

Arming the Enslaved? Different Paths Taken by the US and Confederate Congresses during the American Civil War

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Two years after the start of the American Civil War, the US Congress passed a law arming slaves to help fight the war. It would take another two years for the Confederate Congress to pass a similar law, but by that time it was much too late to make a difference – the Confederacy would surrender the following month. This paper details and explains the different paths on arming slaves taken by the Union and Confederacy, with a particular focus on the role of the nation's respective legislatures.

Both sections faced similar incentives to arm slaves. Military and civilian leaders in both sections supported arming slaves almost immediately after the first shots fired at Fort Sumter and both the Union and Confederacy militaries encountered significant trouble with raising and maintaining troops in general. Despite these shared incentives, differences in political institutions (in addition to social and cultural ones), namely differences in legislative organization and party organizations and majorities, resulted in a quicker journey to arming slaves in the North led by the legislative branch, and an ineffectually slow journey in the South stymied by the national legislature. The overwhelming Republican majorities in the US Congress,¹ largely organized along partisan lines, greased the legislative wheels for action, whereas the slimmer majorities of former Democrats in a formally nonpartisan Congress in the South led to sclerosis.

In the Union, Radical Republicans in Congress sought to use the arming slaves as a path to total emancipation, against the objections of President Lincoln and moderate Republicans in Congress. Throughout debates over the Militia Act of 1862, the law that eventually armed slaves in the North, Radical Republicans in Congress led the way on attempting to manumit broadly by freeing conscripted slaves' wives, mothers, and children alongside the drafted soldier, or freeing conscripted slaves even if their owners were loyal to the Union rather than just those with rebel slaveowners. Lincoln opposed arming slaves and (broad) emancipation in the early years of the war but came to accept the view that emancipation was an ultimate aim of the War.² A significant number of congressmen, however, subscribed to that view immediately and worked to push Lincoln in that direction.

In the Confederacy, the process was reversed. The Confederate Congress acted as a negative check on executive and military leaders' attempts to arm and even emancipate slaves.³ Majorities in the Confederate Congress, and pivotal actors like the Democratic chairman of the Military Affairs Committee, objected to arming slaves and especially to emancipation. Jefferson Davis, Robert E. Lee, and other military and executive leaders, on the other hand, embraced arming slaves and emancipation far before serious proposals to implement such policies percolated up through the Confederate Congress. The Confederate Congress would not pass a law arming slaves until one month before their surrender at Appomattox.

¹ In the 37th Congress (1861-63), the Republicans controlled 31 of 50 seats in the Senate and 108 of 183 seats in the House. Kenneth C. Martis, *The Historical Atlas of Political Parties in the United States Congress, 1789-1989* (New York: Macmillan, 1989), p. 115.

² Lincoln's position early in the war was for gradual, compensated emancipation. See Jeffery A. Jenkins and Justin Peck, *Congress and the First Civil Rights Era, 1861-1918* (Chicago: University of Chicago Press, 2021).

³ See, e.g., Thomas Robson Hay. 1919. "The South and the Arming of the Slaves." *Mississippi Valley Historical Review* 6(1): 34-73 for an accounting of the Confederate Congress's obduracy.

The US and Confederate Congresses were similar in many ways; in fact, the Confederate Congress had been modeled after the US one. One major (informal) difference, however, was that the Confederacy lacked party organizations. During debates over the Confederate Constitution, Democrats successfully disappeared the root of major cleavages between their own party and the Whig Party by making internal improvements and tariffs unconstitutional.⁴ Legislators in this party-free legislature in turn behaved as if unbounded by the kind of robust party leadership that characterizes legislative politics and organization in typical, partisan institutions.⁵ Legislative organization in the Confederate Congress did not feature some standard tools of party control. For example, in the First Confederate Congress, seven of nineteen (37%) of committees had a minority of former Democratic committee members, despite being the ostensible majority party. Following former Whig gains in the 1862 elections, seventeen of twenty-two committees (78%) had a minority of former Democratic committee members, despite former Democrats comprising a floor plurality.

