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**Partisanship and Contested Election Cases
in the House of Representatives, 1789-2002**

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Abstract

This paper identifies, tracks, and examines the 601 contested election cases in the House of Representatives from the 1st through 107th (1789-2002) Congresses. One of its chief goals is to assess the degree to which partisanship has been a significant factor in influencing contested election outcomes. The key finding is that a sizeable majority of successful contests have favored the majority party; however, the overall impact of the contested election process, in terms of adding majority party seats, has been quite small on a per-Congress basis. The one exception to this latter finding was during the late-19th century, when a significant increase in successful contests, and majority party additions, occurred. This was due in large part to the Republican Party's strategic use of contested elections as a means of maintaining a presence in the former-Confederate South.

I. Introduction

Article I, Section 5, Clause 1 of the United States Constitution states: “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.¹ Thus, when a given election is contested, that is, when there is a dispute over who is the rightful occupant of a given seat after the ballots have been collected and tallied, each chamber acts as the sole arbiter without external constraint.² 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.³

This paper investigates the procedures and outcomes in contested election cases in one chamber of Congress, the House of Representatives, across time. The subject of contested elections has not received a great deal of scholarly treatment in recent years. While older studies by Henry L. Dawes, C. H. Rammelkamp, De Alva Alexander, and Vincent M. Barnett, Jr. provide excellent historical overviews and valuable contextual accounts, contemporary political scientists have virtually ignored the subject.⁴ In fact, no published studies focusing exclusively on contested elections have appeared in the post-WW II era to update our collective knowledge.⁵

In addition to generating a complete accounting of all contested election cases in the House from the 1st through 107th Congresses (1789-2002), I also begin to examine the distribution of cases across time as well as the determinants of decision making. In doing so, I investigate the chief claim regarding contested elections that appears in the historical literature: that partisanship has been a (and sometimes *the*) guiding force in determining outcomes in contested election cases. The evidence mustered to support this claim is often sketchy. Some evidence, considered quite compelling by many scholars, is actually rather anecdotal in nature.

For example, the following two quotations, the first from Henry L. Dawes, the Chairman of the Committee on Elections at the time, and the second from Thomas B. Reed, the Speaker of the House at the time, are often cited when making the claim for partisanship:

All traces of a judicial character in these proceedings are fast fading away, and the precedents are losing all sanction. Each case is coming to be a mere partisan struggle. At the dictate of party majorities the committee must fight, not follow, the law and the evidence; and he will best meet the expectations of his appointment who can put on the record the best reasons for the course thus pursued. This tendency is so manifest to those in a situation to observe, that it has ceased to be questioned, and is now but little resisted. There is no tyranny like that of majorities, and efforts in the past to resist them, and to hold the judgments of the Committee of Elections up above the dirty pool of party politics, have encountered such bitter and unsparing denunciations, and such rebuke for treason to party fealty, that they are not likely often to be repeated.⁶

The decision of election cases invariably increases the majority of the party which organizes the House, and which herefore appoints the majority of the Committee on Elections.⁷

Other evidence is based on results from the contested-election cases themselves; studies in this vein take the next step and generate some simple statistics to support their assertions. What are the general findings with regard to partisanship? Results are mixed. Some argue that partisanship has always been the overriding factor in deciding contested election cases.⁸ Others argue that partisanship was a significant factor in the nineteenth century, especially the period after the Civil War, but *not* in the twentieth century.⁹

Thus, much work needs to be done to make the contested election process in the House, and the factors that influence it, transparent. The remainder of this article will endeavor to do just that. In the end, I believe significant strides will be made, both in developing a fuller understanding of contested elections and in establishing the role that partisanship has played in determining case outcomes. In addition, a more subtle argument will be developed, specifically that contested elections were the vehicle by which the Republican Party sought to preserve a

party organization in the South during the late-nineteenth century. That is, in the face of evenly divided national electorates from the mid-1870s through the early-to-mid-1890s and a growing Democratic-led disfranchisement of African Americans in the South, Republicans turned to contested elections as an institutional equalizer, a tool to maintain a sufficient number of southern seats to retain majority control of the House. Thus, for a period of two decades, contested elections played a crucial role in southern politics and House politics specifically, as well as national party politics more broadly.

II. Background Context

Before proceeding to an analysis of contested elections, I first provide some background context. In the following three subsections, I describe the historical mode of procedure in contested election cases, present an overview of contested election cases across time, and recount several interesting and noteworthy cases.

Mode of Procedure in Contested Election Cases

Shortly after the First Congress convened in 1789, the House appointed a standing committee – the Committee on Elections – to devise a procedure for investigating contested election cases. The Committee on Elections recommended that it play a strictly clerical role, wherein it would collect all available evidence and report it back to the chamber, so that the membership might decide on its merits.¹⁰ Soon thereafter, the House instructed the Committee on Elections to report back the *facts of the case*, as well as the evidence, so that the membership might more efficiently allocate its time.¹¹ In the Second Congress, the House went a step further, instructing the Committee on Elections to sift through the evidence gathered and report back a *recommendation* on the case, i.e., whether the House should rule in favor of the contestant (the

individual contesting, or disputing, the election), the contestee (the individual holding the election certificate, who was typically seated), or neither (in which case the recommendation would be that the election, and the seat, be vacated). Possessing this new responsibility, the Committee on Elections adopted informal, and irregular, procedures for taking testimony and collecting evidence.¹²

This informal mode of procedure would create difficulties, as requirements for gathering evidence and recording depositions tended to shift based on the whims (and partisanship) of individual committee members. After failed attempts in 1791, 1796, and 1797, a law was passed in 1798, during the Fifth Congress, which instituted a more formal mode of procedure: establishing the manner of serving summons on witnesses, the process of serving notification on the opposing party, the manner in which witnesses would be examined and testimony taken, etc.¹³ This law was temporary, however, and, while renewed in 1800,¹⁴ continued in force only until 1804, after which it was allowed to expire.¹⁵ While attempts to revive a uniform mode of procedure would be made in 1810, 1813, and 1830, no law upon the subject would be instituted until mid-century, leaving the Committee on Elections without a formal framework to conduct its work.¹⁶ This was far from an ideal situation. As Dawes noted, “Against this loose and unsatisfactory procedure there was a constant struggle.”¹⁷ For the most part, evidence collected and testimony taken by the Committee on Elections during this period was done in accordance with the practices and procedures in the States wherein the contests arose.¹⁸

Finally, in 1851, a uniform mode of procedure for contested elections was enacted into law.¹⁹ The contestant was given 30 days after the election results were announced to provide formal notice, in writing, to the contestee. Moreover, the contestant was required to specify all grounds on which the contest was based. The contestee was then given 30 days to respond to

charges made by the contestant, including an elaboration as to why the election was valid. Thus, within 60 days following an election, the issues under consideration were to be clearly articulated. The contestee and contestant would then have the next 60 days to take and transcribe testimony, which would upon completion, along with all other relevant materials, be sealed and sent to the House Clerk. The evidence would then, shortly after the commencement of a given congress, be printed and submitted by the House Clerk to the Committee on Elections.²⁰ This was a marked improvement over the prior informal process, which would often require the committee itself to gather evidence during the course of a given congress.

For the most part, the mode of procedure specified in the Act of 1851 would be the guiding statute for settling contested election cases for more than a century.²¹ 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, especially with regard to the taking of witness testimony and the recounting of ballots.²² In addition, it has been argued that a contestant's "burden of proof" standard is higher under the FCEA, which has led to most cases being dismissed by the House over the last three decades.²³

Lastly, the committee responsible for managing contested election cases has changed over time. In 1895, the Committee on Elections was split into three committees – Elections #1, Elections #2, and Elections #3 – at the beginning of the 54th Congress. 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.²⁴ Since the 80th Congress, *all* contested election cases in the House have been dealt with by the Committee on House Administration.²⁵

A Short Historical Overview of Contested Elections

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.²⁶ The distribution of these cases is illustrated by the solid line in Figure 1. In the Antebellum period, relatively few contested election cases were dealt with in the House – only 107 over the first 36 Congresses, or an average of just under 3 per Congress. However, a significant jump occurred with the Civil War, 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 high-water mark for contested election cases, in the 54th Congress (1895-97). In all, the period between the Civil War and the turn-of-the-century, the 37th through 55th Congresses (1861-1899), witnessed 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 exceeded single digits only twice, 12 in the 62nd Congress (1911-1913) and 17 in 73rd Congress (1933-35), and in 16 congresses no more than one case has been considered. In total, the period between the 56th and 107th Congresses (1899-2002) witnessed 212 contested election cases, or an average of just over 4 per Congress.

[Figure 1 about here]

The dotted line in Figure 1 illustrates the number of House seats that are contested. For the most part, there is a one-to-one mapping between contested election cases and House seats, that is, a contested election case usually deals with a single House seat. However, for several

reasons, this is not always so. First, some cases deal with multiple seats. The clearest example is the case in the 28th Congress (1843-45) when 21 seats were part of a single contest. The basis of the case was the General-Ticket system that the states of New Hampshire, Georgia, Mississippi, and Missouri continued to employ to elect their House members, despite the provision in the Apportionment Act of 1842 mandating single-member district elections. Because of the nature of the contest, the Committee on Elections dealt with all 21 seats in one case. Second, multiple cases occasionally deal with the same seat. This can occur when the Committee on Elections determines that an election contest first involves a *prima facie* case (when, for example, two individuals possess what appear to be valid election certificates), before a case can be evaluated on its merits. This can also occur if there are multiple elections for a single seat in the same Congress (because of death, retirement, or some other vacancy), opening the door for multiple contests. Third, some cases deal not with districts (or states), but with U.S. Territories, which are entitled to representation in the House, though territorial delegates may not vote. Thus, contested election cases involving territorial seats do not constitute “true” House seats. In all, of the 601 contested election cases, forty-three deal with disputes over territorial representation.

Based on the Figure 1 data, Figure 2 illustrates the percentage of House seats contested in each Congress. Because the number of seats per Congress has varied over time, the impact of election contests is better assessed on a percentage basis, rather than using raw per-Congress seat totals. As the figure illustrates, the percentage of contested House seats has fluctuated considerably over time. While the number of contested seats has exceeded 10 percent on one occasion – 10.3 percent in the 28th Congress (1843-45) – and 6 percent on three other occasions – 6.6 percent in the 40th Congress (1867-69), 8.6 percent in the 42nd Congress (1871-73), and 6.1 percent in the 47th Congress (1881-83) – the average across the 107 Congresses is just under

1.9 percent. This is due, in large part, to a significant decline in election contests in recent decades. Since the 67th Congress (1921-23), the percentage of contested House seats has exceeded 2 percent on only one occasion – 3.9 percent in the 73rd Congress (1933-35) – and the per-Congress average over the time-span is 0.7 percent.

[Figure 2 about here]

Table 1 breaks down the distribution of contested election cases across the various states.²⁷ In all, forty-six of the 50 states have experienced an election contest, with Virginia leading the way with 53 cases, or over 9 percent of the nation's total across time. On the whole, the distribution of election contests reveals a Southern bias, as more than 40 percent of the cases originate from the eleven former-Confederate states. This bias is due, in large part, to legislative battles during the late-nineteenth century over partisan control of the political process in the South, a topic which will be discussed at length in Section IV.

[Table 1 about here]

As to the basis of election contests, cases have been brought on many different grounds. Often, individual contests contain multiple charges; here, I have attempted to identify the *primary* ground in each case.²⁸ Table 2 presents a breakdown of the 601 cases across a number of categories. A plurality of cases have been brought based on charges of criminal activity or intent, either by the contestee or by others acting on the contestee's behalf. Such charges have taken the form, for example, of bribery of voters and/or election officials, violations of Federal and State corrupt practices acts, illegal alteration of ballots, and fraudulent certification of election results. A significant number of cases have also been based on serious election irregularities *not* of a criminal nature. Examples include insufficient provision of polling places, voting by persons not properly registered, improper treatment of ballot boxes, and inadequate

assemblage of election officials, among many others. A smaller number of cases have dealt with charges of illegal elections, stemming largely from the unconstitutional nature of state-level election laws, and improper counting/canvassing of ballots. Additional, more specialized, categories are listed in the table.

