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**Election Fraud and Contested Congressional Elections:
An Analysis of the United States, 1840-1940**

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Abstract Under what conditions do losing candidates file complaints about election fraud? And, what can such complaints teach us about the nature and extension of election fraud? This paper investigates a method for measuring electoral fraud by examining a dataset of challenges over unfair elections filed to the Committee on Elections of the United States House of Representatives between 1840 and 1939. Drawing on a general “calculus of petitions” that can help untangle when contests might be filed, we seek to evaluate the extent to which the analysis of election disputes is a useful method for measuring the incidence of election fraud. We also analyze a variety of hypotheses on the over-time and cross-sectional distribution of election disputes. Overall, the paper seeks to use the American historical case to contribute to the growing comparative politics literature on the causes of election fraud in newly democratizing countries.

Introduction

On November 5, 1878, by a margin of 7.8 percent or some 3000 votes, Ignatius Donnelly lost his bid to win the third Congressional seat of Minnesota on a fused Democrat-Greenbacker ticket. After some initial hesitation, he decided to contest the Republican winner's, William Washburn's, right to the seat, alleging that Washburn had illegally engaged in vote buying, intimidation, and election fraud. Donnelly spent a full year gathering evidence. His brief, presented to the House Committee on Elections, claimed that illegal votes had been cast by railroad employees and transients, unanimously favoring the line's president (Washburn), and that in seven precincts of Minneapolis, election officers circumvented the secret ballot by numbering tickets to intimidate voters. Donnelly presented testimony and depositions showing two specific instances of voter intimidation, and also showing that Washburn had bribed electors. The Democratic majority report of the committee argued that Washburn was clearly guilty of bribery, in itself sufficient to void his seat, but they further claimed that the cases of illegal voting were sufficient to declare that Donnelly had received a majority of the legal votes, thus winning the election. The Republican minority report, however, rejected every one of Donnelly's charges. After some backroom negotiations, the committee voted to oust Washburn, but voted not to seat Donnelly in his place. No action was ever taken by the House, and Washburn remained safely in his seat (Ridge 1962, chap. IX; Rowell 1901, 355-361).

Donnelly's charges were certainly not unique for his time. Several observers have noted that, particularly toward the end of the nineteenth century, allegations of stuffed ballot boxes, padded registration lists, vote buying, repeated voting, voter intimidation and violence at the polls were ubiquitous (Converse 1972; Allen and Allen 1981; Argersinger 1985). But the magnitude and frequency of such charges, the extent to which they were substantiated, and the extent to which fraud affected election outcomes remains disputed. As has been argued, "The evidence to demonstrate the existence of election fraud in the literature is not only anecdotal, it is unsystematic, impressionistic, and by and large inconclusive" (Allen and Allen, 1981, 167). However, the case of *Donnelly vs. Washburn* suggests a potential source for studying the prevalence of election fraud in American political history more systematically by analyzing the

extent to which elections were contested or not.¹ Under Article I, Section 5, of the United States Constitution, each House of Congress “shall be the judge of the elections, returns, and qualifications of its members.” It was under this constitutional provision that Ignatius Donnelly held the right to contest the election of William Washburn in 1878, and the same basic procedure for contesting elections has been in place since the dawn of the republic until the present day (Jenkins 2004, 2005; Green 2007).

Yet, the Donnelly case also suggests the need for serious caution; the case makes clear that there is no straightforward relationship between the incidence of election fraud and cases of contested elections. First, Donnelly’s decision to contest the seat was based on a strategic calculation, weighing the personal legal costs incurred by the contest against the probability that his case would be favorably received by the Democratic majority of the House Committee on Elections (Ridge 1962, 187-8). Donnelly could have come to the conclusion that the election was not worth contesting, suggesting that other potential contestants facing fraud or intimidation at the polls might have acted likewise. And second, despite the seemingly convincing evidence Donnelly presented that Washburn actually had committed fraud, the House still seated Washburn. This suggests that other, presumably partisan, considerations were being brought upon the case than simply its legal credentials.

In short, we are left asking: why are some elections contested, others not, and what determines the resolution of these contests by Congress? And, more importantly, what can the incidence of contested elections teach us about the nature and extension of election fraud in American political development? These are the questions we will attempt to address in this paper.

We define election fraud as the “introduction of bias into the administration of elections such that the voting process itself is distorted” in a way that undermines democratic practice (Schedler 2002, p. 105). We seek to assess the extent to which evidence from election contests reveals both the extent of fraud as well as the role of partisan maneuvering. A “minimalist” claim that we assess is that contested elections are a rich untapped resource for election activities on the

¹ We define “contested election” as any election in which a losing candidate filed a contest to the Committee on Elections of the House of Representatives. Note that this is different from an election in which a candidate is unopposed.

ground. Witnesses provided rich accounts of the varieties of manipulation, the disputes that arose in campaigns, and the evolution of democratic norms and procedures. It provides, in short, an amazing resource to reconstruct the nature of election practice in a period when other sources are simply not available. A “maximalist” claim is that, contested elections are more than that and constitute a possible systematic measure of election fraud across time and space.

In the first section, we review the relevant literature on election fraud in the American context. In section two, we provide a framework for understanding the motivations behind contested elections, and present our data and research design. We propose a general “calculus of petitions” that can help untangle when petitions might be filed; this “calculus of petitions” structures are analysis. We then discuss two key measurement issues: the extent to which election contests a) are truly about what we normally think of as “election fraud” and b) are independent of partisan motivations. In the final section, we use contested elections to test hypotheses about the spatio-temporal distribution of election fraud in the period 1840-1940 in the United States.

I. Election Fraud and the Study of American Political Development

The modern scholarly debate on the nature and extent of election fraud in the political history of the United States started with an essay by Philip Converse (1972). In criticizing Burnham’s (1965) previous data and theory on the matter, Converse argued that the radical decline in (among other things) voter turnout around the turn of the last century could conceivably be explained by the elimination of corrupt voting through ballot and registration law reforms. Burnham (1974, 1017-8) countered that although election fraud “was occasionally notorious and even locally widespread” in the nineteenth century, it was (a) concentrated to the cities, where it could have been ongoing well into the twentieth century, and (b) did not to the same extent concern the national elections. Both Converse’s and Burnham’s evidence to support these claims was impressionistic at the best, however; they seem to have relied on presumed but tacit historical knowledge of the era. Converse, admitting that the literature on the subject was “everywhere anecdotal” (1971, 282), relied most heavily on a selection of case studies of alleged registration fraud collected by Harris (1929). Burnham (1974, 1018), in turn cited Richard Jensen’s study of elections in six states in the Midwest, which Jensen found “remarkably clean,” particularly compared to the rural South (Jensen 1971, 37). Cox and Kousser (1979) contributed

to the debate by suggesting that ballot reform in the late nineteenth century mostly affected the nature, not the extent, of election fraud. Based on a systematic study of newspaper reports in rural New York from 1879-1908, they argued that whereas pre-reform fraud was mostly “inflationary” and intended to boost turnout, post-reform fraud was “deflationary,” with parties bribing voters to stay home on election day.

For the generation of “new political historians” emerging at the time, the stakes involved in the Converse-Burnham controversy extended beyond simple agreement on the facts. If fraud was pervasive, as Converse implied, aggregate election returns could not be trusted, nor could any firm conclusions be drawn from studying the socio-cultural correlates of aggregate partisan support. Allen and Allen (1981), in a handbook on how to analyze historical election returns, tried to rebut this devastating implication in what is probably the most extensive literature review of vote fraud allegations in US election to date. Although newspaper and journal allegations of vote fraud were most abundant in the late nineteenth century, and mostly concerned the large cities and metropolitan areas, Allen and Allen (1981) argued that these allegations were not systematically evidenced – instead, they were the product of Mugwumps and middle- or upper-class white progressive reformers reacting to what they found to be morally objectionable behavior among immigrants, African-Americans, and the poor. The vote fraud allegations were simply part of a particular political agenda to eradicate urban machines and regain control over the cities. With the exception of the South, the Allens found allegations of election fraud in the countryside “considerably less frequent,” especially in the newly formed Western states (Allen and Allen 1981, 165).²

In another move to undercut the published charges of election fraud, Allen and Allen (1981) attempted to redefine the issue by arguing that only violence, intimidation and actual ballot fraud, *not* vote buying or patronage, “violated the voter’s intent.” As argued in an influential essay by Argersinger (1985, 673), however, “It was...precisely the latter type of ‘corruption’ that was most frequently alleged in the late nineteenth century, and so to define it away reduces the incidence of ‘vote fraud’ while doing nothing to disprove the existence of an illegal activity

² See also Kleppner 1987, 167-170, who dismisses the claim that election fraud was pervasive, and who relies extensively on the use of historical election returns to explain genuine voting patterns.

viewed as troubling at the time.” Arguably the best evidenced case studies of election fraud in American political history concerns vote buying. One notable example is the illustrious case of vote fraud in Adams County, Ohio, where the practice of bribing voters on election day was so entrenched that voters considered it “rightful compensation for time spent in going to the polls.” A reform-minded local judge disrupted the system in 1910 by impaneling a grand jury to investigate the illegal practice. By indicting the vote seller (voter) from testimony taken from the buyers (local party officials), who could in return go unpunished, 26 percent of the population was found guilty of vote-selling, and disenfranchised for five years (Gist 1961, cit 60). This figure comes surprisingly close to the estimated 28.5 percent of voters who, according to newspaper reports, allegedly sold their votes in five counties and a metropolitan area in New Jersey between 1889 and 1906 (Reynolds 1980, 195). While both of these studies are constrained geographically, they attest to the fact that vote buying was not a practice unique to urban machines. They also indicate that vote buying was used not only to persuade voters to switch parties, but also to reward partisan voters for turning out on election day.

Other forms of election fraud, such as the padding of registration lists, ballot stuffing, and electoral manipulation, are obviously more difficult to prove due to their hidden nature. Argersinger considers a wide array of sources other than potentially biased Mugwump and reformist allegations, and finds the “certain” existence, through “incontrovertible evidence,” of election fraud during the Gilded Age. They include secondary accounts by third party and union representatives, court cases and official investigations by state and federal governments, and confessions by politicians themselves (Argersinger 1985, cit 677, 680). While this goes a long way toward dispelling Allen and Allen’s (1981) conclusion that election fraud was more or less an ignorable phenomenon, Argersinger (1985, 686) still concedes that his account falls short of showing the more “precise level or influence” of election fraud. Later studies reflect the same underlying controversy. They range from locally constrained but carefully crafted case studies, where the scale and severity of the fraud committed even during the Gilded Age is in more doubt (Mayfield 1993; Reynolds 1993), to Campbell’s (2005) sweeping collection of examples of election fraud from the colonial to present times, designed to show that fraud has always been commonplace in U.S. elections (also, see Campbell 2003; Summers 2001).

