

**The First “Southern Strategy”:
The Republican Party and Contested Election Cases in the Late-Nineteenth
Century House**

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Introduction

Electoral politics during the late-nineteenth century were especially intense and partisan. While the Republican Party reigned supreme during the Civil War and the early years of Reconstruction, intense two-party politics would reemerge in short order. By the mid-1870s, the Democratic Party had reorganized and was openly challenging the Republicans for national supremacy. For the next twenty years, an evenly divided national electorate produced razor-thin margins not only in Presidential elections, but in House elections as well. This latter result led to alternating control of the chamber: between 1875 and 1895, the House changed partisan hands six different times, and a small redistribution of seats in various elections would have increased that figure even more.

Given the high-stakes nature of partisan electoral politics during this era, it should come as no surprise that state and national party leaders adopted various strategies to make inroads at the margins, in order to maintain (or win) control of congressional institutions. Examples include the strategic admittance of new Western states (Stewart and Weingast 1992), the strategic deployment of Federal election officials and deputy marshals (James and Lawson 1999), and the strategic manipulation of congressional districts (Engstrom 2003).¹ While each of these strategic initiatives was used at various times by both parties, the Republican Party was invariably the “first mover.” This was due, in part, to the tactical foresight of Republican leaders, who began planning for the reemergence of the Democratic Party even before the South’s reentry into the political system in the late-1860s and early-1870s.²

This chapter will focus on an additional strategic initiative adopted first by the Republican Party and used in House politics throughout the late-nineteenth century, one that has

¹ See Valelly (1995) for a more general overview of these and other strategic initiatives.

² See, for example, Stewart and Weingast (1992).

received considerably less attention in the scholarly literature – contested election cases.³ By a “contested election,” I refer to an election result that is disputed; specifically, the loser in a congressional race contests the validity of the election outcome, based on any number of charges (but often relating to fraud, corruption, or other electoral irregularities). While quite rare today, contested election cases were a normal extension of the electoral process from Reconstruction through the turn-of-the-century, a veritable staple of late-nineteenth century partisan politics.

The strategic use of contested election cases in the House would emerge as a systematic response to the changing political climate in the mid-1870s. Less than a decade after the end of the Civil War, the Democratic Party reemerged as a national power, going toe-to-toe with the Republicans in their traditional northern strongholds while regaining firm control on southern elections. The Republicans quickly regrouped and attempted to counter the Democrats’ surge; in doing so, they sought a way to maintain a foothold in the former-Confederate states, rather than cede the South completely to the Democrats. The other strategic initiatives at the Republicans’ disposal – admittance of new Western states, deployment of Federal election officials, and redistricting – offered little assistance in this regard.⁴ Contested election cases remained a useful option, however, as they provided the Republicans with an “equalizer,” even as the party found itself increasingly shut out electorally in the South. That is, while the Republicans could not combat the Democrats’ use of fraud, corruption, and violence in southern elections directly, they

³ Studies by Rammelkamp (1905), Alexander (1916), Barnett (1939), and Dempsey (1956) provide excellent historical overviews. But aside from a brief examination by Polsby (1968) and a short analysis by Valelly (1995), few contemporary political scientists have studied the contested election process. For recent overviews and analyses of contested elections in the House and Senate, see Jenkins (2004) and Jenkins (2005), respectively.

⁴ By 1877, the Republicans had lost control of all Southern state legislatures (see Jenkins 2004), making Republican-focused redistricting an impossibility. And, by the early-1880s, Republican leaders had determined that the most efficient use of Federal election officials was in northern states (specifically, swing states) where enforcement (prosecutorial ability) was still possible, rather than in the South where enforcement was at best problematic (see James and Lawson 1999).

could use contested elections to investigate such charges and, if valid, unseat Democrats and replace them with Republicans.

As a result, contested elections provided a “life support” for the southern wing of the Republican Party after Reconstruction and insured that an entire section of the country would not be lost completely as national electoral politics tightened.⁵ Moreover, contested elections provided the Republicans with some breathing room on those occasions when they controlled the House in the 1880s and early-1890s. For example, southern seat additions via election contests provided the Republicans with a larger working majority in both the 47th Congress (1881-83), when they initially held a bare majority, and the 51st Congress (1889-91), when they initially held a five-seat majority (Dubin 1998: 255-56, 285-86).⁶

The remainder of the chapter is organized as follows. Section II provides a short history of contested elections in the House, emphasizing trends over time. Sections III and IV describe the Republicans’ use of contested election cases during and after Reconstruction, respectively. Section V steps back and probes more generally into the data surrounding contested elections in the late-nineteenth century. Section VI examines why contested election ceased to be used as an overt partisan strategy as the nineteenth century was coming to an end. Section VII investigates why a similar contested-elections strategy was not used by Senate Republicans in the late-nineteenth century. Section VIII concludes.

II. Contested House Elections: A Short History

The possibility of a dispute arising over the outcome of an election to Congress was a contingency recognized by the Framers during the Constitutional Convention. As a result,

⁵ See Valelly (1995) for a similar argument.

⁶ Contested elections have determined majority control of the House on two occasions: in the 26th Congress (via the New Jersey case) and in the 72nd Congress (via the *Kunz v. Granata* case). See Jenkins (2004) for a summary of each case.

guidelines for dealing with such a contingency are laid out explicitly in Article I, Section 5, Clause 1 of the Constitution: “Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members...” With this simple statement, each chamber of Congress is granted complete authority over how its membership will be comprised. Thus, when the result of a given election is contested, each chamber acts as the sole arbiter without Executive or Judicial constraint.⁷ This constitutional guarantee was an artifact of English and colonial rule, as fear of Executive authority led the House of Commons and nearly every colonial legislature to adopt similar protections (Dempsey 1956: 12-20, 25-28).

The contested election process in the House was institutionalized fairly early on. By the First Congress, a standing committee – the Committee on Elections – was established to handle contested election cases.⁸ And, after various temporary laws were tried throughout the late-eighteenth and early-nineteenth centuries, a uniform mode of procedure in contested election

⁷ Various attempts have been made over time to modify this congressional right, without success. For example, during the late-nineteenth century, numerous editorials in leading newspapers and newsmagazines, such as the *New York Times*, the *New York Herald*, the *North American Review*, and *Century Illustrated Magazine*, called for a judicial remedy to the presumed partisanship governing election contests in the House, but no reform emerged. More recently, in the 1972 U.S. Supreme Court case of *Roudebush v. Hartke*, involving a Senate election contest, the Court ruled that each chamber of Congress, per the guidelines of the Constitution, retains the unconditional and final judgment in contested election cases.