[Table 2 about here]

Noteworthy Cases

There have been several noteworthy contested election cases in the House across history. I will detail three here: the New Jersey case in the 26th Congress, *Smith v. Jackson* (West Virginia) in the 51st Congress, and *Kunz v. Granata* (Illinois) in the 72nd Congress. Each case provides some individual evidence for partisanship as a determinant in the House outcome. Moreover, in the New Jersey and Kunz cases, the outcome in the election contest determined majority control of the House. A more systematic examination of the role of partisanship in election contests appears in the following section.

The issues surrounding the first case, involving the seating of five members from the state of New Jersey, erupted at the beginning of the 26th Congress (1839-41), as the House attempted to organize. Ten men – five Whigs and five Democrats – appeared before the House to claim the five seats. In fact, these five disputed seats would be pivotal, as the Democrats, who held a small numerical advantage over the Whigs, could not muster enough support to elect a speaker. This was due to two factors: (1) a small group of Anti-Masons who opposed the Democratic candidate, and (2) a small group of conservative Democrats from Virginia and North Carolina, who held more Whiggish preferences on economic policy and used the situation involving the New Jersey delegation as leverage in the organization of the House.

The cause of the New Jersey dispute revolved around rejected ballots in two towns – Millville and South Amboy. Based on claims of widespread illegal voting,²⁹ and under pressure from the Whig Governor, the respective county clerks rejected the town returns. As the state's representatives were elected via General Ticket, these returns were crucial for the entire New Jersey delegation. The alleged illegal votes having been thrown out, the top vote-getters for these five disputed seats were Whigs. Thus, the Governor presented them with the certificate of election. However, the New Jersey Secretary of State, who was a Democrat, rejected the illegal votes claim, counted the ballots, and certified that the five disputed seats were won by Democrats. Thus, five Whigs and five Democrats held various certified claims on the five House seats.³⁰

Unable to organize, the House tried to rule on the New Jersey claims, but, after heated debates and discussions, failed.³¹ Eventually, two weeks into the first session, enough conservative Democrats threw their support behind the Whig candidate, Robert M. T. Hunter of Virginia, to elect him speaker. Another two weeks would be spent on electing the remaining House officers. Finally, a full four weeks into the session, Speaker Hunter appointed the various standing committees. The Committee on Elections was composed of five Democrats and four Whigs, and, after sorting through the testimony and considering the evidence in the New Jersey case, ruled that the illegal vote claims had no basis and recommended that the Democratic members be seated.³² The report of the committee was adopted shortly thereafter on a 101-22 vote, just a quorum, as many members refused to participate. In the end, controlling the five New Jersey seats meant that the Democrats possessed a majority of seats in the 26th House, rather than just a plurality.³³

Writing in 1901, Chester Rowell reflected on the New Jersey case:

The importance of this case is not derived from any particular novelty or importance in its issues, but simply from the fact that the political control of the House turned on its determination, and that on this account it received a more elaborate discussion, both in committee and in the House, than has ever been given to any other case. It is interesting also to note that this is the first case in which charge, now so common, that the majority of the committee were controlled in their determinations by partisan considerations, was solemnly and directly made by a minority of the committee in a report to the House.³⁴

The second case involved a contested election, but simply as a pretext. In the 51st Congress (1889-91), the House was considering the case of *Smith v. Jackson* (West Virginia, Fourth District), when the Speaker, Republican Thomas Reed, used the opportunity to institute a rules change that would restrict the rights of the minority party.

During the 1880s, the minority party frequently used the “disappearing quorum” to stifle the ability of the majority party to pursue its agenda. That is, House rules dictated that a bare majority of the membership – a quorum – was necessary before House business could be conducted. At this time, the two parties’ congressional delegations were often very close in number. Thus, minority party leaders realized that the majority party typically had a very slim margin of error. If, for example, several majority party members were out of town or otherwise indisposed, the majority could not by itself produce a quorum. Thus, on those occasions, minority party leaders began instituting the “disappearing quorum,” when minority party members would not respond to their names during the call of the roll.³⁵ This would be a constant frustration to the majority throughout the decade.³⁶

Reed used the *Smith v. Jackson* contested election case to break the disappearing quorum. His timing was strategic. That is, the Republican Party was often divided on economic issues, primarily currency issues but also tariff issues, during this period,³⁷ yet, contested election cases typically produced partisan consensus. Thus, as Eric Schickler states, “Reed waited to make his move until party passions were most salient. That moment came when the House began

consideration of contested election cases... Reed knew that Republicans would be loath to allow Democrats to obstruct the seating of GOP members.”³⁸ Reed was right. On July 29, 1890, during House consideration of *Smith v. Jackson*, Reed ruled that non-voting (and non-responding) representatives could be counted as present, for purposes of achieving a quorum. After a heated debate, the House Republicans supported Reed’s decision on a perfectly aligned party vote.³⁹ Over the next few days, additional rules changes would be produced, actively suppressing the rights of the minority and strengthening the hand of the majority. The sum total of these rules changes would come to be known as the “Reed Rules,” which would go down in the annals of congressional history/development as perhaps the most important rules change(s) of the nineteenth century.⁴⁰

The third and final case was *Kunz v. Granata* (Illinois, Eighth District) in the 72nd Congress (1931-33). This case was held in a very tightly divided House, as the general election had returned 217 Republicans, 217 Democrats, and one member of the Farmer-Labor Party.⁴¹ However, the Republicans were not a homogenous group, with storms brewing over a host of economic issues. As a result, several Farm Belt Republicans decided to withhold their support from the Republican speakership candidate, Nicholas Longworth of Ohio, and allow the Democrats to organize the House. John N. Garner (D-Texas) was subsequently elected speaker.

The Democrats soon discovered that organizing the House *and* maintaining working majorities were two very different things. The Democratic leadership could count on the support of Paul Kvale, the Farmer-Labor member from Minnesota, on most issues, as well as a few midwestern Republicans on some issues, but they constantly needed to assemble all of their partisans to have a chance. Even the smallest number of Democratic absences on a given day

could ground their agenda to a halt. Thus, the Democrats hoped to add to their partisan ranks during the Congress.

The first (and only real) opportunity came with the consideration of the *Kunz v. Granata* case. Republican Peter C. Granata was elected from the Eighth District in Illinois, over the incumbent Democrat Stanley H. Kunz, by a total of 1,171 votes. Kunz charged fraud and gross irregularity in counting the ballots, and a general recount was ordered. The recount, overseen by a Democratic board of election commissioners, reported back a majority of 1,288 votes for Kunz. Their basis was that a number of “straight ticket” Democratic ballots had been thrown out because of inconsistent markings. The Democrats on the Elections Committee, consisting of a majority, supported the recount results, while the Republicans on committee opposed them. The Republicans claimed that a number of the supposed “straight ticket” Democratic ballots, which were now being counted for Kunz, had actually been marked in the congressional column for Granata. In addition, they claimed that the recount generated a host of new ballots, which had never been seen or counted before.⁴²

A host of angry debate followed, with a flurry of votes. Each time the Republicans lost. Finally, Kunz was elected (and Granata unseated) on a voice vote, without opposition, as the Republicans withdrew and accepted their defeat. The Democrats thus had achieved some additional wiggle room in the House – in fact, they now possessed a bare majority of the chamber – but not without producing a public spectacle. As Vincent Barnett, Jr. states, “The decision was perhaps as nearly partisan as any that can be found during this period [1918-37]... in all probability the case of *Kunz v. Granata* is an example of the misuse of power by both the Committee on Elections and the House itself in order to attain partisan ends.”⁴³ As Barnett goes on to argue, none of the disputed ballots, which were pivotal to the case, and none of the

testimony taken were ever submitted to the committee. Thus, the committee, as well as the House, based its decision to unseat a sitting member of the minority party entirely on second-hand accounts.

III. Analyzing Contested Election Cases

In this section, I move beyond descriptive and individual-case analyses and begin to examine contested election cases more systematically across time. I focus on trying to identify patterns in House and committee outcomes, with a particular emphasis (later in the section) on assessing the role of partisanship.

How have contested election cases in the House typically been resolved? For the most part, the ruling has been in favor of the contestee. Of the 601 contested election cases, the contestee has emerged victorious in 407 cases (or 67.7 percent), the contestant has won 128 cases (or 21.3 percent), and the election has been 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 3 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. Since the start of the twentieth century (56th-107th Congresses), however, contestees have fared exceedingly well, winning over 85 percent of contested elections cases. While contestants at one time stood a reasonable chance of winning an election contest, this is no longer true in the modern period. 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.⁴⁴

[Table 3 about here]

To investigate the degree to which partisanship has influenced contested election cases, the first question to examine is: to what extent have decisions favored the majority party?⁴⁵ A first cut at an answer involves separating out all cases in which a majority party member was involved in a case (as either the contestee or the contestant), and where a decision other than to vacate the seat was rendered.⁴⁶ In fact, only slightly more than half of the decisions (50.2 percent) were in favor of the majority party candidate.

Yet, this simple result may be misleading. If majority party claimants contest at a higher rate, because they believe they will be awarded a seat simply by virtue of their majority party affiliation, then there will be a selection effect present. That is, many potential frivolous cases will be brought by majority party claimants – leading to dismissals – while only serious cases will be brought by minority party claimants. And, in fact, majority party claimants *do* contest at a significantly higher rate, bringing 72 percent of all cases. Thus, to get a better sense of the degree to which partisanship influences contested election outcomes, we must dig deeper.

One avenue to pursue would be to evaluate only those cases that involved a split within the committee. In a sense, split-committee cases will serve as a control on case quality. For example, if a high number of frivolous cases are in fact brought by majority party claimants, they should be “weeded out” at the committee level. That is, a unanimous committee report should follow from frivolous (and other weak) cases, leading to negative decisions on the House floor. Thus, my assumption is that only serious cases will yield committee splits. The question then becomes: do we see a significant difference in majority-party vs. minority-party outcomes when committee splits occur? The answer is yes – the majority party in fact wins nearly 70 percent of split-committee cases.

Another avenue to pursue would be to examine only those cases in which a contestant successfully unseated a constestee. The question here would be: do we observe impartiality when a seat “flips,” or changes hands? The logic for partisan behavior is straightforward – it is one thing for a majority to allow a minority member to retain his/her seat, while it is quite another for the majority to unseat one of its own in favor of a member of the minority. If we in fact observe a similar ratio of majority-minority and minority-majority “flips,” then this would constitute evidence of non-partisan behavior in decision making. Again, restricting cases to those in which a member of the majority party is directly involved, as either the contestee or contestant, I find that seat flips significantly favor the majority party. In 85.8 percent of the cases in which a contestee has been unseated, the contestant, who gains the seats, has been a member of the majority party. Only 15 times in a total of 106 cases has a sitting majority party member been unseated in favor of a minority party contestant.

The flipped-seat results combined with the split-committee findings, I argue, lends credence to a story of partisanship in contested election cases. Once the frivolous cases brought by majority party claimants are stripped away, and attention is focused on cases that would seem ripe for partisan activity, the outcomes disproportionately favor the majority party.

Committee Rolls

Another issue to investigate is the degree to which the House outcome has differed from the committee’s recommendation in contested election cases, or in other words, the frequency with which the committee has been “rolled.” This question is related to the issue of partisanship, in that committees will be dominated by members of the majority party. Theory developed by Gary W. Cox and Mathew D. McCubbins posits that majority party contingents on committee should act as “agents” for the interests of the underlying majority in the House.⁴⁷ As a result,

committee rolls should be quite infrequent, as the time, effort, and recommendation of the committee will be honored on the floor. Their results on contemporary bill referral data confirm these expectations – the roll rate on final-passage votes across the 55 Congresses in their sample (spanning the years 1877-1986) is 3 percent.