While the extent of fraud remains disputed, there at least seems to be scholarly agreement on its spatial and temporal distribution. First, most observers seem to agree that the turn of the last century marked the heyday of electoral manipulation. Thus, Allen and Allen (1981, 163) argue, “As was the case with the urban vote fraud, the great bulk of the allegations of rural vote fraud fell into the years roughly between the Civil War and 1930.” Similarly, Sikes (1928, 36, 90) concluded that actual practices of intimidation at the polls and outright election fraud (although not necessarily vote buying!) were less prevalent in the late 1920s compared to a couple of decades earlier. Secondly, there appears to be a near consensus on the view that electoral manipulation was more commonly practiced in the South, particularly concerning the use of violence and intimidation to prevent blacks from voting, than in other parts of the country (Jensen 1971, 37; Allen and Allen 1981, 164-5; Seip 1983, 74-6; see Kousser 1974).

Finally, although examples of fraudulent practices occurring in rural areas do occur as noted above, election fraud at the turn of the twentieth century was a predominantly urban phenomenon. This is evident both in Allen and Allen’s (1981, 162, 178) review of historical charges, and in the scholarly literature on urban machine politics. Whereas rural election fraud seemed a remnant of pre-modern development, with wealthier patrons bestowing favors on electors, machine bosses relied explicitly on patronage to build party organizations and administer local government.

The political machine emerged in the late nineteenth century; by 1890, machine bosses controlled half of the largest cities in the country (Erie 1988, 2). Machines were distinguished by one political party “captur[ing] the local governing apparatus and centraliz[ing] power in a given jurisdiction” (Trountsine 2006, p. 881), and they were associated with reliance on patronage and spoils to ensure loyalty. Because machine bosses controlled hundreds of local and municipal offices, they could exchange jobs for votes, and could use control over offices to ensure high turnout in elections (Wolfinger 1972). Patronage was so widespread that civil service wages were significantly higher in cities governed by machines than they were in similarly-sized cities around the turn of the century (Troesken 1999).

In addition to dispensing jobs, machine bosses were also known for their largesse during elections, providing food, alcohol, and money to voters. George Washington Plunkitt, a famous boss of the Tammany Hall, famously remarked that “some people say they can’t understand what becomes of all the money that’s collected for campaigns. They would understand fast enough if they were district lead-em. There’s never been half enough money to go around.”³ Nor was corruption limited to elections; machine bosses also extorted money from local businessowners and granted favorable contracts and legal exceptions to party supporters (Stone 1996; Banfield and Wilson 1963; Erie 1988).

While machines lasted for decades in many American cities, they peaked around the same period that contested elections peaked in Congress – roughly the 1870s through the 1890s. In the presidential election of 1868, the Tweed machine in New York “naturalized” 50,000 ineligible aliens, and New York state went Democratic by 10,000 votes. The House created the Select Committee on Alleged New York Election Frauds in the 40th Congress (1870), and in 1871, the second of the Enforcement Acts allowed federal regulation of elections in cities with over 20,000 people. The Act allowed citizens (or parties) to petition U.S. Circuit Courts for federal marshals and deputies in polling-places where fraud was likely. Between 1871 and 1894 (when the law was repealed), it was enforced in cities run by machines – Boston, New York, Brooklyn, Jersey City, Baltimore, Philadelphia, Chicago, and San Francisco (Burke 1970, p. 17).⁴ The law was significant for authorizing federal intervention over the states, but ultimately it was repealed for two reasons. First, it required politicization of the judiciary and appointment of deputies who were seen as partisan. Second, anti-corruption efforts seemed to be effective: Boss Tweed was arrested in 1873, and the secret ballot went into use in 1889. We would nonetheless expect urban areas to be associated with electoral fraud in the period prior to the turn of the century.

³ Quoted in William Riordon, 2010, “Plunkitt of Tammany Hall,” *Digireads*, p. 73

⁴ In 1870, 68 cities met this population minimum.

II. Data and Research Design

In this paper we probe the validity of a more systematic source for studying election fraud: the series of contested elections to the US House of Representatives in 1840-1940.⁵ We are certainly not the first to study contested congressional elections, nor are we alone in relying on this as an indicator of election fraud. Allen and Allen (1981, 176-8) presented an overview of contested congressional elections from 1789-1917 across eight regions of the United States, but dismissed this source of evidence on election fraud on account of the infrequency with which elections were contested, and because the “highest frequency of charges of vote fraud occurred...in the post-Reconstruction South and border states when political conditions were unstable and highly unusual.” Argersinger (1985, 682) retorted that the congressional investigations resulting from election contests “provide indisputable proof of election fraud.” More recently, both Anderson (2000) and Bense (2004) have used these cases to draw qualitative conclusions of the nature of elections and voting habits at the time. Seymour (1915) first used election contests to study voting habits in Victorian Britain (also see Kam 2009), and contested elections have now been used with some success to study election fraud in Costa Rica (Lehoucq and Molina 2002), Germany (Anderson 2000; Ziblatt 2009), and Sweden (Teorell 2011).

There are certain comparative advantages to using contested election cases over other measures of election fraud, such as media reports or biographical accounts. First, they are based on a procedure that does not differ from one part of the country to the other, and that at least for most stretches of history has been fairly unified across time. Although the Constitution did not spell out how these cases should be dealt with, it soon became established practice that each contested election case should be submitted to the standing Committee on Elections, which had to sift through the evidence and then report back to the House a recommendation in favor of the contestant (the individual disputing the election), the contestee (the person originally elected), or neither (in case of which the seat was to be vacated). This informal practice, however, varied considerably with respect to how testimony should be taken or other forms of evidence gathered. In 1851, the House established a uniform mode of procedure governing election contests. Under

⁵ We focus on elections to the House for two reasons. First, there are many more cases of contested elections to the House than there are to the Senate. Second, Senators were not popularly elected until the passage of the Seventeenth Amendment in 1913, so cases of bribery and intimidation relate only to state legislatures, not voters.

this act, the contestant had to notify the contestee in writing, within thirty days after the announcement of the election result, of his intention to contest the election, stating all the grounds for the contest. The contestee then had thirty days to respond to the charges, which meant that the issues under consideration were to be articulated within at the most sixty days after the electoral contest. Under the original act of 1851 the contesting parties then had sixty days to take testimony and gather other forms of evidence, a period of time which was extended to ninety days in 1873. To speed up the handling of these affairs it was further enacted in 1887 that the briefs of the contestant and contestee, including all relevant evidenced, had to be printed and filed with the clerk of the House before the meeting of Congress. After this, no major changes in procedure occurred until the passage of the Federal Contested Election Act in 1969 (Jenkins 2004, 114; Dawes 1870, 60-63; Rammelkamp 425-427, Dempsey 1956, 45-58). As a result of this more or less unified federal procedure, the “rules of the game” concerning contested election cases are comparable across time and space. They do not vary by state-specific legislation, the access and proliferation of media outlets, or other local peculiarities that could affect other potential sources of election fraud.

A second advantage of relying on contested elections is that they have the outer characteristics of a judicial trial. In 1929, the Supreme Court ruled that the Houses of Congress acted “as Judicial Tribunals” in deciding election contests (Dempsey 1956, 42). These contests rely heavily on evidence – testimony, hearings and congressional investigations – in order to reach a verdict. Although other considerations may also weigh in on the matter, as we shall see, ever since the first efforts to regulate the taking of testimony in contested election cases in the late eighteenth century the evidentiary basis of these rulings has been adhered to at least in principle.

The Calculus of Petitioning

It is important, however, to emphasize and to come to terms with a crucial point: There are also pitfalls involved in making inferences on election fraud from the incidence of contested elections. As noted by Green (2007, 159) there are three considerations that affect a potential contestant’s calculus over whether or not to contest a lost election: the value the congressional seat holds to him (B), the chance that he will succeed (p), and the costs (C) in terms of time, money and other resources that “may be required to sustain a challenge.” Losers choose to

contest if $p*B > C$, implying two potential sources of bias in relying on contested elections to infer fraud. First, the fact that a challenge is costly ($C > 0$) means that not everyone will undertake it, even when convinced that the race would have been won absent of fraud. As a result, the frequency of contested elections might *underestimate* the actual amount of fraudulent elections. But the perceived value of winning and the chances of success ($p*B$) might vary systematically from one potential contestant to the other. Most importantly, the fact that cases were in the end determined by the majority party controlling the House arguably meant that the prospects for winning a contest were considerably larger for losers belonging to that majority party. The partisan nature of the handling of cases could even lead to instances of frivolous cases being brought to Congress, with losers (from the minority party) filing contests for strategic reasons unrelated to the actual conduct of the election itself. As a consequence, the frequency of contested elections might also *overestimate* the actual amount of fraudulent elections.

Of these two sources of bias, the latter has received much more scholarly attention. The chairman of the Committee on Elections acknowledged the role of partisanship in deciding election contests already in his 1869 study of contested elections (Dawes 1869). Charges of the partisan nature of the handling of these contests have predominated ever since (Reed 1890; Rammelkamp 1905; Alexander 1916; Dempsey 1956), although some observers have argued that partisanship has been in decline since the early twentieth century (Barnett 1939; Polsby 1968, 161-3). Most contestants in the late nineteenth century were Republicans from the South, and the Republican Party tended to favor these contestants when in control of the House (Bensel 1984, 84-7; Valelly 1995, 199-200). Jenkins (2004) goes so far as to argue that Republicans used contested elections as a strategic tool to ascertain a foothold in the increasingly Democratic post-reconstruction South, and that this “Southern strategy” explains the upsurge in contested cases toward the end of the nineteenth century.

Partisanship may affect decisions over many a contested election, but we contend that this does not pose an insurmountable threat to inferring election fraud from these cases. Most importantly, the fact that some (or many) of these decisions were taken along partisan lines does not deny that fraud actually occurred (Green 2007, 160). The perceived likelihood of success (p) is thus not only a function of the expectation that the Committee or House will rule in one’s favor

(partisanship), but should also increase as the amount of fraud committed increases.⁶ Therefore, all else being equal, the more fraud, the likelier it is that an election will be contested. This in turn suggests two strategies for correcting the potential upward bias in relying on contested elections to infer fraud. First, the grounds of the contest must be taken into account. Obviously, fraud is not evidenced by cases in which the contestant does not allege it. Second, the other factor affecting the likelihood of success (p), that is, partisanship, as well as the value of the seat to the contestant (B) needs to be accounted for in order for “all else” to be “equal.” In more common statistical parlance, these other factors need to be measured and controlled for. In this paper, we make use of both these strategies.