⁸ In 1895, at the beginning of the 54th Congress (1895-97), the Committee on Elections was split into three committees – Elections #1, Elections #2, and Elections #3. This was done, in large part, to accommodate a greater workload, created by an increasing number of contested election cases in the late-nineteenth century. These three Election Committees remained in place until 1947, when, as part of the Legislative Reorganization Act of 1946, they were combined with several other committees into *one* standing committee – the Committee on House Administration. Since the 80th Congress, *all* contested election cases in the House have been dealt with by the Committee on House Administration.

cases was adopted in 1851, which established guidelines for the development of a contest.^{9, 10} This statutory framework, with minor revisions, would last for more than a century.¹¹

There have been 601 contested election cases in the House between the 1st and 107th Congresses (1789-2002), or an average of just over 5.6 per Congress.¹² The distribution of these cases is illustrated in Figure 1. During the Antebellum era, the House dealt with relatively few contested election cases – only 107 over the first 36 Congresses, or an average of just under 3 per Congress. A significant jump occurred with the Civil War, however, as 19 and 17 cases were considered in the 37th and 38th Congresses (1861-65). The number of cases remained relatively high for the next 35 years, alternating between 5 cases in the 49th Congress (1885-87) and 38 cases, the historical high-water mark, in the 54th Congress (1895-97). In all, between the Civil War and the turn-of-the-century, the 37th through 55th Congresses (1861-1899), the House considered 262 contested election cases, or an average of nearly 15 per Congress. A gradual decline began with the 56th Congress (1899-1901); since then, the number of contested election cases has reached double digits only twice, 12 in the 62nd Congress (1911-1913) and 17 in 73rd Congress (1933-35), and no more than one case has been considered in 16 different congresses.

⁹ *U.S. Statutes at Large*, Vol. IX, Chapter 11, pp. 568-70. Examples of such guidelines included deadlines for specifying the grounds of a contest and rules for transcribing testimony and gathering evidence.

¹⁰ A uniform mode of procedure in contested Senate elections has never emerged; rather, the Senate has traditionally followed an informal route, treating each election contest as a “unique question.” See Jenkins (2005) for a more extensive discussion.

¹¹ This would finally change in 1969, with the passage of the Federal Contested Election Act (FCEA), which updated and streamlined the mode of procedure in contested election cases. See *2 U.S. Code*, Chapter 12, Sections 381-396.

¹² Sources used to code contested election cases include Rowell (1901), which covers the 1st through 56th Congresses; Moores (1917), which covers the 57th through 64th Congresses; Dempsey (1956), which covers the 1st through 82nd Congresses; Deschler (1977), which covers the 65th through 92nd Congresses; and Welborn (2000), which covers the 73rd through 106th Congresses. Some coding discrepancies exist between the various works. For example, in identifying contested election cases, Dempsey differs from Rowell on five occasions, Moores on one occasion, and Deschler on ten occasions. To determine which coding scheme to use, I examined the debates in Congress, using the *Annals of Congress*, the *Register of Debates*, the *Congressional Globe*, and the *Congressional Record*, as guiding materials.

In total, the House dealt with 212 contested election cases between the 56th and 107th Congresses (1899-2002), or an average of just over 4 per Congress.

[Figure 1 about here]

Across time, the ruling in contested election cases has mostly favored the contestee (i.e., the individual holding the election certificate, who is typically seated). Of the 601 contested election cases, the contestee has emerged victorious in 407 cases (or 67.7 percent), the contestant (i.e., the individual contesting, or disputing, the election) has won 128 cases (or 21.3 percent), and the election has been voided, and the seat vacated, in 66 cases (11 percent). Thus, in just over 2 of every 3 cases, the contestee has retained his/her seat.

Historically, these percentages have fluctuated. Table 1 illustrates this. During the Antebellum period (1st-36th Congresses), contestees won nearly 62 percent of contested election cases. From the Civil War through the turn-of-the-century (37th-55th Congresses), contestees fared less well, winning just over 57 percent of contested election cases. This period also represents the high-point for contestant success, as nearly 29 percent of cases resulted in seatholder replacement. Since the beginning of the twentieth century (56th-107th Congresses), contestees have fared exceedingly well, winning over 85 percent of contested election cases. Thus, while contestants at one time stood a reasonable chance of winning an election contest, this has not held true in the modern period.¹³

[Table 1 about here]

Overall, less than one-third of all contested election cases have been decided by roll call, with the remaining cases dealt with by voice vote or by the House taking no action (and thereby

¹³ Case in point: since the 67th Congress (1921-23), only *five* of 128 cases (or 3.9 percent) have been decided in favor of the contestant.

accepting the outcome from the initial election).¹⁴ Of those election cases determined by roll call, partisanship has typically determined the voting: 87 percent of such cases can be classified as “party votes,” i.e., votes in which at least 50 percent of one major party opposed at least 50 percent of the other major party.¹⁵ And just over one in seven roll calls is a perfectly-aligned party vote, in which all voting members of one major party oppose all voting members of the other major party. A cross-period breakdown, which appears in Table 2, reveals that these aggregate results are in fact driven by results from the late-nineteenth century – nearly 95 percent of election-contest roll calls in the late-nineteenth century were party votes, and more than one of every five roll calls was a perfectly-aligned party vote. This compares to the other two periods, in which less than 80 percent of election-contest roll calls were party votes.¹⁶

[Table 2 about here]

Thus, the late-nineteenth century clearly stands out amid a historical overview of contested House elections. It produced the largest per-Congress ratio of election contests, the highest proportion of seat changes (or “flips”), and the highest levels of party voting in case outcomes. I now turn to a systematic analysis of contested election cases during the late-nineteenth century and examine the role election contests played in the Republicans’ party-building efforts.

III. The Rise and Fall of the Southern Republicans during Reconstruction

After the Civil War, the Republicans shed their label as a sectional party and emerged as a true national force. Thanks to a mass of newly enfranchised African-American voters, an

¹⁴ This aggregate ratio is depressed by results since the beginning of the twentieth century, wherein only 13.7 percent of contested election cases were dealt with by roll call. This compares to a 48.6 percent ratio during the Antebellum era and a 39.4 percent ratio during the late-nineteenth century. See Jenkins (2004).

¹⁵ Party affiliations for members of Congress, as well as contestees and contestants in election contests, are taken from Martis (1989) and Dubin (1998).

¹⁶ For additional evidence of party influence in election-contest roll calls, see Jenkins (2004).

“occupying” army of Union troops, and no general amnesty for former-Confederate combatants, the South would quickly become fertile ground for a southern Republican organization. For example, of the 41 former-Confederate House seats in the 40th Congress (1867-69), thirty-six were controlled by the Republicans. Shortly thereafter, however, a southern Democratic Party began to revive, and growing violence toward and intimidation of African-American voters threatened the electoral process (Trelease 1971; Perman 1984). The Republican-controlled Congress responded quickly with two reform efforts. First, a series of Enforcement Acts (or “Force Bills”) was passed to protect the voting rights of African Americans and insure the sanctity of the electoral process in the South (Gillette 1979: 25-27; Foner 1988: 454-59, 528-31).¹⁷ Second, contested election cases were used to remedy the current electoral situation. In all, ten apparent Democratic seats in the 41st Congress (1869-71) were either successfully contested or vacated, based on charges of fraud and corruption, and subsequently became Republican seats.