In the 601 contested election cases across time, fifty committee rolls have occurred. Excluding the 43 cases involving territorial delegates and two cases involving seceded states in the 38th Congress where partisan identification of the claimants is difficult to determine, the relevant committee (Elections or House Administration) has been rolled on 39 occasions, or 7 percent of the time.⁴⁸ The relevant information for these cases is reported in Table 4. In fact, as shown, the committee's recommendation was inconsistent with the interests of the majority party in only 10 of 39 cases. In the other 29 cases, either a third-party claimant was involved in the case or the House overruled the pro-majority party recommendation of the committee. Thus, committee rolls were rarely the “fault” of the committee, in that the committee only rarely provided “bad” advice to the floor (in the sense of recommending non-majority party outcomes).⁴⁹

[Table 4 about here]

Roll-Call Voting

Another way to gain leverage on the question of partisanship in contested election cases is to examine roll-call votes. That is, the distribution of individual vote choices in election contests that are decided by roll call can help reveal whether partisanship was a major factor in the case outcomes. Moreover, we can compare party-based models of roll-call voting to ideological models to assess the relative importance of party and ideology.

Before turning to an examination of roll-call votes, I first consider the distribution of cases that elicited roll calls. Table 5 provides a breakdown, both generally and across the three time periods from Table 3. 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 accepting the outcome from the initial election). The cross-period distribution reveals an interesting pattern: the percent of cases determined by roll call was reasonably high prior to the twentieth century, but dropped off considerably thereafter. In fact, in the most recent period, it would not be a stretch to characterize an election contest decided by roll call as something of a “rare event.” These results suggest that the disposition of contested election cases has become more programmatic in recent years.⁵⁰

[Table 5 about here]

Of those election cases determined by roll call, to what extent has partisanship been a factor in the outcome? An initial answer would be to determine how many roll calls constitute “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. Table 6 provides a summary total, as well as a cross-period breakdown. In fact, a distinct majority of roll calls are party votes, exactly 87 percent. In addition, just over one out of every seven roll calls is a perfectly-aligned party vote, in which all voting members of one party oppose all voting members of the other party. Results for the late-nineteenth century are even more extreme – nearly 95 percent of roll calls are party votes, and over one out of every five roll calls is a perfectly-aligned party vote. These latter results are consistent with the general view in the literature that the late-nineteenth century was a particularly partisan era.

[Table 6 about here]

Further evidence of partisanship can be obtained through an examination of individual vote choices on roll calls. Here, a party-based model of roll-call voting can be tested against a simple “naïve” model to determine how much better the former fits the underlying vote-choice data. Moreover, a party-based model can be compared to a competing ideologically-based model to determine whether ideological cleavages provide a better explanation than partisan cleavages. In terms of methodology, the Party Model is a basic logistic regression, where an individual roll-call vote is regressed on a member’s party affiliation. In effect, a vote is deemed “correctly classified” if a member votes with the majority of his party. The Ideological Model follows the same approach, except that instead of party affiliation two ideological “scores” developed by Keith T. Poole and Howard Rosenthal are included as independent variables.⁵¹ The Naïve Model is a unanimous “yea” or “nay” model, based on the direction of the winning side on each roll call. Put differently, the Naïve Model predicts that all members will vote with the “winning” side on each roll call.⁵²

Table 7 documents the performance of each model generally and across periods. The Naïve Model correctly classifies just under 65 percent of all individual-level roll-call votes across all congresses, with slight variations period by period. The Party Model easily outperforms the Naïve model generally, correctly classifying 91.3 percent all individual-level vote choices, as well as in each period. The Party Model does display some classification variance, with a high of 93.5 percent in the most recent era and a low of 84.8 percent in the Antebellum period. Finally, the Ideological Model yields the best classification success of the three models, outperforming the Party Model generally as well as in each period. The improvement, however, is slight, averaging around one additional percentage of classification success.

[Table 7 about here]

The Party Model thus provides an excellent fit to the underlying individual-level vote choices; however, it is marginally surpassed by the Ideological Model. Does this suggest that ideological determinants are always more important than party determinants in explaining individual-level vote choices in contested election cases? Not necessarily. The findings in Table 7 are individual-level results aggregated across all roll calls, either generally or within a particular era. Another option would be to compare how the Party and Ideological Models compare at the individual-level on *each* roll call. This provides a way to determine if the Ideological Model outperforms the Party Model systematically, or if the Party Model emerges as superior in a head-to-head competition on some subset of roll calls.

Table 8 illustrates how the Party and Ideological Models perform on a roll-call by roll-call basis. In fact, the Party Model outperforms the Ideological Model generally, providing superior explanatory power on over 42 percent of roll calls. The Ideological Model outperforms the Party Model on nearly 34 percent of roll calls, while the two models perform similarly on 24 percent of roll calls. These relative percentages are comparable in a period-by-period analysis, except that the Ideological Model outperforms the Party Model during the Antebellum period. Overall, then, the Party Model stacks up quite well in a head-to-head comparison against the Ideological Model. Specifically, the Party Model performs either as well or better than the Ideological Model roughly two-thirds of the time. These results therefore suggest that partisanship is the major determinant on a significant number of contested election roll calls across American history.

[Table 8 about here]

The roll-call voting data in the previous subsection can also be used to examine speculations by Nelson Polsby regarding contested election cases.⁵³ Polsby's seminal *American Political Science Review* article argued that the House became more "institutionalized" over time, as a result of organizational and decision-making structures becoming more universalistic and less particularistic in design. Contested election cases were used to support the institutionalization thesis. Using a series of quotations by members of Congress across time, Polsby argued that references to partisanship ("particularism") as the primary determinant in contested election outcomes had ceased by the early twentieth century. By then, "contested elections" were "settled with much more regard to due process and the merits of the case than was true throughout the nineteenth century."⁵⁴

Polsby's investigation, however, stops short of providing more systematic evidence for a move to universalism in the twentieth century. But he *does* lay out how the transition to a universalistic norm could be identified, specifically by:

measuring the extent to which party lines are breached ... in voting on the floor in contests cases. I have made no such study, but on the accumulated weight of contemporary reports such as I have been quoting, I predict that a time series would show strict party voting in the 19th century, switching to unanimity or near-unanimity, in most cases, from the early years of the 20th century onward.⁵⁵

Results in Table 6 and 7 can be used to examine Polsby's prediction. Is it, in fact, borne out? No. First, since the beginning of the twentieth century, the number of election-contest votes that can be characterized as "party votes" is quite high – approximately 80 percent – with roughly one in six characterized as perfectly-aligned party votes. These results represent only a slight drop off from the late-nineteenth century. If universalism had indeed emerged as the new norm in the twentieth century, party lines should have (largely) broken down on election-contest votes in favor of

unanimous (or near-unanimous) coalitions, and we thus should observe no (or few) votes that would be characterized as party votes.

Second, a model of universalism can be evaluated more directly, by examining the results in Table 7. Specifically, the Naïve Model *is* a model of universalism – wherein *all* members are predicted to vote with the winning side on each roll call. Thus, particularism *and* universalism can be evaluated side-by-side, based on the relative performances of the Party and Naïve Models. And, in fact, the Party Model far outperforms the Naïve Model on election-contest votes since the start of the twentieth century. While universalism, through the Naïve Model, accounts for 66 percent of individual vote choices, particularism, through the Party Model, correctly classifies over 93 percent. Moreover, the performance of the Party Model has not waned since the late-nineteenth century; in fact, classification success has *increased*.

Thus, while certain aspects of the contested election process – like the sheer number of cases, the relative success rates of contestants, and the proportion of cases dealt with by roll call – have declined since the late-nineteenth century, the degree to which partisanship enters into floor votes in election cases remains strong.

The Impact of Partisanship

While various forms of evidence can be marshaled to argue that partisanship has been a (or *the*) significant determinant in contested election cases, perhaps the more fundamental issue is measuring the *degree* to which the majority party has benefited from controlling the contested election process in the House. Stated another way, determining the *impact* of partisanship is key. The most straightforward way to do this is to ask: how would the distribution of majority-party seats have been different in a given Congress, had the contested-election procedure not been available? That is, if House membership were determined *exclusively* by an individual's

possession of the certificate of election, how would this have changed the majority-party seat allocation?

This question can be examined by comparing the *actual* House membership to how the House membership *would have appeared* had (a) no successful contests occurred and (b) no seats been vacated. The difference between these two scenarios (the actual and the counterfactual) is illustrated in Figure 3. For any given Congress, two pieces of data are provided. The left y-axis, which corresponds to the solid line, measures the change in majority-party seats; a positive (negative) number represents the addition to (subtraction from) the majority-party ranks from the contested election procedure. The right y-axis, which corresponds to the dotted line, measures the percentage change in the size of the majority party, given the increase (decrease) in seats. As the figure shows, the impact of the contested-election procedure on the majority party was relatively small prior to Reconstruction, and *sometimes negative*. In the 3rd (1793-95), 18th (1823-25), 24th (1835-37), 26th (1839-41), and 32nd (1851-53) Congresses, the majority-party seat allocation was reduced, by as many as two seats, because of election contests. Moreover, when the majority party *did* benefit from election contests, the impact was small, with the seat addition maxing out at two. In fact, for the first 38 Congresses (1789-1865), the total net gain for the majority party from contested elections was *five* seats.

[Figure 3 about here]

The significance of contested elections would only be felt after the Civil War. The first two Reconstruction-era Congresses, the 39th (1865-67) and 40th (1867-69), witnessed small majority-party gains of two and three seats, respectively. The 41st Congress (1869-71), however, produced a “sea change,” as contested election cases generated 10 additional seats for the majority party. There were eight successful contests, all of which involved a Republican

unseating a Democrat, along with two Democratic seats declared vacant that were later won by Republicans in special elections. The addition of these 10 seats increased the size of the Republican Party by 6.2 percent.

For the next three decades, contested election cases would become part of the partisan landscape. But their effects would ebb and flow. The 42nd (1871-73) and 43rd (1873-75) Congresses were a complete departure from the 41st, as the Republicans, the majority party, would lose two seats in each because of election contests. The Democrats would then assume control of the House for the next six years, the 44th through 46th Congresses (1875-81), and use contested election cases for their own benefit.

The majority-party “bump” from contested election cases would fluctuate for the next twenty years, as Republicans and Democrats alternated control of the House. However, the especially large gains occurred under Republican rule – five additional seats in the 47th Congress (1881-83),⁵⁶ eight additional seats in the 51st Congress (1889-91), and nine additional seats in the 54th Congress (1895-97), representing a 3.4, 4.7, and 3.7 percent increase in the size of the party, respectively.⁵⁷ Finally, contested elections, as a partisan tool, began to cool. The Republicans gained only three seats from election contests in each of the 55th (1897-99) and 56th (1899-1901) Congresses. This gain was reduced to two seats in each of the 57th (1901-03) and 58th (1903-05) Congresses. Since the 59th Congress (1905-07), the majority-party gain from election contests has never exceeded one seat. And, more often than not, it has been zero. In all, over the last 49 Congresses, the total net gain for the majority party has been only 10 seats.

Thus, the data from Figure 3 convey three distinct periods: weak majority-party gains through the Civil War; strong majority-party gains from Reconstruction through the turn-of-the-century; and weak majority-party gains thereafter. More specifically, the majority party

benefited little from the contested election process in the first and third periods, but benefited considerably in the second period.

IV. Examining the Late-Nineteenth Century Rise in Contested Elections

As the prior section illustrated, the partisan impact of contested election cases has actually been quite small during most of congressional history. At most, the majority-party gain from election contests was two seats per Congress during the Antebellum period and the twentieth century. The outlier, however, was the late-nineteenth century, during and after Reconstruction, when contested elections often produced sizeable benefits for the majority party. What was different about this period?