The remainder of this paper details positions on arming slaves in the North and South from the genesis of the Civil War through the legislative debates over impressing and conscripting slaves. We then describe the legislative debates over the Militia Act of 1862, the Union law arming slaves, and the Confederate law arming slaves.

Republican Positions on Slavery Before and Early in the War

On November 6, 1860, Republican Abraham Lincoln of Illinois was elected President of the United States following a divisive campaign. Democrats were split by region, old-line Whigs asserted themselves in the border states, and Republicans enjoyed support almost exclusively in the free Northern states. Lincoln's victory in the four-man contest – against Democrats Stephen Douglas (IL) and John C. Breckenridge (KY) and Constitutional Unionist John Bell (TN) – was seemingly the last straw in a decades-long battle between slavery advocates and abolitionists. Specifically, the GOP had emerged as an organized response to the continued extension of slavery into the Western territories. Those who defended slavery had, over the course of the preceding decades, won a series of important political battles, but in the years directly preceding the outbreak of war, anti-slavery advocates began pushing back successfully. As a result, slaveholding leaders from various Southern states had threatened to separate from the Union.⁶

Lincoln was on record only for opposing slavery's extension, not its abolition. Southern "fire eaters," however, viewed a Republican president as a natural enemy of slavery – and one that would inevitably seek its demise in total. As a result, secession movements (and conventions) quickly followed, with South Carolina, Mississippi, Florida, Alabama, Georgia,

⁴ Jeffery A. Jenkins, "Why No Parties?: Investigating the Disappearance of Democrat-Whig Divisions in the Confederacy," *Studies in American Political Development* 13 (1999): 245-62.

⁵ Jeffery A. Jenkins, "Examining the Bonding Effects of Party: A Comparative Analysis of Roll-Call Voting in the US and Confederate Houses," *American Journal of Political Science* 43 (1999): 1144-65; Jeffery A. Jenkins, "Examining the Robustness of Ideological Voting: Evidence from the Confederate House of Representatives," *American Journal of Political Science* 44 (2000): 811-22.

⁶ Pro-slavery victories included the Missouri Compromise, the War with Mexico, the Compromise of 1850, and the Kansas-Nebraska Act of 1854. Anti-slavery victories included electing an anti-slavery advocate as Speaker of the House (Nathaniel Banks in 1856) and defeating slavery's extension into Kansas. For more on this history, see David M. Potter, *The Impending Crisis: America Before the Civil War, 1848-1861* (New York: Harper, 1876).

Louisiana leaving the Union.⁷ On February 4, 1861, these seven states convened in Montgomery, Alabama, to form the Confederate States of America.⁸

Some federal legislators used the waning days of the lame-duck session of the 36th Congress to seek a compromise that might restore the Union.⁹ The compromise measure that gained the most traction was a single constitutional amendment offered by Thomas Corwin (R-OH) in the House. Proposed as a joint resolution (H.J. Res. 80), Corwin believed it satisfied the concerns of both Republicans and his slave-state colleagues. It read:

No amendment shall ever be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.¹⁰

Corwin's amendment was considered on February 27, 1861, but failed to achieve the necessary two-thirds, 120-71.¹¹ The House reconsidered the vote the following day, and the necessary two-thirds was reached, 133-65.¹² While a majority of Republicans voted against H.J. Res 80 on February 28, a minority (46 of 109) voted with nearly every other House member to achieve the necessary vote total. Passage occurred largely because enough Republicans had been convinced overnight either to cast a vote in favor, after not participating on the earlier roll call, or to change their vote from nay to yea (as only 38 of 108 Republicans voted yea on the initial roll call).¹³

The joint resolution then went to the Senate, where Stephen Douglas (D-IL) served as floor manager. Time was of the essence. The lame-duck session was soon to expire, and GOP senators like Charles Sumner (R-MA) sought to run out the clock. Eventually, after a short and fierce debate, a vote was taken on March 2, 1861, and Corwin's amendment garnered exactly the two-thirds necessary to pass, 24-12.¹⁴ Just like in the House, a majority of Republicans voted against the joint resolution, but a large enough minority (8 of 20) voted with pro-slavery members all to achieve its passage.