With respect to the perceived costs for challenging the winner (C), the example of Ignatius Donnelly cited in the introduction is a case in point. Donnelly clearly feared the time and money a contest would cost, and for good reasons, it appears. He had to sell wheat at under market prices and mortgage newly acquired land in order to save the money it cost him to gather evidence, pay for legal council (“a highly experienced but costly pleader”), and finance his trip to Washington to present his case (Ridge 1962, 187-8). In other instances the costs incurred for contesting elections could be more physical than financial, as in the case of John Clayton, who was shot to death while obtaining testimony from locals in the town of Plumerville, where a ballot box had been stolen in a 1890 House race in Arkansas (Barnes 1993; Rowell 1901, 468-70). These colorful examples notwithstanding, there are reasons to believe that the costs involved were not excessive. Congress actually reimbursed contestants for their expenses, at least up to a certain amount. As per the law of 1879, each party was allowed a maximum of \$2,000 for expenses, but larger amounts were commonly voted, making the contests more of a costly affair for Congress than for the contestants themselves (Rammelkamp 1905, 426-7; Alexander 1916, 325). It also stands to reason that of the countless examples of election fraud in the history of the US collected by Campbell (2005), the very few pertaining to congressional elections are *all* based on cases of contested elections. This seems to suggest that underestimation might not be the most serious problem for our inquiry. Nevertheless, we shall also take measures to control for proxies related to systematic variation in the costs involved in contesting elections.

⁶ If we denote the degree of partisanship of the House as γ , representing the degree to which cases are decided in favor of the party of the contestant, and the amount of fraud as λ , we may define $p = \gamma * \lambda$.

In sum, the strategy we propose for using contested elections as an indicator of election fraud will unfold in three steps. First, we need to be able to separate out cases contested on the grounds of fraud from other perhaps more frivolous cases. This in turn hinges on a proper classification of the grounds of which an election was contested, which will be the subject of the next section of the paper. Second, we need to probe the extent to which these cases were determined by partisan rather than factual or “on the ground” considerations, and develop some measures that could be used as controls for this purpose. This will be dealt with in the following section. In the final section, then, these pieces will be put together into a statistical model of the incidence of contested elections in 16,552 House races occurring between 1840 and 1939, now also including some technical controls to put the elections on a more comparable footing, together with some proxies for the costs of contestation. This model will then be probed through three face validity tests, where the three expectations as to the spatio-temporal distribution of election fraud derived from the literature review above will be taken to the data in a series of logit regressions.

This final section thus brings our study fairly close to Green (2007), who purports to explain the origins of contested elections in a statistical analysis covering 7,750 House races between 1866 and 1910. Green (2007) finds that, although partly driven by partisan concerns, contests were also affected by actual election conditions, such as being less likely after disenfranchisement laws had been adopted and more likely in districts with large black populations. Several factors however distinguish our study from his, the most important one being our difference in substantive focus: whereas Green (2007) tries to explain contestation as a result of partisan and actual election conditions, we try to make an inference about the nature of election conditions after controlling for partisanship (and costs). Moreover, we only look at contests based on charges of fraud, we use other sources of election data, and we cover a much longer time period.

The data at our disposal has been gathered from various sources. For the statistical analyses of contested elections, we rely on both Jenkins’ (2004) and Green’s (2007) original datasets, generously made available to us by the authors. Both these datasets primarily rely on the compilations or “digests” of contested election cases throughout the history of the House of Representatives (most importantly for our purposes, Rowell 1901; Moores 1917; and Deschler

1977).⁷ In the more in-depth study of a sample of contested election cases in the section that follows, however, we have instead relied on the original source material from the archives of the U.S. House of Representatives Committee on Elections. Specifically, we use the majority and minority reports on each election contest, the petitions of each contestant, and the depositions and testimonies collected by the Committee. These are printed in the Congressional Serial Set; for some cases we have also used the original sources from the House archives. Our data on election returns and the partisanship of the candidates from the 27th to the 75th Congress are taken from Dubin (1998), who according to recent observers provide both “more complete and accurate election returns” than the ICPSR collection of election more commonly utilized (Querubin and Snyder 2011, 17 n.9). Finally, our socio-demographic district-level data are from the U.S. censuses 1840-1930.⁸ Our choice of time period is in part an arbitrary function of the availability of election and census data, but also reflects the fact that it covers some 75 percent of all cases of contested elections in the entire history of the House of Representatives (Jenkins 2004, 115-6).

III. The Grounds of Election Contests

The Committee on Elections was the first standing committee established by the House of Representatives during Congress’s inaugural session. The committee’s duties included overseeing certificates of elections, qualifications of members, and “such matters as shall or may come in question.” The first contest, filed in 1789 by David Ramsey against William Smith, concerned naturalization — specifically, whether the British-born Smith had been a citizen of the United States for the seven years the Constitution requires. Committee members took evidence from both contestant and contestee, including birth records, copies of state laws, and documents

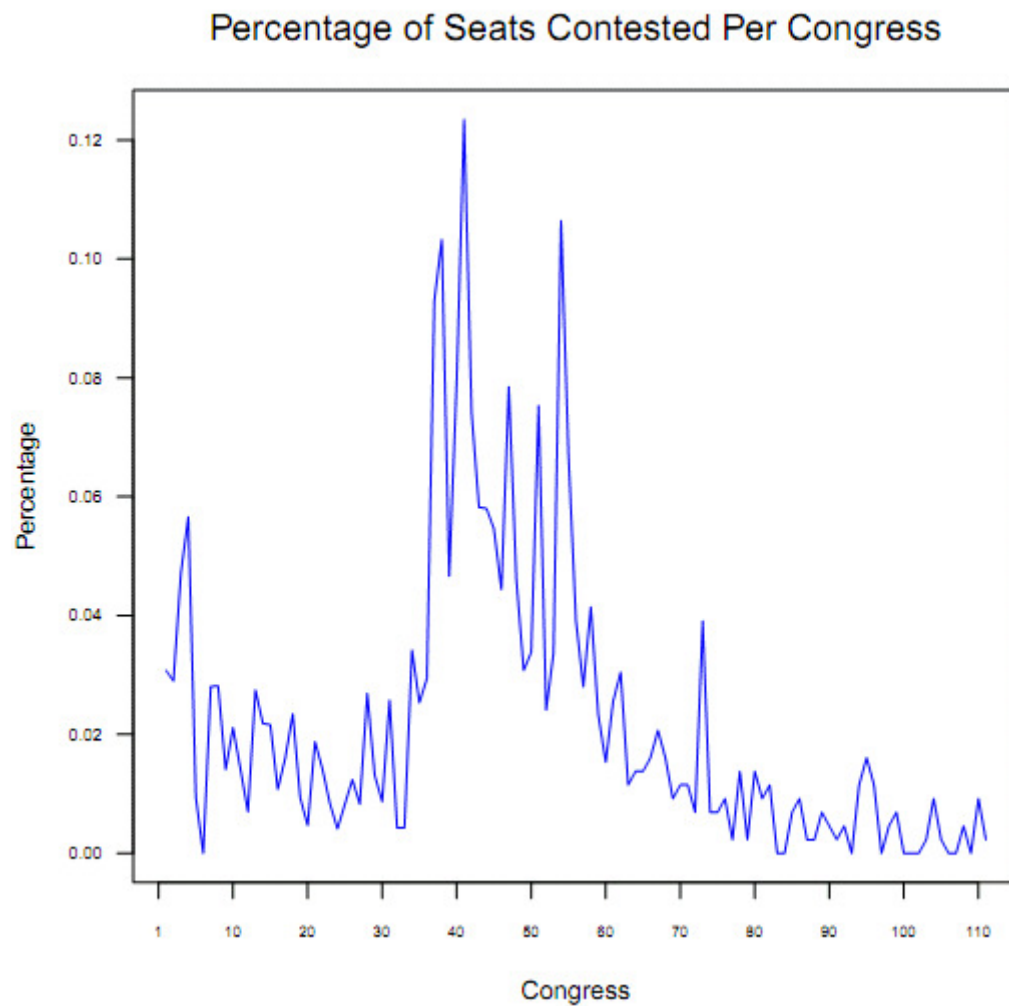
⁷ When merging together Jenkins’ and Green’s data, we have also been able to correct some errors that particularly pertained to the exact location of the district where an election was contested. Moreover, we have merged together contested election cases that concerned the same election in the same district at the same time point, whereas both Jenkins (2004) and Green (2007) typically count these as separate cases.

⁸ We wish to thank Jim Snyder, Harvard University, for making both the county-level census data sets and the district-level election returns data available to us in spreadsheet (Stata) format, including a crucial file containing information on how to match congressional districts with counties across time and space. We have however also made numerous corrections to the data on election returns based on Dubin’s (1998) original publication. Moreover, we have merged the election data for (mostly urban) districts that did not match county boundaries with the census data from all unmatched counties of that state and election year, in total covering 97 percent of the elections with census data.

from the South Carolina Commissioners of the Treasury. They found that Smith was entitled to his seat, and in doing so, established rudimentary procedures to govern election contests.

Until the mid-nineteenth century, only about three elections per Congress were contested. Contests steadily increased following the Civil War, and in 1895, the House split the Committee on Elections into three committees to handle its increased caseload. While the sheer number of contests peaked around the turn of the century, the percentage of seats contested was at its highest in the Reconstruction period, with up to 10% of seats challenged from 1865-1890.

Figure 1



Because each state passes its own election administration laws, there are no set grounds upon which contestants can claim their right to a seat. Therefore, the grounds of cases have varied throughout history. Some cases relate to Constitutional requirements, such as citizenship or the status of a territory. Other cases concern technical aspects of the election, such as the location of polling places, or the spelling of a candidate's name on a ballot. Most cases, however, relate to some aspect of electoral corruption. Contestants charged their opponents with engaging in bribery and intimidation of witnesses, in ballot tampering and partisan election administration, and in fraud and violence.

