

Reviving the Dead Letter: Attempts to Enforce Section Two of the
Fourteenth Amendment after the 1920 Presidential Election

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Amendment XIV § 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Abstract

In this thesis, I construct a history of the attempted enforcement of Section Two of the Fourteenth Amendment after the 1920 Presidential Election. The particular events surrounding the 1920 election - the presidential election and the decennial census, coupled with the enfranchisement of women with ratification of the Nineteenth Amendment - granted Section Two greater political urgency than ever before. An expanded electorate and the support of the NAACP increased the potential of African American influence at the polls and on behalf of Section Two enforcement. After the 1920 election, the NAACP and Republican Representative George W. Tinkham of Massachusetts campaigned for the enforcement of Section Two as a means to achieve African American enfranchisement. With apportionment delayed until 1929, the campaign for Section Two enforcement strayed from the central goal of the 1920-1921 campaign (African American enfranchisement) as it became a means to combat southern representatives' efforts to discount foreign "aliens" in northern population counts. Ultimately, both parties abandoned their efforts and Section Two went unenforced.

The failed enforcement of Section Two weakened the already-faltering loyalty of African American voters to the Republican Party by the 1920s, constituting a key step in the political realignment of African American voters to the Democratic Party in the mid-twentieth century. In its efforts to restore Section Two, the NAACP uplifted the enfranchising ambitions of Reconstruction without the support of the Republican Party. Republican concerns for attaining white southerners' vote replaced the Reconstruction-era goal of a political coalition of freedmen and loyal white southerners. The inaction and growing dismissal of Section Two by Republican lawmakers, excepting Representative George Tinkham, created a rising tide of dissatisfaction

amongst African American voters that resulted in a shift to more partisan, local efforts in the pursuit of enfranchisement.

Introduction

If one accepts Charles Sumner's assertion that the Reconstruction Amendments - the Thirteenth, Fourteenth, and Fifteenth - were "sleeping giants," then Section Two of the Fourteenth Amendment has remained in perpetual slumber.¹ According to Section Two, "when the right to vote at any election... is denied... or in any way abridged" to eligible voters, a state's representatives in the House and Electoral College shall be reduced proportional to the disfranchised population.² Stirred briefly during the 1870 Census, Section Two laid dormant until the apportionment crisis of the 1920s. From the 1920 Presidential Election to the passage of the delayed apportionment bill in 1929, the National Association for the Advancement of Colored People (NAACP) and Massachusetts Representative George Tinkham campaigned to enforce Section Two as a means to punish discriminatory southern governments and incentivize the re-enfranchisement of African American citizens.

In this thesis, I construct a history of the attempted enforcement of Section Two of the Fourteenth Amendment after the 1920 Presidential Election. The particular events surrounding the 1920 election - the presidential election and the decennial census, coupled with the enfranchisement of women with ratification of the Nineteenth Amendment - granted Section Two greater political urgency than ever before. An expanded electorate and the support of the NAACP increased the potential of African American influence at the polls and on behalf of Section Two enforcement. After the 1920 election, the NAACP and Republican Representative George W. Tinkham of Massachusetts campaigned for the enforcement of Section Two as a means to achieve African American enfranchisement. With apportionment delayed until 1929, the campaign for Section Two enforcement strayed from the central goal of the 1920-1921

¹ Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W. W. Norton & Company, Inc., 2019), xxviii.

² U.S. Const. amend. XIV, § 2.

campaign (African American enfranchisement) as it became a means to combat southern representatives' efforts to discount foreign "aliens" in northern population counts. Ultimately, both parties abandoned their efforts and Section Two went unenforced.

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The recent digitization of the legislative files of the NAACP provide the foundation of my research on Section Two. These subject files contain telegrams, memoranda, press releases, copies of legislation, correspondence with Congressmen, and newspaper clippings regarding the NAACP and Representative Tinkham's attempts to enforce Section Two during the 1920s. In addition to the files of the NAACP, I have consulted the Congressional Record and newspapers from the period to understand the campaign and reception for Section Two enforcement.

Chapter One provides a background in the drafting of the Fourteenth Amendment, the attempted enforcement of Section Two during the 1870 Census, and the rise of the disfranchisement of African American voters after Reconstruction. An understanding of the successful enforcement of Section Two and valiant Republican efforts to enforce it inform later

attempts at enforcement under the oppressive Jim Crow governments. Chapter Two follows the unsuccessful attempts of the NAACP and Representative Tinkham to prompt congressional action on behalf of Section Two and provides the reasoning of those in favor of and against Section Two enforcement. Finally, Chapter Three recounts the last resolutions of Tinkham, with the support of the NAACP, to enforce Section Two and African American voters' resistance to the southern strategy of the Republican Party. These developments in the history of Section Two follow the rising dissatisfaction of African American voters with the Republican Party and their abandonment of the Republican Party.

Without the successful enforcement of Section Two, the other sections of the Fourteenth Amendment have dominated the historiography of the Reconstruction Amendments. The available literature concerning Section Two consists of the legal history of congressional proceedings responsible for drafting and passing the section, with some discussion of failed attempts at congressional enforcement. These historiographies are limited in themselves and ignore a critical consideration: how African American voters, those to whom the section outlines enfranchisement protections, conceived of and attempted to attain enforcement of Section Two. While the history of African American voters' agency during and after Reconstruction is well-documented and historically contested, the attempted enforcement of Section Two merits its own study as a site of political contests after its inception during Reconstruction and before the United States' "Second Reconstruction" of the 1960s Civil Rights Movement.

My study of the attempted enforcement of Section Two of the Fourteenth Amendment after the 1920 Presidential Election lies within the broader historiography of the suffrage and political activity of African American voters during the periods of Reconstruction and Jim Crow.

Serving as the initial foundation for Reconstruction historiography, the Dunning School constructed racist narratives that portrayed the successful enfranchisement and political participation of African American men in American society as a stain on American history. According to the Dunning School, the end of Reconstruction and subsequent disfranchisement of freedmen was a “struggle through which the southern whites, subjugated by adversaries of their own race, thwarted the scheme which threatened permanent subjection to another race.”³ Portraying the successful enfranchisement of freedmen as a result of white Republicans’ race-betraying actions and a threat to white southern society, the Dunning School simultaneously discounted and fomented white southerners’ fear of the political ability of African American voters. As African Americans attempted to regain the vote temporarily afforded during Reconstruction, the narratives of the Dunning School appeared in the arguments of Section Two’s opponents.

Though not given due consideration in its time, W.E.B. Du Bois’s *Black Reconstruction* served as the counterpoint to the false narratives of the Dunning School. Du Bois offered the first thorough examination of black Americans’ role in Reconstruction and illuminated the economic position of disfranchised men. Acknowledging that the enfranchisement of black men was short-lived, Du Bois characterized Reconstruction as a “splendid failure.”⁴ Black men’s political involvement was largely successful when African Americans had the support of the federal government and the enforcement of the Reconstruction Acts. A fair assessment of the democratic project of Reconstruction-era enfranchisement, the African American commitment to

³ William Archibald Dunning, *Reconstruction, Political and Economic, 1865-1877* (New York: Harper & Brothers, 1907), xv.

⁴ W.E.B. Du Bois, *Black Reconstruction in America 1860-1880* (New York: Free Press, 1999), 708.

enfranchisement embodied in attempts at Section Two enforcement in the 1920s responded to Du Bois's Reconstruction narrative of success advanced in *Black Reconstruction*.

While racist histories of enfranchisement of freedmen supplanted histories like Du Bois's, the later revisionist work of historians like C. Vann Woodward interpreted federal management of southern democracy more favorably and fairly elucidated the corruption of the successive Redeemer governments that came to rule the post-Reconstruction South.⁵ The most significant of the historiographies after the revisionist and later post-revisionists includes Eric Foner's *Reconstruction: America's Unfinished Revolution, 1863-1877*. Foner provides an extensive account of the United States' efforts to temporarily construct a representative democracy that enfranchised all of its eligible male citizens.⁶ This text serves as a valuable source of information on the conditions of the black political community before, during, and after Reconstruction. While such works have replaced the racist thought of Dunning School, the specific history of the attempted enforcement of Section Two remains limited.

In *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*, Eric Foner examines the Reconstruction amendments, building on his landmark work on Reconstruction. Foner argues, "All three amendments end with a clause empowering Congress to enforce their provisions, guaranteeing that Reconstruction would be an ongoing process, not a single moment in time."⁷ This assertion that the enforcement clauses ensured an ongoing movement for ensuring enfranchisement aligns with my research into attempts to enforce Section Two of the Fourteenth Amendment. Foner's warning against searching for the

⁵ C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge: Louisiana State University Press, 1971).

⁶ Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper Perennial Modern Classics, 1988 [2014]).

⁷ Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W. W. Norton & Company, Inc., 2019), xx.

original intent of the drafters of this amendment rather than how Americans understood and attempted to use them serves as valuable direction. While black men's suffrage allowed the ratification of the Fourteenth Amendment, they were not yet in Congress for its approval. This absence provides that there was often on consideration of them when considering "intent."⁸ With this work, Foner makes meaningful consideration of the role of African American men in a history that should include them.

With a solid understanding of the period that saw the ambitious enfranchisement of African American men, one can approach the history of the denial and suppression of their suffrage. Understanding how state and local governments restricted the right to vote is crucial in framing how African Americans regarded Section Two as a means to resist this "denial" or "abridge[ment]."⁹ C. Vann Woodward described the public perception of the inequality of the Jim Crow South: "The new Southern system was regarded as the 'final settlement,' the 'return to sanity,' the 'permanent system.'"¹⁰ The white southern elite and, eventually, the Republican Party adopted the view that the disfranchisement and oppression of African Americans was a final, settling system. Combatting southern disfranchisement and Republican inaction, disfranchised voters rallied around Section Two.

The 1960s serve as the starting point for renewed discussion of Section Two of the Fourteenth Amendment in law reviews. As the Civil Rights Movement, The United States' "Second Reconstruction," was underway, lawyers and legal historians looked to the never-before-enforced Section Two as a possible means to enfranchise African American voters.¹¹ Legal historians like George David Zuckerman explored the "forgotten second section

⁸ Foner, *The Second Founding*, xxvii.

⁹ U.S. Const. amend. XIV, § 2.

¹⁰ C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1955 [2002]).