President James Buchanan was delighted with the result and affixed his signature, even though it was not constitutionally necessary. President-Elect Lincoln also supported the Corwin

⁷ South Carolina was the first state to secede (on December 20, 1860), with Mississippi (January 9, 1861), Florida (January 10, 1861), Alabama (January 11, 1861), Georgia (January 19, 1861), Louisiana (January 26, 1861), and Texas (February 1, 1861) following soon thereafter.

⁸ See William C. Davis, *"A Government of Our Own": The Making of the Confederacy* (Baton Rouge: Louisiana State University Press, 1994).

⁹ These various compromise efforts are described in detail in David M. Potter, *Lincoln and His Party in the Secession Crisis* (New Haven: Yale University Press, 1942); Roy Franklin Nichols, *The Disruption of American Democracy* (New York: Macmillan, 1948); Kenneth M. Stampp, *And the War Came: The North and the Secession Crisis, 1860-61* (Baton Rouge: Charles Scribner's Sons, 1950); Daniel W. Crofts, *Lincoln and the Politics of Slavery: The Other Thirteenth Amendment and the Struggle to Save the Union* (Chapel Hill: University of North Carolina Press, 2016).

¹⁰ CG, 36-2, 2/26/1861, 1236.

¹¹ CG, 36-2, 2/27/1861, 1264.

¹² CG, 36-2, 2/28/1861, 1285.

¹³ Of the eight additional GOP votes cast in favor of the Corwin Amendment on February 28, four came from Republicans who did not cast a vote on February 27, while four others came from Republicans who voted nay initially. In addition, four additional votes in favor came from Democrats (two from the North and two from the South). On Republican attempts to ensure the passage of the Corwin Amendment on February 28, see R. Alton Lee, "The Corwin Amendment in the Secession Crisis," *The Ohio Historical Quarterly* 70 (1961): 1-26.

¹⁴ CG, 36-2, 3/2/1861, 1403.

Amendment and advised members of Congress from his home state of Illinois to support it.¹⁵ Lincoln would validate the joint resolution's content in his inaugural address, announcing that he and his party had no "lawful right" or "inclination" to "interfere with the institution of slavery in the States where it exists."¹⁶ Thus "the man who would later be known as the Great Emancipator," argues Daniel Crofts, "first came to power having just accepted a constitutional amendment designed to prevent any attack on slavery" where it already existed.¹⁷ Yet the Corwin Amendment was not ratified by the requisite number of states to become law. Only Kentucky voted to approve the amendment (on April 4, 1861) before hostilities started between North and South. Thereafter, only five states pursued some form of ratification.¹⁸

Why did a significant portion of congressional Republicans support the Corwin Amendment? Some felt that the narrowly written text was consistent with GOP ideology, which was predicated on eliminating slavery's spread but not its abolition. Others backed the amendment to support Southern Unionists and stop secession movements in the remaining slave states.¹⁹ Eight such states – Virginia, North Carolina, Tennessee, Arkansas, Kentucky, Maryland, Missouri, and Delaware – were still firmly in the Union, and support for the amendment was meant to reassure their leaders that their property in slaves would not be threatened.²⁰

On April 12, 1861, Confederate forces fired on Fort Sumter, which escalated the North-South conflict and hastened the move toward war. Lincoln immediately called for 75,000 volunteers to support the Federal cause. And over the next two months, four more Southern states seceded and joined the Confederacy: Virginia, Arkansas, North Carolina, and Tennessee.²¹