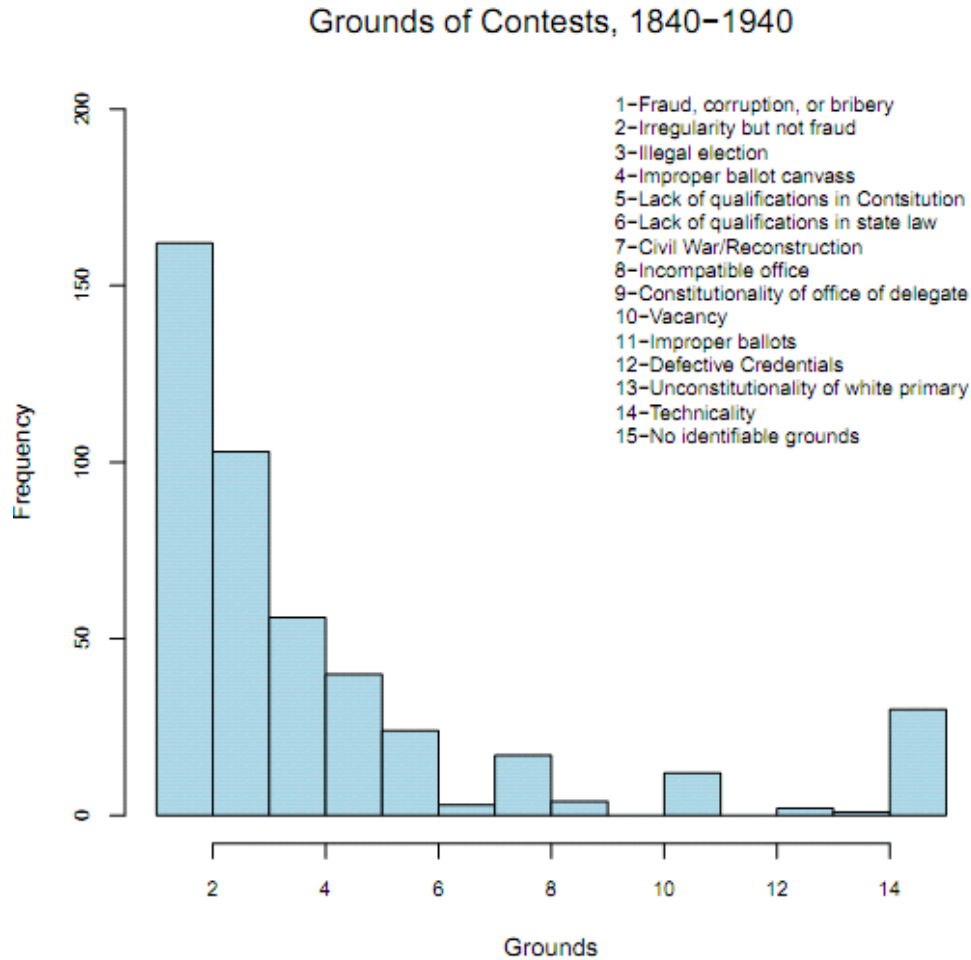
There were 609 contests between 1789 and 2010, and the records from these contests (contained in the holdings of the Committee on Elections in the National Archives) are voluminous. Each case includes official documents, beginning with the contestant's official notice enumerating his right to the seat.⁹ The cases include accompanying materials, sometimes hundreds of pages' worth, to support each party's claims.

Since the Committee adheres to precedent when evaluating contests, clerks of the House created digests of contested elections as quick references for Committee members. The digests summarize the reports issued by the Committee, and describe the grounds that the House considered most important when determining cases.

Subsequent scholars have relied on these digests when classifying election contests. Dempsey (1956) sorted contests into 15 categories, and Jenkins (2004) and Green (2007) adapted these categories in their analyses of contested elections. They distinguished between cases of corruption, fraud, or bribery, and cases of procedural irregularities with no intent of fraud. In this period, they classify about 36% of all cases as corrupt, and another 22% of cases as involving irregularities.

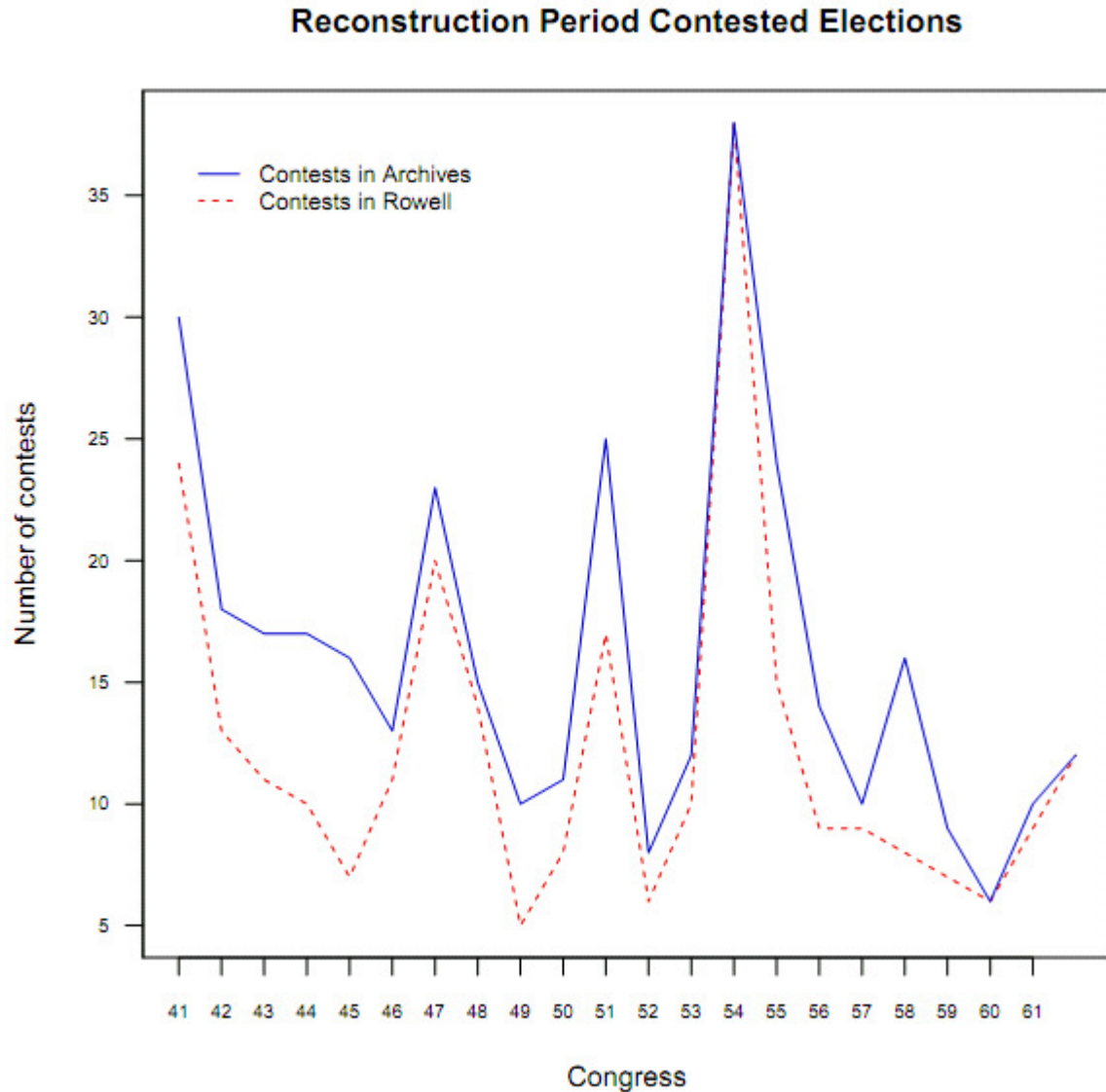
⁹ The vast majority of election contests have been filed by, and against, men.

Figure 2



The relatively low number of corruption cases is the misleading result of two problems. The first, which is minor, is that studies of contested elections have relied on digests of the cases rather than the archives themselves. The digests systematically underreport claims and evidence of election fraud. First, there are many years for which the digests summarize some, but not all, election contests. This is particularly true for the Reconstruction Period and Gilded Age in the United States. A count of the contests held in the archives versus the cases reported by Rowell shows rather significant discrepancies. There are at least 87 cases that are in the archives that are not in Jenkins or Green’s data; 80 of these missing cases are from the 40th-61st Congresses (1869-1911). Most of these cases went unresolved by the committee because the contestant missed deadlines to file evidence or stopped pursuing the contest.

Figure 3



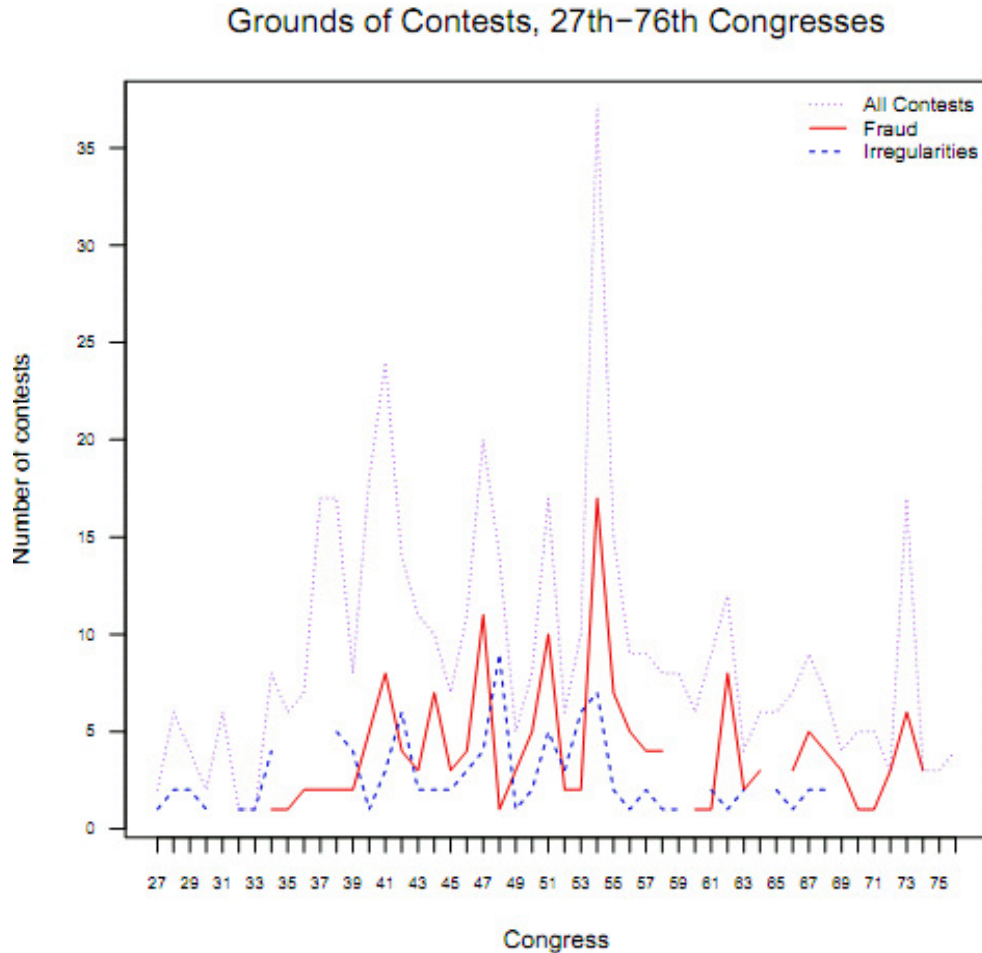
Beyond simply missing many contested election cases, the committee reports themselves represent an unreliable data source for deducing the grounds of an election contest. The committee rarely got involved in questions of criminal matters, arguing that the facts were too difficult to determine or that the legal questions were more relevant. For example, the House could rule on the *prima facie* case and resolve whether or not the certified election returns were legitimate, rather than investigate allegations of fraud. The Committee could also discard returns from specific precincts or counties in which fraud had occurred without deciding the case in favor of the contestant. The Committee report would then detail the vote count from the

remaining districts, and the House would seat whichever individual had received the majority of legitimate votes. In these instances, the summary in the digest often barely mentioned fraud despite the Committee's findings of some level of fraudulent activity.