¹¹ Woodward, *The Strange Career of Jim Crow*, 9.

of the Fourteenth Amendment” but relied only on Congressional discussion to illuminate public understanding of the meaning of the Fourteenth Amendment.¹² As voter suppression continues to plague the United States today, discussion of Section Two has continued to prompt discussion and reflection on Section Two.¹³ Such legislative history as is available in these law reviews is novel in its consideration of Section Two and provides valuable insight into the intended meaning and use of the amendment. Still, this legislative history neglects the role of African American voters in relation to the section intended to protect their suffrage.

Most recently, Professor Judith Giesberg delved into the study of attempted enforcement of Section Two during the 1870 census. Giesberg’s study of the 1870 census illuminates the aims of the Republican Party and the project of Reconstruction. While no states saw decreased representation on the basis of voter disfranchisement, the Census included questions inquiring about voter status and disfranchisement, the first instance of attempted enforcement of Section Two. Giesberg’s work presents a rare history of enforcement of Section Two before disfranchisement of African American voters had reached near-complete levels. Considering the history of Reconstruction and disfranchisement, Giesberg highlights the role of the Census and Section Two before widespread disfranchisement that characterized the 1920s.

¹² George David Zuckerman, “George David Zuckerman “A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment.” *Fordham Law Review* 30, no. 1 (1961): 93-136.

¹³ Michael Kent Curtis, “The Fourteenth Amendment: Recalling What the Court Forgot.” *Drake Law Review* 56 (2008): 911-1005.

CHAPTER ONE

From 1870 to 1920: The Inception and Evolution of Section Two

Section Two of the Fourteenth Amendment embodied the most radical of the Republican Party's Reconstruction-era ambitions to uphold the enfranchisement of African American men. The first instance of Republican commitment to protecting freedmen's vote through Section Two occurred under the Republican administration of President Ulysses S. Grant during the proceedings of the 1870 Census. By attempting to define and assess the levels of disfranchisement during the 1870 Census, Ohio Congressman and Chair of the House Subcommittee on the Census, James A. Garfield, hoped to enforce Section Two and punish voter suppression. After the returns from the 1870 Census proved insufficient to influence apportionment of representatives, freedmen maintained the practical potential of Section Two. As the federal government abandoned the aims and protections of Reconstruction, the necessity of voter protections and voter suppression deterrents under Jim Crow skyrocketed. African American men and women renewed the Reconstruction-era project of suffrage once-advanced by the Republican Party and looked to Section Two as a means to regain their constitutionally-protected right to vote.

Drafting Section Two: The Project of Reconstruction at Work

Penned by the remaining members of the Radical Republicans, Section Two reflected the beliefs of those in the Republican Party that were responsible for the most far-reaching aims of the Civil War and Reconstruction. In 1867, Charles Sumner, Massachusetts Senator and Radical Republican, expressed his position regarding suffrage:

For a long time I was perplexed by the subtlety so often presented, that the suffrage is a “privilege” and not a “right,” and being a “privilege,” it was subject to such limitations as the policy or good will of the legislature chose to impose. The more I think of it, the more it seems to me an essential right.¹⁴

Sumner’s belief that one’s right to vote as a male, American citizen aged twenty-one or older should not be restricted in any way reflected the consensus of the drafters of Section Two. In order to advance the evolving understanding of voting as a right, rather than a privilege bestowed upon the elite class of white southerners, Section Two punished the restriction or outright denial of an eligible voter.¹⁵ Congressmen such as Sumner strove to punish, and so prevent, nonracial voting requirements that southern states could impose without consequence. Referred to as the “obvious policy” of southern states by Eric Foner, these seemingly nonracial voting requirements could cripple the recently-reconstructed governments and their enfranchised freedmen. With extending suffrage to freedmen and protecting their reconstructed governments as main projects of Reconstruction, Section Two served as a deterrent against the voting restrictions of racist reconstructed governments.

While Section Two saw Republican Congressmen attempt to enforce voting as a right rather than a white man’s privilege, Republican Congressmen maintained reservations regarding the capabilities of recently-enfranchised freedmen. Thaddeus Stevens, Radical Republican and Representative of Pennsylvania, explained the function of Section Two in an 1866 Congressional debate: “If a State abuses the elective franchise and takes it from those who are the only loyal people there, the Constitution says to such a State, you shall lose power in the halls of the nation.”¹⁶ When Stevens referred to “the only loyal people,” he referred to the most reliable

¹⁴ Eric Foner, *The Second Founding*, 17.

¹⁵ U.S. Const. amend. XIV, § 2.

¹⁶ “Basis of Representation,” *Congressional Globe*, 39 Cong., 1 Sess., January 31, 1866, 536.

Republican-voting southerners: African American men. In the same debate, Stevens also relayed reservations about “delivering the vote to freedmen too quickly, before they had received the appropriate civic education.”¹⁷ By protecting these newly-enfranchised voters, regardless of Congressmen’s reservations about their capability, Republicans could ensure party security by maintaining the right to vote of their most allied constituency. Thus, the drafters of Section Two aimed to discourage voter suppression, a threat to freedmen and recently-reconstructed governments.

Recognizing freedmen’s suffrage as key to the egalitarian Reconstruction of southern states, the protection of freedmen’s vote also strengthened the other primary goal of the period: the Reconstruction of the Union. With the majority of Americans focused on the Reconstruction of the Union, Mark W. Summers argues that the failure in upholding an unprecedented level of democracy in reconstructed southern states was a result of the successful Reconstruction of the Union.¹⁸ Without the concern of a fractured Union or reemergence of slavery, the Summers argument helps explain why Republicans came to abandon freedmen’s enfranchisement in favor of obtaining greater political security during the 1870s. Concerned with their party’s standing in the Union, Republicans focused on attaining a coalition of white southerners and freedmen, favoring the concerns of the white majority at the expense of loyal freedmen voters.

While the freedmen’s party loyalty alleviated suspicions that Radical Republicans may have held regarding their civic ability, the concerns of the Republican party are only as important insofar as they influenced enactment and those whom the section was designed to protect: African American men. Though they had not been represented in Congress at the time of the

¹⁷ Judith Giesberg, “A Muster-Roll of the American People’: The 1870 Census, Voting Rights, and the Postwar South,” 3.

¹⁸ Mark W. Summers, *The Ordeal of the Reunion: A New History of Reconstruction* (Chapel Hill: The University of North Carolina Press, 2014).

Fourteenth Amendment's approval, African American men enfranchised in reconstructed governments were responsible for the successful ratification of the Fourteenth Amendment.¹⁹ Ultimately, it was the freedmen's vote that ratified the Fourteenth Amendment and their reception that granted it significance. An analysis of the subsequent attempt to enforce the measure reveals the practicability and political potential of Republican efforts to enforce Section Two to maintain the right to vote for African American men.

The 1870 Census: An Attempt to Enforce Section Two and Uphold Enfranchisement

The first attempt to enforce Section Two of the Fourteenth Amendment arrived with the 1870 Census. The census provided a crucial opportunity and hurdle to quantify state populations - including great numbers of casualties and refugees - and determine the scale of disfranchisement in the wake of the Civil War. Chair of the Census Committee, James A. Garfield, and the Republican administration attempted to create a census that quantified the disfranchised population, in accordance with the provisions of the Fourteenth Amendment, and maintained the Republican commitment to male enfranchisement. The attempts of Congress and the Republican administration to incorporate Section Two into the 1870 Census and their subsequent failure at its enforcement reveal the possibility of voter protection by the Republican Party during Reconstruction and the lengths to which the party would go to enforce the amendment's provisions.

Historian Judith Giesberg examines the well-intentioned attempts and failure of Garfield and the Republicans' attempts to use the Ninth Census as an instrument to enforce Section Two. Garfield referred to the Ninth Census as a "muster-roll of the American people."²⁰ Garfield's

¹⁹ Summers, *The Ordeal of the Reunion*, xxvii.

²⁰ "Ninth Census," *Congressional Globe*, 41 Cong., 2 Sess., December 16, 1860, 183.

description summons an ambitious image of a complete account of all Americans - northerners and southerners, white and black Americans - prepared to engage in society. Wielding the census as a possible tool of enfranchisement and political power, Garfield and his fellow Republicans embodied the civic ambitions of their party during Reconstruction.²¹ Their efforts, though unsuccessful, reveal the commitment to suffrage that still characterized the Republican Party before their abandonment of African American enfranchisement.

A quick glance at questions nineteen and twenty on the 1870 Census schedules reveals the project of Reconstruction of southern democracy at work.

1	2	3	DESCRIPTION.			7	-VALUE OF REAL ESTATE OWNED.		10	PARENTAGE.		13	14	EDUCATION.			18	19	20
			4	5	6		8	9		11	12			15	16	17			
		The name of every person whose place of abode on the first day of June, 1870, was in this family.	Age at last birthday, or date of birth, if known, in fractions, when $\frac{1}{2}$ or less.	Sex—Male (M.) Female (F.)	Color—White (W.), Black (B.), Indian (I.), Chinese (C.), Japanese (J.), Other (O.).	Profession, Occupation, or Trade of each person, male or female.	Value of Real Estate.	Value of Personal Estate.	Place of Birth, naming State or Territory of U. S.; or the Country, if of foreign birth.	Father of foreign birth.	Mother of foreign birth.	If born within the year, state month (Jan., Feb., &c.)	If married within the year, state month (Jan., Feb., &c.)	Attended school within the year.	Cannot read.	Cannot write.	Whether deaf and dumb, blind, insane, or idiotic.	Male Citizens of U. S. of 21 years of age and upwards.	Male Citizens of U. S. of 21 years of age and upwards, whose right to vote is denied or abridged on other grounds than rebellion or other crime.

Figure 1. The complete questions from the 1870 Census schedule.

19	Male Citizens of U. S. of 21 years of age and upwards.	CONSTITUTIONAL RELATIONS.
20	Male Citizens of U. S. of 21 years of age and upwards, whose right to vote is denied or abridged on other grounds than rebellion or other crime.	

Figure 2. Questions 19 and 20 of the 1870 Census schedule.