For the next two Congresses, the 42nd (1871-73) and 43rd (1873-75), the Republicans did not use contested elections as an overt partisan tool, relying instead on the army to oversee southern elections in keeping with the various Enforcement Act provisions. While the Democrats were making steady inroads in the Deep South as well as the Border states, the Republicans downplayed their growing strength, as they still enjoyed unified control of the national government. This was to change very quickly, however, due to two factors. First, the political context changed: in 1873-74, the Midwest suffered a serious economic depression, while at the same time the larger northern electorate was becoming disenchanted with Southern Reconstruction and demanding new economic policies. Second, the Union army was slowly

¹⁷ The Enforcement Acts were comprised of five laws passed between May 1870 and June 1872 that, among other things, outlawed violence, fraud, and intimidation in the voting process, provided deputy marshals to oversee elections, and required paper ballots be used in congressional elections.

being withdrawn from the South, leaving African-American voters vulnerable to violence and intimidation.¹⁸ As a result, the Democrats erupted in the 1874 congressional midterms, dominating the South, winning a majority of seats in the border states, pulling even with the Republicans in the Great Lakes states, and capturing a sizeable number of seats in the northeast (Stewart 1991). In doing so, the Democrats won majority control of the House in the 44th Congress (1875-77). Moreover, in that and the succeeding Congress, the Democrats used the contested election process to their advantage, adding a total of nine seats to their ranks.

Thus, the Republicans found themselves in a position that they had not experienced for over a decade – as a chamber minority. For a time, the Republicans could afford to discount the South and any attempts by the Democrats to revive a southern organization, as they could count on a substantial House majority simply by dominating the northern states. However, the Democrats, thanks to their recent successes, had reestablished themselves as a national power. Consequently, the Republicans had to devise a “southern strategy” if they hoped to vie consistently for House control (De Santis 1959: 12; Valelly 1995).

The problem was *how* to make inroads in the South. Many of the strategic tools that Republicans used effectively throughout the late-nineteenth century, like admittance of western states, deployment of Federal election officials, and redistricting, were not effective in maintaining a Republican presence in the post-Reconstruction South. And with Federal troops no longer protecting the ballot box, per the implicit agreement underlying the Compromise of 1877, no credible enforcement mechanisms were in place to ensure fair elections.¹⁹ Contested election cases, therefore, became the chief means by which the Republicans would fight

¹⁸ For a discussion of the military withdrawal, political corruption, and southern elections in the late-1870s, see Bensel (1990: 366-415).

¹⁹ For an argument that the enforcement of electoral laws continued into the 1880s, albeit at a significantly lower rate than during Reconstruction, see Valelly (1995).

Democratic-sanctioned fraud, intimidation, and violence in the South and promulgate hopes that a southern wing of the Republican Party could be resuscitated.²⁰

IV. The Post-Reconstruction Southern Strategy

Initially, however, it appeared that the new contested-election strategy was finished before it started. That is, by the 46th Congress (1879-81), the southern component of the Republican Party was virtually eliminated – only three Republican House seats remained, one each in Florida, Tennessee, and Virginia. Moreover, a new mobilization and recruitment campaign was attempted, as the liberal element within the Republican Party, led by President Rutherford Hayes, undertook a “new departure” in the South, courting white southern Democrats with Whiggish persuasions while denying patronage to the carpetbaggers, scalawags, and African American who made up the southern Republican rank-and-file (Hirshson 1962: 25-26; Woodward 1966; 22-50; Hoogenboom 1988: 51-78). This strategy of conciliation would prove disastrous: white southerners accepted Hayes’ patronage positions while gleefully rejecting Republican principles, as the “regular” southern Republicans and their local organizations were left to slowly wither away (De Santis 1955, 1959: 99-103, 135-36; Summers 2000: 30-39, 45-45).

Yet, the southern Republican organization was afforded new life, as the Republicans regained control of the House in the 47th Congress (1881-83). And with Hayes now out of the picture, and the “new departure” policy an unmitigated failure, they labored to keep their southern pulse alive. Contested elections would be the vehicle, as six southern Democrats – one each in Alabama, Florida, Mississippi, and Missouri, and two in South Carolina – would be

²⁰ In addition, the Republican pursuit of election contests in the South would be used as electoral fodder in the North, as coverage of southern fraud and corruption would put northern Democratic candidates on the defensive. See Bense (1984: 87).

unseated in favor of Republicans.²¹ These institutional seat gains provided the Republicans with some leeway in constructing their policy agenda, as they commanded only a bare majority when the House convened, and combined with seven seats captured outright in the general congressional elections – one each in Louisiana and North Carolina, two in Virginia, and three in Tennessee – gave the southern Republican organization newfound hope.²²

This was not to last, however, as the Democrats would seize control of the House for the next three Congresses, effectively eliminating election contests as a means to prop up the fledgling Republican organization in the South. By the late-1880s, the Democrats had completely swept the Republicans from the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas. The only remaining Republican foothold was in the hill country of eastern Tennessee, western North Carolina, and southwestern Virginia.

The Republicans regained the House in the 51st Congress (1889-91), and with the backing of President Benjamin Harrison and a small group of congressmen sympathetic to the party's Radical roots, they resumed their southern mission (De Santis 1959: 195-97; Hirshson 1962: 200-14; Welch 1965; Socolofsky and Spetter 1987: 60-65). A new Force Bill would be introduced, this time advocating the Federal courts rather than the army as the guardian of southern elections,²³ and election contests would continue to be wielded as the great "equalizer." In all, five Democrats from the former-Confederate South – one each in Alabama, Arkansas,²⁴

²¹ One Iowa Republican, Marsena Cutts, would be unseated in favor of a Democrat on the last day of the Congress, producing a net gain of five seats for the Republicans.

²² Accompanying this Republican spurt was an active effort by Republican President Chester Arthur to form an alliance with Independents in the South, principally members of the Readjuster Party in Virginia. See De Santis (1953; 1959: 133-81), Hirshson (1962: 105-22), and Dailey (2000: 55-59).

²³ The Force Bill of 1890 would pass in the House, but be bogged down in the Senate by a Democratic filibuster. The original Force Acts of the early 1870s would be repealed in 1893 during Grover Cleveland's administration. See Perman (2001: 38-47) and Golden (2001: 145-70).

