remained strong, other splits in the Republican coalition had emerged. Nonetheless, party leaders had achieved what they set out to do in the short run – Conkling's sections of the new law provided the Republicans with the ability to rein in various fraudulent behaviors in Northern cities in advance of the 1870 elections. How much this would matter was an open question, but one that would be answered soon enough.

¹⁹⁸ *Congressional Globe*, 41st Congress, 2nd session (July 4, 1870), 5177.

¹⁹⁹ *Congressional Globe*, 41st Congress, 2nd session (July 4, 1870), 5177.

²⁰⁰ The single defector was Arthur Boreman (R-WV), who was also the lone Republican to vote against Conkling's earlier amendment to H.R. 2201.

²⁰¹ *Congressional Globe*, 41st Congress, 2nd session (July 11, 1870), 5441.

²⁰² The Republican defectors were John B. Hay (R-IL) and David S. Bennett (R-NY).

The Third Enforcement Act

The First and Second Enforcement Acts would be employed actively, and New York would be the epicenter. Republicans efforts were centered on making sure New York City provided a “fair election,” and (as best can be determined) that was largely achieved. Voter registration was reduced by twenty to thirty thousand, and dozens were arrested. But the result for the Republicans was the same—the governor and mayor of NYC were reelected (with fewer votes) and the partisan distribution of House seats from NYC elections remained the same.²⁰³

More generally, though, the Democrats did well throughout the country, and increased their numbers in the upcoming 42nd Congress (by more than 30 in the House, and by 2 in the Senate). In the South, Klan violence was widespread, and led to significant GOP losses in Alabama, Georgia, North Carolina, and Texas.²⁰⁴ In short, the Republicans saw their numbers eroding, both North and South, and party leaders called for additional enforcement legislation to stem the tide.

The GOP would endeavor to make these changes in the lame-duck session of the 41st Congress, before the larger Democratic minority was seated in the 42nd. Their attempts to pass Third and Fourth Enforcement Acts would only be partially successful, however. Only the Third would be enacted before the end of the Congress—the Fourth would be postponed until the early months of the next (42nd) Congress. On the plus side, there were few theatrics in this round, as the party held together well.

On February 13, 1870, John Bingham (R-NY), representing the Judiciary Committee, would report the new enforcement bill (H.R. 2634). Bingham’s bill—nineteen sections in all—

²⁰³ For a useful summary, see Wang, *The Trial of Democracy*, 79.

²⁰⁴ Trelease, *White Terror*, 241-42; Foner, *Reconstruction*, 441-44.

was designed to clearly delineate enforcement machinery.²⁰⁵ Duties for all enforcement officials were established, and specific crimes (dealing with various aspects of electoral fraud in the registration and voting processes) were identified in painstaking detail (with a range of punishments). The crimes were also designated as federal in nature, and thus made federal courts the venue for subsequent cases. In addition, the second section of the bill incorporated the language of the fifth and sixth sections of the Naturalization Act (regarding enforcement protocols in cities with greater than 20,000 inhabitants), and thus superceded those earlier provisions. Finally, the 19th section endeavored to modernize ballot procedures in congressional elections, by requiring written or printed ballots.

In reporting his bill, Bingham moved that the rules be suspended and the bill be made a special order in two days (with strict debate limits and with dilatory motions not allowed). Bingham's motion would be approved,²⁰⁶ and the H.R. 2634 was taken up for a final vote in the late afternoon on February 15. And, after debate and only light modifications, it was passed, 144-64.²⁰⁷ All but three Republicans supported the bill, and every Democrat voted against it.²⁰⁸ (See Table 11 for this and the Senate vote.)

The Senate took up H.R. 2634 on February 23, and debated it over the course of two days. At the end of the second day, after a series of failed amendments offered by Democrats to scuttle portions of the bill,²⁰⁹ it passed 39-10.²¹⁰ All but one Republican voted for the bill, with all

²⁰⁵ The nineteen sections (as subsequently amended) are listed in *Congressional Globe*, 41st Congress, 3rd session (February 15, 1871), 1281-83.