Under the heading “Constitutional Relations,” questions nineteen and twenty inquired into the voting status of the person being counted - qualifying their sex, citizenship and age - and whether their right to vote had been “denied or abridged,” excepting the acceptable circumstances of rebellion or other crime. In theory, an accurate count of the eligible voting population (question nineteen) and the amount of those disfranchised (question twenty) would allow the

²¹ Judith Giesberg, “‘A Muster-Roll of the American People’: The 1870 Census, Voting Rights, and the Postwar South,” 2.

reapportionment of representatives proportional to the voting electorate. Representatives would not benefit by suppressing votes that could have gone to their opponent. Thus, questions nineteen and twenty should have provided the responses possible to enforce Section Two and punish the suppression or denial of freedmen's right to vote.

While questions nineteen and twenty included the revolutionary attempt to punish and prevent voter suppression, the questions also posed practical considerations determining what merited the denial of one's right to vote. To answer the broad question of what merited a classification of denial or abridgement of an American man's right to vote, the *Ninth Census, United States, 1870: Instructions to Assistant Marshals* compiled by the U.S. Census Office of the Department of the Interior advised the field representatives accordingly: "Because the 'Fifteenth Amendment to the Constitution... has become the law of the land,' marshals were instructed that if any person were denied the vote based on the principles stated in the amendment, 'that denial is merely an act of violence.'"²² In order to gather the data necessary to apportion representatives in accordance with Section Two, the Census Office classified the denial of the right to vote as an act of violence, underscoring the threat that suppression of the freedmen's vote posed to the Republican Party.

While question twenty presented complications in defining the denial of the right to vote, the greatest hurdle in enforcing Section Two resulted from the disappointing returns of the census. Proper apportionment demanded that the Ninth Census returns provided responses representative of the scattered American population, but the 1870 Census ended in the highest

²² Judith Giesberg, "A Muster-Roll of the American People': The 1870 Census, Voting Rights, and the Postwar South," 30.

undercount of the nineteenth century.²³ In his submission of the census reports to Congress, Columbus Delano, the Secretary of the Interior, warned:

[T]he Department is disposed to give but little credit to the returns made by assistant marshals in regard to the denial or abridgement of suffrage. The unfavorable judgment of the Department in respect to this single class of statistics is formed, first, from the application of certain statistical tests, and second, from a consideration of the agencies employed, which are not deemed adequate to the determination of the numerous questions of difficulty and nicety which are involved.²⁴

Apportionment continued in Congress without enforcement of Section Two, and questions determining the disfranchised population were never again included in the census schedules. The few returns of the census and the complicated nature of determining enfranchisement resulted in the failure of Republicans to enforce Section Two of the Fourteenth Amendment.

While Giesberg argues that the aims of the 1870 census to enforce Section Two reflected the project of Reconstruction at work in the halls of Congress, she - and other historians - fail to consider how the events of 1870 Census influenced its participants and how the project of Reconstruction was at work in the community of the recently-enfranchised freedmen. In “A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment,” legal historian George David Zuckerman mistakenly argues that the insubstantial returns of the 1870 Census “probably produced its mark in history” because no census report since has attempted to report the number of disfranchised citizens in the states.²⁵ As the example of the 1920 census and election will show, the Congressmen may have learned in 1870 of the difficulty

²³ Judith Giesberg, “‘A Muster-Roll of the American People’: The 1870 Census, Voting Rights, and the Postwar South,” 13.

²⁴ *Congressional Globe*, 42nd Cong., 2nd Sess. 42 (1371-1372) quoted in George David Zuckerman, “A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment” *Fordham Law Review* 30, no. 1 (1961): 111.

²⁵ George David Zuckerman, “A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment” *Fordham Law Review* 30, no. 1 (1961): 116.

of enforcing Section Two, but those that had lost the right to vote had taken a different lesson from history. African American voters understood that an amendment ratified by the votes of their ancestors had been incorporated into the Constitution with the power to punish disfranchisement and continuously sought its enforcement.

By looking at the response of the African American community each decade, it becomes apparent that hope for Section Two was neither extinguished nor fading after the failures of the 1870 Census. With each decennial census, the vision for enforcement of Section Two arose in the political thought of the disfranchised African American community. In a 1902 letter to the Anti-Lynching Bureau, Ida B. Wells-Barnett, renowned champion of anti-lynching legislation, urged the bureau's members to each send a "letter urging the cutting down of the representation in Congress of the states which have nullified the Constitution."²⁶ This request remained a brief addition to an exhortation to send Congressmen accurate histories of Reconstruction. In 1903, the Union League Club and the Republican Club of New York both urged congressional investigation of disfranchisement and the enforcement of Section Two. Republican campaigns had gone so far as to adopt the plank of enforcement of Section Two during the 1908 election but never acted on their promises.²⁷ The political vision for enforcement of Section Two remained formidable in African American communities and Republican promises to African American voters.

While Section Two remained a "dead letter" among those with the legislative power to enforce it, the efforts of disfranchised African American voters kept the vision of enfranchisement through the Reconstruction Amendment alive. The Republicans that drafted

²⁶ Ida B. Wells-Barnett to the Members of the Anti-Lynching Bureau, Chicago, IL, January 1, 1902.

²⁷ R. W. Thompson, "The Ohio Platform: Demands That the Fourteenth Amendment to the Constitution Be Enforced," *The Baltimore Afro-American (1893-1988)*, March 21, 1908.

Section Two of the Fourteenth Amendment aimed to protect the freedmen's right to vote, and thanks to the freedmen, the amendment achieved ratification. Though the return of the 1870 Census failed to account for the scale of disfranchisement in the nation, it established the categories of enfranchised and disfranchised and defined the denial of one's vote as an act of violence. As the federal government abandoned the project of Reconstruction, the violent acts of disfranchisement that the 1870 Census attempted to quantify became common practice throughout the nation.

Disfranchisement of African American Voters

The need for protections against the disfranchisement of African American voters had dramatically increased by the twentieth century. Jim Crow, "the legal, customary, and often extralegal system that segregated and isolated African Americans from mainstream American life," endured through the post-Civil War period to the Civil Rights Movement and operated throughout the United States at an alarmingly successful rate.²⁸ In *Jim Crow America: A Documentary History*, historians Catherine M. and Richard J. Lewis mark 1900 as the point of "near-total disfranchisement" of African Americans through legal and non-legal means. Though African American voters continued to assert their right to the ballot, the Republican Party that had once positioned enforcement of Section Two as a primary objective in 1870 had increasingly accepted the widespread denial of African Americans' right to vote.

The discriminatory practices of states solidified during the era of Jim Crow were not particular to the South, but the immutable power of white southern Democrats and the extreme rates of disfranchisement presented a most egregious case. The transition from the visionary

²⁸ Catherine M. Lewis and Richard J. Lewis, *Jim Crow America : A Documentary History* (Fayetteville: University of Arkansas Press, 2009), xii
<https://ezproxy.cul.columbia.edu/login?url=https%3a%2f%2fsearch.ebscohost.com%2flogin.aspx%3fdirect%3dtrue%26db%3de025xna%26AN%3d906882%26site%3dehost-live%26scope%3dsite>.

measures embodied in the Reconstruction Amendments to the near-total removal of African Americans from the formal political process of the United States resulted in lasting disfranchisement throughout the South. Without the previous measures that meted southern racism - "moderate Southern opinion, liberal Northern opinion, the nationwide press, the courts, the federal government" - or the enforcement of Section Two, southern governments could deny the right to vote without fear of substantial retribution.²⁹ The institutional and social restrictions of Jim Crow resulted in the denial of the right to vote through "legal" means and explicitly violent actions; the scale of disfranchisement merits discussion in order to understand the disproportionate power of southern officials, the lack of power of black southerners, and the potential of Section Two of the Fourteenth Amendment.

A pamphlet compiled by the National Association for the Colored People (N.A.A.C.P.) entitled *Disfranchisement of Colored Americans in the Presidential Election of 1920* provides an invaluable analysis by W.E.B. Du Bois in its opening chapter, "The Election and Democracy." Du Bois prefaced his findings with the confident assertion that "COMPLETE evidence of disfranchisement of Negro Americans in the election of 1920 could be obtained only by federal or congressional investigation."³⁰ As the next chapter will discuss, the N.A.A.C.P. pushed for federal investigation of disfranchisement during the 1920 election and enforcement of Section Two. For now, Du Bois's work offers a brief investigation into southern disfranchisement that the federal government never granted its citizens.

²⁹ Catherine M. Lewis and Richard J. Lewis, *Jim Crow America : A Documentary History*, xx.

³⁰ The National Association for the Advancement of Colored People, *Disfranchisement of Colored Americans in the Presidential Election of 1920* (New York: NAACP, 1920), 4.

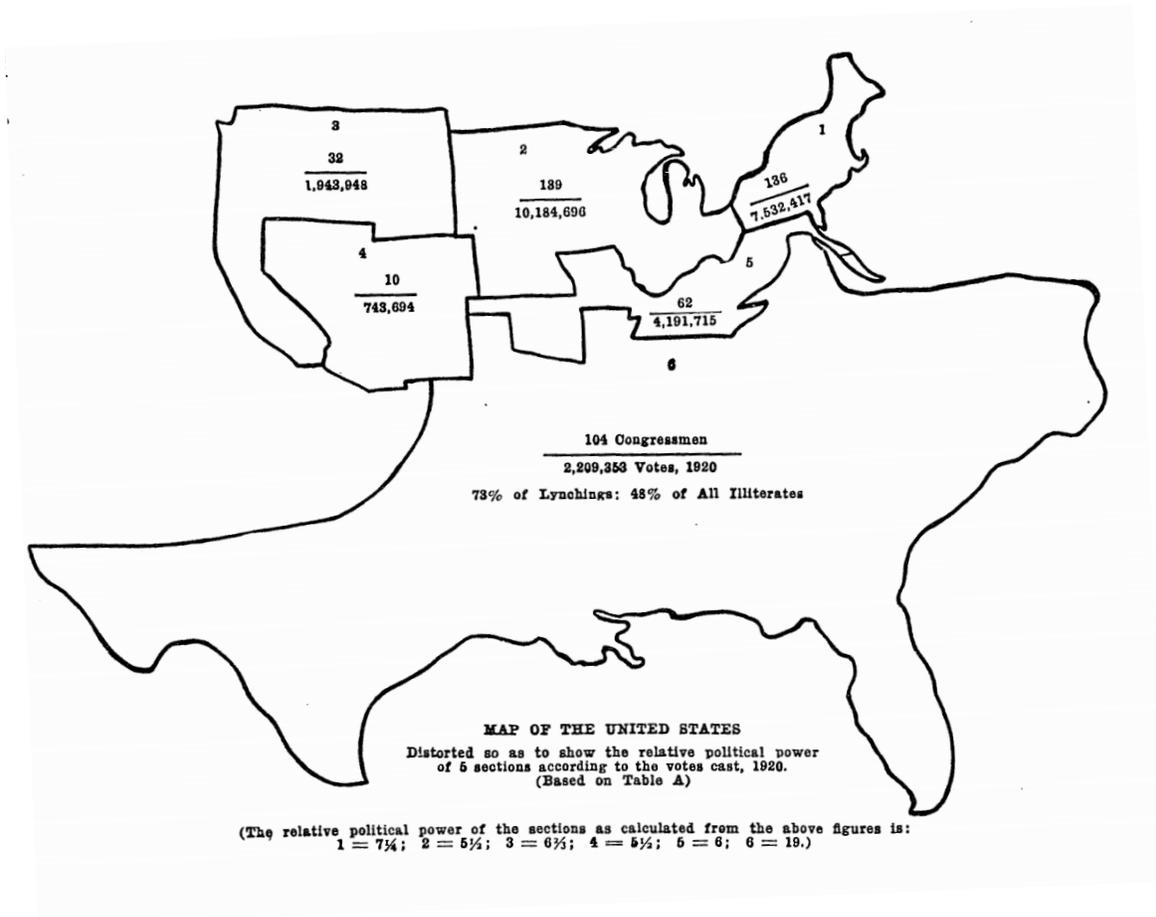


Figure 3. A visual representation of southern disfranchisement made by Du Bois.