²⁴ This Arkansas case – John M. Clayton *vs.* Clifton R. Breckinridge – was unusual, in that the Republican contestant was murdered before the taking of testimony had been completed. Nevertheless, the House continued with the investigation. In the end, a majority of the Committee on Elections held that fraud did in fact occur – a

and South Carolina, and two in Virginia – and three Democrats from the former-slave Border states – one from Maryland and two from West Virginia – would be unseated and replaced by Republicans.²⁵ After a two-Congress switch in control, the Republicans took back the House in the 54th Congress (1895-97), and their southern efforts continued. Four Democrats from the former-Confederate South – one each from South Carolina and Virginia, and two from Alabama – and two Democrats from the former-slave Border states – Missouri and Kentucky – were unseated in favor of Republicans.²⁶

At that point, the Republicans' use of election contests as a means of securing a southern base began to slow. Three Democrats from the Deep South in each of the next two Congresses, the 55th (1897-99) and 56th (1899-1901), were unseated in favor of Republicans. But while the Republicans would control the House for the next five Congresses, no additional Democrats from the former-Confederate South would be unseated and replaced by Republicans. Meanwhile, the Republicans' electoral success in southern congressional elections left little doubt that the party's southern base was essentially dead. Except for occasional Republican successes in eastern Tennessee, southwestern Virginia, and western North Carolina, the South became a one-party Democratic state.²⁷

ballot box had been stolen – and once lost votes were counted, Clayton was the rightful occupant of the seat. Because of his death, the committee determined that the election should be voided. The House agreed by a 105 to 62 vote. For a full description of this case, and the events surrounding Clayton's assassination while contesting his election defeat, see Barnes (1998).

²⁵ In addition, one Democrat from Arkansas was unseated in favor of a member of the Labor Party.

²⁶ In addition, two Democrats from the Deep South, one each from Alabama and North Carolina, were unseated in favor of Populists.

²⁷ In fact, aside from the aforementioned areas and one district in Texas – the 14th, represented by Republican Harry M. Wurzbach from the 67th (1921-23) through 71st (1929-31) Congresses – the Republican Party would not capture another southern district until the late-1950s.

V. Examining the Data

In this section, I pull back a bit and examine more generally the data on contested election cases across the late-nineteenth and early-twentieth centuries. The southern emphasis on contested election cases during this time is illustrated in Table 3. Between the 40th and 61st Congresses (1867-1911), generally considered the most partisan period in American history, there were 270 contested election cases in the House,²⁸ of which 162 (or 60 percent) dealt with seats from the former-Confederate South.²⁹ This is an exceedingly high ratio, as the former-Confederate states only made up, on average, around 25 percent of the entire House during this period. If the term “South” is expanded to include all former-slave states, then 188 contested election cases (or 69.6 percent) dealt with southern seats.³⁰

[Table 3 about here]

The data in Table 3 also indicate that the distribution of cases brought during this period varied by majority-party control of the House. A significantly greater number of elections were contested when the Republicans controlled the chamber – more than 14 per Congress, compared to fewer than 9 per Congress under Democratic control. In addition, a larger proportion of the Republicans’ caseload dealt with seats from the former-Confederate South specifically – nearly 66 percent, relative to less than 44 percent under the Democrats – and the former-slave states more generally – nearly 83 percent, relative to less than 51 percent under the Democrats. This suggests a selection effect, that is, amid the Democratic-sanctioned fraud and corruption that typified southern elections during this time, losing Republican candidates likely believed that

²⁸ This excludes cases involving U.S. Territories.

²⁹ These states include Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

³⁰ These states include Delaware, Kentucky, Maryland, Missouri, and West Virginia. While these states were not “reconstructed,” as were the former-Confederate states, each had strong Democratic histories and southern sympathies. Kentucky and Missouri, for example, elected rump governments during the Civil War, which were recognized by the Confederacy and provided representation in the Confederate Congress.

their chances of a successful contest were higher if the Republicans controlled the House; thus, more cases involving southern seats were considered under Republican rule.³¹

Table 4 details the partisan seat changes that followed from successful election contests and vacated seats between the 40th and 61st Congresses (1867-1911). Overall, of the 270 cases during this period, eighty (or 29.6 percent) resulted in seat changes, or “flips.” Of those 80 seat changes, seventy (or 87.5 percent) favored the majority party. And of those 70, thirty-four (or 48.6 percent) were seats from the former-Confederate South. And, finally, if “South” is expanded once again to include all former-slave states, then forty-six (or 65.7 percent) pro-majority-party seat flips were southern in nature.

[Table 4 about here]

Also illustrated in Table 4 is the evolving use of the contested election process by the Republican Party. As discussed previously, prior to the Enforcement Acts being adopted and fully implemented between 1870 and 1872, the Republicans used election contests to combat Democratic fraud and intimidation in southern elections. Once the Enforcement Acts were in place, the army and Federal election officials took over monitoring Democratic electoral impropriety; as a result, Republican leaders no longer employed election contests in an aggressively partisan way. In fact, in the 42nd (1871-73) and 43rd (1873-75) Congresses, the Republicans would apply the contested election procedure in a very even-handed manner,

³¹ Alexander (1916: 326) echoes this contention, stating that during this period:

... comparatively few contestants appear except those belonging to the party which organizes the House. This accounts for the absence of contests from the South during the administration of [Democratic] Speakers Kerr, Randall, Carlisle, and Crisp, and the phenomenally large number presented during the [Republican] Speakership of Keifer and Reed.

awarding five seats to Democrats in the former-Confederate South, but just two seats to their own partisans.³²

This even-handedness would not last for long, as the changing political climate led the Republicans to rethink their use of contested election cases. Once the Democrats regained control of the House in the 44th Congress (1875-77), combined with the southern withdrawal of the Union army and the subsequent emasculation of the Enforcement Acts, Republican leaders realized that the party's foothold in the South was slipping away. As a result, during the next five Congresses in which they controlled the House, the 47th (1881-83), 51st (1889-91), 54th (1895-97), 55th (1897-99), and 56th (1899-1901), the Republicans behaved much more parochially, seating 20 of their own partisans in the former-Confederate South, while seating *no* Democrats. Moreover, the Republicans now used the contested election process almost exclusively as a means of maintaining a southern presence: of the 29 Republican seats added via contested election cases in these Congresses, only *three* were located outside of the former-slave states.

When the Democrats were the majority party in the House, they pursued a different strategy. They did not add many southern seats via contested elections, relying instead on strongarm tactics to influence the electoral process in the South.³³ Rather, contested election cases were a means by which the Democrats expanded *outside* of the South. In the eight Democratic Houses between the 44th and 53rd Congresses (1875-95), thirteen of the 21 Democratic seats (or 61.9 percent) added via election contests were located outside of the former-slave states.

³² The Republicans would also void the election of Robert C. De Large (R-SC) in the 42nd Congress, but the seat remained vacant for the remainder of the congress.

³³ For examples of these various corrupt practices, see Kousser (1974), Argersinger (1985-86), Perman (2001), and Summers (2001; 2004).

Table 5 documents the Republican presence in the former-Confederate South between the 40th and 61st Congresses (1867-1911) and notes the number of Republican seats generated specifically via election contests. Between the 40th and 43rd Congresses (1867-75), the Republicans controlled a majority of House seats in the former-Confederate South, which was accomplished almost wholly through the standard electoral process: only 7 of the 150 Republican seats (or 4.7 percent) resulted from contested elections.