²⁰⁶ *Congressional Globe*, 41st Congress, 3rd session (February 13, 1871), 1190-91. The vote on Bingham's motion would be 141-52, with Republicans voting 138-1. The lone Republican defector was Isaac Hawkins (TN).

²⁰⁷ *Congressional Globe*, 41st Congress, 3rd session (February 15, 1871), 1285.

²⁰⁸ The three Republican defectors were Isaac Hawkins (TN), John B. Hay (IL), and Oliver J. Dickey (PA).

²⁰⁹ These dissenting Democratic amendments led to ten roll call votes, all of which the Republicans easily won.

²¹⁰ *Congressional Globe*, 41st Congress, 3rd session (February 24, 1871), 1655.

Democrats opposing it.²¹¹ Five days later, on February 28, President Grant signed the bill, and it became law (the Third Enforcement Act).

As the 41st Congress came to a close, Republicans were in an increasingly desperate position. They retained control of the federal government, but more tenuously than in the past, and with reason to believe the worst was not yet over. Klan violence in the South was significant, and the federal enforcement power was still lacking to deal with it. And Northern constituencies were growing restless and more willing to accept the Democrats as a viable solution. While things would get better in the short-run (thanks to the passage of a Fourth Enforcement Act in the early months of the 42nd Congress), as the Klan would be convincingly dealt with, the lingering electoral issues in the North and the lack of a strong bi-racial coalition congealing in the South were problems that were not going away. And the onset of an economic panic and subsequent downturn would be a blow the Republicans – as an interregional coalition – could not survive.

Conclusion

The first three Congresses after the Civil War's end were an eventful time for both the country and the governing Republican Party. The Reconstruction of the South, and elevation of a race of people who had been slaves in the body politic, was a truly revolution experience. But it did not come easily. The Republicans fought amongst themselves (Radical vs. moderate), and together battled an intransigent president (Andrew Johnson). But struggling through these battles, the Republicans achieved quite a lot – as we document, the adoption of the Civil Rights Act of 1866, the Reconstruction Acts, the 14th Amendment, the 15th Amendment, and the Enforcement Acts were landmark legislative accomplishments, and their enactments created (for a while) the basis of a society that fulfilled the promises advanced in our earliest declarations as a free nation. That

²¹¹ The lone Republican defector was Joseph Fowler (TN).

they – and the society they meant to create – did not stand the test of time should not diminish their significance; indeed, the seeds of the Second Reconstruction in the 1950s and 1960s were arguably planted in the late-1860s and early-1870s.

Table 1. House and Senate Votes on DC Suffrage Legislation, 39th Congress

House

Party	To Postpone Consideration of H.R. 1		To Recommit H.R. 1		To Pass H.R. 1	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	1	32	0	33	0	33
Southern Democrat	1	4	0	5	0	5
Republican	27	95	52	71	114	10
Uncond. Unionist	5	3	1	7	1	6
Ind. Republican	0	1	0	1	1	0
Total	34	135	53	117	116	54

Source: *Congressional Globe*, 39th Congress, 1st Session (January 18, 1866), 310; 311.

Senate

Party	To Pass S.1		To Pass S. 1 (Veto Override)	
	Yea	Nay	Yea	Nay
Northern Democrat	0	5	0	3
Southern Democrat	0	1	0	0
Republican	31	5	27	5
Uncond. Unionist	1	1	2	1
Unionist	0	1	0	1
Total	32	13	29	10

Source: *Congressional Globe*, 39th Congress, 2nd Session (December 13, 1866), 109; (January 7, 1867), 303.

Table 2. House and Senate Votes on Freedman’s Bureau Bill, 39th Congress

House

Party	To Amend S. 60 (Smith)		To Amend S. 60 (Stevens)		To Pass S. 60	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	26	0	0	26	0	26
Southern Democrat	5	0	0	5	0	5
Republican	0	123	37	85	127	1
Uncond. Unionist	3	7	0	9	9	1
Ind. Republican	0	1	0	1	1	0
Total	34	131	37	126	137	33

Source: *Congressional Globe*, 39th Congress, 1st Session, (February 6, 1866), 688.