In response, in July 1861, Lincoln called an emergency session of Congress. Absent members from the states that had seceded, the 37th Congress was small and dominated by Republicans. And despite the Confederate aggression, the party's position on slavery did not immediately change. Keeping the remaining slave states – Kentucky, Missouri, Maryland, and Delaware – in the Union and their male citizens out of the Confederate army continued to drive GOP thinking.²² As a result, despite their small numbers, Unionist members from the four remaining slave states wielded considerable power. This became clear after the First Battle of Bull Run, on July 21, 1861, when the Confederate army routed the Union forces and forced them back to Washington, DC. Following Bull Run, the Republicans were, according to Herman Belz, "chastened by defeat and aware more than ever of the necessity of holding the border states in

¹⁵ Leonard L. Richards, *Who Freed the Slaves?: The Fight Over the Thirteenth Amendment* (Chicago: University of Chicago Press, 2015), 23. Daniel Crofts also contends that substantial circumstantial evidence exists that Lincoln "worked behind the scenes to get the amendment passed." Crofts, *Lincoln and the Politics of Slavery*, 231.

¹⁶ For the full text of Lincoln's first inaugural address, see http://avalon.law.yale.edu/19th_century/lincoln1.asp.

¹⁷ Crofts, *Lincoln and the Politics of Slavery*, 236.

¹⁸ These five were Ohio on May 13, 1861 (ratification would be rescinded on March 31, 1864); Rhode Island on May 31, 1861; Maryland on January 10, 1862; the "Restored Government of Virginia" (much of which would become the State of West Virginia) on February 13, 1862; and Illinois on February 14, 1862 (although there were conflicting decisions between the convention – which ratified the amendment – and a popular referendum that did not, and possibly invalidated the convention decision). See Crofts, *Lincoln and the Politics of Slavery*, 243-54.

¹⁹ A roll-call analysis (logistic regression) of Republican votes finds that first (negative) and second (positive) NOMINATE dimensions are statistically significant, with Republican members nearest to the Democrats on both dimensions being more likely to support the Corwin Amendment.

²⁰ Crofts, *Lincoln and the Politics of Slavery*, 215, 226-27.

²¹ Dates of secession were April 17 (Virginia), May 6 (Arkansas), May 20 (North Carolina), and June 8 (Tennessee).

²² See Harris, *Lincoln and the Border States*.

the Union.”²³ This led to two border-state members – Unionist John Crittenden (KY) in the House and War Democrat Andrew Johnson (TN) in the Senate – to offer separate, but very similar, resolutions in their respective chambers.²⁴

Together, the Crittenden²⁵ and Johnson²⁶ Resolutions specified the “war aims” of the Union. Both blamed the Southern states for the war, while specifying the Union’s prime goal as suppressing the “disunionist” insurrection, preserving the Constitution, and maintaining the rights and institutions of the states as they were before hostilities began. More to the point, as Belz notes, the resolutions were “supposed to convey that slavery was not, under any circumstances, to be interfered with, nor the rebellious states divested of any of their power or privileges.”²⁷

President Lincoln, aware of the importance of keeping the border states in the Union, strongly supported both resolutions.²⁸ As a result, when voting commenced, congressional Republicans fell in line. On July 22, in the House, both parts of the Crittenden Resolution passed by near-unanimous margins, with no dissenting GOP votes on the first clause and only two on the second.²⁹ The same was true of the Johnson Resolution three days later, as it passed easily,

²³ Herman Belz, *Reconstructing the Union: Theory and Policy during the Civil War* (Ithaca: Cornell University Press, 1969), 24.

²⁴ Crittenden was a long-time Whig senator, who migrated to the American (Know Nothing) Party after the Whig Party collapsed. In the 37th Congress, he became a Unionist. Late in the 36th Congress, at the same time the Thomas Corwin offered his constitutional amendment in the House, Crittenden offered an elaborate proposal built around six constitutional amendments and four congressional resolutions that would (among other things) prohibit Congress from legislating on slavery, including in the District of Columbia; strengthen fugitive slave laws; and extend the Missouri Compromise 36° 30' line all the way to the Pacific Ocean, thereby allowing slavery’s extension into any future territories south of the line. The “Crittenden Compromise,” as it became known, also stipulated that once adopted, it could not be repealed or amended. Senate Republicans rejected the plan as too extreme, especially on the issue of slavery extension. Crittenden’s proposals would be repackaged at the Peace Conference of 1861, which met in February 1861 in Washington, D.C. The Peace Conference was led by former-President John Tyler of Virginia and included more than 130 northern and southern politicians. The Peace Conference’s ultimate proposal differed little from the Crittenden Compromise and was rejected 28-7 in the Senate on March 4, 1861. For a detailed description of the Peace Conference, see Mark Tooley, *The Peace That Almost Was: The Forgotten Story of the 1861 Washington Peace Conference and the Final Attempt to Avert the Civil War* (Nashville: Nelson Books, 2015).