As communicated by Du Bois's calculations and media, glaring rates of disfranchisement meant that southern representatives stood to lose substantial representation if Section Two were enforced. Du Bois estimated the percentage of the eligible voting population through a rough approximation of returns from the 1910 census. According to his calculations, out of the nearly thirteen million southerners eligible to vote in the 1920 election, only two-and-a-half million cast their ballot. Thus, he calculated the disfranchisement of southern voters to be as high as 82.4 percent.³¹ Through their deliberate disfranchisement of significant portions of the southern

³¹ The National Association for the Advancement of Colored People, *Disfranchisement of Colored Americans in the Presidential Election of 1920*, 6.

population, southern officials governed vast populations in which entire African American communities lacked the ability to influence their representatives' election.

The suppression and denial of the vote, which Section Two aimed to prevent, was an accepted facet of southern society and interpreted by many white southerners as a public good. A 1920 letter to the *New York Tribune* from North Carolinian R. L. Tate described the normalcy of southern disfranchisement: "All well-informed people know that elections are as free to white people, and to white people only, in the South as they are in any other part of the country."³² Disfranchisement of African American voters was so commonplace in the South that unconcealed means of racist disfranchisement were popular suggestions in southern newspapers. In a 1921 publication of *Vardaman's Weekly*, one southerner went as far to argue that "there should be an amendment to the Federal Constitution prohibiting the Negro from voting, regardless of his educational accomplishments or his property holding."³³ Rather than deny the reality of disfranchisement throughout the South, white southerners embraced their minority rule as a distinction of southern government.

In order to portray African American disfranchisement as a strength of southern government, white southerners contrasted the condition of African American southerners during Jim Crow to the supposed horrors of Reconstruction. Since the post-Reconstruction period of Redemption, the southern elite drew on the threat of African American political involvement and northern intervention as a basis for white solidarity.³⁴ Commenting on the possible enfranchisement of African American southerners, a 1920 article from the *Evening Telegram* of Lakeland, Florida warned that the South would be "threatened by a return of the troubles of the

³² The National Association for the Advancement of Colored People, *Disfranchisement of Colored Americans in the Presidential Election of 1920*, 17.

³³ *Ibid.*, 21.

³⁴ C. Vann Woodward, *Origins of the New South*, 51.

reconstruction period.”³⁵ The opinion expressed in the *Evening Telegram* and others of its kind amplified the racist history of Reconstruction most famously popularized by William Archibald Dunning and propounded by racist elites throughout the United States. The successful enfranchisement and political participation of African American men during Reconstruction was a tool for white southerner officials to maintain disfranchisement and political power.

With the interpretation that Reconstruction was a disaster for southern society, white southerners looked ahead with resolve and determination to prevent a recurrence of the events that had led to the successful participation of black southerners in the political and social life of the nation. C. Vann Woodward analyzed how white southerners welcomed the exclusion of African Americans from society during Jim Crow as the “‘final settlement,’ the ‘return to sanity,’ the ‘permanent system.’”³⁶ To the common understanding of white southerners, the successes of Reconstruction and the potential of the Reconstruction Amendments served as a disgraceful hurdle in the long history of the white-controlled South. Reconstruction had not been a failure, but the ascendancy of white supremacy in southern governments had successfully stopped the political and social advancement of African Americans. While white southern elites ruled with their false understanding, the memory of Reconstruction and Section Two remained alive in the hopes of mobilizing African Americans.

African American Women Threaten Southern Suppression

While the political activity of African American men during Reconstruction presented a historical nightmare for white southerners with racist ambitions, the ratification of the Nineteenth

³⁵ The National Association for the Advancement of Colored People, *Disfranchisement of Colored Americans in the Presidential Election of 1920*, 21.

³⁶ C. Vann Woodward, *The Strange Career of Jim Crow*, 8.

Amendment granting female suffrage presented a fresh horror of an expanded black electorate. Though the South already successfully denied the suffrage granted to African American men by the Fifteenth Amendment, any expansion of suffrage was a threat to their restriction of it. At its ratification, the political scope of Section Two had been limited to the eligible voters of its day: “any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States.”³⁷ With an expanded disfranchised body of voters including female citizens, the threat of reduction of southern representation by the enforcement of Section Two increased, and southern officials met the political potential of African American women’s vote with fervent resistance.

It is easy to suppose that a government which strove to suppress the right to vote of the male African American population would balk at the extension of suffrage to African American women. An article published in the *Chicago Tribune* in 1920 presented the troubles that women’s suffrage raised for elected southern representatives: “The South is opposed to extension of suffrage because that involves the Negro vote which is not cast but which must always be suppressed. Extensions of suffrage are inimical to sections which must maintain restrictions of suffrage.”³⁸ Simply, any threat to the successful suppression of African American suffrage became a threat to the control that white southerners held over southern society and government. Though they strove to characterize the Reconstruction Amendments as failures of the past, the Nineteenth Amendment prompted white southerners to reconsider the threat of the Fifteenth Amendment.

Though not included in the original suffrage project of Reconstruction, African American women attempted to make the most of their recent enfranchisement in the face of resistance.

³⁷ U.S. Const. amend. XIV, § 2

³⁸ The National Association for the Advancement of Colored People, *Disfranchisement of Colored Americans in the Presidential Election of 1920*, 22.

White southern officials registered enfranchised women's self-recognition as a threat to power. As women attempted to participate at the polls in the 1920 election, African American women faced particular methods of discrimination - accusations of perjury above all else - in addition to the usual methods used to deny the vote to men - tax qualifications, educational tests, grandfather clauses, and harassment.³⁹ According to the pamphlet compiled by the NAACP, African American women registered at far higher rates than white women.⁴⁰ Altogether, African American received similar, if not the same, methods of voter suppression and emboldened the mission for enfranchisement as a newly-enfranchised class of voters eager to participate in their constitutionally-mandated right.

The Perfect Storm: the 1920 Election as a Platform for Section Two

In a campaign speech recorded in June of 1920, future President Warren G. Harding offered his vision for the United States and the world:

Ours will be the commanding example of world leadership today. If we can prove a representative popular government under which the citizenship asks what it may do for the government and country rather than what the country may do for individuals, we shall do more to make democracy safe for the world than all armed conflict ever recorded. The world needs to be reminded that all human ills are not curable by legislation, and that quantity of statutory enactments and excess of government offer no substitute for quality of citizenship.

Campaigning on a return to "normalcy," Harding appealed to an American electorate affected by the recent horrors of the first World War. Though the Presidential Election of 1920 ended in a landslide victory for Harding, the electorate and government responsible for Harding's victory

³⁹ Lynn Dumenil, "The New Woman and the Politics of the 1920s," *OAH Magazine of History* 21 (2007), 24.

⁴⁰ The National Association for the Advancement of Colored People, *Disfranchisement of Colored Americans in the Presidential Election of 1920*, 31.

was far from a leading example of representative democracy for the international community.⁴¹ Considering the scale of disfranchisement and the threat of the Nineteenth Amendment, the alignment of the 1920 Presidential Election and census created an opportune situation to do exactly the opposite of what Harding recommended. The disfranchised African American citizens of the United States would demand the country to act on existing constitutional provisions - namely, Section Two of the Fourteenth Amendment - as Reconstruction had proved that the cure for certain evils - such as disfranchisement - lay within the power of the United States government.

⁴¹ Warren G. Harding, "Readjustment," June 29, 1920, New York, New York, Sound disc, 4:22 minutes, Library of Congress.

CHAPTER TWO

Election Returns: The Resurrection of Section Two

The 1920 Presidential Election and Census provided the necessary data and platform for the reintroduction of Section Two on behalf of disfranchised African American men and women. “Second Reconstruction,” coined by C. Vann Woodward in *The Strange Career of Jim Crow*, refers to the eventual enfranchisement won by African Americans during the Civil Rights Movement that had renewed the Reconstruction aims for - and protection of - expanded suffrage. Woodward argues that the “Second Reconstruction, unlike the old, was not the monopoly of one of the great political parties” but the “impersonal forces of history”: “economic revolution, rapid urbanization, and war.”⁴² Though the effects of such impersonal forces merit their own study, this chapter examines how efforts to enforce Section Two prompted disfranchised voters to look beyond the Republican Party to kickstart this Second Reconstruction through the revival of the Fourteenth Amendment. The catastrophically-undemocratic election of 1920 and the rise of the NAACP under James Weldon Johnson primed the post-election political landscape for the reintroduction of Section Two.

From 1920 to 1930, Johnson headed the NAACP. Under his leadership, the NAACP advanced the famous Dyer Anti-Lynching Bill, strengthened the local branches and institutional framework of the association, and cultivated a membership that the organization would come to rely on in his absence.⁴³ Johnson’s NAACP advocated for congressional investigation into the widespread disfranchisement of African American voters during the 1920 election and demanded the subsequent reduction of southern representatives. Massachusetts Representative George

⁴² Woodward, *The Strange Career of Jim Crow*, 9.