First, the late-nineteenth century was an extremely partisan time, resulting in large part from an evenly divided national electorate. Between 1870 and 1900, the House changed partisan hands six different times, and a small redistribution of seats in various elections would have increased that figure even more. Thus, there was every incentive for the parties to search for strategic advantages, both institutional and electoral, to increase their likelihood of gaining (and maintaining) control of the House, as well as the national government more generally. Examples of strategic maneuvers included the manipulation of congressional districts,⁵⁸ the admittance of sparsely populated western states,⁵⁹ and the deployment of Federal election marshals.⁶⁰ The strategic use of contested election cases went hand-in-hand with these other initiatives.

But, perhaps even more importantly, the use of contested elections was crucial to the continued Republican success in the House. That is, by the 1870s and 1880s, the Republican dominance in the North, which was consolidated during the Civil War, had ended. The Democratic Party began making serious inroads outside of the former-Confederate states, winning a majority of seats in the border states, pulling even with the Republicans in the Great

Lakes states, and even capturing a sizeable number of seats in the northeast.⁶¹ This created a problem for the Republicans. For a time, they could afford to largely ignore the South and any attempts by the Democrats to revive a southern organization, because they could count on a substantial House majority simply from sweeping the northern and border states. With the growing Democratic strength throughout the country, the Republicans could no longer afford to write off the bloc of southern districts.⁶²

The problem, however, was *how* to make inroads in the South. Many of the strategic tools that Republicans used effectively throughout the late-nineteenth century, like redistricting, admittance of western states, and deployment of Federal election officials were not effective in maintaining a Republican presence in the South. And, with the Federal troops no longer stationed in the South, per the implicit agreement underlying the Compromise of 1877, no enforcement mechanisms were in place to ensure fair elections. The contested election procedure, therefore, became the chief means by which the Republicans would fight Democratic-sanctioned fraud, intimidation, and violence in the South, and promulgate hopes that a southern wing of the Republican Party could be resuscitated.⁶³

Reconstruction and Contested Elections

But, first, a step back. Initially, during Reconstruction, a southern Republican Party was very much a reality. With African American enfranchisement, an “occupying” army of Union troops, and no general amnesty for Southern troops, the South was staunchly Republican. Of the 41 former-Confederate House seats in the 40th Congress (1867-69), thirty-six were controlled by the Republicans. In the 41st Congress (1869-71), a southern Democratic Party began to revive, and the electoral process (mainly through violence toward and intimidation of African American voters) was threatened.⁶⁴ As a result, the Republican-controlled Congress did two things: it

secured the future safety of the electoral process in the South, through a series of Enforcement Acts (or “Force Bills”),⁶⁵ and remedied the current electoral situation via contested election cases. In all, ten apparent Democratic seats were either successfully contested or vacated, based on charges of fraud and corruption, and became Republican seats.

For the next several Congresses, the contested election procedure was used sporadically. In the 42nd (1871-73) and 43rd (1873-75) Congresses, the Republicans did not use election contests as a partisan tool, relying instead on army supervision of southern elections as part of the various Enforcement Act provisions. And while the Democrats were making inroads in the Deep South as well as the border states, the Republicans still maintained a majority presence. By the 44th Congress (1875-77), all of that changed, due to two factors. First, on the heels of a Midwestern depression, the Democrats regained majority control of the House. Second, the Union army was fully withdrawn from the South. As a result, the intimidation of African American voters went unchecked, and the southern Republican Party was dealt a near-fatal blow.⁶⁶ Moreover, in the 44th (1875-77) and 45th (1877-79) Congresses, the Democrats used the contested election process to their advantage, adding a total of nine additional Democratic seats to their ranks.

Post-Reconstruction and Contested Elections

Thus, by the 46th Congress (1879-81), the southern component of the Republican Party was virtually eliminated – only three Republican seats remained, one each in Florida, Tennessee, and Virginia. In addition, the liberal element within the Republican Party, led by President Rutherford Hayes, began pursuing 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.⁶⁷ This would prove

disastrous, as white southerners rebuffed Hayes' efforts, while the "regular" southern Republicans and their local organizations were left to die on the vine.⁶⁸

Yet, some hope remained. The Republicans recaptured the House in the 47th Congress (1881-83), and with Hayes now out of the picture, 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 unseated in favor of Republicans.⁶⁹ These institutional seat gains, combined with the capture of seven seats outright in the general congressional elections – one each in Louisiana and North Carolina, two in Virginia, and three in Tennessee – gave the Republicans newfound hope.⁷⁰ However, the Democrats would regain control of the House for the next three Congresses, the 48th (1883-85), 49th (1885-87), and 50th (1887-89), effectively eliminating election contests as a means to prop up the fledgling Republican organizations in the South. By the 50th Congress, 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 members of Congress sympathetic to the old Radical party roots, they resumed their southern mission.⁷¹ A new Force Bill would be introduced, this time advocating the Federal courts rather than the army as the guardian of southern elections,⁷² and election contests would continue to be wielded as the great "equalizer." Five additional southern Democrats would be unseated via election contests and replaced by Republicans – one each in Alabama, Arkansas, and South Carolina, and two in Virginia. 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.⁷³

At that point, however, 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 election contests would replace Democrats with Republicans in the former-Confederate South. 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. In fact, aside from the aforementioned areas and one district in Texas,⁷⁴ the Republican Party would not capture another southern district until the late-1950s.

The Data: A Closer Look

The southern emphasis on contested election cases in the late-nineteenth and early-twentieth centuries is underscored in Table 9. 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, 162 of which (or 60 percent) dealt with seats from the former-Confederate South.⁷⁵ This is an exceedingly high percentage, given that the former-Confederate South made up, on average, only 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.⁷⁶

[Table 9 about here]

Table 10 lays out the distribution of seats that resulted in a partisan flip, following from successful election contests and vacated seats. Overall, of the 70 seat flips that favored the majority party between the 40th and 61st Congresses (1867-1911), thirty-four (or 48.6 percent) occurred in the former-Confederate South. And, again, if “South” is expanded to include all former-slave states, then 45 seat flips (or 64.3 percent) were southern in nature.

[Table 10 about here]

Also illustrated in Table 10 is the evolving use of the contested election process by the Republican Party. As discussed previously, prior to the adoption of the Enforcement Acts between 1870 and 1872, the Republicans used election contests to prevent Democratic fraud and intimidation. Once the Enforcement Acts were in place, the Republicans reduced their monitoring of Democratic impropriety, and seemingly applied the contested election procedure in an equitable manner. In the 42nd (1871-73) and 43rd (1873-75) Congresses, for example, the Republicans awarded five seats to Democrats in the former-Confederate South, while only awarding two seats to their own partisans.

After the Compromise of 1877 and the emasculation of the Enforcement Acts, however, the Republicans behaved much more parochially. Over the next five Congresses in which they were the majority, the Republicans seated 20 of their own partisans in the former-Confederate South, while seating *no* Democrats. Overall, 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 the 47th (1881-83), 51st (1889-91), 54th (1895-97),

55th (1897-99), and 56th (1899-1901) Congresses, only *three* were located outside of the former-slave states.

When the Democrats held the majority reins in the House, their strategy was different. In large part, they did not apply the contested election procedure much in the South, relying instead on fraud, violence, and intimidation to influence the electoral process.⁷⁷ 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) resulting from election contests occurred outside of the former-slave states.

Finally, Table 11 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 maintained a majority presence 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 11 about here]

After the Democrats returned to power nationally, and the remaining troops were pulled out of the South, the Republicans' share of seats dropped off substantially. For the most part, without the help of the contested election procedure, the Republicans learned quickly that they could only count on single digits in the former Confederacy. Thus, on the next five occasions when the Republicans controlled the House, in the 47th (1881-83), 51st (1889-91), 54th (1895-97), 55th (1897-99), and 56th (1899-1901) Congresses, contested elections became a major tool

to boost the party's seat totals. Of the 58 seats that the Republicans controlled during these five Congresses, twenty (or 34.5 percent) came directly via election contests.

The End of Contested Elections as a Partisan Tool

After the 56th Congress (1899-1901), the use of contested elections as a partisan tool ended abruptly. The Republicans would maintain their majority status in the next five Congresses, yet not a single Republican seat was added in the South via election contests. What accounts for this change?

Three complementary explanations can be provided. First, while the contested election process produced additional Republican seats in the South and was supported by prominent party leaders like President Harrison, many Republicans were not enthusiastic about its 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 a tremendous waste of resources for the committee members, who had to read thousands of pages of testimony, as well as the House, which had to spend an often significant amount of time considering arguments and rendering decisions.⁷⁸ His principal concern was the Republican Party agenda, which was often put on hold for contested election cases. As Reed stated, election contests "consume the time of the House to the exclusion of valuable legislation."⁷⁹ Thus, in Reed's mind, the Republicans were being myopic in trying to marginally increase their support in the South; as a result of that effort, their policy agenda had stagnated, and they had managed to win control of the House only two of ten times between the 44th (1875-77) and 53rd (1895-97) Congresses.⁸⁰

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 the contested election procedure were unable to build a base of support and maintain control of their districts. This is illustrated in Table 12. 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 four gained their seats via *another successful election contest*. In fact, *one* candidate, William F. Aldrich (Alabama, 4th District), won *three* successive election contests, in the 54th, 55th, and 56th Congresses.⁸¹ 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.

[Table 12 about here]

Moreover, the *loyalty* of these Republican contestants left much to be desired. Specifically, Republican contestants in the former-Confederate South were significantly less loyal than their Republican brethren who were elected outright. Cohesion scores for Republicans in the former-Confederate South on party votes appear in Table 13. For each of the five Congresses in question, southern Republicans elected outright were significantly more supportive of the party than those 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 represented contested House seats. As a result, it was in many ways a “lose-lose” strategy: it was a time-consuming process to “flip” a seat, and the resulting benefit turned out to be minimal.

[Table 13 about here]

Third, and finally, the changing electoral landscape in the late-1890s made the use of election contests as a partisan tool no longer necessary. To reiterate, in the 1880s and early-to-

mid 1890s, the Republicans endeavored to maintain a southern presence because it was necessary to do so. The Democrats had become a national power once again by the mid-to-late 1870s, and the two congressional parties were essentially running neck-in-neck in their competition for voters. Thus, if they cared about capturing and maintaining control of the House, the Republicans could not afford to ignore the South entirely.

This all changed, however, with the elections of 1894-96, which produced a national, electoral realignment. Battling over industrial, agrarian, and monetary issues, the Republicans and Democrats emerged from the 1894-96 elections with a new distribution of solid, lasting constituencies. As David W. Brady 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.”⁸² 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. As a result, beginning with the 54th Congress (1895-97), the Republicans would go on to control the House for the next 16 years straight, and the vast majority of the years before the New Deal.

Enjoying the positive effects of the electoral realignment, the Republicans would begin to reassess their partisan strategies. In effect, they no longer needed representation in the South to win control of the House, and thus could heed Speaker Reed’s advice by dropping their (largely unsuccessful) contested-election strategy and focusing on their policy agenda. This did not happen all at once, however, as it was not immediately clear whether the initial Republican electoral victories in the mid-to-late 1890s reflected a temporary swing or a more general, lasting movement. As a result, the Republicans maintained a conservative approach and continued adding southern seats via election contests – four in the 54th (1895-97) Congress, and three each

in the 55th (1897-99) and 56th (1899-1901) Congresses. After President William McKinley's reelection in 1900, however, Republican Party leaders were confident in their newfound electoral windfall, and the partisan use of election contests (and the Republican presence in the South) went by the board.⁸³

V. Conclusion and Future Extensions

This has been an initial examination of contested election cases in the House of Representatives, a generally-understudied topic in Congressional history. In addition to providing a general overview of the phenomenon, by describing the historical mode of procedure in contested election cases, presenting an overview of the 601 contested election cases across time, and recounting several noteworthy cases, I examine the determinants of case outcomes, focusing specifically on the role of party. Using a variety of data, like case dispositions, committee recommendations, and roll-call votes on the floor, I find that partisanship has been a significant factor in contested election outcomes generally across time, and during the late-nineteenth century in particular.