The digests are not the only cause of underreported fraud, however. (In fact, despite their shortcomings, the digests remain an extremely useful resource for understanding the general issues in election contests.) Instead, the very categories Dempsey employed hinder the study of electoral corruption. Electoral malpractice takes a variety of forms; vote-buying, intimidation, and stealing elections are among the most obvious. But contestants in the United States also claimed that fraud occurred when they were prevented from holding rallies, when voters were disfranchised (or when illegal voters were brought in to vote), when ballot-boxes were tampered with or discarded, and when election administrators manipulated vote counts so as to ensure victory for members of their parties. While these practices vary in degree, they vitiate the democratic process in fraudulent ways (Lehoucq 2003, Schaffer 2003, Schedler 2002).

Because Dempsey, Jenkins, and Green only categorize fraud when corruption, fraud, or bribery constitute the primary grounds considered by the committee, they overlook many cases in which fraud was still a significant issue. They classify activities such as improper registration, improper treatment of ballot boxes, and partisan election administration as "serious election irregularities" rather than fraud, perhaps because the committee refused to rule on the fraud allegations. All of these cases involve procedural irregularities, but most also involve allegations of fraud (which were ignored by the Committee). The table below shows contests coded as corruption or fraud relative to contests coded as irregularities.

Figure 4



In an analysis of election contests in the late nineteenth century, we find that the coding scheme differentiating between corrupt and irregular elections fails to adequately draw a line between the two grounds. Furthermore, many of the other categories including “Civil War/Reconstruction tangles” and “Illegal Election” are used to describe the corrupt elections that took place in Southern states under Reconstruction, rather than the first category of corruption, fraud, or bribery. We now take a closer look at three Congresses – the 41st (1869-71), the 48th (1883-85), and the 54th (1895-97). These all had high rates of contestation, they all occurred in notoriously corrupt periods of history, and they vary according to which party held power.

The 41st Congress (1869-1871) oversaw a record 30 election contests, 19 of which were filed in states of the former Confederacy. Most of the contestants were Republicans who had lost elections against Democratic counterparts; Jenkins (2004) argues that the contests represent a

Republican strategy to maintain a foothold in the Democratic-dominated South. However, the Republicans had an overwhelming majority in the House, with 171 seats to the Democrats' 67. Furthermore, in some cases that are not in Rowell, Democrats filed contests against Republicans.

While the parties could have been jockeying for partisan advantage, many of the elections themselves were far too corrupt to have produced obvious winners. In the cases classified as "illegal elections" (which Dempsey describes as elections that violated state-level election laws), witnesses described a virtual reign of terror at the ballot box. In a Reconstruction case called *Hunt vs. Sheldon*, Caleb Hunt – a Republican – filed a contest against Lionel Sheldon alleging that Republicans and emancipated black voters were prevented from voting out of widespread rioting and fear. At least 232 Republicans had been shot and killed, but the committee still did not nullify the election.¹⁰ Instead, the Committee ruled that it would discard returns from the most violent districts, and determine the winner based on returns from the remaining districts. In similar cases, voters reported being shot by armed mobs and receiving threatening letters from the Ku Klux Klan; others witnessed the beating of black voters.¹¹ Intimidation "consisted in planters and others, democrats, threatening to discharge from their employment laborers who voted the republican ticket, telling them that they would be starved...and that they were marked men."¹²

Analysis of the cases from the 41st Congress reveals discrepancies in the coding of Reconstruction cases. Five are coded as illegal elections, which are, by definition, corrupt. But two similar cases, in which there was evidence of Democratic violence against Republican voters (*Sheafe vs. Tillman*, from Tennessee, and *Boyden vs. Shober*, from North Carolina) are coded as corrupt or fraudulent (Dempsey's first category, rather than his fifth). Lastly, a set of cases are coded as "disqualified by Constitutional requirements." The 14th Amendment barred from Congressional office any citizens who "engaged in insurrection or rebellion against the [United States], or given aid or comfort to the enemies thereof." Therefore, many contests were filed

¹⁰ U.S. House of Representatives. Committee on Elections. 1869. *Hunt vs. Sheldon*. 41st Cong., 2d session, H.Rp.4.

¹¹ U.S. House of Representatives. Committee on Elections. 1868. *Papers in the Case of J. H. Sypher vs. Louis St. Martin, First Congressional District of Louisiana*. 41st Cong., 1st sess., H. Mis.Doc. 13.

¹² U.S. House of Representatives. Committee on Elections. 1868. *Papers in the Case of Frank Morey vs. G. W. McCranie, First Congressional District of Louisiana*. 41st Cong., 1st sess., H. Mis. Doc. 16.

against former members of the confederacy who were elected to Congress following the Civil War. These cases are qualitatively impossible to distinguish from those coded as corrupt or as illegal. All of the cases include accusations that the winner is unqualified to serve, but also include testimonies about widespread terror, lynchings, and ballot-box manipulation. If the cases coded as illegal elections or Reconstruction tangles are recoded as corrupt, the number of corruption cases from the 41st Congress alone increases from 8 to 18. An additional four cases that are not in Rowell also concern corrupt elections, bringing the number of corrupt elections in the 41st Congress alone to 22 (out of 30 cases).

Furthermore, Dempsey's second category of "serious election irregularities not involving allegations of fraud" turns out to cover many cases in which some aspect of corruption was at issue. In the 41st, 48th, and 54th Congresses, many cases were coded as procedural irregularities when the contestant made direct claims of fraud. Three cases from the 41st Congress allege irregularities: ballot-box manipulation (Taylor vs. Reading), allowing disqualified non-residents to vote (Eggleston vs. Strader), and biased election administration with partisan tampering of ballot boxes (Barnes vs. Adams). The contestants further alleged that the election manipulation was intentional and corrupt. In the case of Taylor vs. Reading, the Committee acknowledged that there seemed to be evidence of fraud; after throwing out illegitimate votes, they found that Taylor had won a majority of votes, and seated him.¹³ While the Committee's decision rested on their final vote count in Taylor's Pennsylvania district, rather than legal issues relating to fraud, the grounds of the contest were primarily related to fraud. In the case of Eggleston vs. Strader, Eggleston charged multiple types of fraud, including allowing non-residents to vote, manipulation of election registries (such as reporting more votes than the number of voters registered), and allowing civilians to act as nonpartisan election judges.¹⁴ The Committee agreed that irregularities abounded; they also acknowledged that election judges advocated for Strader and accepted bribes. Ultimately, however, they ruled that fraud was not widespread enough to

¹³ U.S. House of Representatives. Committee on Elections. 1870. *John R. Reading: Report*. 41st Cong., 2d session, H.Rp. 50.

¹⁴ U.S. House of Representatives. Committee on Elections. 1869. *Eggleston vs. Strader: Testimony in the Contested Election Case of Eggleston vs. Strader*. 41st Cong., 2d session, H. Mis.Doc. 16.

discard votes that had been “peacefully cast,” and seated Strader.¹⁵ And in a similar case, Barnes vs. Adams, former members of the Confederacy were appointed as election agents in contravention of Kentucky laws mandating nonpartisan election administration. He further alleged that temporary railroad workers had been allowed to vote, and that the KKK had lynched and threatened voters. The Committee found evidence of all the allegations, but ruled that the election agents ought to be treated as *de facto* legitimate agents. They recounted votes after omitting returns from violent districts that lacked administrative oversight, and ruled for the contestant.

In the 48th Congress, nearly half of the election contests (7 out of 15) are coded as election irregularities when the contestant alleges, and provides evidence of, fraud. In one case, the state election board arbitrarily rejected ballot boxes from districts in which their candidate received a minority of votes. In a case in Indiana, English vs. Peele, English accused Republicans of controlling every election precinct and of circumventing the secret ballot by using different paper for Republican ballots. In fact, in seven of these contests, the contestant was ultimately seated; in another case that alleged corruption (but was coded by Dempsey as an election irregularity), the seat was vacated.¹⁶ Two of these cases are classified as “improper canvass of ballots.” In one of these, Craig vs. Shelley, the election board unfairly reject ballot boxes in a partisan manner; in another, English vs. Peele, Republicans circumvented the secret ballot by using different types of paper for the different parties and by allowing double voting. While both of these cases therefore involved electoral fraud, neither is coded as such by Dempsey.

The 54th Congress oversaw 38 election contests; it was during this Congress that the Committee on Elections was divided into three committees. Seventeen of these elections were coded as corrupt, although contestants contended that contestees had engaged in fraud in at least six other cases. In two cases, Rinaker vs. Downing and Murray vs. Elliot, the contestant was actually seated as a result of the Committee’s finding evidence of fraud and manipulation. In three other

¹⁵ U.S. House of Representatives. Committee on Elections. 1870. *Eggleston vs. Strader*. 41st Cong., 2d session, H.Rp.73.

¹⁶ U.S. House of Representatives. Committee on Elections. 1884. *Election Case of Chalmers vs. Manning*. 48th Cong., 1st sess., H. Rp. 1959.

cases during that Congress, instances of ballot manipulation (in which election officers fraudulently rejected the votes of registered voters) were not coded as corrupt.

While our investigation of the coding discrepancies has been limited to three Congresses, our results strongly imply that existing categories fail to capture corrupt and fraudulent grounds in election contests. We find that throughout United States history, there have been varieties of fraud at the ballot box. The types of electoral abuses varied in different time periods and regions, but evidence from these election contests reveal far more than partisan motivations in the conduct and administration of elections. By triangulating the digests with the material in the archives, and by retooling categories to reflect a more diverse array of corrupt activities (rather than a blunt distinction between fraudulent and procedurally irregular activities), the grounds of contested elections could be used to systematically assess election fraud.