⁴³ Gilbert Jonas, *Freedom's Sword: The NAACP and the Struggle against Racism in America, 1909-1969* (New York: Routledge, 2005), 22.

Tinkham similarly introduced resolutions before the House of Representatives calling for enforcement of Section Two and reduction of southern representatives. In their endeavors to enforce Section Two, the NAACP and Representative Tinkham supported one another's vision of the constitutionally-enforced punishment and prevention of voter suppression.

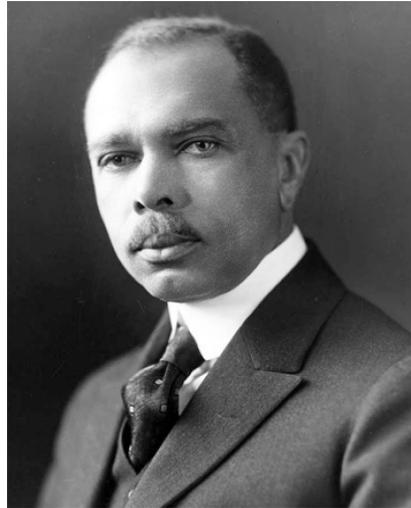


Figure 4. James Weldon Johnson, Executive Secretary of the NAACP (1920-1930).

Arguments Against and in Favor of Section Two

The NAACP and Representative Tinkham envisioned that the successful enforcement of Section Two would reduce the number of representatives elected by minority white populations, lessen the power of discriminatory southern Democrats through the reduction of southern representatives, and thus advance the enfranchisement of African American citizens by punishing disfranchisement. As explained in a January 1921 article from *The New York Age*, this plan of action figured that the possible reduction of southern representatives would lessen the power of the state and its power to disfranchise its citizens, make disfranchising less appealing, incentivize the re-enfranchisement of the African American voters, revive the Reconstruction

Amendments, and lessen discriminatory legislation.⁴⁴ With such a reduction, supporters of Section Two hoped that the reduction of southern representatives would create the opportunity to pass critical anti-lynching and anti-Jim Crow legislation.⁴⁵ Though no organization can claim to speak on behalf of an entire community, the NAACP advanced Section Two enforcement in accordance with widespread support of the measure throughout the African American community.

Due to the lived experience of discrimination and segregation of the twentieth century, some African American citizens expressed practical concerns regarding the campaign for Section Two. Organizations such as the Commonhood of Negroes of Cambridge, Massachusetts protested Tinkham's resolutions, concerned that reduction would increase the difficulty of securing any representation for African Americans and encourage the legalization of disfranchisement.⁴⁶ Such concerns stemmed from the assumption that the disfranchising states would accept the reduction of their representation and power in the United States government. With proposed reduction accepted, worries arose that enforcement of Section Two would wholly permit the disfranchisement of African Americans, encourage disfranchisement in Midwestern states that had seen the recent growth of African American political strength, and "decitizenize the Negro."⁴⁷ For the majority of African American southerners, the central tenet to their participation as citizens - their right to vote - had already been denied.

The possibility of future enfranchisement sidelined concerns about jeopardizing existing limited levels of enfranchisement. Reservations that the movement to enforce Section Two

⁴⁴ "Reducing South's Votes in Congress: Will It Be To the Negro's Advantage or Disadvantage?," *New York Age*, January 8, 1921.

⁴⁵ *Ibid.*

⁴⁶ "Commonhood of Negroes Protests Tinkham's Bill," *The Morning Globe*, Boston, MA, December 9, 1920.

⁴⁷ "Reducing South's Votes in Congress: Will It Be To the Negro's Advantage or Disadvantage?," *New York Age*, January 8, 1921.

would retard or legalize disfranchisement factored into the deliberations of the NAACP, but the extreme disfranchisement of African Americans that had already existed in the South demanded decisive action. Newspaper clippings reporting the approval of African American citizens far outnumbered those of disapproval in the legislative files of the NAACP. In the end, Section Two found its most popular and public support through the NAACP and Tinkham's organized efforts as defenders of the right to vote of African American citizens.

Conversely, a consideration of Mississippi Representative John Elliott's thoughts regarding Section Two enforcement reveal the impractical, racist arguments advanced by southern Democrats and white southerners. Unable to promote practical arguments for the disfranchisement of those whom the Reconstruction Amendments explicitly aimed to protect, Rankin turned to discrediting the validity of the amendment and furthering false narratives of Reconstruction. Rankin argued that the Fifteenth Amendment's prohibition of race-based disfranchisement had nullified Section Two of the Fourteenth Amendment. The NAACP and Tinkham, propelled by the support of African American voters, had clearly not interpreted the Fifteenth Amendment in a similar manner. Rankin argued further that "the time had passed when a man or a party can successfully make political capital by holding out to the Negro the hope or promise of social and political equality."⁴⁸ Rankin referred to the success of enfranchisement during Reconstruction as a bygone era. Exposing the political priorities of congressional representatives, Rankin proclaimed that African American enfranchisement no longer warranted political action for either party as they accepted southern disfranchisement.

⁴⁸ *Congressional Record*, House, 67th Cong., 1st sess. (14 October 1921): 6316.

The “Stormy Sessions” Batter the NAACP

In a December 1920 press release from the NAACP, James Weldon Johnson relayed how NAACP witnesses had weathered the “stormy sessions” of Congress during their attempts to testify on southern disfranchisement before the House Committee on the Census.⁴⁹ If the NAACP hoped to influence apportionment according to the provisions of Section Two following the 1920 Census, the audience they most needed to persuade was the Census Committee. Established as a standing committee in 1901, the House Committee on the Census, headed by Republican Representative Isaac Siegel of New York, oversaw all proposed legislation dealing with the census and the apportionment of representatives.⁵⁰ While Section Two had arisen in the 1870 Census by internal Republican efforts, the NAACP mustered the committee to consider the census’s returns in accordance with Section Two.

Just less than one month after votes were cast in the 1920 election, the NAACP called upon Representative Siegel. Siegel, a Republican representative who served from 1915 to 1923, was a more sympathetic candidate to the NAACP’s reports of disfranchisement than members of the Democratic Party, whose southern wing had reinstated discriminatory practices.⁵¹ In a letter to Representative Siegel, Johnson requested that representatives of the NAACP serve as witnesses before a Census Committee hearing on the disfranchisement of African American voters in the 1920 Presidential Election. While Republicans no longer advanced radical civil rights legislation on behalf of African Americans, their Democratic counterparts were obvious

⁴⁹ “Charge Congressmen With Obstructing Negro Witnesses on Disfranchisement,” NAACP, December 31, 1920.

⁵⁰ Census History Staff, “House Committee on the Census (1901-1946) - History - U.S. Census Bureau,” United States Census Bureau, accessed January 31, 2021, https://www.census.gov/history/www/reference/legislation/house_committee_on_the_census_1901-1946.html.

⁵¹ “SIEGEL, Isaac (1880-1947),” US House of Representatives: History, Art & Archives, accessed December 27, 2020, [https://history.house.gov/People/Listing/S/SIEGEL.-Isaac-\(S000404\)/](https://history.house.gov/People/Listing/S/SIEGEL.-Isaac-(S000404)/).

enemies to enfranchisement as evidenced by their discriminatory legislation, local governments, and exclusively-white voting base.

Through the enforcement of the Fourteenth Amendment, the NAACP hoped to curtail the uncontrolled disfranchisement of African Americans by southern governments that characterized the 1920 Presidential Election and all other supposedly-free elections in the United States. On behalf of disfranchised voters, Johnson expressed the organization's hope that a hearing before the Census Committee would bring about a congressional investigation of the "violent, illegal and unconstitutional disfranchisement of colored people in southern states, and a consequent reduction in representation of those states, as provided in the Fourteenth Amendment."⁵² Fifty years prior, the federal government had identified the denial of one's right to vote as an act of violence in the instructions to the field representatives of the 1870 Census. The harassment and physical acts of violence of the 1920 election made the definition of disfranchisement a reality, and under Johnson's direction, the NAACP sought retribution.

In his letter to Representative Siegel, Johnson emphasized the importance of the security of the ballot as it sustained the democratic livelihood for all Americans, regardless of race. Maintaining the security of the ballot had been an obvious priority occupying African American political thought since enfranchisement, but rising levels of disfranchisement for African Americans voters had not received substantial recourse from either political party; Johnson had to extend the problem of disfranchisement beyond those that the government had already dismissed. Johnson warned Representative Siegel that congressional refusal to recognize disfranchisement would "constitute a grave affront to American citizens of every complexion who see in the validity of the ballot a fundamental of representative government."⁵³ Johnson

⁵² James Weldon Johnson to Representative Isaac Siegel, December 3, 1920.

⁵³ "Charge Congressmen With Obstructing Negro Witnesses on Disfranchisement," NAACP, December 31, 1920.

noted that acceptance of the disfranchisement of African American voters was widespread, and argued that any threat to the ballot was a threat to the nation's representative character at-large. By congressional action, the NAACP urged the Republican congressmen to - at least, partially - sustain the representative government that the United States claimed to be.

While the NAACP channeled its enfranchisement campaign through Republican Representative Siegel, the disregard for the African American voter's right to the ballot had already fomented frustration and mention of party desertion within the African American community. An article from the *Chicago Defender* in 1918 entitled "What the Ballot Means to Us" positioned the value of the right to vote for African American citizens within the greater context of American politics: "As long as [African American voters] can be counted upon as a fixed asset of any political party that party does not need to concern itself about our interests and will not do so."⁵⁴ The unwavering alliance of African American voters to the Republican Party had become a hurdle to their advancement. Angered by the repeated failure of the Republican Party to secure the enforcement they had promised, the author encouraged breaking allegiance with the Republican Party.⁵⁵ By wielding the power of the vote secured by some to jeopardize the Republicans' monopoly on the black electorate, the author hoped to pressure the party to enforce Section Two. In this instance of frustration in the *Chicago Defender*, the possible benefits of the enforcement of the Fourteenth Amendment superseded the historic alliance of African American voters to Republicans that had begun during Reconstruction.

On December 29, 1920, representatives from the NAACP testified before the Congressional Committee on the Census in Washington, D.C. on the disfranchisement of African

⁵⁴ "What the Ballot Means to Us." *The Chicago Defender (Big Weekend Edition) (1905-1966)*. October 19, 1918, sec. Editorial Page.