Senate

Party	To Pass S. 60		To Pass S. 60 (Override Veto)	
	Yea	Nay	Yea	Nay
Northern Democrat	0	8	0	8
Southern Democrat	0	2	0	2
Republican	35	0	29	7
Uncond. Unionist	2	0	1	1
Total	37	10	30	18

Source: *Congressional Globe*, 39th Congress, 1st Session (January 25, 1866), 421; (February 20, 1866), 943.

Table 3. House and Senate Votes on Civil Rights Bill, 39th Congress

House

Party	Motion to Recommit (Bingham)		To Pass S. 61		To Pass S. 61 (Override Veto)	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	23	2	0	27	0	29
Southern Democrat	5	0	0	5	0	4
Republican	48	65	106	1	117	2
Uncond. Unionist	6	2	4	5	4	6
Ind. Republican	0	1	1	0	1	0
Total	82	70	111	38	122	41

Source: *Congressional Globe*, 39th Congress, 1st Session (March 9, 1866), 1291; (March 13, 1866), 1366-67; (April 9, 1866), 1861.

Senate

Party	To Amend S. 61 (Trumbull)		To Pass S. 61		To Pass S. 61 (Override Veto)	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	1	6	0	7	0	8
Southern Democrat	0	2	0	2	0	2
Republican	30	1	33	2	32	4
Uncond. Unionist	0	1	0	1	1	1
Total	31	10	33	12	33	15

Source: *Congressional Globe*, 39th Congress, 1st Session (February 1, 1866), 575; (February 2, 1866), 607; (April 9, 1866), 1809.

Table 4. House and Senate Votes on 14th Amendment and Related Legislation, 39th Congress

House

Party	To Pass H.J. Res. 51 (Apportionment)		To Amend H.J. Res 127 (Section 3)		To Pass H.J. Res. 127		To Pass H.J. Res. 127 (Concur)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	29	10	17	1	26	0	32
Southern Democrat	0	5	4	1	0	5	0	5
Republican	115	6	67	54	120	1	127	0
Uncond. Unionist	4	6	3	7	5	5	9	0
Unionist	0	0	0	0	0	0	0	0
Ind. Republican	1	0	1	0	1	0	1	0
Total	120	46	85	79	127	37	137	37

Source: *Congressional Globe*, 39th Congress, 1st Session (January 31, 1866), 538; (May 10, 1866), 2545; (May 10, 1866), 2545; (June 13, 1866), 3149.

Senate

Party	To Pass H.J. Res. 51 (Apportionment)		To Amend H.J. Res. 127 (Section 3)		To Pass H.J. Res. 127	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	1	7	0	5	0	5
Southern Democrat	0	2	0	2	0	2
Republican	23	12	30	3	32	3
Uncond. Unionist	1	1	2	0	1	1
Unionist	0	0	0	0	0	0
Total	25	22	32	10	33	11

Source: *Congressional Globe*, 39th Congress, 1st Session (March 9, 1866), 1289; (May 31, 1866), 2921; (June 8, 1866), 3042.

Table 5. House and Senate Votes on First Reconstruction Act and Related Legislation, 39th Congress

House

Party	To Pass H.R. 1143 (Military Government)		To Pass H.R. 1162 (Eliot-Shellabarger)		H.R. 1143 (Motion to Concur)		To Pass H.R. 1143 (Wilson Amendments)		To Pass H.R. 1143 (Override Veto)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	29	0	29	0	29	0	30	0	31
Southern Democrat	0	5	0	5	0	6	0	6	0	6
Republican	103	10	106	6	65	54	118	3	127	4
Uncond. Unionist	6	5	5	3	7	4	8	2	8	2
Unionist	0	5	1	4	1	4	0	5	0	5
Ind. Republican	0	1	1	0	0	1	1	0	0	0
Total	109	55	113	47	73	98	127	46	135	48