IV. Partisanship and Contested Elections: The Problem of Measuring Fraud “Indirectly” and the Revealing Case of the Post-Civil War U.S. South

In addition to knowing which contests should “count” as accusations of “fraud,” a second major threat to measurement validity is the extent to which the process of filing disputes simply reflected a partisan logic. “Partisanship” arguably affects what we have dubbed the “calculus of petitions” in at least obvious two ways: a friendly Congress might induce non-factual claims to be filed; second, if a party has a majority in Congress, having access to the levers of power might increase the value of seats. One historical period casts that these issues into sharp relief and allows us to assess the meaning of election contests in the American political context: the period after the U.S. Civil War in the eleven states that made up the U.S. Confederacy during the Civil War. It was during this post-Civil War period, and precisely in this location, that the starkest spike in election challenges occurred in American history (Jenkins, 2004, p. 126). The period of Reconstruction, that roughly lasted until 1877 and the post-Reconstruction era as well, were fraught and subject to heated efforts to illegally and legally restrict the suffrage (on the period, see Kousser, 1972; Foner, 1989; Valelly, 1995; Green, 2007).

In one recent analysis of the region in this period 1869-1916 that builds on a broad literature on the topic, the increased petitioning reflected, what Jenkins (2004) dubs the “first Republican southern strategy”—a conscious *partisan* effort to keep a Republican presence in the U.S. South

as local southern Democrats deployed physical intimidation, election fraud, and statutory and constitutional challenges that would re-restrict the franchise, limiting the voting power of the Republicans' potential new core base. From this perspective, the frequency of challenges reflected a conscious and high-stakes strategy of the Republican Party to keep a "foot" in U.S. southern politics after the rising dominance of Southern Democrats.

According to Jenkins (2004), in what is the most systematic analysis of this mass of election petitions to-date, there are two reasons that we should think that the increase in petitions reflected only partisan maneuvering rather than changing facts on the ground. First, it was primarily Republicans who filed contestations against Democrats in this period and in this region. Second, Democrats, who relied on various strategies of nondemocratic manipulation and violence, did not need the strategy.

A potential problem with this perspective, if accepted at face-value, however, is that these arguments and evidence are also compatible with a different hypothesis, as noted by Green (2007): perhaps Republicans filed more cases during this period because there *actually* was more fraud in the period and in this region. A vast secondary literature (eg. Woodward 1951; Kousser 1972; Foner 1989, Valelly 1989) has provided ample evidence of the repressive election manipulation, primarily under Democratic auspices, in the U.S. South in this period. Furthermore, Jenkins (2004) cites no literature justifying the idea no secondary literature providing evidence evidence of an organized "Republican strategy." Nor, are we aware of any secondary literature that makes this argument. Finally, Jenkins' core claim appears, at first glance, also compatible with the observation that it was southern Democrats, who in the attempt to resurrect their power at the hands of Northern Republicans, were the primary culprits of election manipulation, perhaps explaining why it was Republicans who were the main contestants in this region.

Thus, examining this particular episode of American history in greater detail provides a chance to open up many of the difficult measurement issues involved in using election contests or petitions as a proxy for actual fraud. To what degree do petitions measure fraud (i.e. facts on the ground) and to what degree do they measure merely partisanship? While we cannot, at this

point, provide precise estimates of the degree to which contestants or petitions accurately measures the actual incidence of election fraud, a more careful analysis of Jenkins' own data (e.g. who exactly was filing petitions and under what conditions) does represent a first step into this terrain, providing evidence that partisanship did matter a great deal, (perhaps even as much as Jenkins argues), though it was not the single determinant of election petitions, suggesting the possibility that petitions might still, in some instances, be useful proxies for election fraud.

In all of the existing analyses of petitions, and in all of the analyses that emphasize the importance of "partisan" motivation, what is strikingly absent are some facts on basic questions. For example, what was the partisan profile of petitioners? Did it change over time? Were Republicans more likely to file petitions when their party controlled Congress? Were Democrats more likely to file petitions when their party controlled Congress? Figures 5 and 6 provide some answers by focusing exclusively on the U.S. South in the period 1869 to 1916

Figure 5¹⁷

¹⁷ The findings reported here (and for the next three figures) are based on data that are subsample over the overall set of cases, reporting the results for only the eleven states of the Southern Confederacy between 1869 and 1916

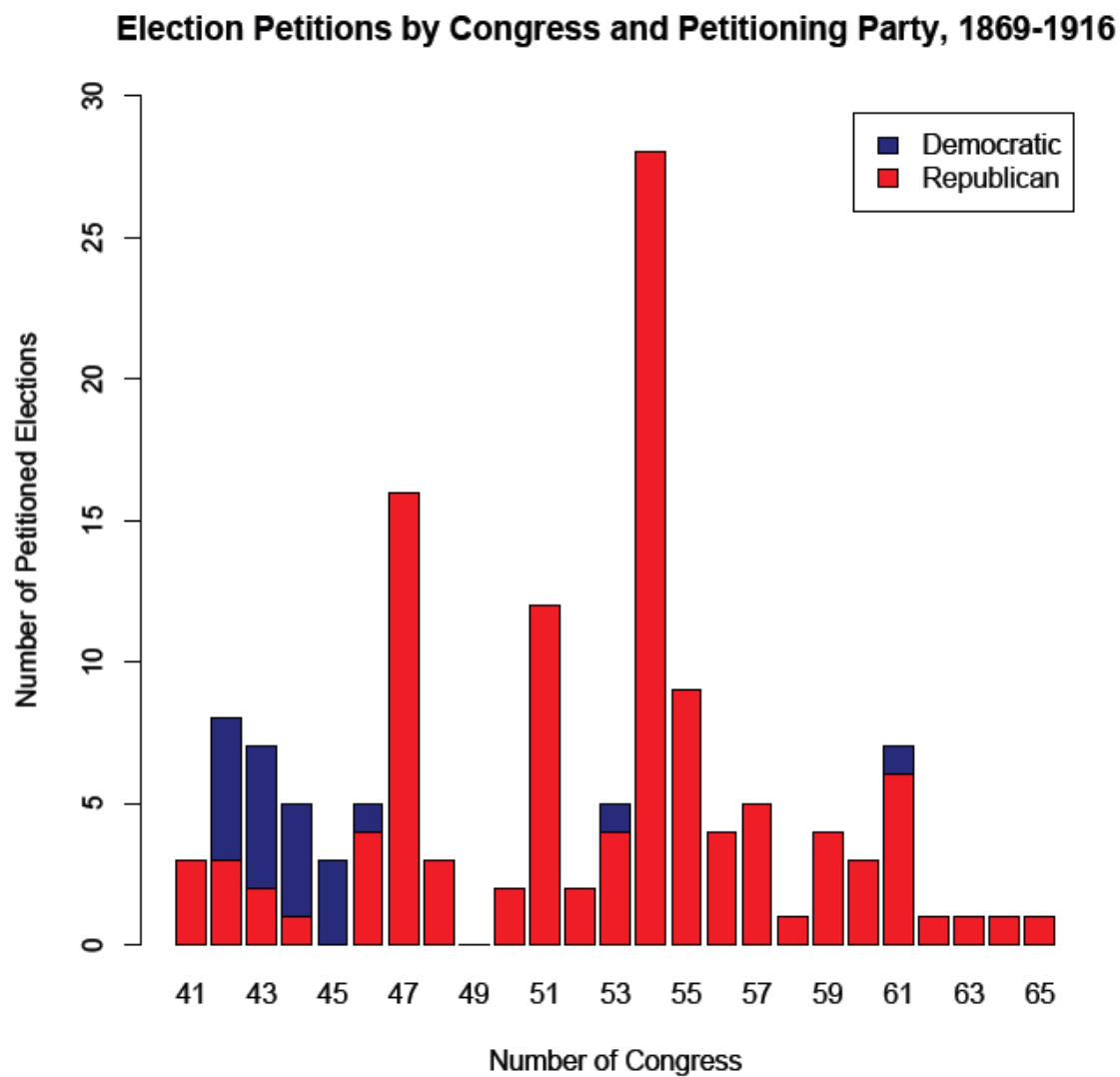
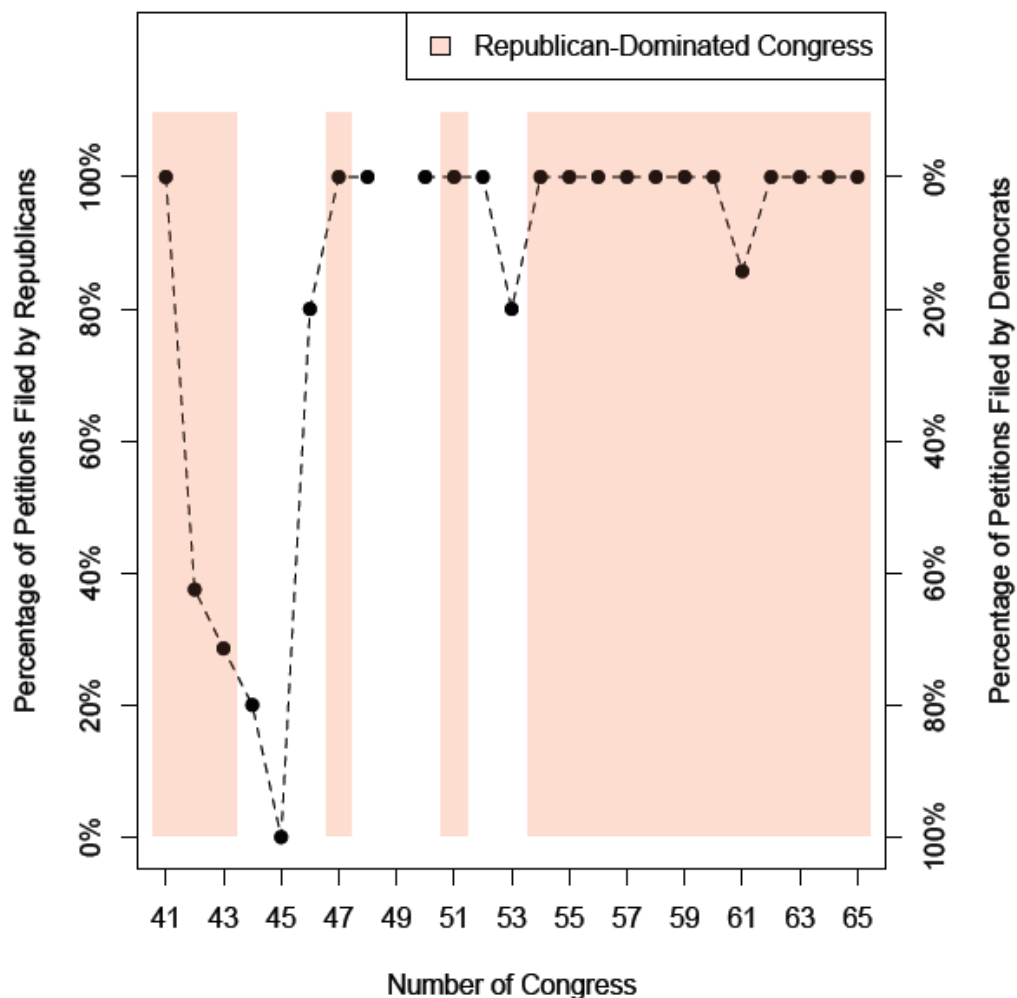


Figure 6

Breakdown of Petitions Filed Against Election Winners by Party of Petitioner



First, as Figures 5 and 6 summarize, using a new database of petitions we have collected (described in detail above), if we examine the partisan profile of the petitioners behind all the petitions in thirteen congresses between 1869 and 1916 in the U.S. Congressional elections of the eleven states of the former confederacy, we do see Republicans disproportionately petitioned election results; they filed nearly all the petitions against the results of elections in the region in the time period.