⁵⁵ *Ibid.*

American voters during the 1920 Presidential Election. The delegation provided the following evidence:

1. That uniformly in the southern states it took fewer voters to elect representatives to congress than in northern and western states, 11,000 votes electing a representative in Georgia against 61,000 required in New York.
2. We presented the names, addresses and registration certificate numbers of 941 persons who were denied the vote in the city of Jacksonville, Florida, and informed the Census committee that 3,000 other names accompanied by affidavits or sworn statements would be forwarded.
3. We presented photographs showing long lines of colored people who stood all day without being permitted to vote.
4. We presented evidence of the cold blooded murder of upwards of 30 colored people in the election riots at Ocoee, Florida.⁵⁶

With the above information, the delegates aimed to prove the extent of the disfranchisement of African Americans through ample evidence of violent and nonviolent action taken against those who had attempted to register to vote and cast their ballots.

The first point provided by the NAACP presented the unrepresentative southern governments, which operated in contradiction with the vision of Section Two. Southern representatives sought election from a voting body that was almost exclusively white. Within this already-limited group of voters, the white southerners that did participate in the elections were a minuscule fraction of the total eligible voting population. In the 1920s, just over one fifth of eligible southerners voted in Democratic primaries or general elections, and the primaries, the most meaningful elections in the South, excluded African American voters until the 1940s.⁵⁷

⁵⁶ "Charge Congressmen With Obstructing Negro Witnesses on Disfranchisement," NAACP, December 31, 1920.

⁵⁷ Dewey Grantham, *The Life and Death of the Solid South: A Political History* (Lexington: University of Kentucky Press, 1988), 78.

Thus, the NAACP's evidence revealed how a minority governed southern elections. With Section Two enforcement, the reduction of southern representatives proportional to their restricted voting body would diminish the power of southern minority rule.

If the glaring imbalance required to elect a representative in northern versus southern elections did not provide a clear enough argument for enforcement of Section Two, the NAACP supplied further evidence of the outright denial of suffrage through acts of official refusal, delay, and violence. The thousands of voters denied from the polls in Jacksonville, Florida offered clear evidence of disfranchisement. Impossibly long lines delaying the casting of ballots and voting officials' refusal to process the registration of African American voters cast the dire position of African American voters throughout the South in clear view. Instances of "cold blood murder" executed during the "election riots" of Ocoee, Florida declared that the situation in the South required more than the deterrence of voter suppression that Section Two could afford. African American voters throughout the South required the immediate intervention of the federal government.

Precisely because the evidence presented by Johnson and his fellow witnesses was undeniably damning, southern representatives attempted to drown the testimony of the NAACP in what Johnson referred to as the "stormy sessions." Seeking the assistance of the federal government through its traditional Republican allies, the NAACP met resistance from aggressive southern Democrats and protesting Republicans. Before the delegates could convince the Congressmen of the severity of their case, three southern representatives - Carlos Bee of Texas, W. W. Larsen of Georgia, and Representative Aswell of Louisiana - attempted to prevent the presentation of evidence by obstruction and intimidation of the witnesses.⁵⁸ The simple

⁵⁸ Charge Congressmen With Obstructing Negro Witnesses on Disfranchisement," NAACP, December 31, 1920.

presentation of the evidence of southern disfranchisement, widely recognized and accepted throughout the South, was unacceptable to the southern Democrats who had won their elections as a result of discriminatory voting practices.

Unable to discredit the evidence presented by the NAACP, the southern representatives aimed to discredit those who presented it. An article from the *Philadelphia Public Journal* published on January 8, 1921 quoted Representative Clark of Florida's characterization of the NAACP witnesses in its biting headline: "NAACP 'Meddling, Fussy Persons' Over Little Thing Like Burning at Stake."⁵⁹ The sarcastic tone of the paper emphasized the pathetic attempts of southern representatives to ridicule the NAACP in light of the evidence presented. Representative Clark complained that the NAACP aimed to influence "the ignorant Negroes of the south in order to keep themselves in good positions."⁶⁰ Representative Clark sought to advance a racist perception of African Americans as "ignorant" and the harmful view that organizations such as the NAACP sought personal profit. In order to resist the reality that African Americans longed for enfranchisement throughout the South, southern Congressmen inhibited potential legislation and promoted lies.

⁵⁹ "N.A.A.C.P. 'Meddling, Fussy Persons' Over Little Thing Like Burning at Stake," *Philadelphia Public Journal*, January 8, 1921.

⁶⁰ *Ibid.*



THE SIXTH WARD POLLING-TENT, JACKSONVILLE, FLORIDA, COLORED SIDE. ABOUT 400 IN LINE DURING ENTIRE DAY

Figure 5. A photo of African American voters delayed at the polls during the 1920 Presidential Election.

In the end, the NAACP concluded that the hearing had prolonged the American scandal of disfranchisement. Johnson described the grim condition of the American government:

United States citizens are taunted the world over with the hypocrisy of pretending that they enjoy a republican form of government when, by force, fraud and violence, colored citizens are deprived of the ballot and are murdered in cold blood when they claim this prerogative of their manhood and womanhood.⁶¹

Inaction from those at the highest level of the United States government signaled that the right to vote, granted to African American men and women in the nation's Constitution, was a vehicle for political manipulation of Congressmen and not an instrument for the people of the nation to participate in their supposedly-representative government.

⁶¹ "Charge Congressmen With Obstructing Negro Witnesses on Disfranchisement," NAACP, December 31, 1920.

The “Conscience of the House” Pestern His Party

On December 7, 1920, Representative George H. Tinkham broke from Republican complacency with a House resolution calling for the enforcement of Section Two of the Fourteenth Amendment. Requesting action from the House Committee on the Census, or any sub-committee of that body, Tinkham’s resolution called for congressional inquiry into “the extent to which the vote is denied or abridged to citizens” and legislation providing for reapportionment of representatives in Congress.⁶² In May of 1921, Tinkham again interrupted proceedings when he introduced a similar resolution during discussions surrounding an Army appropriations bill. In fall of 1921, Tinkham called upon Section Two during a floor debate of Representative Siegel’s proposed bill to expand House membership. Until Congress finally dealt with apportionment from the 1920 Census returns with a comprehensive apportionment bill passed in 1929, Tinkham would routinely introduce resolutions calling for the enforcement of Section Two of the Fourteenth Amendment.⁶³ Tinkham’s resolutions served as the most robust attempts to revive Section Two of the Fourteenth Amendment by the Republican Party since 1870. As he aimed to re-enfranchise the African American population, Tinkham renewed Reconstruction-era Republican aspirations for a more egalitarian United States.

⁶² “Congressman To Wage Attack On Anti-Negro Election Legislation,” *New York Call*, December 6, 1920.

⁶³ “Reduction Redux,” US House of Representatives: History, Art & Archives, accessed January 29, 2021, <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Temporary-Farewell/Reduction/>.



Figure 6. George Holden Tinkham of Massachusetts.

Evidenced by the failure of the federal government to ever enforce the section, Tinkham's enthusiasm for the enforcement of Section Two required an explanation. Though Tinkham's opponents claimed that his intentions laid in securing more votes from African Americans within his congressional district, the representative's relentless commitment to civil rights throughout his legislative career suggests that Tinkham's concern for enfranchisement went beyond individual political advantage. During Tinkham's defense of his May 1921 resolution, he described southern disfranchisement as "the most colossal electoral fraud the world has ever known."⁶⁴ Unlike many of his contemporaries, Democratic or Republican, Tinkham objected to the blatant discriminatory practices of southern governments. Voicing frustration during his singular crusades for Section Two, Tinkham depicted the pitiful state of his party: "On this question moral cowardice and political expediency dominate the Republican leadership of the House."⁶⁵ Referring to House members who refused to accept his resolution, Tinkham identified those that "refuse[d] obedience to the Constitution which they have sworn to obey" as the "real

⁶⁴ *Congressional Record*, House, 67th Cong., 1st Sess. (6 May 1921): 1124–1126.

⁶⁵ *Ibid.*

leaders of lawlessness.”⁶⁶ Uncharacteristically devoted to African American enfranchisement, Tinkham hounded his own party for the sake of the disfranchised.

In addition to his declaration of obvious fraud and pitiful Republican response, Tinkham emphasized the constitutional responsibility of Congress to enforce the reduction of southern representatives through Section Two. On the House floor, he protested, “national elections can no longer be half constitutional and half unconstitutional.”⁶⁷ Tinkham recognized Section Two as one of only four mandatory sections of the Constitution “where ‘shall’ is employed;” the other three sections concern Congress’s control of electoral ballots, the reconsideration of a veto of a President, and the decennial census.⁶⁸ According to Tinkham, this particular power of Section Two demanded enforcement from Congress or risked the nullification of a key component of Congressional enforcement. By denying the enforcement required by Section Two, Tinkham reasoned, “No greater violence can be done to our Constitution than refusal by Congress to obey these mandates.”⁶⁹ Through his reasoning, a refusal to enforce Section Two jeopardized the authority of constitutional enforcement by Congress just as the Eighteenth and Nineteenth Amendments made constitutional enforcement a critical issue of the day.

Tinkham’s support of Section Two was exceptional; House members from both parties accepted disfranchisement as the “permanent system” of the so-called representative government of the United States.⁷⁰ The other Republicans of the House dismissed the disfranchisement of African American voters, as the *Afro-American* reported, “Mr. Tinkham made a grievous mistake white Republican leaders say, having been advised by them that his resolution would so

⁶⁶ *Congressional Record*, House, 67th Cong., 1st sess. (14 October 1921): 6312.

⁶⁷ *Ibid.*, 6311–6312.

⁶⁸ *Ibid.*, 6339.

⁶⁹ *Ibid.*

⁷⁰ C. Vann Woodward, *The Strange Career of Jim Crow*, 8.

complicate the question [of apportionment] before the House.”⁷¹ As long as it served their political interests to maintain the disfranchised status of countless African Americans, lawmakers did not push to enforce Section Two in order to end fraudulent elections. Only one other member of the House, Representative Wells Goodykoontz of West Virginia, joined Tinkham in calling for the enforcement of the Fourteenth Amendment.⁷² Accepting the disfranchisement of African Americans as part of the political system, the Republican Party abandoned Tinkham and his isolated efforts to enforce Section Two.