[Table 5 about here]

Beginning in the 44th Congress (1875-77), with the Democrats' resurgence, the Republicans' share of seats dropped off substantially. It soon became clear that without the help of contested elections, the Republicans could only count on single digits in the former Confederacy. Thus, on the next five occasions when the Republicans controlled the House, contested elections became a major tool to boost the party's southern seat totals. Of the 58 seats that the Republicans controlled during these five Congresses, twenty (or 34.5 percent) came directly via election contests.

VI. The End of Contested Elections as a Partisan Strategy

After the 56th Congress (1899-1901), the strategic use of contested elections ended quite abruptly. Despite retaining majority control of the chamber, the Republicans did not use election contests to add a single southern seat over the next five Congresses. What accounts for this change?

Three complementary explanations can be provided. First, while contested elections had added Republican seats in the South and were supported by prominent party leaders like President Harrison, many Republicans were not enthusiastic about their continued use as a partisan device. One very vocal opponent was Thomas B. Reed, Republican Speaker of the

House in the 51st (1889-91), 54th (1895-97), and 55th (1897-99) Congresses. Reed believed that the contested election process was incredibly costly, requiring committee members to read thousands of pages of testimony and the House as a whole to spend weeks and sometimes months each session considering arguments and rendering decisions (Robinson 1930: 76, 85).³⁴ His principal concern was the Republican Party agenda, which was often put on hold for contested election cases. As Reed (1890: 114-15) stated, election contests “consume the time of the House to the exclusion of valuable legislation.” Thus, in Reed’s mind, the Republicans had become too fixated on adding southern seats; in the meantime, valuable time was wasted and the party’s legislative agenda had stagnated. Consequently, the party suffered, as the Republicans had managed to capture the House only two of ten times between the 44th (1875-77) and 53rd (1893-95) Congresses.³⁵

Second, the strategy of using election contests to maintain a Republican presence in the former-Confederate South was largely a failure. Most of the Republicans who successfully unseated Democrats via election contests were unable to build a base of support and maintain control of their districts. Of the 15 successful Republican contestants in the Republican-controlled 47th, 51st, 54th, 55th, and 56th Congresses who ran for reelection to the subsequent Congress, only *six* were reelected. And, of those six, only *two* were elected outright. The other

³⁴ Henry Cabot Lodge (R-MA), a member of the Committee on Election in the 50th Congress, echoed Reed’s concerns, suggesting that contested election cases consumed 30 to 60 days in each session of Congress (*New York Herald*, November 30, 1889).

³⁵ Reed also had first-hand experience with election contests, having had his own seat contested in the 47th Congress (1881-83). The contestant in the case, Democrat Samuel J. Anderson, leveled a number of charges, chief among them that a number of his would-be voters were intimidated by Reed’s supporters and did not participate in the election. Filing a short brief with the Committee on Elections, Reed stated: “If I could scare them as easily as the contestant seems to think and by means as inadequate as he has proved, I have certainly been recreant in a plain duty. I ought to have scared more of them” (quoted in Robinson 1930: 75). Both the committee and the House found the evidence presented by Anderson flimsy and ruled in Reed’s favor.

four gained their seats via *another successful election contest*.³⁶ More generally, of the 20 Republican seats achieved via election contests in these five Congresses, only *eight* would be controlled by the Republican Party in the next election. And only *three* of those eight would be won outright.

Moreover, the *loyalty* of these successful Republican contestants left much to be desired. Cohesion scores for Republicans in the former-Confederate South on party votes appear in Table 6. For each of the five Congresses in question, southern Republicans elected outright were significantly more supportive of the party than were southern Republicans seated via election contests. Thus, in addition to being unable to maintain control of contested seats across congresses, Republicans received very little “bang for the buck” from those members who held contested-House seats. As a result, it was in many ways a no-win strategy: it was a time-consuming process to “flip” a seat, and the ensuing benefit was minimal.

[Table 6 about here]

Third, and finally, the changing electoral landscape in the late-1890s made the continued use of election contests unnecessary. To reiterate, after the Democrats had reemerged as a national power in the mid-1870s, the Republicans endeavored to maintain a southern presence because it was necessary to do so. That is, the two congressional parties were running neck-in-neck in their competition for voters for the next twenty years; thus, if they cared about capturing and maintaining control of the House, the Republicans could not afford to ignore the South entirely. Contested elections provided them with an opportunity to add southern seats, despite the Democrats’ iron grip on the electoral process in the South.

³⁶ In fact, *one* candidate, William F. Aldrich (Alabama, 4th District), won *three* successive election contests, in the 54th, 55th, and 56th Congresses.

This all changed, however, with the congressional elections of 1894, which produced a national, electoral realignment. Battling over industrial, agrarian, and monetary issues, the Republicans and Democrats emerged from the 1894 elections with a new distribution of solid, lasting constituencies – and the Republicans were the better for it. As Brady (1988: 61) states, these elections “converted competitive two-party states in the industrial East and Midwest into solid Republican regions and made the Border states ... [which] were solidly Democratic before 1894 ... into a competitive two-party region.”³⁷ In effect, the two parties offered distinct economic platforms in the mid-1890s, and the electorate (outside of the South) overwhelmingly supported the Republican agenda. This is illustrated in Figure 2. The 1894 elections produced a sizeable Republican uptick in every region of the nation. For the next decade-and-a-half, this surge would either be maintained or increase in every region outside of the South, leaving the Republicans firmly in control of New England, the Mid-Atlantic, the Midwest, and the West and battling for control of the Border-South.

[Figure 2 about here]

As a result of this electoral realignment, the Republicans would reassess their partisan strategies. In effect, as Valelly (1995: 208) states, the South became “superfluous to Republican Party interests,” as the Republicans no longer needed southern representation to maintain a working majority in the House. Consequently, they could heed Reed’s advice by dropping their (largely unsuccessful) contested-election strategy and focusing their energies on their policy agenda. This did not happen immediately, however, as it was not initially clear whether their electoral victories in the mid-to-late 1890s reflected a temporary swing or a more general, lasting movement. Hence, the Republicans proceeded cautiously and continued using election contests to add southern seats – four in the 54th (1895-97) Congress, and three each in the 55th (1897-99)

³⁷ For a similar breakdown, see Valelly (1995; 2003).

and 56th (1899-1901) Congresses. After President William McKinley's reelection in 1900, however, Republican Party leaders were confident in their newfound electoral success, and the partisan use of election contests (and the Republican presence in the South) vanished.