There is, however a notable exception: the period before 1879. Here, Figures 5 and 6 make evident, contra Jenkins, Democrats filed *more* petitions in the pre-1877 period (i.e. in the Reconstruction era) when it was Republicans who dominated the U.S. South (Foner, 1989). By

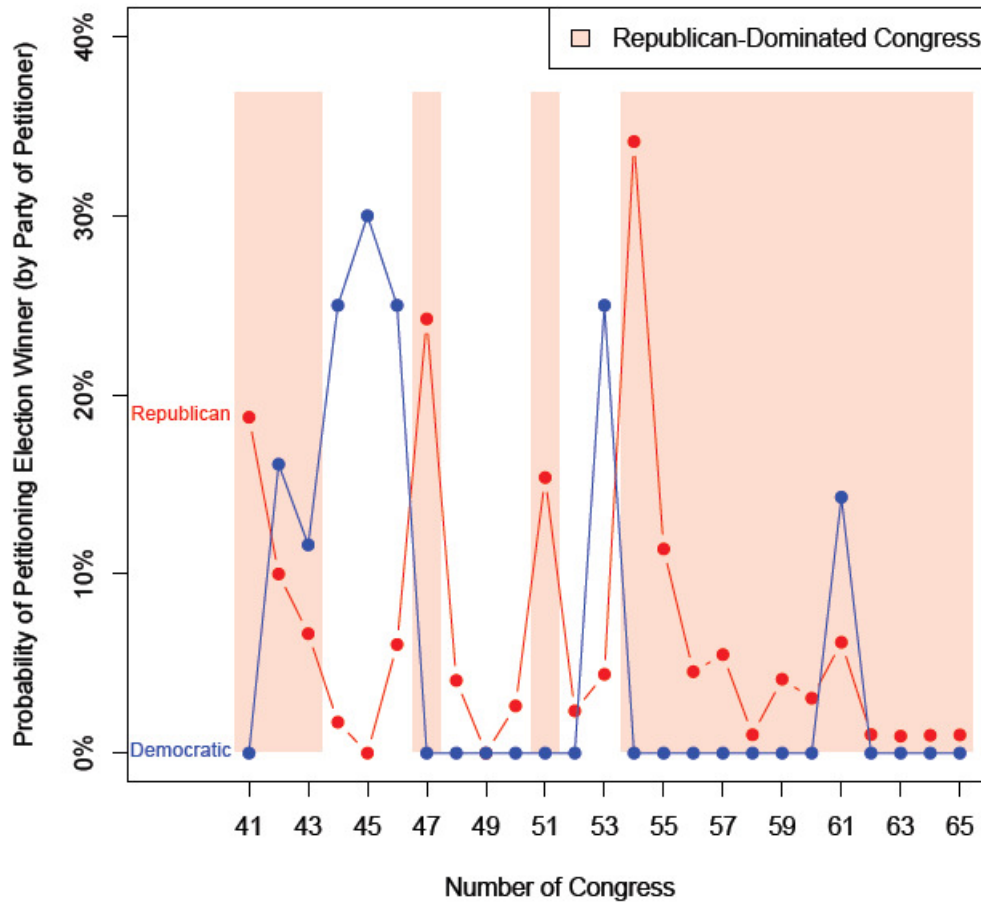
contrast, it was only in the period where one-party Democratic Rule was established after the end of Reconstruction in 1877-- via fraud, intimidation and statutory and constitutional change--that Republicans monopolized the procedure of challenging election results. In short, adding a twist to the “partisan” argument: it was when a party was systematically excluded from power that it sought recourse through the petitioning process.

However, how do we go about empirically assessing the degree to which it may have been strictly partisan motivation that was driving these shifting levels of election petitions? A first step is to accept the “calculus of petitions” logic outlined above—the idea that two key factors driving petitions were the a) the value of a seat and b) probability of success of a petition, both of which were chiefly shaped by the partisan make-up of the Congress. Put in other terms, is it possible to calculate the degree to which variations in petitions actually reflect the “p-term” and the “B” term in the simple calculus outlined above ($p*B > C$)? If we accept this model of election petition, the claim that partisan motivation to gain a foothold in the South drove petitioning simply meant that the incentive to petition was higher, *ceteris paribus*, when one’s own party was in power because a) the process governing the judicial evaluation of petitions was friendlier (and thus more likely to be successful), and b) the value of a seat is higher when one’s own party is in power. We would expect, in short, that the *probability of a Republican or Democrat filing a complaint would be higher (from election to election) if his party was in power (i.e. had a Congressional majority)*. Is this expectation borne out by the facts?

The partisan profile of the House majority itself changed six times , 1869-1916, allowing for a series of “natural experiments” directly to assess the partisan argument. Figures 7 tracks the probability that a Republican and Democrat, after losing an election would file a petition challenging the results, against the backdrop of which party was in power.

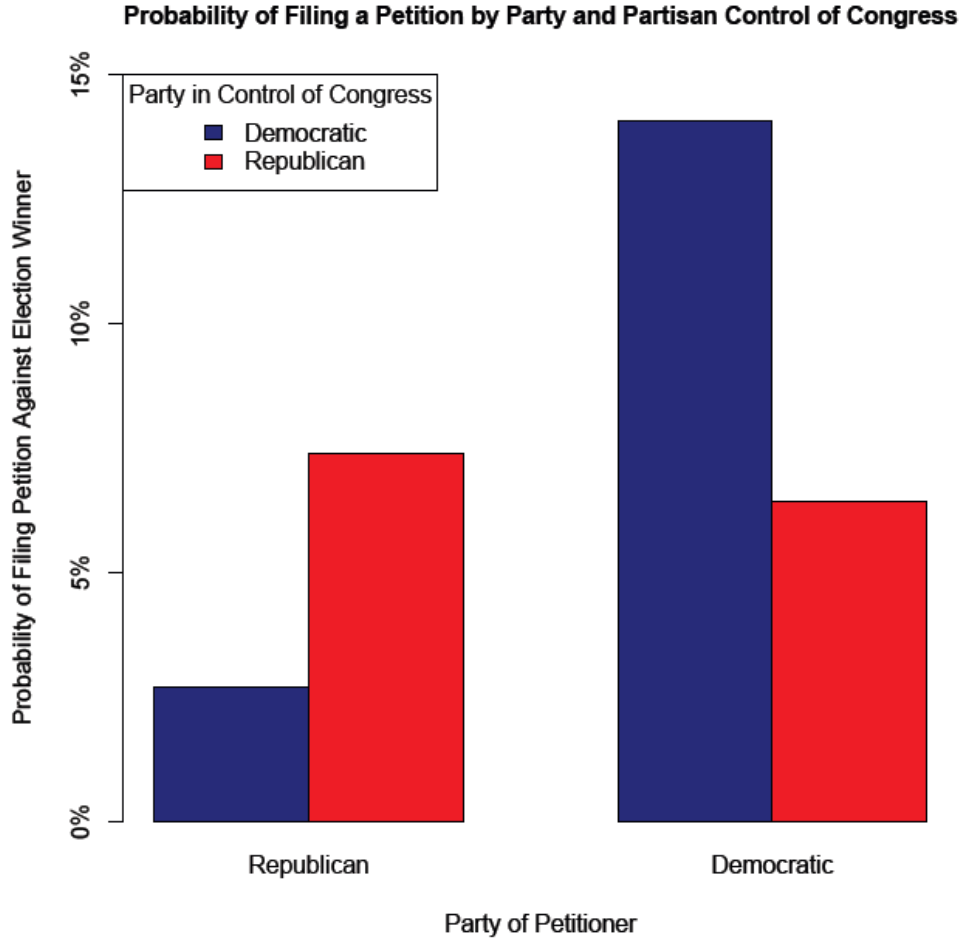
Figure 7

Probability of Petitioning Election Winner by Party and Congress



The evidence is quite striking: the party in power was more likely to file petitions eighteen out of the twenty-four Congresses; when Republicans ran Congress, Republican candidates for office who lost typically challenged; when Democrats had a majority in the House of Representatives, Democrats were more likely to petition. There are, however, some exceptions: in some years, Democrats were more likely to petition though their party was not in the majority in the House (42nd and 43rd Congress as well as the 61st Congress) and in some instances Republicans more likely to file petitions though not in the majority (48th and 50th Congresses). Additionally, Figure 8 averages the probabilities across the entire time period to make the same point.

Figure 8



Across the entire time period (1869-1916), the left hand side of Figure 8 makes clear, Republicans were more likely to contest election results when Republicans were in charge of the Congress; and so too were Democrats, when Democrats were in charge of the House of Representatives. Additionally, the difference between the probability that a Republican would file a contest differs by 4.7% between when the Republicans control Congress and the Democrats control Congress. This difference is statistically significant at the <1% level.¹⁸ Likewise the difference between a Democrat filing a contest under a Democratic controlled Congress and a Republican controlled Congress is 7.63%. The associated Confidence Interval is [-0.38% ,15.64%], and the p-value is 0.062, so the difference is not significant at the 5% level.¹⁹

¹⁸ The confidence interval for this difference is [2.42%, 6.98%]

¹⁹ Certainly part of this lack of significance (despite a large point estimate of the difference than the point estimate for Repubs) is that there are fewer observations since there are fewer Dems filing petitions

Yet, broadly, the analysis suggests two points: first, though it is often argued that “partisanship” mattered in the process, less evidence has heretofore been brought to bear on this. Here, we see partisanship did appear to matter a great deal and it must be “controlled” for in any analysis. Second, it is also clear, given the evidence above, that a strictly strategic partisan calculation cannot exclusively explain the largest spike in election disputes in American history, in the U.S. South after the Civil War. The facts on the ground themselves were worth further investigation.