Unsurprisingly, Tinkham’s efforts received support from the NAACP and other African American organizations. W.G. Young, Secretary of the local Graham, Virginia, Branch of the NAACP, wrote to Congressman Tinkham on behalf of his chapter thanking him for the attempted resolution. In his praise of the Congressman’s efforts, Young noted how “nullification of [the Fourteenth] Amendment” harmed both “the negroes and poor whites - especially the former - of the South.”⁷³ Young’s emphasis on the disfranchisement of poor white southerners briefly highlighted the less-common consideration of disfranchisement of white southerners. With the enfranchised elite of the South dominating southern discourse, the popular opinion advanced by white southerners remained an attack on Tinkham’s attempts to prompt a congressional inquiry into disfranchisement. With white supremacist rule ensured by the enfranchised southern elite, the greatest concern of the supporters of Section Two was the severe disfranchisement of African Americans throughout the South.

⁷¹ Colored Syndicate Press Bureau, “Leaders Say They Defeated Tinkham Bill: Massachusetts Congressman’s Measure To Reduce Representation Purposely Killed: Longworth Speaks: Tells Afro Correspondent, Republican Party Has A Better Plan,” *Afro-American (1893-1988)*, January 28, 1921.

⁷² “Reduction Redux,” US House of Representatives: History, Art & Archives, accessed January 29, 2021, <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Temporary-Farewell/Reduction/>.

⁷³ W.G. Young to Representative George Tinkham, December 14, 1920.

When the NAACP descended upon the nation's capital to testify on southern disfranchisement, they hoped to prompt a congressional response and reduce southern representation in order to incentivize the enfranchisement of African Americans. Their hearing and the resolutions of their ally, Representative Tinkham, fell on deaf ears on both sides of the aisle. By refusing to acknowledge the disfranchisement of African Americans, accepting the hypocrisy of the American representative government that denied the vote to so many, and promoting racist and defeatist histories of Reconstruction, the lawmakers of Washington, D.C. solidified the growing suspicion that political alliances could not bring African American citizens to a Second Reconstruction.

CHAPTER THREE

1929 Apportionment: Section Two and the Republican Party Abandoned

Our political salvation and our social survival lie in our absolute independence of party allegiance in politics and the casting of our vote for our friends and against our enemies whoever they may be and whatever party labels they carry.

-- 1926 Annual Report of the NAACP National Convention

The nonpartisanship proclaimed by the NAACP at their 1926 National Convention reframed the organization's pursuit of civil rights for African Americans. Forsaking the storied African American alliance to the Republican Party, the NAACP redefined their political allies as those "friends" capable of advancing the status of the African American voter in the twentieth century. Conversely, any opponent to the political and social advancement of African Americans was an enemy, regardless of party alliance. Having sought and not received Republican assistance for the federal enforcement of Section Two after the 1920 Census and Presidential Election, the NAACP and Representative Tinkham renewed their struggle as Congress began the delayed apportionment of 1921 in 1927.

Though the Constitution mandates a decennial Census and reapportionment of congressional representatives, the returns of the 1920 Census remained untouched as congressional conflict pushed the constitutionally-mandated task of apportionment to 1927. The returns from the census revealed a population shift of Americans from rural to urban areas that was decisive and ongoing. Threatened by the potential power of officials from urban areas with

growing populations, rural-elected members delayed reapportionment repeatedly.⁷⁴ Along with the complication presented by the rising urban population, members of Congress stood at odds on issues of immigration, tax policy, a soldier's bonus, and international issues raised by the First World War.⁷⁵ This unprecedented delay in apportionment finally came to a close with the passage of a reapportionment bill in 1929, declaring that the House of Representatives would be apportioned based on the results of the 1930 census.

As Congress prolonged their task of reapportionment, the NAACP and Representative Tinkham pursued Section Two enforcement through two more presidential elections. With each election, the disfranchisement of African American voters jeopardized the integrity of the elections and livelihoods of African Americans. African American voters watched as the Republican Party, under the leadership of President Hoover after his 1928 win, pivoted to the votes of white southerners in hopes of solidifying a Republican party presence in the South. The NAACP and African American voters' demand for Section Two and enfranchisement would be unrelenting, but their partnership with the Republican Party was nearing its end.

Reducing Representation: the NAACP vs. Southern Lawmakers

Before the passage of the 1929 apportionment bill, Tinkham advanced two more resolutions calling for the reduction of representatives according to Section Two of the Fourteenth Amendment. In a telegram sent to northern Congressmen, James Weldon Johnson urged Congressmen on behalf of the National Office to enthusiastically support the Tinkham

⁷⁴ Census History Staff, "1920 Overview - History - U.S. Census Bureau," United States Census Bureau, accessed December 27, 2020, https://www.census.gov/history/www/through_the_decades/overview/1920.html?sec_ak_reference=18.2cb7efc7.1590661529.a77271a.

⁷⁵ "Reduction Redux," US House of Representatives: History, Art & Archives, accessed January 29, 2021, <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Temporary-Farewell/Reduction/>.

Amendment to the house reapportionment bill; the bill provided for the reduction of southern representatives in accordance with Section Two as a result of the disfranchised southern population. Arguing that it was an “effective means of compelling enforcement of [the] fourteenth and fifteenth amendments of [the] constitution,” Johnson maintained the NAACP’s supportive position of Section Two and Tinkham’s efforts.⁷⁶ Neither the NAACP nor Tinkham had accepted defeat since the Section Two debacle had begun before the Census Committee in 1921.

African American voters reliably renewed their demands for Section Two enforcement with each census, but the reapportionment bill of 1929 introduced the most unlikely supporters of the reduction of representatives: southern Congressmen. Rather than enforce the Fourteenth Amendment of the Constitution, Representative Hoch of Kansas attempted to introduce a resolution discounting “foreign aliens” in the population count in order to influence apportionment.⁷⁷ By discounting the foreign population, Hoch and other southern lawmakers aimed to diminish the population of urban areas and prevent the increase of northern representatives. Southern lawmakers, refusing to take action on the constitutional reduction of representatives as outlined in the Fourteenth Amendment, conceived of a new scheme to further exacerbate undemocratic American elections and representation.

Unsurprisingly, Hoch’s resolution prompted retaliation from Tinkham in a resolution calling for the enforcement of the Fourteenth and Fifteenth Amendments. In a press release from the NAACP recounting the events surrounding Hoch and Tinkham’s resolutions, Johnson described how the renewed discussion of Section Two “threw the House into an uproar” as the threat of reduced southern representatives reawakened.⁷⁸ The NAACP had introduced Section

⁷⁶ James Weldon Johnson, Telegram, June 5, 1929.

⁷⁷ James Weldon Johnson, Telegram, June 7, 1929.

⁷⁸ “Nation Stirred Over Reapportionment,” NAACP, June 7, 1929.

Two in 1921 before the House in response to election disfranchisement primarily in the South, but its reintroduction was a response to southern aggression towards northern representation.

Assessing the support behind Tinkham's resolution reveals the shifting strategy of the NAACP and Democratic representatives in combating southern lawmakers' transparent efforts to maintain their rule of southern government. The legislative files of the NAACP from 1929 include thanks to Tinkham and firm encouragement to local branches to obtain their respective congressional representative's support for the Tinkham resolution; the role of the local NAACP branches buttressed by Johnson's leadership present in these files would only grow as the NAACP shifted its energy away from the Republican Party.⁷⁹ While southern lawmakers strove to diminish northern representation, they strained ties with northern Democrats and congressional resistance to civil rights for African Americans. The June 1929 NAACP press release described the congressional commotion: "During the struggle, party lines were broken in the House, and northern Democratic organs like the New York World warned the southerners that they were making inevitable a movement for the enforcement of the 14th and 15th Amendments now being flagrantly violated."⁸⁰ Acting on behalf of the interests of the white elite of the South mobilized the NAACP and northern lawmakers across partisan lines by threatening political control in the North.

In the end, the final apportionment bill of 1929 excluded Hoch and Tinkham's resolutions. Apportionment's delay did not deter the campaign for Section Two, but it had transformed into a retaliatory campaign championed by Tinkham and the local branches of the NAACP. Tinkham's efforts dominated the House in place of the NAACP's previous leadership on behalf of Section Two in 1921. Southern lawmakers' plotting to discount northern populations

⁷⁹ "Nation Stirred Over Reapportionment," NAACP, June 7, 1929.

⁸⁰ Ibid.

only propelled Tinkham's enfranchisement ambitions, but both endeavors failed to pass the House. Section Two enforcement died before the House for the second time in a single decade.

Republicans Appeal to White Southerners

As Section Two reappeared and subsequently disappeared from House debates, Republicans looked beyond Washington as they prioritized white southern voters at the expense of the civil rights of African Americans. The Reconstruction-era coalition of enfranchised freedmen and white southerners was no longer a party priority; instead, Republicans developed a "lily-white" movement within the party. The "lily-white" movement prioritized the demands of white southerners and ignored the storied African American basis of the Republican Party in the South with little success.⁸¹ Rather than press for the enfranchisement of their former allies, the African American voters of the South, the Republican party accepted the failed Reconstruction of southern governments and worked within the discriminatory southern structures. Instead of securing a solid southern base of white voters, the Republican Party succeeded in driving away its most loyal voters.

In the chaos of the apportionment crisis, Herbert Hoover clinched the 1928 presidential election victory, along with the ramifications of his party's "lily-white" movement. Though the majority of African American voters cast their ballot for Hoover, the 1928 election marked the Republican Party's greatest flight of African American voters. Prominent African American newspapers, such as the *Chicago Defender* and the *Baltimore Afro-American*, had expressed their support of his Democratic opponent, Al Smith.⁸² The apportionment crisis, widespread disfranchisement, a growing urban population of African Americans, and Republican folly

⁸¹ Richard B. Sherman, *The Republican Party and Black America: From McKinley to Hoover 1896-1933* (Charlottesville: University Press Virginia, 1973), 83.

⁸² Richard B. Sherman, *The Republican Party and Black America*, 224.

contributed to opposition toward the party and the president. President Hoover's success at the polls had come without the traditional support of African American voters; pandering to white southerners during his term would only further African American voters' decamping.