Moreover, I offer a broader thesis: that contested elections were *vital* to the Republican Party's efforts to maintain a Southern presence after Reconstruction, at a time when the Democrats had resurfaced as a viable national party, Republican control of the House (and national politics generally) was tenuous, and African American disfranchisement in the South was rampant. From the mid-1870s through the mid-1890s, contested elections were used as a partisan tool to combat the Democratic-sanctioned fraud, corruption, and violence that had become commonplace in southern electoral politics. Thus, for a time, contested election cases and partisan "seat flips" were a normal part of the political process. Eventually, the critical elections of the mid-1890s and the subsequent electoral realignment returned the Republican

Party to national dominance; as a result, the Republicans no longer sought a southern organization and discontinued the use of contested elections as a partisan tool. Since then, contested elections have been brought only sporadically, and few have been successful.

While I believe that I have made significant strides in this analysis, a number of questions remain, providing opportunities for various extensions in the future. First, a more systematic analysis of contested election cases needs to be pursued, using multivariate methods. A number of avenues are ripe for examination: why some general election outcomes are contested, and why some are not; why some cases are successful (net of partisanship), and why some are not; and, finally, why some Congresses (especially in the late-nineteenth century) generate large numbers of cases, while others do not.

Second, a similar examination of the Senate would provide a useful comparison. Much like the House, very little is known about contested election cases in the Senate. Yet, we do know that a number of such cases have arisen across the Senate's history – around 130 or so.⁸⁴ Thus, several interesting comparative analyses are possible: how the Senate's mode of procedure compares to that of the House; whether the grounds in Senate election contests mirror those of the House; whether partisanship has been a determinant in contested election outcomes in the Senate across time, as has been true in the House; and whether there is evidence to suggest that the Republicans used contested Senate elections to maintain a southern presence in the late-nineteenth century, as I find occurred in the House. Finally, the Senate case offers a separate, intriguing perspective: by examining how the move to direct elections, with the passage of the 17th Amendment in 1913, has affected the Senate contested election process, new and interesting insights can be gained on the nature (and effects) of the electoral connection and the representative-constituency linkage.