²⁵ [Clause 1] *Resolved by the House of Representatives of the Congress of the United States*, That the present deplorable civil war has been forced upon the country by disunionists of the southern States now in revolt against the constitutional Government, and in arms around the capital. [Clause 2] That in this national emergency Congress, banishing all feeling of mere passion or resentment, will recollect only its duty to the whole country; this this war is not waged upon our part in any spirit of oppression, or for any purpose of conquest or subjugation, or purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; and that as soon as these objects are accomplished the war ought to cease. See *CG*, 37-1, 7/22/1861, 223.

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²⁷ Belz, *Reconstructing the Union*, 25.

²⁸ Richards, *Who Freed the Slaves?*, 28-29; Harris, *Lincoln and the Border States*, 80-81.

²⁹ *CG*, 37-1, 7/22/1861, 223. The votes were 121-2 and 117-2, respectively.

with only one of 25 Republican senators defecting.³⁰ Even amid the pressure to maintain a united front and support their Commander in Chief, however, two-dozen Republicans across the two chambers abstained on the resolution votes.³¹

A Shift on Slavery: The Confiscation Acts

Through July 1861, congressional Republicans had largely worked to protect slavery where it existed. As the war progressed, however, the notion that the Union could squelch a rebellion by eleven Southern states while assuming the legalities that governed slavery had not changed became increasingly untenable. While many national leaders, including President Lincoln, preferred to fight and conclude a civil war that would return the country to its pre-war institutions, events around them shattered these hopes. Sympathy for abolition was growing among congressional Republicans – demonstrated by the passage of two Confiscation Acts.³²

As the federal army drove into Confederate territory, advanced forces began to encounter fugitive slaves. A key moment came on May 24, 1861, when three slaves attached to the 115th Virginia Militia at Hampton Roads escaped across the James River and approached Union-controlled Fortress Monroe at the mouth of the Chesapeake Bay. Benjamin Butler, in command at the fort, interviewed the escapees and discovered they were helping to reinforce rebel batteries nearby. Butler treated the slaves as “contraband of war,” and when approached by a Confederate emissary, who sought the slaves’ return under the Fugitive Slave Act of 1850, replied that the law could only be invoked by U.S. citizens.³³ This was a radical position at the time, as most federal commanders were turning away fugitive slaves or returning them to their owners.

Butler’s decision, to President Lincoln’s chagrin, found considerable support within the GOP.³⁴ The decision had far-reaching consequences, as word spread and slaves began “freeing themselves” by departing their plantations, walking north, and seeking refuge at Fortress Monroe and other points behind federal lines.³⁵ Thus, slaves’ pursuit of freedom, and their daily appearance in Union camps, had the effect of making slavery much more than a sterile public policy issue.

The second event was the First Battle of Bull Run. In the aftermath of the humiliating federal defeat, several Republican members of Congress interviewed Union troops involved in the battle and learned how slaves supported Confederate forces by building and maintaining fortifications, resupplying ammunition, tending to the injured, maintaining animal teams, and cooking and dispensing food. Through these various activities, slaves allowed white Southerners

³⁰ *CG*, 37-1, 7/25/1861, 265. The vote was 30-5. Lyman Trumbull (IL) was the only GOP defection.

³¹ Many of these members would go on to adopt extreme (punitive) positions on post-war Reconstruction policy. See Belz, *Reconstructing the Union*, 27; Richards, *Who Freed the Slaves?*, 29.