Source: *Congressional Globe*, 39th Congress, 2nd Session (Feb 13, 1867), 1215; (February 12, 1867), 1175; (February 18, 1867), 1340; (February 20, 1867), 1400; (March 2, 1867), 1733

Senate

Party	To Pass H.R. 1143 (Senate Amended)		To Pass H.R. 1143 (Wilson Amendment)		To Pass H.R. 1143 (Veto Override)	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	5	1	4	1	4
Southern Democrat	0	1	0	1	0	1
Republican	27	3	31	1	34	4
Uncond. Unionist	2	0	3	0	3	0
Unionist	0	1	0	1	0	1
Total	29	10	35	7	38	10

Source: *Congressional Globe*, 39th Congress, 2nd Session (February 16, 1867), 1469; (February 20, 1867), 1645; (March 2, 1867), 1976.

Table 6. House Votes on 15th Amendment Legislation, 40th Congress

Party	To Amend H.J. Res. 402 (Shellabarger)		To Amend H.J. Res 402 (Bingham)		To Pass H.J. Res. 402 (Boutwell)		To Concur in Senate Amendments to H.J. Res 402	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	31	10	19	0	29	1	29
Southern Democrat	0	7	2	4	0	7	0	5
Conservative	0	2	1	1	1	1	0	2
Republican	62	83	10	134	147	4	36	95
Ind/Cons Republican	0	2	1	2	2	1	0	2
Total	62	125	24	160	150	42	37	133

Source: *Congressional Globe*, 40th Congress, 3rd Session, (January 30, 1869): 744; (January 30, 1869): 744; (January 30, 1869): 745; (February 15, 1869): 1226.

Party	To Amend S.J. Res 8 (Logan)		To Amend S.J. Res 8 (Bingham)		To Pass S.J. Res 8 as Amended		To Agree to Conference Report on S.J. Res 8	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	25	0	22	2	0	28	0	33
Southern Democrat	6	0	2	2	1	5	0	6
Conservative	1	0	0	1	0	1	1	1
Republican	36	95	68	64	137	2	141	3
Ind/Cons Republican	2	0	0	2	1	1	1	1
Total	70	95	92	71	139	37	143	44

Source: *Congressional Globe*, 40th Congress, 3rd Session, (February 20, 1869): 1428; (February 20, 1869): 1428; (February 20, 1869): 1428; (February 25, 1869): 1563-64.

Table 7. Senate Votes on 15th Amendment Legislation, 40th Congress

Party	To Amend H.J. Res. 402 (Howard)		To Amend H.J. Res 402 (Wilson I)		To Amend H.J. Res. 402 (Wilson II)		To Pass H.J. Res 402 as Amended	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	6	0	2	1	4	0	5
Southern Democrat	0	2	0	2	0	2	0	3
Republican	16	27	19	20	30	21	40	8
Total	16	35	19	24	31	27	40	16

Source: *Congressional Globe*, 40th Congress, 3rd Session, (February 8, 1869): 1012; (February 9, 1869): 1029; (February 9, 1869): 1040; (February 10, 1869): 1044.

Party	To Recede from its Amendments to H.J. Res 402		To Pass H.J. Res 402 (Boutwell)		To Pass S.J. Res 8 (Stewart)		To Agree to Conference Report on S.J. Res 8	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	6	0	6	0	6	0	5
Southern Democrat	0	3	0	3	0	3	0	3
Republican	33	15	31	18	35	2	39	5
Total	33	24	31	27	35	11	39	13

Source: *Congressional Globe*, 40th Congress, 3rd Session, (February 17, 1869): 1295; (February 17, 1869): 1300; (February 17, 1869): 1318; (February 26, 1869): 1641.