Figure 1: Number of Contested Election Cases and Contested Seats, 1789-2002

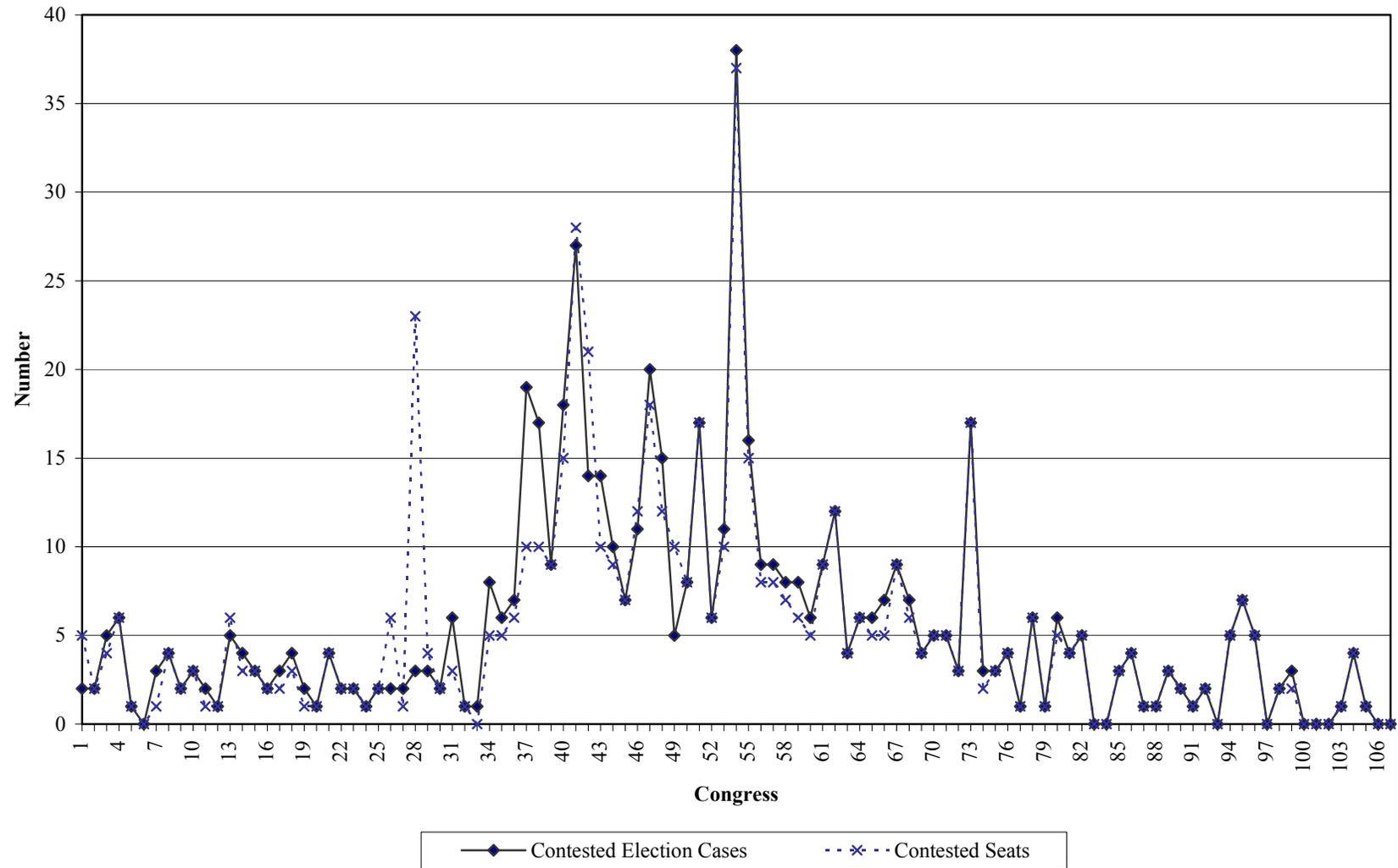


Figure 2: Percentage of Seats Contested, 1789-2002

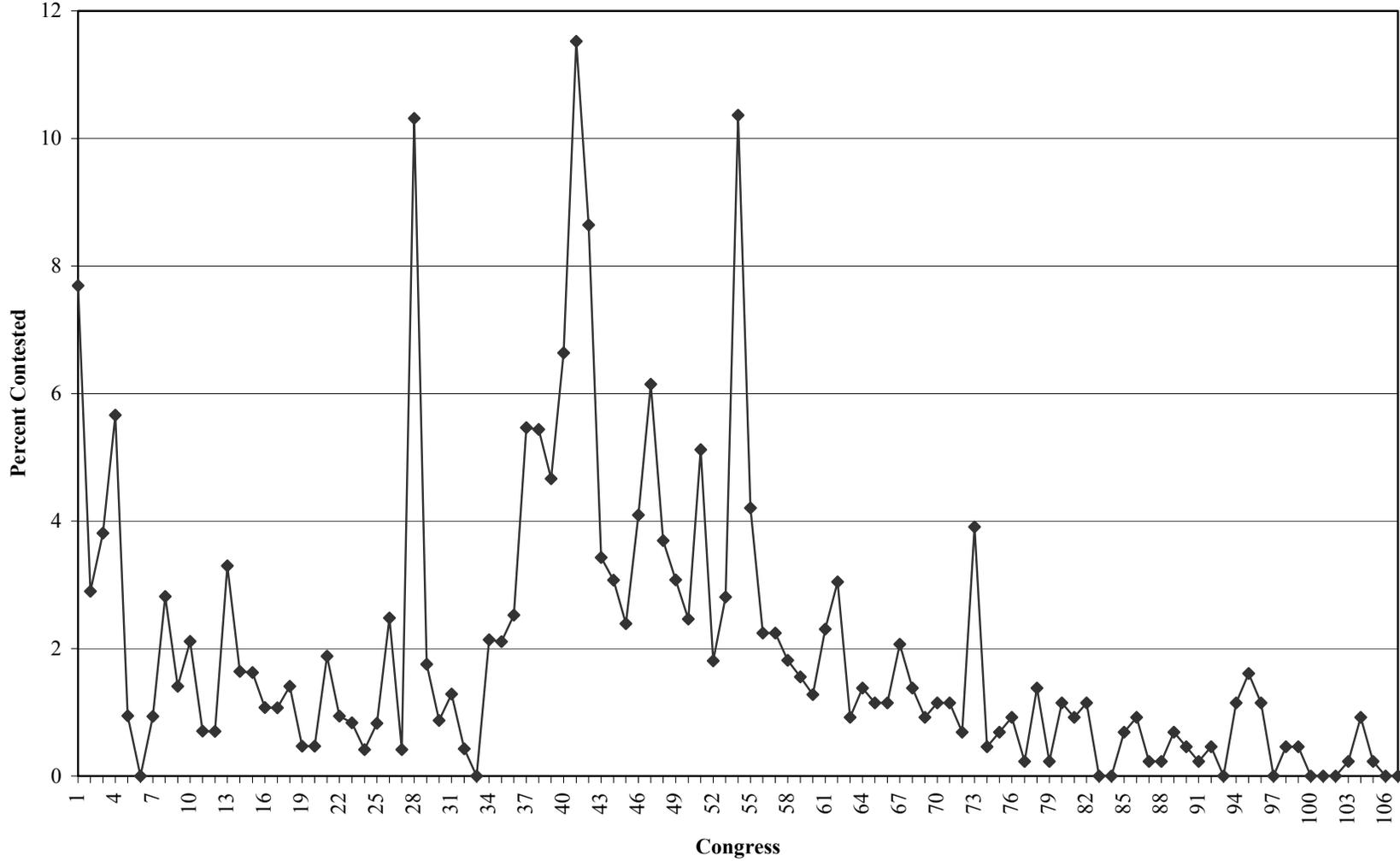


Figure 3: Net Impact of Contested Election Procedure

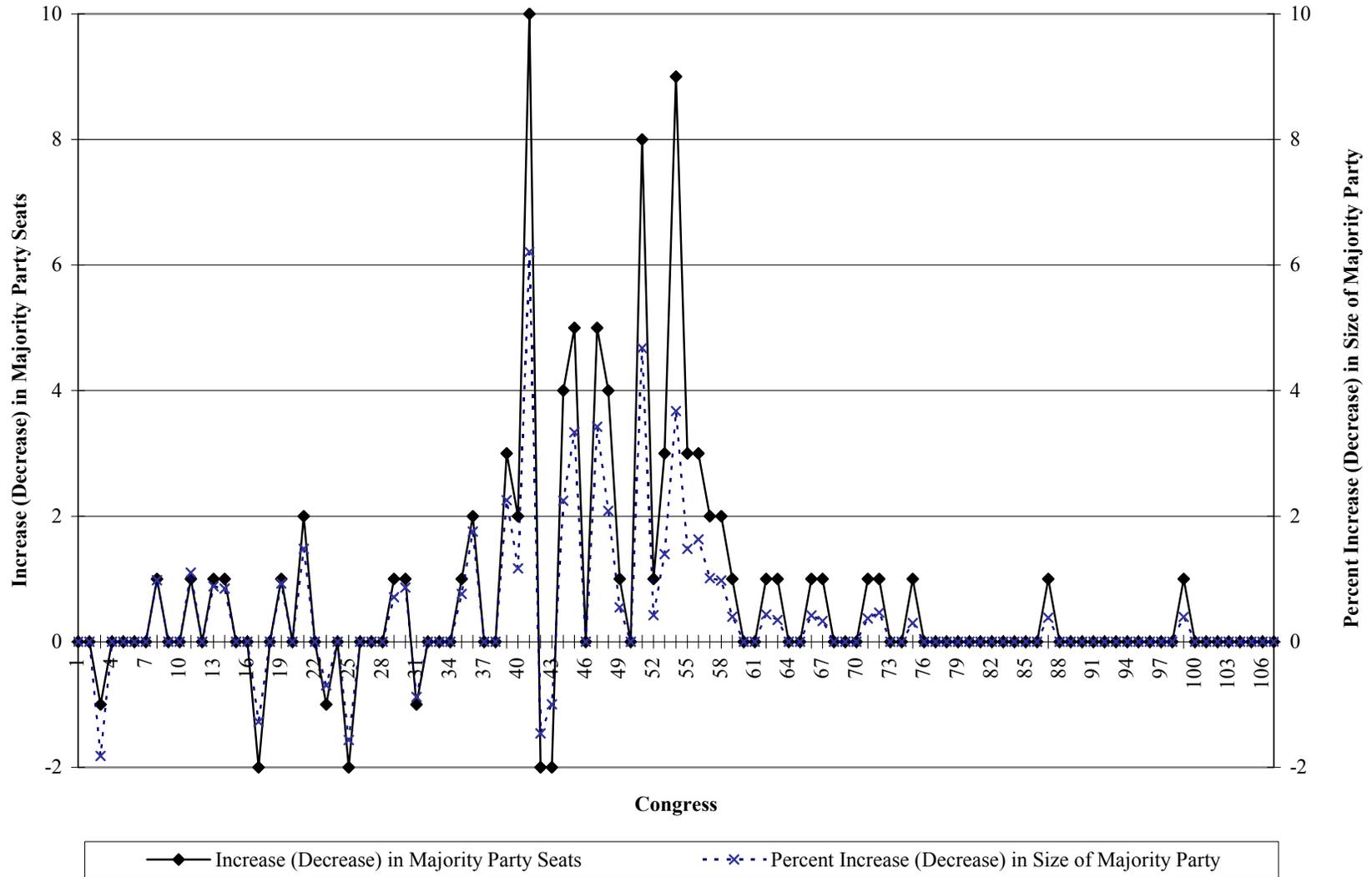


Table 1: State Distribution of Contested Election Cases

State	Cases	State	Cases
Alabama	24	Montana	1
Alaska	4	Nebraska	5
Arizona	0	Nevada	0
Arkansas	13	New Hampshire	4
California	16	New Mexico	8
Connecticut	5	New Jersey	3
Colorado	4	New York	35
Delaware	2	North Carolina	22
Florida	12	North Dakota	0
Georgia	14	Ohio	17
Hawaii	3	Oklahoma	4
Idaho	2	Oregon	2
Illinois	29	Pennsylvania	42
Indiana	12	Rhode Island	1
Iowa	16	South Carolina	35
Kansas	6	South Dakota	1
Kentucky	19	Tennessee	18
Louisiana	28	Texas	9
Maine	7	Utah	7
Maryland	14	Vermont	2
Massachusetts	10	Virginia	53
Michigan	13	Washington	0
Minnesota	8	West Virginia	7
Mississippi	15	Wisconsin	7
Missouri	34	Wyoming	1

Table 2: Grounds in Contested Election Cases

Grounds	Number of Cases
Criminal Action/Intent (Fraud, Corruption, and/or Bribery)	205
Serious Election Irregularities Not Involving Criminal Action/Intent	137
Illegal Election	79
Improper Canvass/Counting of Ballots	50
Lack of Qualifications Established by Federal Constitution	32
Civil War and Reconstruction Readmittance Issues	19
Existence of a Vacancy	16
Incompatible Office	7
Improper Ballots	6
Defective Credentials	4
Constitutionality of the Office of Delegate	3
Lack of Qualifications Established by State Law	3
Not Ascertainable	38

Table 3: Outcomes in Contested Election Cases

	All Congresses	Antebellum Period	Late 19th Century	20th and 21st Centuries
Contestee Victory	67.7	61.7	57.1	85.4
Contestant Victory	21.3	22.4	28.7	10.8
Seat Vacated	11	15.9	14.2	3.8
Number of Cases	601	107	282	212

Note: Cell values represent percentages. For example, 67.7 percent of cases across all congresses have resulted in victories for the contestee.

Table 4: Contests Leading to Committee Rolls

Cong	St. (Dist.)	Case	Contestant Party	Contestee Party	Majority Party	Committee Split?	Committee Recommendation	Case Disposition
3	VA (4)	Trigg v. Preston		Anti-Adm	Anti-Adm	No	vacate the seat	contestee seated
13	VA (9)	Taliaferro v. Hungerford	Dem-Rep	Federalist	Dem-Rep	No	vacate the seat	contestee seated
22	VA (22)	Draper v. Johnston		Jackson	Jackson	Yes	vacate the seat	contestee seated
23	KY (5)	Letcher v. Moore	Anti-Jack	Jackson	Jackson	Yes	seat contestee	seat vacated
24	NC (12)	Newland v. Graham	Anti-Jack	Anti-Jack	Jackson	No	seat contestant	seat vacated
25	MS (GT)	Prentiss & Word v. Gholson & Claiborne	Whig	Dem	Dem	Yes	seat contestees	seats vacated
30	NY (6)	Monroe v. Jackson	Whig	Dem	Whig	Yes	seat contestant	seat vacated
31	IA (1)	Miller v. Thompson	Whig	Dem	Dem*	Yes	seat contestee	seat vacated
32	PA (11)	Wright v. Fuller	Dem	Whig	Dem	Yes	vacate the seat	contestee seated
34	IL (7)	Archer v. Allen	Rep	Dem	Opp*	Yes	seat contestant	seat vacated
35	MD (3)	Whyte v. Harris	Dem	Amer	Dem	Yes	vacate the seat	contestee seated
37	PA (1)	Butler v. Lehman	Rep	Dem	Rep	Yes	seat contestant	contestee seated
38	MO (7)	Bruce v. Loan	Dem	Unc Unt	Rep*	Yes	vacate the seat	contestee seated
40	MO (9)	Switzler v. Anderson	Dem	Rep	Rep	Yes	seat contestant	contestee seated
41	PA (21)	Foster v. Covode	Dem	Rep	Rep	Yes	seat contestee	seat vacated
41	SC (4)	Wallace v. Simpson	Rep	Dem	Rep	Yes	seat contestant	seat vacated
41	LA (1)	Sypher v. St. Martin	Rep	Dem	Rep	No	seat contestant	seat vacated
41	MO (9)	Switzler v. Dyer	Dem	Rep	Rep	Yes	seat contestant	contestee seated
41	KY (9)	Zeigler v. Rice	Rep	Dem	Rep	Yes	vacate the seat	contestee seated
41	TN (GT)	John Rodgers		Rep	Rep	Yes	seat claimant	seat vacated
43	WV (1)	Davis v. Wilson	Ind Dem	Rep	Rep	Yes	seat contestee	contestant seated
43	WV (2)	Hagans v. Martin	Rep	Dem	Rep	Yes	seat contestee	contestant seated
44	VA (2)	Platt v. Goode	Rep	Dem	Dem	Yes	seat contestant	contestee seated
45	SC (3)	Richardson v. Rainey	Dem	Rep	Dem	Yes	vacate the seat	contestee seated
46	PA (20)	Curtin v. Yocum	Dem	G'back	Dem*	Yes	vacate the seat	contestee seated
46	MN (3)	Donelly v. Washburn	Dem	Rep	Dem*	Yes	seat contestant	contestee seated
50	IN (12)	Lowry v. White	Dem	Rep	Dem	Yes	vacate the seat	contestee seated
50	CA (5)	Sullivan v. Felton	Dem	Rep	Dem	Yes	seat contestant	contestee seated
51	FL (2)	Goodrich v. Bullock	Rep	Dem	Rep	Yes	seat contestant	contestee seated
51	WV (3)	McGinnis v. Alderson	Rep	Dem	Rep	Yes	seat contestant	contestee seated
52	NY (28)	Noyes v. Rockwell	Rep	Dem	Dem	Yes	seat contestant	contestee seated
54	KY (10)	Hopkins v. Kendall	Rep	Dem	Rep	Yes	seat contestee	contestant seated
54	SC (7)	Johnston v. Stokes	Rep	Dem	Rep	Yes	seat contestee	seat vacated
55	TN (10)	Patterson v. Carmack	Nat Dem	Dem	Rep	Yes	seat contestant	contestee seated
61	VA (5)	Parsons v. Saunders	Rep	Dem	Rep	Yes	seat contestant	contestee seated
62	PA (11)	McLean v. Bowman	Dem	Rep	Dem	Yes	seat contestant	seat vacated
65	NC (10)	Britt v. Weaver	Rep	Dem	Rep*	Yes	seat contestee	contestant seated
68	NY (19)	Chandler v. Bloom	Rep	Dem	Rep	Yes	seat contestant	contestee seated
71	MD (3)	Hill v. Palmisano	Rep	Dem	Rep	Yes	seat contestant	contestee seated

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

Table 5: Percentage of Election Contests Decided by Roll-Call Vote, by Era

	All Congresses	Antebellum Period	Late 19th Century	20th and 21st Centuries
Percent	31.9	48.6	39.4	13.7
Total Cases	601	107	282	212

Table 6: Percentage of Election Contest Roll Calls Classified as “Party Votes”, by Era

	All Congresses	Antebellum Period	Late 19th Century	20th and 21st Centuries
Percent Party Votes	87.0	76.9	94.6	79.3
Percent Perfectly-Aligned Party Votes	17.1	9.6	20.7	17.2
Total Roll Calls	192	52	111	29

Table 7: Percentage of Individual-Level Roll-Call Votes Correctly Classified, by Era

	All Congresses	Antebellum Period	Late 19th Century	20th and 21st Centuries
Naïve Model	64.6	61.2	65.3	66.0
Party Model	91.3	84.8	92.7	93.5
Ideological Model	92.3	86.6	93.4	94.7

Note: Cell values represent the percentage of individual roll-call votes correctly classified by each model. For example, the Naïve Model correctly classifies 64.6 percent of individual roll-call votes across all Congresses.

Table 8: Goodness of Fit Comparison between Party and Ideological Models, by Era

	All Congresses	Antebellum Period	Late 19th Century	20th and 21st Centuries
Party Model	42.2	40.4	42.3	44.8
Ideological Model	33.9	42.3	30.6	31.0
Tie	24.0	17.3	27.0	24.1
Total Roll Calls	192	52	111	29

Note: Cell values represent the percentage of individual roll calls best explained by each model. For example, the Party Model provides the best fit (most explanatory power) on 42.2 percent of individual roll calls across all Congresses.

Table 9: The South and Contested Election Cases, 1867-1911

Congress	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 10: Seat Changes Due to the Contested Election Procedure, 1867-1911

Congress	Majority Party	<u>Majority Party Additions</u>			<u>Minority Party Additions</u>		
		Former Confederacy	Other Slave States	Former Non-South	Former Confederacy	Other 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	3	0	0
43 (1873-75)	Republicans	1	0	1	2	1	1
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 11: Election Contests and Republican Seats in the Former-Confederate South, 1867-1911

Congress	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 12: Successful Republican Contestants, 47th, 51st, 54th-56th Congresses

Congress	Name	State (District)	Run for Next Congress?	Elected to Next Congress?	Control of Seat in Next Congress?
47	James Q. Smith	AL (4)	No ^a	***	Republican ^b
47	Horation Bisbee	FL (2)	Yes	Yes	Republican
47	John R. Lynch	MS (6)	Yes	No	Democrat
47	Edmund W. Mackey	SC (2)	Yes	Yes	Republican
47	Robert M. Smalls	SC (5)	Yes	No ^c	Democrat
51	James V. McDuffie	AL (4)	Yes	No	Democrat
51	John M. Clayton	AK (2)	No	***	Democrat
51	Thomas E. Miller	SC (7)	Yes	No	Democrat
51	Edmund Waddill, Jr.	VA (3)	No	***	Democrat
51	John M. Langston	VA (4)	Yes	No	Democrat
54	William F. Aldrich	AL (4)	Yes	Yes ^d	Republican
54	Truman H. Aldrich	AL (9)	No	***	Democrat
54	George W. Murray	SC (1)	Yes	No	Democrat
54	Robert T. Thorp	VA (4)	Yes	Yes ^e	Republican
55	Willam F. Aldrich	AL (4)	Yes	Yes ^f	Republican
55	Richard A. Wise	VA (2)	Yes	Yes ^g	Republican
55	Robert T. Thorp	VA (4)	Yes	No	Democrat
56	William F. Aldrich	AL (4)	Yes	No	Democrat
56	Richmond Pearson	NC (9)	No	***	Republican
56	Richard A. Wise	VA (2)	Yes	Yes	Democrat

^aDied in office.