³² Foundational works on the Confiscation Acts include Leonard P. Curry, *Blueprint for Modern America: Nonmilitary Legislation of the First Civil War Congress* (Nashville: Vanderbilt University Press, 1968), 75-100; Silvana R. Siddali, *From Property to Person: Slavery and the Confiscation Acts, 1861-1862* (Baton Rouge: Louisiana State University Press, 2005); John Syrett, *The Civil War Confiscation Acts: Failing to Reconstruct the South* (New York: Fordham University Press, 2005); Daniel W. Hamilton, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy during the Civil War* (Chicago: University of Chicago Press, 2007).

³³ More specifically, Butler stated that the Fugitive Slave Act “did not affect a foreign country, which Virginia claimed to be.” James Oakes, *Freedom National: The Destruction of Slavery in the United States, 1861-1865* (New York: Norton, 2012), 95-96.

³⁴ Secretary of War Simon Cameron, for example, publicly backed Butler.

³⁵ Richards, *Who Freed the Slaves?*, 28-29.

to focus on soldiering and killing Union troops.³⁶ This information helped many Republicans re-envision slavery as a major factor contributing to the overall effectiveness of Southern military forces – and perhaps to the eventual outcome of the war. As a result, Republicans began asking themselves some hard questions. As Leonard Richards writes:

[Republicans] had agreed that Congress had no right to legislate against slavery in a state. But what about individuals who allowed their slaves to be used against the United States? Couldn't such traitors be punished? Didn't the laws of war authorize the seizure of any property, including slave property, used to aid the war effort directly?³⁷

In answering “yes” to these questions, congressional Republicans were increasingly ready to question slavery’s future in a post-war Union. The result was the First Confiscation Act, which sought to confiscate property used for insurrectionary purposes. Specifically, section four of the law eliminated any claims of individuals on persons (slaves) who were employed directly or indirectly in hostile services against the United States. Thus, individuals in the South, rather than states, were the targets.

While radical Republicans saw the First Confiscation Act as a step toward their preferred outcome – general emancipation for slaves – the legislation only applied to slaves used in support of the rebellion.³⁸ And as John Syrett notes, these slaves “did not go free under the act; those claiming their services – the owners – simply forfeited their claim to them. The only liberty granted to [confiscated slaves] was not to remain slaves of rebels.”³⁹

While border-state Unionists and Democrats argued against the measure on constitutional grounds and as a strategic prelude to emancipation, it passed easily: 61-48 in the House on August 3, 1861, and 24-11 in the Senate two days later.⁴⁰ Near-uniform Democratic and Unionist opposition was trumped by overwhelming GOP support, as 57 of 64 Republicans in the House and 23 of 24 in the Senate voted yea.

Lincoln signed the bill but felt that congressional Republicans were moving too quickly. He was concerned that the measure lacked bipartisan support and could be struck down by the pro-slavery Supreme Court led by Chief Justice Roger Taney.⁴¹ Thus, he did not pressure his Attorney General, Edward Bates, to enforce it – and Bates, a conservative, had little interest in doing so. As a result, the First Confiscation Act was mostly symbolic, as Union generals were allowed to follow it or not. Some might behave as Butler did and confiscate, while others, like George McClellan, Don Carlos Buell, and Henry Halleck, all with Democratic leanings, were free to honor the Fugitive Slave Act and continue returning slaves to their Confederate masters.⁴²

³⁶ Siddali, *From Property to Person*, 76-77; Syrett, *The Civil War Confiscation Acts*, 4; Richards, *Who Freed the Slaves?*, 30.

³⁷ Richards, *Who Freed the Slaves?*, 31.

³⁸ While historians often note Republican factions during and after the Civil War, explicit caucuses of radicals, moderates, and conservatives did not exist. And quantitative historical scholars have long sought to use roll-call votes as a means of identifying these implicit factions – without reaching a clear consensus. For a summary of these efforts, see Allan G. Bogue, *The Congressman's Civil War* (New York: Cambridge University Press, 1989), 132-37. Nevertheless, the description provided by Hans Trefousse in Chapter 1 provides a useful shorthand.