V. A Statistical Model and Some Face Validity Tests

We are now in a position to present a statistical model of the process underlying the choice to contest a lost election, and to probe the face validity of the contestation data as an indicator of fraud. The latter probe consists of three hypotheses tests, each derived from our literature review on the spatio-temporal distribution of election fraud above. Recall that there seemed to be some consensus on the fact that fraud was concentrated to (a) the late nineteenth century, (b) the South, and (b) the cities. We present a first purely descriptive test of these expectations in the first model of Table 1. The temporal distribution is here simply tested through a set of dummies, one for each decade (with the 1840s used as reference category); the South is measured as a dummy for each of the former eleven confederate States; and urbanization as the percentage of the population living in dwellings of 2,500 people or more.²⁰ Although we found in section III that the existing coding of the grounds of the contests could be disputed, we have here relied on the conservative strategy of only looking at cases of “fraud” (according to Jenkins’s coding scheme).²¹

As can be seen from the Table, all three expectations are born out. House elections were more frequently contested on the grounds of election fraud in the last decades of the nineteenth century. After the turn of the last century, there are not significantly more charges of fraud than there were in the 1840s. Moreover, fraud-based contests were also in general more common in the South and, controlling for the latter, in more urban areas.²²

²⁰ A higher threshold, with dwellings of 25,000 or more, produce almost identical results.

²¹ Possible recodes, and robustness tests based on the other codes of grounds, is work in progress.

²² In this and the following tests, no result differs substantially if we try correct for potential time-dependence by including robust standard errors clustered by state.

*** Table 1 around here ***

But maybe these descriptive patterns only reflect systematic differences in the incentives and disincentives to file a contest. To control for the latter, we introduce the second model of Table 1. To begin with, this model consists of some more technical controls taking into account some of the structural varieties of elections at the time. The first controls for the log of the number of candidates returned from the district, or what is commonly known as the district magnitude. Although 99 percent of the electoral races in our data were single-member districts, multi-member elections did at times occur, particularly in state-wide elections that were held after decennial apportionment awarded a state additional seats (Martis 1989, 7). Moreover, we control for whether the election had only one candidate who ran unopposed, and thus did not involve a loser who could potentially contest the election, and for whether the election was a regular or a by-election (the latter in US parlance being called a “special election”). As can be seen, in this first test of the control model, neither of these election characteristics exerts any statistically significant effects. When combined with the face validity tests in models 3 and 4, however, multi-member elections appeared to have been more prone to charges of fraud, unopposed elections less so (as one would expect).

The remaining variables of model 2 is our attempt to proxy for the costs of contesting (C) and the perceived likelihood of success (p) net of fraud.²³ First, districts with larger populations should be costlier to contest, in part because the amount of testimony needed should be larger, in part because population size also proxies for other factors making electoral conditions more complicated to overview and assess. Although the sign of the coefficient for the log of population size is reversed in model 2, it works as expected in the fuller models 3 and 4. Moreover, we conjecture that modernization should make contestation costlier, mostly since rising levels of literacy and education in the electorate raises the information costs for potential contestants, who in their collection of evidence faced a more competent and critical audience. Although we have found no census data on levels of education measured consistently over time,

²³ We have not been able to collect data on any useful proxies for the value of winning (B) independent of partisanship. Querubin and Snyder (2011) however find that although congressmen were able to enrich themselves considerably during the Civil War, the net gains in previous and later time periods were miniscule. Perhaps we can thus safely assume that, net of the partisan make-up of congress, the utility of winning was more or less constant across time and space.

we proxy for modernization more generally through the percent of the population employed in manufacturing (as opposed to agriculture, most importantly). This also appears to exert a statistically significant but negative influence on the incidence of fraud-based contests.

We follow Green (2007) in how to measure and control for partisanship. First and foremost, as illustrated in the former section, the perceived probability that one's case would be favorably received by the House should of course be a direct function of the partisanship of the winner. If he belongs to the House majority, the chances of unseating him should be dimmer. Secondly, the recent history of how the House has handled contested election cases could arguably be used as a signal as to its predisposition in this regard. Following Green (2007), we measure this is the proportion of contested cases in the previous congress that were ruled in favor of the majority party. As can be seen, both these partisan proxies work as expected. When the winner is from the House majority (of the House to be filled by the election in question), there are fewer contests on fraud. And when the majority favors itself in one congress, this seems to spill over to the expectations of potential contestant in the next congress (although the latter effect is not statistically significant in the fuller models 3 and 4). Finally, we control for the closeness of the race, that is, the percent of the vote that separated the winner from the loser (or, in multi-member districts, the last winner from the first loser). The expectation should be that the smaller the margin of victory, the stronger the incentives to contest, since so relatively few votes need to be proven invalid in order to unseat the winner. As the table makes clear, this expectation is clearly borne out in the data.²⁴

Most importantly, however, all three of our face validity checks remain statistically significant in the presence of these controls. As can be seen from model 3, contested elections on charges of fraud were more common before than after 1900 (and this difference in effect is actually statistically significant, although that is not visible from the table). Moreover, southern elections were more commonly contested on these grounds, as were urban elections. In the fourth model,

²⁴ One could of course doubt the validity of the election return in cases where fraud was perpetrated, in effect making the margin of victory endogenous to the incidence of fraud. Our purpose here is however not to infer the exact magnitude of any exogenous effect of margin of victory on the probability to contest, but to include this as (one of several) proxies for partisan incentives to contest. Moreover, for the contestants themselves, the reported elections returns were what could be taken into account before deciding on whether to contest or not. Our measure of margin of victory thus relies on these reported figures, not the sometimes corrected versions of the election returns that came out of the process of contesting elections.

finally, we probe the most commonly suggested mechanisms for these two latter effects: that Southern election fraud was concentrated to districts with large black populations, whereas urban fraud should be related to the large influx of poor and illiterate immigrants in the cities (the latter being easiest pray for the city machines). As should be clear, the first but not the second of these proposed mechanisms seem to have been at work. In other words, the difference between former confederate state and the rest of the country vanishes almost completely once the percentage of blacks in the population is being controlled for. The effect of urbanization, however, is only marginally affected by the inclusion of the share of foreigners in the population.

Conclusion

This paper has investigated the degree to which contested elections to the House of Representatives might be a useful measure of election fraud. There are certainly good reasons to be skeptical. The costs of filing contests as well as partisan and personal benefits of obtaining office via this extra-electoral process provided incentives for filing contests, suggesting the possibility that contests are merely “noise” that cannot reliably be used to tell us anything about *actual* electoral practice.

However, rather than abandoning the data altogether or simply assuming that the data gives us an accurate picture of election practice, this paper has sought to develop a theoretically-informed empirical assessment of these issues. Also, rather than ask how these contests were resolved as others have (Jenkins 2004) or how they affected the institution of the House itself (Polsby 1968), we look at the *calculus of the contests* themselves. Structuring our analysis around a simplified model of election petitioning, we assess two major threats to measurement validity: do contests really measure what we normally mean when we discuss “election fraud”? To what degree is partisanship a factor shaping the generation of election contests? We find, first, that contestants alleged some type of corruption or fraud in most of the cases. Furthermore, without evidence of a clear partisan strategy at the local level, we cannot simply assume that contestants filed claims of corruption for purely partisan reasons. Yet, there is evidence that the likelihood of success of a contest increases the probability of filing a contest. Thus, we conduct a straightforward statistical analysis in which we control for these threats to validity. The results of this analysis give us some confidence in these data as useful measures of actual fraud and confirms three expectations

derived from the literature on historical election fraud in the U.S. case: first, that its prevalence peaked around the turn of the 19th century; second, that it was more common in the South; and finally, that it was also particularly prevalent in the cities.

Where does this leave us for future research? First, admittedly, we overlook many other types of electoral fraud in United States history. Corruption has been charged both in Presidential elections and at the local level, in elections to state legislatures or city government. Second, more work has to be done on the statistical model controlling for the calculus of petitioning, particularly with respect to the costs of contesting an election and the value of winning the seat. Finally, the categorization of the grounds on which elections were contested needs to be buttressed further to sharpen the distinction between cases of fraud and more frivolous grounds.

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Table 1. House Elections Contested on Charges of Fraud, 1840-1939

	(1)	(2)	(3)	(4)
Decade: 1850s	.241 (1.226)		.475 (1.239)	.457 (1.244)
1860s	2.536** (1.035)		3.307*** (1.049)	3.491*** (1.058)
1870s	2.349** (1.024)		2.833*** (1.034)	2.847*** (1.041)
1880s	2.473** (1.019)		3.045*** (1.030)	3.075*** (1.035)
1890s	2.440** (1.018)		3.116*** (1.027)	3.269*** (1.033)
1900s	.696 (1.073)		1.659 (1.086)	1.980* (1.092)
1910s	1.406 (1.034)		2.518** (1.050)	2.939*** (1.058)
1920s	1.117 (1.041)		2.343** (1.056)	2.934*** (1.067)
1930s	1.045 (1.043)		2.453** (1.065)	2.959*** (1.080)
Southern state	1.606** (.209)		2.550*** (.240)	.618* (.374)
Percent urban population	1.677** (.316)		3.431*** (.528)	3.040*** (.637)
ln(district magnitude)		.666 (.596)	1.402** (.631)	1.412** (.662)
Unopposed election		-1.497 (1.016)	-2.046** (1.021)	-2.394** (1.025)
Special election		.031 (.423)	-.094 (.435)	-.296 (.445)
ln(population size)		.183** (.092)	-.284** (.117)	-.254** (.118)
Percent population employed in manufacturing		-3.219* (1.912)	-5.496** (2.717)	-4.512 (2.812)
ln(margin of victory)		-.492*** (.044)	-.641*** (.048)	-.698*** (.049)
Winner from House majority party		-1.503*** (.192)	-1.434*** (.196)	-1.481*** (.199)
Proportion ruled in favor of majority party at t-1		1.060*** (.325)	.477 (.419)	.493 (.428)
Percent black population				5.598*** (.752)
Percent foreign population				.777 (1.334)
Constant	-7.571** (1.013)	-5.502*** (1.098)	-3.759*** (1.650)	-4.563 (1.659)
Log Likelihood	-814.501	-768.685	-675.890	-645.186
Wald Chi-Squared	129.38***	221.01***	406.60***	468.01***
Pseudo R-Squared	.074	.126	.231	.267

* significant at the .10-level, ** significant at the .05-level, *** significant at the .01-level.

No. of observations: 16 552

No. of states: 48

Mean no. of elections per state: 345

Note: The dependent variable is coded 1 for every district election that was contested on charges of fraud, 0 otherwise. Entries are logit coefficients, with standard errors within parentheses.