^bInitial result for Democrats. Seat was successfully contested by a Republican candidate.

^cLater elected to fill term resulting from Edmund Mackey's death.

^dInitial result for Democrats. Aldrich successfully contested the election.

^eInitial result for Democrats. Thorp successfully contested the election.

^fInitial result for Democrats. Aldrich successfully contested the election.

^gInitial result for Democrats. Wise successfully contested the election.

Table 13: Mean Cohesion Scores for Republicans in the Former-Confederate South

Congress	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 50 percent of Republicans oppose 50 percent of Democrats. 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, did not cast enough roll-call votes from which a cohesion score could be generated.

Endnotes

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¹ Various attempts have been made over time to appeal (and modify) this congressional right, without success. On the last occasion, 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.

² The term “contested election” is not to be confused with the term “contested race,” which denotes that more than one major candidate is seeking a congressional seat.

³ John T. Dempsey, “Control by Congress over the Seating and Disciplining of Members,” Ph.D. dissertation (University of Michigan, 1956), 12-20, 25-28.

⁴ Henry L. Dawes, “The Mode of Procedure in Cases of Contested Elections,” *Journal of Social Science* 2 (1870): 56-68; C. H. Rammelkamp, “Contested Congressional Elections,” *Political Science Quarterly* 20 (1905): 421-42; De Alva Alexander, *History and Procedure of the House of Representatives* (Boston: Houghton Mifflin, 1916), 313-30; Vincent M. Barnett, Jr., “Contested Elections in Recent Years,” *Political Science Quarterly* 54 (1939): 187-215.

⁵ Dempsey, “Control by Congress over the Seating and Disciplining of Members,” is an unpublished dissertation that provides excellent historical background and a rich source of data on contested elections. George B. Galloway, *History of the United States House of Representatives* (New York: Crowell, 1968) and Kenneth A. Martis, *The Historical Atlas of Political Parties in the United States Congress, 1789-1989* (New York: Macmillan, 1989) provide very useful overviews of contested elections, but their accounts are largely derivative. Terry L. Seip, *The South Returns to Congress: Men, Economic Measures, and Intersectional Relationships, 1868-1879* (Baton Rouge: Louisiana State University Press, 1983), 106-08; Richard Franklin Bense, *Sectionalism and American Political Development, 1880-1980* (Madison: University of Wisconsin Press, 1984), 84-88; Richard Franklin Bense, “The American Ballot Box: Law, Identity, and the Polling Place in the Mid-Nineteenth Century,” *Studies in American Political Development* 17 (2003): 1-27; Richard M. Valelly, “Congressional Modernization and the Federal Elections Bill of 1890,” Working Paper (Swarthmore College, 2003); and Richard Franklin Bense, *The American Ballot Box in the Mid-Nineteenth Century* (Cambridge: Cambridge University Press, 2004) offer fresh connections between contested elections and larger institutional/electoral forces, but their coverage is limited. Matthew N. Green, “Disputing the Vote: Explaining the Decline of Contested Elections to the U.S. House of Representatives,” Working Paper (Yale University, 2003) offers a lengthier examination of contested election cases, focusing on the determinants of their decline over time. Finally, Nelson W. Polsby, “The Institutionalization of the House of Representatives,” *American Political Science Review* 62 (1968): 144-68 examines contested election cases as one element in a larger House-institutionalization thesis and stands as the most influential published analysis to date.

⁶ Dawes, “The Mode of Procedure in Cases of Contested Elections,” 64. These comments were first presented in a paper read at the general meeting of the Social Science Association, held in New York City, on October 26, 1869.

⁷ Thomas B. Reed, “Contested Elections,” *North American Review* 151 (1890): 112-120. To strengthen his point about the role of partisanship, Reed stated: “Probably there is not a single instance on record where the minority was increased by the decision of contested cases,” 114. This was not true. In fact, prior to Reed’s statement, sitting majority party members had been unseated by minority party claimants on ten separate occasions: once each in 1794, 1821, 1822, 1872, 1873, 1874, 1875, 1881, 1883, and 1885.

⁸ See Alexander, *History and Procedure of the House of Representatives*; Dempsey, “Control by Congress over the Seating and Disciplining of Members.”

⁹ See Rammelkamp, “Contested Congressional Elections”; Barnett, “Contested Elections in Recent Years.”

¹⁰ Rammelkamp, “Contested Congressional Elections.”

¹¹ Matthew St. Clair Clarke and David A. Hall, *Cases of Contested Elections in Congress, From the Year 1789 to 1834, Inclusive* (Washington: Gales and Seaton, 1834).

¹² Dawes, “The Mode of Procedure in Cases of Contested Elections.”

¹³ *U.S. Statutes at Large*, Volume I, Chapter 8, 537-39. Enacted on January 23, 1798.

¹⁴ *U.S. Statutes at Large*, Volume II, Chapter 28, 39. Enacted on April 22, 1800.

¹⁵ Clarke and Hall, *Cases of Contested Elections in Congress*, 14-16.

¹⁶ For a more detailed account of the various formal modes of procedure proposed and discussed in the House prior to 1851, see Dempsey, “Control by Congress over the Seating and Disciplining of Members,” 45-55.

¹⁷ Dawes, “The Mode of Procedure in Cases of Contested Elections,” 61. In addition, committee decisions were typically made with little regard to precedent. This was because committee members were often not aware of prior precedents, as the first digest of contested election cases (Clarke and Hall’s) was not published until 1834. See Rammelkamp, “Contested Congressional Elections.”

¹⁸ Dempsey, “Control by Congress over the Seating and Disciplining of Members,” 53.

¹⁹ *U.S. Statutes at Large*, Volume IX, Chapter 11, 568-70. Enacted on February 19, 1851.

²⁰ Rammelkamp, “Contested Congressional Elections.”

²¹ Two minor changes would be made in subsequent years. First, in 1873, the length of time specified for taking testimony was extended from 60 days to 90 days. See *U.S. Statutes at Large*, Volume 17, Chapter XXIV, 408-09. Second, in 1887, the House Clerk would be required to print and submit evidence pertaining to contested election cases to the Committee on Elections *before* the commencement of a given Congress. See *U.S. Statutes at Large*, Volume 24, Chapter CCCXVIII, 445. For a more detailed discussion, see Rammelkamp, “Contested Congressional Elections.” The full set of procedures can be found in 2 *U.S. Code*, Chapter 7, Sections 201-226.

²² The FCEA was enacted on December 5, 1969, and codified as 2 *U.S. Code*, Chapter 12, Sections 381-396. For a detailed description of the procedures underlying FCEA, see Thomas M. Durbin and L. Paige Whitaker, “Procedure for House-Contested Election Cases,” Congressional Research Service, Library of Congress, 1995. No. 95-61 A.

²³ Angie Welborn, “House Contested Election Cases: 1933 to 2000,” Congressional Research Service, Library of Congress, 2000. No. 98-194 A.

²⁴ These other committees included Accounts, Enrolled Bills, the Library, Memorials, Disposition of Executive Papers, and Printing.

²⁵ The Committee on House Administration underwent a brief name change during the 104th and 105th Congresses, when it became known as the Committee on House Oversight. However, contested election cases still fell within its jurisdictional boundaries, and the committee reverted back to House Administration in the 106th Congress.

²⁶ Sources used to code contested election cases include Chester H. Rowell, *A Historical and Legal Digest of All the Contested Election Cases in the House of Representatives from the First to the Fifty-Sixth Congress, 1789-1901*. House Document 510, 56th Congress, 2nd Session (Washington: U.S. Government Printing Office, 1901), which covers the 1st through 56th Congresses; Merrill Moores, *A Historical and Legal Digest of All the Contested Election Cases in the House of Representatives from the Fifty-Seventh to and Including the Sixty-Fourth Congress, 1901-1917*. House Document 2052, 64th Congress, 2nd Session (Washington: U.S. Government Printing Office, 1917), which covers the 57th through 64th Congresses; Dempsey, “Control by Congress over the Seating and Disciplining of Members,” which covers the 1st through 82nd Congresses; Lewis Deschler, *Deschler’s Precedents of the United States House of Representatives*, Volume 2 (Washington: U.S. Government Printing Office, 1977), which covers the 65th through 92nd Congresses; and Welborn (2000), “House Contested Election Cases,” 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.

²⁷ For simplicity, I have included cases that involved territories in the relevant state categories. Some territories do not map directly into states, such as Guam, the Dakota Territory, the NW Territory, and the SW Territory; thus, these cases do not appear in any columns.

²⁸ This can sometimes be difficult to determine, based on a reading of the case reports. As Dempsey states: “No two writers would agree on any classification system applied.” Dempsey, “Control by Congress over the Seating and Disciplining of Members,” 56. To underscore this notion, my own coding for several cases differs from Dempsey’s.

²⁹ The specific claim was that hundreds of ballots were cast by “aliens,” i.e., foreign-born individuals who had never been naturalized. See Rowell, *A Historical and Legal Digest*, 112.

³⁰ Rowell, *A Historical and Legal Digest*, 109-10; Major L. Wilson, *The Presidency of Martin Van Buren* (Lawrence: University Press of Kansas, 1984), 139.

³¹ The House Clerk, Hugh Garland, refused to read the names of the five Whig members in his call of the roll, which effectively forced the House to decide on the conflicting claims to the New Jersey seats. By not acknowledging the five Whigs, however, Garland swung the control of the House organization to the Democrats. Many held that this was a partisan decision, as Garland had been elected Clerk in the previous House by netting the Democratic vote. Moreover, once the 26th Congress was organized, Garland was once again elected House Clerk, thanks to the votes of a majority of Democrats. See Alexander, “History and Procedure of the House of Representatives, 14-18; Jeffery A. Jenkins and Charles Stewart III, “More than Just a Mouthpiece: The House Clerk as Party Operative, 1789-1870,” paper presented at the 2004 annual meeting of the American Political Science Association, Chicago, IL.

³² Was there an agreement between the Whig Hunter and the Democrats regarding the partisan composition of the Committee on Elections (and the standing committees generally), prior to the speakership vote? No “smoking gun” has been uncovered, but an examination of standing committee rosters suggests that a majority of committees were controlled by Democrats. See Charles Stewart III,

David T. Canon, and Garrison Nelson, *Committees in the U.S. Congress, 1789-1946, Volume 1: House Standing Committees* (Washington: CQ Press, 2002).

³³ Martis, *The Historical Atlas of Political Parties in the United States Congress*, 95.

³⁴ Rowell, *A Historical and Legal Digest*, 109.

³⁵ Alexander, *History and Procedure of the House of Representatives*, 162-64.

³⁶ The minority party (Democrats) once used the disappearing quorum successfully to derail a contested election case, *Lee v. Richardson* (South Carolina, First District), in the 47th Congress (1881-83).

³⁷ H. Wayne Morgan, *From Hayes to McKinley: National Party Politics, 1877-1896* (Syracuse: Syracuse University Press, 1969); R. Hal Williams, *Years of Decision: American Politics in the 1890s* (New York: Wiley, 1978); Eric Schickler, *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress* (Princeton: Princeton University Press, 2001), 35-36.