VII. Examining the Senate

In examining the Republicans' use of contested elections as a partisan strategy in the late-nineteenth century House, a natural question emerges: was a similar strategy employed in the Senate? The answer is no. While contested elections in the Senate reached their high-point during Reconstruction, they all but dried up by the late-1870s. In fact, between the 46th and 56th Congresses (1879-1901), only two contested elections cases from Southern states were considered in the Senate.³⁸

This divergence can be explained in part by an institutional difference. That is, state legislatures were an additional component of the contested election process in the late-nineteenth century Senate – prior to the adoption of the 17th Amendment, Senators were elected by state legislatures, rather than directly by the people. And while the Republican Party possessed majorities in many southern state legislatures in the decade after the Civil War, the subsequent situation mirrored that of the national level: the reemergence of the Democratic Party in the early-to-mid 1870s combined with the gradual withdraw of Union troops from the South ended the Republicans' southern ascendancy very quickly. By 1877, the Republicans had lost majority control of every state legislature. And with threats and violence toward African Americans continuing unabated and the rise of Jim Crow Laws, the Republican Party disappeared in all practical terms from many states. This is illustrated in Table 7. Between 1877 and 1900, the average Republican seat share across state legislatures in the former-Confederate South was 11.1

³⁸ Both cases were from Florida, and both ended in dismissal.

percent in the lower chamber and 9 percent in the upper chamber. In eight of the eleven states, the average Republican seat share was below 12 percent in both chambers. And even in states like North Carolina and Tennessee, where the Republican organization remained active, the average Republican seat share was less than 30 percent.

[Table 7 about here]

As a result, adding southern seats via contested elections was problematic for the Republican Party after Reconstruction. Since Senators were elected by state legislatures, and the Republicans had such a small share of seats in Southern state legislatures, each Senate contest would require an investigation into *many* state-level elections. That is, in order to generate a state-legislative majority so that a Republican Senator could be elected, a substantial number of seats would need to be flipped, which would require investigating a substantial number of state-level elections. For the Senate Republicans, this was simply not worth the effort, especially since, despite the Democrats' resurgence, the Republicans still controlled the Senate eight of ten times between the 44th (1875-77) and 53rd (1893-95) Congresses.^{39, 40}

For House Republicans, on the other hand, election contests *were* worth the effort. This was because a simple, direct link existed between a district election and a House seat. Stated another way, while each Senate seat was tied to *multiple* state-level elections and thus required *multiple* coordinated investigations, each House seat was tied to *one* district election and thus necessitated *one* basic investigation. At a time when every seat mattered and the Republicans

³⁹ The Republicans' control of three of these Congresses was rather tenuous, however. They held a bare majority in the 48th (1883-85) and 50th (1887-89) Congresses, and they were dead even with the Democrats in the 47th Congress (1881-83), but controlled the chamber thanks to a Republican Vice President and an arrangement with Independent William Mahone (see Valelly 1995: 201-02).

⁴⁰ The Republicans were largely able to control the Senate (and the Presidency) from the late-1870s through the mid-1890s despite the Democratic resurgence thanks to the strategic admittance of key Western states with Republican bents, and the strategic refusal to admit other (likely Democratic) Western territories. This "state admittance game" allowed the Republicans to protect the policies that they implemented during the Civil War and Reconstruction. See Stewart and Weingast (1992) for a more extensive discussion.

were struggling electorally, losing majority control of the House to the Democrats eight of ten times between the 44th (1875-77) and 53rd (1893-95) Congresses, election contests as a partisan strategy made sense. Thus, variance in the “electoral connection” between the House and Senate and a different sense of Republican “urgency” across the two chambers in the late-nineteenth century led to different patterns of election contests.

VIII. Conclusion

I have argued in this essay that Republicans in the late-nineteenth century House used contested election cases as an overt partisan strategy to combat the illegal electoral practices by white Southern Democrats. Specifically, after the Democrats’ resurgence in the mid-1870s, the Republicans, who enjoyed little meaningful opposition going back to the Civil War, quickly found themselves in an electoral dogfight for national supremacy. While part of this Democratic resurgence took place in the north, after a midwestern economic depression combined with citizens’ growing fatigue toward Reconstruction policy to produce an anti-Republican backlash, part also took place in the South, where Democratic-sanctioned fraud and corruption quickly snuffed out Reconstruction-era Republican gains. To stem the tide, the Republicans realized that they could not cede control of the South completely to the Democrats; yet, with the Union army no longer stationed in the former Confederacy, no enforcement mechanism was present to insure fair elections. Thus, the Republicans turned to an institutional mechanism, contested election cases, when they controlled the House, unseating southern Democrats and replacing them with Republicans. This was done both to increase their numbers and to build a southern foothold, in hopes that a southern Republican organization could be resurrected. This strategy continued through the mid-to-late 1890s, when the Republicans realized that the 1894 electoral realignment was a permanent one; as a result, they could afford to ignore the South, as they were highly

competitive or dominant in every other region of the country, and thus the active pursuit of election contests came to an end.

This leads, of course, to the following question: why did contested elections not reemerge as a partisan strategy in the 1910s and 1920s, when the Democrats began to contend once again for national preeminence? While this question deserves a more extended examination, several complementary reasons can be suggested. First, the information costs of contesting elections increased, as illiteracy rates declined and media coverage (including radio) expanded. In effect, the populace was simply better informed, which required party leaders to better explicate and justify their reasons for pushing election contests and thereby attempting to overrule the decisions of the electorate. Second, related to the first point, the South was no longer a battleground, as Jim Crow laws and state constitutional changes effectively eliminated African American electoral participation (Kousser 1974; Perman 2001). During the late-nineteenth century, intimidation and violence toward African Americans had kept the electoral costs of election contests low for the Republican Party as a whole, as “fairness” and “Democratic intransigence” played well as campaign issues with Republican voters in the North (Bensel 1984: 87). By the early twentieth century, legal disfranchisement took these “morality” issues out of play, and election contests outside of the South (and the “undemocratic” nature in which they were often portrayed) became quite costly to both parties. Third, balloting became secret (after the adoption of the Australian ballot) and voting technology improved, making it considerably more difficult for outright fraud to enter into congressional elections. As fraud allegations were at the heart of a large number of prior cases, these changes greatly reduced the basis for potential election contests.

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Figure 1: Contested Election Cases in the House of Representatives, 1789-2002