Disapproval and Disaffection of the Republican Party

In May of 1929, President Hoover delivered a speech that incited immediate dissent from African American voters. Speaking on behalf of the Republican party's efforts to establish itself in the southern states, Hoover emphasized the necessity of the party to "commend itself to the citizens of those states."⁸³ African American voters had already established Republican party loyalty in the South; by that logic, Hoover had advocated for the recommendation of the party to the desires of white voters. In response to Hoover's speech championing the "lily-white" movement of Republicans, African American voters and organizations including the NAACP expressed their outrage through the press. Recognizing Republican courtship of white southerners as intolerable, the editorials ranged from arguments for party renewal to complete party abandonment. Hoover's speech embodied the greater shift of Republican priorities to white voters and the fallout from the lack of Section Two enforcement. Consequently, African American political organization adapted to nonpartisan, local efforts to attain enfranchisement.

In response to Hoover's remarks on the Republicans' southern strategy, a packet of newspaper clippings denouncing Hoover and the party arrived in the offices of congressional representatives. The *Congressional Record* of May 7, 1929 recorded Senator Blease's request to print these clippings "with reference to the political situation in the South."⁸⁴ The collection of articles was issued by the *Memphis Triangle* with postage from "millionaire negro and political

⁸³ "Political Situation in the South," *Congressional Record*, 71 Cong., 1 Sess., May 7, 1929, 1002.

⁸⁴ *Ibid.*

power” Robert R. Church.⁸⁵ The clippings included an article written by Charles Michelson in the *New York World*, a staunchly-Democratic newspaper, describing the indignation of African American voters as “G.O.P. Negroes in Party Revolt.”⁸⁶ Michelson claimed, “This is the first time the race has attempted an organized movement of the sort, and some of the northern Republicans are doubtful of the wisdom of risking their surety.”⁸⁷ The arrival of these clippings proved remarkable enough to make the record and impress upon Republican and Democratic audiences that a movement for enfranchisement was afoot with or without party alliances.

An article from the NAACP’s *The Crisis*, published after Hoover’s speech, expressed the frustration of the African American political community at the Republican betrayal of civil rights. The exasperation of African American voters’ efforts to obtain protection from their supposed party in the article’s demands is overt: “They must be offered something; offices, better schools, better living conditions, abolition of ‘Jim Crow’ cars. Something!”⁸⁸ *The Crisis* demanded that the votes cast by African Americans for the Republican Party result in concrete improvements in their lives. The demands listed in *The Crisis* and their urgent delivery stressed that African American voters could not serve as reliable votes for a party that had long-since stopped serving them.

Though previously embraced by Republican presidential platforms and entertained by Republican representatives, enforcement of Section Two became an exclusive demand of African American voters wearied by Republican inaction. An article from the *Chicago Tribune* titled “Hoover Passes for Man, but Good Lord, Who Said Republican?” replied to Hoover’s expressed desire for a two-party system in the South: “The upbuilding of a strong 2-party system in the

⁸⁵ “Political Situation in the South,” *Congressional Record*, 71 Cong., 1 Sess., May 7, 1929, 1002.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

South should not come until the South enfranchises the negro or takes the constitutional penalty of reduction of representation in Congress for failure to do so.”⁸⁹ This article made the simple recognition of disfranchisement of African American voters that Republicans and Democrats alike ignored. Before instituting party development in the South, it would be necessary to ensure that a fair political system was in practice. Headlong Republican activity in southern politics that disregarded black southerners would not be tolerated.

Yet, the article’s criticism of Hoover and his party still found hope in the Republican Party by claiming it for African American voters. “The Republican Party, as with our Christian faith, the same yesterday, to-day, and forever, everywhere.”⁹⁰ Recognizing the basis of African American voters and the Reconstruction-era ambitions of the party, the Republican Party remained salvageable by this opinion. Even with some hope declared, the article acknowledged the gravity of the changes the Republican Party underwent as it warned, “When the Republican Party becomes a Hooverwhite party in the South, as Hoover seems to wish, the Democratic Party will become less white in the North.”⁹¹ Foreshadowing the realignment of African American voters from the Republican to Democratic Party, the article subsumed its hope for Republican perseverance with the reality that African American voters demanded results from their candidates.

Frank R. Crosswaith, a socialist leader and founder of the Negro Labor Committee, disavowed the Republican Party outright after Hoover’s play to white southerners in his article, “Fumigating the Republican Party.”⁹² Crosswaith identified the 1920 Presidential Election as the

⁸⁹ “Political Situation in the South,” *Congressional Record*, 71 Cong., 1 Sess., May 7, 1929, 1004.

⁹⁰ *Ibid.*, 1005.

⁹¹ *Ibid.*, 1004.

⁹² Robert Fay, “Crosswaith, Frank Rudolph” (*Oxford African American Studies Center* 1 Dec. 2006), Accessed 18 Mar. 2021.
<https://oxfordaasc.com/view/10.1093/acref/9780195301731.001.0001/acref-9780195301731-e-40899>.

beginning of the most recent storm of political disorder and claimed, “the Negro finds himself literally a cast-away drifting in the treacherous sea of Republican lily-whitism.”⁹³ Republicans offered no security to African American voters, and the party’s refusal to embrace the issue of disfranchisement threatened their political and literal survival in the South. Though Crosswaith acknowledged that the Republican withdrawal was long-coming, he noted that the only distinguishable difference between the two parties had been the Republican Party’s “more cleverly veiled and slightly less hostile attitude... toward the political prerogatives of the negro.”⁹⁴ With the public “lily-white” movement of the Republican Party, the African American voter had no incentive to prioritize either party as both openly accepted disfranchisement. Leading by example, Crosswaith prioritized black organization at a local, organizational level without party dependence.

In addition to the news clippings delivered to the lawmakers, an NAACP press release recounted James Weldon Johnson’s August editorial urging African American voters to focus on local efforts. Concerning the African American voter, Johnson advised, “He should go into the Democratic primaries and vote for what he believes to be the best men for local offices” and “not bother himself about helping to elect Republican presidents - or Democratic ones either.”⁹⁵ The progression of Republican disappointment at the federal level had shown that effective transformation need not originate at the level of national parties. Johnson believed, “By eschewing national Republican politics [the African American voter] will undermine all arguments about his being a mere tool and monkey paw of alien Yankee domination.”⁹⁶ Under

⁹³ “Political Situation in the South,” *Congressional Record*, 71 Cong., 1 Sess., May 7, 1929, 1002.

⁹⁴ *Ibid.*

⁹⁵ “James Weldon Johnson Writes in September Mercury on the Negro and Politics,” NAACP, August 23, 1929.

⁹⁶ “James Weldon Johnson Writes in September Mercury on the Negro and Politics,” NAACP, August 23, 1929.

the leadership of Johnson, the NAACP advanced political independence as the surest path for effective change for African American voters.

The final failure to enforce Section Two in 1929 impressed upon the NAACP and African American voters across the country that the Republican Party's interests were not aligned with their own. Support of Tinkham's resolutions was a momentary means to combat southern lawmakers' machinations. With their gaze directed towards white southerners, the Republican Party looked past the needs of African American voters. As expressed in the published opinions of prominent African American citizens, neither party feigned concern for the status of the African American citizen. In order to sustain the mission for enfranchisement, organizations like the NAACP and African American voters fled the Republican Party as it abandoned them.

Conclusion

Though never enforced, Section Two retains plenty of historical significance in its hibernation. As the Fifteenth Amendment made freedmen's suffrage the law of the land, the freedmen's right to vote outshone the voting protections outlined in Section Two of the Fourteenth Amendment. Yet, the willful ignorance adopted by most Americans regarding Section Two was as short-lived as the period of freedmen's enfranchisement during Reconstruction; by the 1870s, disfranchisement was on the rise and the first attempt at Section Two enforcement had failed. The ensuing conflicts that arose because of the attempted and unsuccessful enforcement of Section Two illuminated the dire position of African American citizens and the evolving dynamics of the political parties.

By the 1920 Presidential Election, Representative Tinkham and the NAACP revived Section Two and funneled their revival through Republican channels in the House of Representatives. The predictable resistance of southern Democrats and the disappointing passivity of Republicans worsened as the apportionment crisis delayed passage of the final reapportionment bill to 1929. By then, the NAACP was no longer at the forefront of the Section Two campaign, testifying before the House Committee on the Census. Instead, Representative Tinkham employed Section Two as a means to further enfranchisement and combat southern discounts of the northern foreign-born population. The strategy of the NAACP and that shared by the popular opinion advanced in African American newspapers was to break party allegiance with the Republican Party because it had forfeited any concern for its African American constituency. By the mid-1930s, a mass movement of African American voters to the Democratic Party signaled a definitive political realignment.⁹⁷

⁹⁷ Michael K. Fauntroy, *Republicans and the Black Vote* (Boulder: Lynne Rienner Publishers, 2007), 41-55.

Though the issue of Section Two enforcement cannot account for political realignment on its own, the efforts of the NAACP and Tinkham on behalf of Section Two tell part of the lasting story of enfranchisement and disfranchisement in the United States. The history of voter suppression and disfranchisement is long and persistent. Each election presents new reports of attempts by state governments to restrict eligible voters from casting their ballot and election legislation consistently prompts divided responses from Democrats and Republicans. Consider the most recent legislation signed by Georgia Governor Brian Kemp. An expansive, controversial overhaul of the state's election laws approved by the Republican-controlled state legislature has stirred state political conflict and the comment of the national press.⁹⁸ Chronicling the convoluted history of voting in the United States requires the consideration of constitutionally-enforced punishment for denying eligible voters the ballot.

While the future possibilities of Section Two can elicit intriguing projections, the brief history of the section prompts consideration of how a Second Reconstruction, brought on by Section Two enforcement, may have had radically-different consequences for African American citizens. The 1920 Census and Presidential Election had given hope to the cause of African American enfranchisement, but Section Two of the Fourteenth Amendment has remained in relative obscurity to most Americans since its inflammatory departure at the end of the 1920s. Though the practicality of Section Two is yet to be successfully tried in practice and civil rights victories have come through other constitutional means, the history of Section Two reveals how the movement for African American enfranchisement evolved through constitutional and partisan struggles in its journey to a Second Reconstruction.

⁹⁸ Stephen Fowler, "Georgia Governor Signs Election Overhaul, Including Changes To Absentee Voting," NPR (National Public Radio, March 25, 2021), <https://www.npr.org/2021/03/25/981357583/georgia-legislature-approves-election-overhaul-including-changes-to-absentee-vot>.

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