Table 8. House and Senate Votes on First Enforcement Act, 41st Congress

House

Party	To Suspend the Rules and Pass H.R. 1293 (Bingham)		To Suspend the Rules and Non-Concur in H.R. 1293 (as amended)		To Agree to Conference Report on H.R. 1293	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	30	1	37	0	42
Southern Democrat	0	11	0	13	0	12
Conservative	3	1	0	3	1	3
Republican	128	1	132	1	132	1
Total	131	43	133	54	133	58

Source: *Congressional Globe*, 41st Congress, 2nd Session, (May 16, 1870): 3054; (May 23, 1870): 3726; (May 27, 1870): 3884.

Senate

Party	To Amend S. 810 (Sherman)		To Concur in Amendment to H.R. 1293 (substituting instead S. 810)		To Pass H.R. 1293 (now embodying S. 810)		To Agree to Conference Report on H.R. 1293	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	5	0	5	0	4	0	7
Southern Democrat	0	3	0	3	0	3	0	3
Republican	31	4	40	1	43	1	48	1
Total	31	12	40	9	43	8	48	11

Source: *Congressional Globe*, 41st Congress, 2nd Session, (May 20, 1870): 3687; (May 21, 1870): 3690; (May 25, 1870): 3809.

Table 9. House Votes on Second Enforcement Act, 41st Congress

Party	To Suspend the Rules and Pass H.R. 2201 (Davis)		To Suspend the Rules and Concur in Senate Amendments to H.R. 2201	
	Yea	Nay	Yea	Nay
Northern Democrat	0	34	0	38
Southern Democrat	1	12	0	11
Conservative	1	3	1	2
Republican	128	0	131	2
Total	130	49	132	53

Source: *Congressional Globe*, 41st Congress, 2nd Session, (June 13, 1870): 4368; (July 11, 1870): 5441.

Table 10. Senate Votes on Second Enforcement Act, 41st Congress

Party	To Amend Conkling Substitute (Sumner)		To Agree to Conkling Substitute		To Amend H.R. 2201 (Conkling)		To Amend H.R. 2201 (Sumner)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	5	0	5	0	5	0	5
Southern Democrat	0	3	0	3	0	3	0	3
Republican	22	18	17	25	37	1	27	14
Total	22	23	17	33	37	9	27	22

Source: *Congressional Globe*, 41st Congress, 2nd Session, (July 2, 1870): 5123; (July 2, 1870): 5123; (July 2, 1870): 5123; (July 2, 1870): 5124.

Party	To Reconsider Sumner Amendment Vote		To Amend H.R. 2201 (Sumner)		To Amend H.R. 2201 (Warner)		To Amend H.R. 2201 (Sumner)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	6	0	0	6	0	6	0	6
Southern Democrat	2	0	0	2	0	2	0	1
Republican	19	14	14	22	21	12	12	19
Total	27	14	14	30	21	20	12	26

Source: *Congressional Globe*, 41st Congress, 2nd Session, (July 4, 1870): 5173; (July 4, 1870): 5176; (July 4, 1870): 5176; (July 4, 1870): 5177.

Party	To Amend Warner Amendment (Trumbull)		To Pass H.R. 2201	
	Yea	Nay	Yea	Nay
Northern Democrat	0	6	0	6
Southern Democrat	0	1	0	1
Republican	9	24	33	1
Total	9	31	33	8

Source: *Congressional Globe*, 41st Congress, 2nd Sess (July 4, 1870): 5177; (July 4, 1870): 5177.

Table 11. House and Senate Votes on Third Enforcement Act, 41st Congress

Party	Vote to Pass H.R. 2634 (House)		Vote Pass H.R. 2634 (Senate)	
	Yea	Nay	Yea	Nay
Northern Democrat	0	45	0	6
Southern Democrat	0	13	0	3
Conservative	1	3	--	--
Republican	143	3	39	1
Total	144	64	39	10

Source: *Congressional Globe*, 41st Congress, 3rd Session, (February 15, 1871): 1285; (February 23, 1871): 1655.