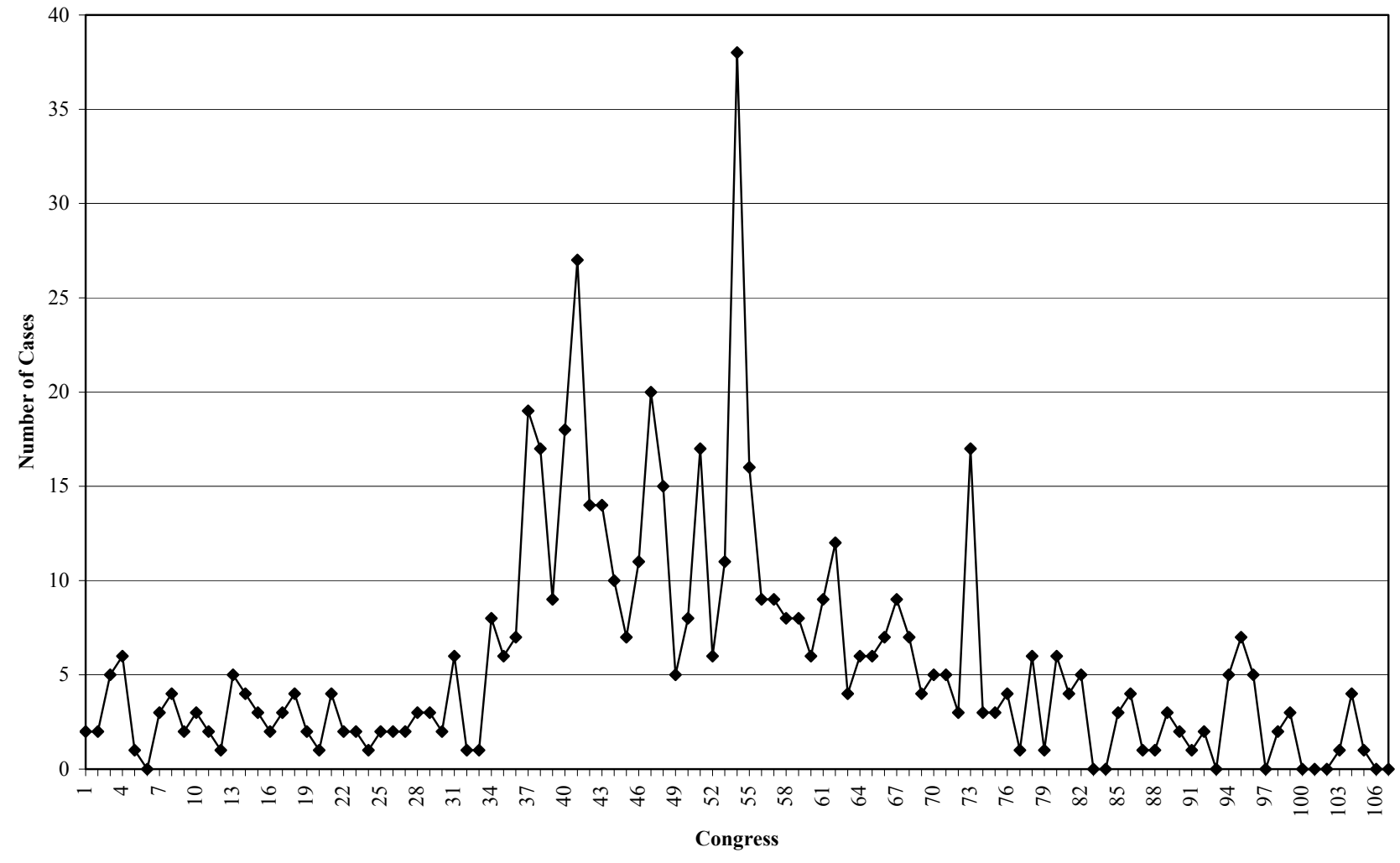
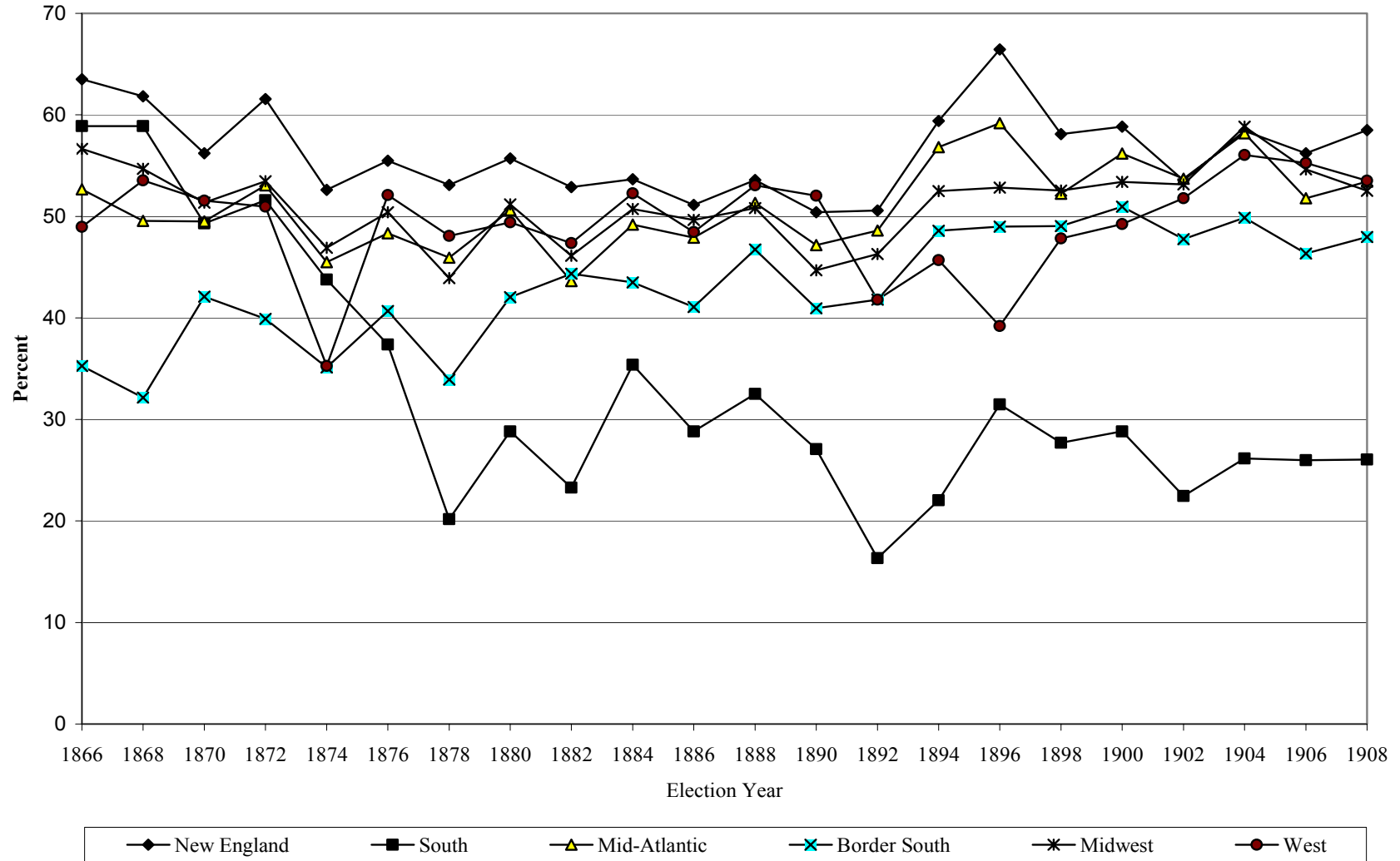


Figure 2: Republican Congressional Vote Totals, by Region



Source: Rusk (2001: 226-28)

Table 1: Outcomes in Contested Election Cases, by Era

	Antebellum Period	Late 19th Century	20th and 21st Centuries
Contestee Victory	61.7	57.1	85.4
Contestant Victory	22.4	28.7	10.8
Seat Vacated	15.9	14.2	3.8
Number of Cases	107	282	212

Note: Cell values represent percentages. For example, 61.7 percent of cases during the Antebellum Period resulted in victories for the contestee.