³⁸ Schickler, *Disjointed Pluralism*, 39.

³⁹ Regarding the resolution of the *Smith v. Jackson* case, the House unseated the Democrat Jackson in favor of the Republican Smith.

⁴⁰ For an extensive discussion of the Reed Rules, see Alexander, *History and Procedure of the House of Representatives* 164-79, 205-12; Schickler, *Disjointed Pluralism*.

⁴¹ In fact, the initial distribution was 218 Republican, 216 Democrats, and one Farmer-Labor. However, Republican Harry M. Wurzback (Texas, 14th District) had died before the 72nd Congress convened. He was replaced in a special election, held less than three weeks later, by Democrat Richard M. Kleberg.

⁴² Deschler, *Deschler's Precedents*, 463-64. This latter charge was in keeping with the general reputation of corrupt politics in the Eighth District of Illinois, a gangster-controlled section of Chicago.

⁴³ Barnett, “Contested Elections in Recent Years,” 203-04.

⁴⁴ The last successful election contest was in the 99th Congress (1985-87), in the *McCloskey v. McIntyre* (Indiana, Eighth District) case, when Republican Richard D. McIntyre, who held the election certificate, was replaced by Democrat Frank X. McCloskey. A ballot recount showed McCloskey as the victor, a decision upheld by the House.

⁴⁵ Party affiliation data for contestees and contestants was obtained from Martis, *The Historical Atlas of Political Parties in the United States Congress*, and Michael J. Dubin, *United States Congressional Elections, 1788-1997* (Jefferson, NC: McFarland & Company, Inc., 1997).

⁴⁶ Cases involving territorial delegates are dropped, due to difficulties in determining the partisanship of the claimants. In addition, qualification cases (in which no there was no contestant in the case) and cases in which both the contestee and contestant are members of the majority party are dropped.

⁴⁷ Gary W. Cox, “Agenda Setting in the U.S. House: A Majority-Party Monopoly,” *Legislative Studies Quarterly* 26 (2001): 185-210; Gary W. Cox, and Mathew D. McCubbins, “Agenda Power in the U.S. House of Representatives, 1877-1986,” in David W. Brady and Mathew D. McCubbins, eds., *Party, Process, and Political Change in Congress: New Perspectives on the History of Congress* (Stanford: Stanford University Press, 2002).

⁴⁸ If the sample is restricted to the 55 congresses examined by Cox and McCubbins – the 44th through 99th Congresses – then the roll rate drops to 4.5 percent.

⁴⁹ Interestingly, a unanimous committee recommendation has been rolled on four occasions. In only one of those cases was the committee recommendation inconsistent with the interests of the majority party.

⁵⁰ In my view, it would be a mistake to argue that the reduction in roll-call votes is also an indication that the contested election process has become *less* partisan over time. The *Kunz v. Granata* case, for

example, was highly partisan but was eventually resolved by voice vote. The move to more programmatic disposition of contested election cases could simply be a function of the changing costs and benefits attributed to election contests by partisan decision makers in the twentieth century. These issues will be discussed to some degree in Section IV, but deserve additional investigation in the future.

⁵¹ For a fuller discussion of these ideological scores, dubbed NOMINATE scores, see Keith T. Poole and Howard Rosenthal, *Congress: A Political-Economic History of Roll Call Voting* (New York: Oxford University Press, 1997). In effect, these scores represent placements on “dimensions” that are recovered from a multi-dimensional unfolding technique applied to the matrix of roll-call votes in a given Congress. Over time, the first NOMINATE dimension generally taps economic cleavages across parties, while the second NOMINATE dimension typically taps cleavages within parties, such as sectional or geographic differences.

⁵² This naïve model characterization is a typical benchmark used in the congressional voting literature. See Herbert F. Weisberg, “Evaluating Theories of Congressional Roll-Call Voting,” *American Journal of Political Science* 22 (1978): 554-77; Poole and Rosenthal, *Congress*, 29-30.

⁵³ Polsby, “The Institutionalization of the U.S. House of Representatives.”

⁵⁴ *Ibid.*, 163.

⁵⁵ *Ibid.*

⁵⁶ These additional five seats constituted the difference between a Republican plurality and majority – without the five seats, the Republicans would have only controlled 146 of the 293 House seats, one seat short of a majority.

⁵⁷ All of these gains came at the expense of the Democratic Party. Moreover, one additional Democrat was unseated in favor of a Labor Party contestant in the 51st Congress, and two additional Democrats were unseated in favor of Populist Party contestants in the 54th Congress.

⁵⁸ Erik J. Engstrom, "Stacking the States, Stacking the House: The Partisan Consequences of Congressional Redistricting in the 19th Century," paper presented at the 2003 annual meeting of the Midwest Political Science Association, Chicago, IL. According to Engstrom, at least one state pursued a redistricting in every year between 1872 and 1896.

⁵⁹ Charles Stewart III and Barry R. Weingast, "Stacking the Senate, Changing the Nation: Republican Rotten Boroughs, Statehood Politics, and American Political Development," *Studies in American Political Development* 6 (1992): 223-71. According to Stewart and Weingast, this was a strategy concocted by the Republicans to "stack" the Senate and control the presidency. It also had a marginal benefit for Republicans' efforts to control the House.

⁶⁰ Scott C. James and Brian L. Lawson, "The Political Economy of Voting Rights Enforcement in America's Gilded Age: Electoral College Competition, Partisan Commitment, and the Federal Election Law," *American Political Science Review* 93 (1999): 115-31.

⁶¹ Charles Stewart III, "Lessons from the Post-Civil War Era," in Gary W. Cox and Samuel Kernell, eds., *The Politics of Divided Government* (Boulder: Westview Press, 1991).

⁶² Vincent P. De Santis, *Republicans Face the Southern Question: The New Departure Years, 1877-1897* (Baltimore: The Johns Hopkins Press, 1959), 12.

⁶³ 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 Bensel, *Sectionalism and American Political Development*, 87.

⁶⁴ Allen W. Trelease, *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction* (New York: Harper & Row, 1971); Michael Perman, *The Road to Redemption: Southern Politics, 1869-1879* (Chapel Hill: University of North Carolina Press, 1984).

⁶⁵ The Enforcement Acts were a series of five laws passed between May 1870 and June 1872 that were intended to protect and insure the voting rights of African Americans in the South. William Gillette, *Retreat from Reconstruction, 1869-1879* (Baton Rouge: Louisiana State University Press, 1979), 25-27; Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 454-59, 528-31.

⁶⁶ For a discussion of military withdrawal, corruption, and southern elections in the late 1870s, see Richard Franklin Bense, *Yankee Leviathan: The Origins of Central State Authority in America, 1859-1877* (Cambridge: Cambridge University Press, 1990), 366-415.

⁶⁷ C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge: Louisiana State University Press, 1951), 27-29; Stanley P. Hirshson, *Farewell to the Bloody Shirt: Northern Republicans & the Southern Negro, 1877-1893* (Bloomington: Indiana University Press, 1962), 25-26; C. Vann Woodward, *Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction* (Boston: Little, Brown and Company, 1966), 22-50; Ari Hoogenboom, *The Presidency of Rutherford B. Hayes* (Lawrence: University Press of Kansas, 1988), 51-78.

⁶⁸ Vincent P. De Santis, "President Hayes's Southern Policy," *The Journal of Southern History* 21 (1955): 476-94; De Santis, *Republicans Face the Southern Question*, 99-103; Mark Wahlgren Summers, *Rum, Romanism, & Rebellion: The Making of a President, 1884* (Chapel Hill: University of North Carolina Press, 2000), 30-39, 45-46.

⁶⁹ One Iowa Republican would be unseated in favor of a Democrat, producing a net gain of five seats for the Republicans.

⁷⁰ Accompanying this Republican spurt was an effort by Republican President Chester Arthur to reach out to Independents in the South, principally members of the Readjuster Party in Virginia, for additional support. Vincent P. De Santis, "President Arthur and the Independent Movments in the South in 1882," *The Journal of Southern History* 19 (1953): 346-63; De Santis, *Republicans Face the Southern Question*, 133-81; Hirshson, *Farewell to the Bloody Shirt*, 105-22; Jane Dailey, *Before Jim Crow: The Politics of Race in Postemancipation Virginia* (Chapel Hill: University of North Carolina Press, 2000), 55-59.

⁷¹ De Santis, *Republicans Face the Southern Question*, 195-97; Hirshson, *Farewell to the Bloody Shirt*, 200-14. Richard E. Welch, Jr., "The Federal Elections Bill of 1890: Postscripts and Prelude," *Journal of American History* 52 (1965): 511-26; Homer E. Socolofsky and Allan B. Spetter, *The Presidency of Benjamin Harrison* (Lawrence: University Press of Kansas, 1987), 60-65.

⁷² 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 Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill: University of North Carolina Press, 2001), 38-47; Robert M. Golden, *"A Free Ballot and a Fair Count": The Department of Justice and the Enforcement of Voting Rights in the South, 1877-1893* (New York: Fordham University Press, 2001), 145-70.

⁷³ In addition, two Democrats from the Deep South, one each from Alabama and North Carolina, were unseated in favor of Populists.

⁷⁴ This was the 14th District, represented by Republican Harry M. Wurzbach from the 67th (1921-23) through 71st (1929-31) Congresses.

⁷⁵ These states include Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

⁷⁶ 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 given representation in the Confederate Congress.

⁷⁷ For examples of these various corrupt practices, see J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restrictions and the Establishment of the One-Party South* (New Haven: Yale University Press, 1974); Peter Argersinger, “New Perspectives on Election Fraud in the Gilded Age,” *Political Science Quarterly* 100 (1985-86): 669-87; Perman, *Struggle for Mastery*; Mark Wahlgren Summers, “Party Games: The Art of Stealing Elections in the Late-Nineteenth-Century United States,” *The Journal of American History* 88 (2001): 424-35; Mark Wahlgren Summers, *Party Games: Getting, Keeping, and Using Power in Gilded Age Politics* (Chapel Hill: University of North Carolina Press, 2004).

⁷⁸ William A. Robinson, *Thomas B. Reed: Parliamentarian* (New York: Dodd, Mead & Company, 1930), 76, 85.

⁷⁹ Reed, “Contested Elections,” 114-15. Henry Cabot Lodge (R-MA) 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.

⁸⁰ 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, *Thomas B. Reed*, 75). Both the committee and the House found the evidence presented by Anderson exceedingly flimsy and ruled in favor of Reed.

⁸¹ Aldrich’s vote totals in those three races were 41.37, 40.1, 45.12 percent, respectively. In each case, Aldrich charged corruption in the election, specifically fraudulent returns. He ran for reelection to the 57th Congress but received only 2.57 percent of the vote and did not contest the election.

⁸² David W. Brady, *Critical Elections and Congressional Policy Making* (Stanford: Stanford University Press, 1988), 61. See, also, Valelly, “Congressional Modernization.”

⁸³ This leads, of course, to the following question: why did contested elections not reemerge in the 1910s and 1920s, when the Democrats began to contend once again for national preeminence? Several complementary reasons exist. 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 effectively eliminated African American electoral participation. During the late-nineteenth century, attempts at African American disfranchisement (through intimidation and violence) had kept the electoral costs of election contests low, as “fairness” and “Democratic intransigence” as campaign issues played well with Republican voters in the North. See Benschel, *Sectionalism and American Political Development*, 87. By the early twentieth century, these “morality” issues were no longer in 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 (via the Australian ballot) and voting technology improved, making it more difficult for outright fraud to enter into congressional elections.

⁸⁴ Anne M. Butler and Wendy Wolff, *United States Senate Election, Expulsion, and Censure Cases, 1793-1990*. Senate Document 103-33 (Washington: U.S. Government Printing Office, 1995).