Table 2: Percentage of Election-Contest Roll Calls Classified as “Party Votes”, by Era

	Antebellum Period	Late 19th Century	20th and 21st Centuries
Party Votes	76.9	94.6	79.3
Perfectly-Aligned Party Votes	9.6	20.7	17.2
Total Roll Calls	52	111	29

Note: Cell values represent percentages. For example, 76.9 percent of election-contest roll calls during the Antebellum Period can be classified as “party votes.”

Table 3: The South and Contested Election Cases, 1867-1911

Congress (Years)	Majority Party	Cases Involving Former Confederate States	Cases Involving Other Former Slave States	All Cases
40 (1867-69)	Republicans	5	8	14
41 (1869-71)	Republicans	16	4	27
42 (1871-73)	Republicans	11	0	13
43 (1873-75)	Republicans	9	3	12
44 (1875-77)	Democrats	6	0	9
45 (1877-79)	Democrats	3	1	7
46 (1879-81)	Democrats*	5	0	11
47 (1881-83)	Republicans	16	1	19
48 (1883-85)	Democrats	7	1	13
49 (1885-87)	Democrats	0	0	5
50 (1887-89)	Democrats	2	2	8
51 (1889-91)	Republicans	12	4	17
52 (1891-93)	Democrats	2	0	6
53 (1893-95)	Democrats	5	1	10
54 (1895-97)	Republicans	28	4	38
55 (1897-99)	Republicans	10	2	16
56 (1899-1901)	Republicans	4	3	8
57 (1901-03)	Republicans	5	3	9
58 (1903-05)	Republicans	1	1	7
59 (1905-07)	Republicans	5	1	7
60 (1907-09)	Republicans	3	0	5
61 (1909-11)	Republicans	7	0	9

Note: Cases involving U.S. Territories are excluded from the “All Cases” category.

* indicates that the party had only a plurality in a given Congress.

Table 4: Seat Changes Resulting from Contested Election Cases, 1867-1911

Congress (Years)	Majority Party	<u>Majority Party Additions</u>			<u>Minority Party Additions</u>		
		Former Confederacy	Other Former Slave States	Former Non-South	Former Confederacy	Other Former Slave States	Former Non-South
40 (1867-69)	Republicans	0	1	1	0	0	0
41 (1869-71)	Republicans	5	0	5	0	0	0
42 (1871-73)	Republicans	1	0	0	2	0	0
43 (1873-75)	Republicans	1	1	0	3	1	0
44 (1875-77)	Democrats	2	0	2	0	0	0
45 (1877-79)	Democrats	2	0	3	0	0	0
46 (1879-81)	Democrats*	1	0	0	1	0	0
47 (1881-83)	Republicans	5	1	0	0	0	1
48 (1883-85)	Democrats	2	0	4	2	0	0
49 (1885-87)	Democrats	0	0	1	0	0	0
50 (1887-89)	Democrats	0	0	0	0	0	0
51 (1889-91)	Republicans	5	3	0	0	0	0
52 (1891-93)	Democrats	0	0	1	0	0	0
53 (1893-95)	Democrats	0	1	2	0	0	0
54 (1895-97)	Republicans	4	2	3	0	0	0
55 (1897-99)	Republicans	3	0	0	0	0	0
56 (1899-1901)	Republicans	3	0	0	0	0	0
57 (1901-03)	Republicans	0	2	0	0	0	0
58 (1903-05)	Republicans	0	0	2	0	0	0
59 (1905-07)	Republicans	0	1	0	0	0	0
60 (1907-09)	Republicans	0	0	0	0	0	0
61 (1909-11)	Republicans	0	0	0	0	0	0

* indicates that the party had only a plurality in a given Congress.

Table 5: Election Contests and Republican Seats in the Former-Confederate South, 1867-1911

Congress (Years)	Majority Party	Total Republican Seats	Republican Seats Due to Contested Elections	Total Seats
40 (1867-69)	Republicans	36	0	41
41 (1869-71)	Republicans	44	5	58
42 (1871-73)	Republicans	29	1	58
43 (1873-75)	Republicans	41	1	73
44 (1875-77)	Democrats	14	0	73
45 (1877-79)	Democrats	8	0	73
46 (1879-81)	Democrats*	3	1	73
47 (1881-83)	Republicans	12	5	73
48 (1883-85)	Democrats	9	1	85
49 (1885-87)	Democrats	8	0	85
50 (1887-89)	Democrats	9	0	85
51 (1889-91)	Republicans	14	5	85
52 (1891-93)	Democrats	3	0	85
53 (1893-95)	Democrats	4	0	90
54 (1895-97)	Republicans	13	4	90
55 (1897-99)	Republicans	11	3	90
56 (1899-1901)	Republicans	8	3	90
57 (1901-03)	Republicans	4	0	90
58 (1903-05)	Republicans	2	0	98
59 (1905-07)	Republicans	4	0	98
60 (1907-09)	Republicans	3	0	98
61 (1909-11)	Republicans	6	0	98

* indicates that the party had only a plurality in a given Congress.

Table 6: Mean Cohesion Scores for Republicans in the Former-Confederate South

Congress (Years)	Members Elected Outright	Successful Contestants
47 (1881-83)	.908 (7)	.456 (4) ^a
51 (1889-91)	.939 (9)	.425 (4) ^b
54 (1895-97)	.742 (9)	.377 (4)
55 (1897-99)	.897 (8)	.412 (3)
56 (1899-1901)	.900 (5)	.474 (3)

Note: Numbers represent mean Republican cohesion scores (percentages) on “party votes,” defined as those votes in which at least 50 percent of Republicans oppose at least 50 percent of Democrats. The number of members in each category for each Congress appears in parentheses.

^aA fifth successful contestant, James Q. Smith, died before the 47th Congress convened.

^bA fifth successful contestant, John M. Clayton, was assassinated while collecting testimony related to his election case. His seat was awarded posthumously.

Table 7: Average Republican Seat Share in Southern State Legislatures, 1877-1900

State	Lower Chamber	Upper Chamber
Alabama	4.3	3.0
Arkansas	8.9	2.9
Florida	11.8	8.2
Georgia	2.1	1.1
Louisiana	15.7	14.1
Mississippi	4.9	2.2
North Carolina	28.3	24.2
South Carolina	4.0	5.0
Texas	5.7	2.7
Tennessee	27.6	24.8
Virginia	9.0	11.6

Note: Figures represent the average percentage share of legislative seats controlled by the Republican Party in each state for each chamber.

Source: Modified from Burnham (1984).