³⁹ Syrett, *The Civil War Confiscation Acts*, 6.

⁴⁰ *CG*, 37-1, 8/3/1861, 431; 8/5/1861, 434.

⁴¹ In addition, according to William Harris, “[Lincoln] believed that it would create more hard than good in that it would cause the rebels to fight harder and would hurt the Union cause in the border states.” See William C. Harris, *Lincoln and Congress* (Carbondale, IL: Southern Illinois University Press, 2017), 23.

⁴² Siddali, *From Property to Person*, 91; Richards, *Who Freed the Slaves?*, 31-32.

External pressure for emancipation continued, however. In the border state of Missouri, support for the rebellion was strong, as pro-Confederate guerrillas fought pro-Union forces for control in various parts of the state.⁴³ Major General John C. Frémont, Union commander in the West, eventually declared martial law to restore order and stipulated that those found to be aiding the rebellion would have all real and personal property confiscated and their slaves set free.

Frémont's proclamation – with its “emancipation clause” – shocked Northerners. While radical Republicans approved, President Lincoln instructed Frémont to amend his order so that it complied with the First Confiscation Act, which allowed the seizure of only those slaves who were involved in military operations against the United States and made no mention of “freedom” for them upon confiscation. Lincoln was concerned about losing the border states, as he received scores of letters from Unionists in Kentucky and Missouri condemning Frémont's action. After Frémont refused to comply, Lincoln revoked his order, and six weeks later relieved him of his command and installed Henry Halleck, an opponent of slave confiscation, in his place.

While Lincoln had effectively squelched Frémont's emancipatory initiative and lowered the temperature in the border states, support for emancipation was growing in the North. And Radical Republicans were frustrated and increasingly desirous of positive action.⁴⁴ In December 1861, Lincoln was blindsided yet again, when Secretary of War Cameron issued his annual report, which strongly supported property (including slave) confiscation and called for slaves to be armed and used in battle against the Confederates. Once again, Lincoln had to defuse the situation. He directed Cameron to collect all existing copies of his report and excise the offending text before reissuing it, and a month later, removed him from his position.⁴⁵

Radical Republicans in Congress had seen enough and decided to push back against Lincoln's hesitant approach on emancipation.⁴⁶ Their effort began in the Senate. They disliked the narrowness of the First Confiscation Act and sought a tougher law.⁴⁷ In early December, Lyman Trumbull introduced a bill (S. 151) that sought to confiscate *all* real and personal property of those in support of the rebellion, for all time (beyond the life of the person judged guilty).⁴⁸ The Union military would assist with confiscation in areas where the U.S. courts could not operate. Slaves confiscated would be declared free, and should they choose, pursue voluntary colonization in “some tropical country” arranged by the president.⁴⁹ Other property seized would

⁴³ See Michael Fellman, *Inside War: The Guerilla Conflict in Missouri during the American Civil War* (New York: Oxford University Press, 1989). Pro-Confederate support was so strong in Missouri – as well as Kentucky – that the Confederate Congress recognized rump governments organized in these states and provided them with representation. See Kenneth C. Martis, *The Historical Atlas of the Congress of the Confederate States of America: 1861-1865* (New York: Simon & Schuster, 1994).

⁴⁴ The Frémont episode in Missouri, Lincoln's response, and their various repercussions are discussed in Siddali, *From Property to Person*, 95-109; Syrett, *The Civil War Confiscation Acts*, 7-12; Richards, *Who Freed the Slaves?*, 32-37; Harris, *Lincoln and Border States*, 98-106.

⁴⁵ Siddali, *From Property to Person*, 117-19; Richards, *Who Freed the Slaves?*, 40-41. Richards notes that Lincoln's decision to remove Cameron was not exclusively due to his overreach on the arming of slaves, but also likely involved other matters like “mismanagement, corruption, and abuse of patronage.”

⁴⁶ Robert Harris notes that after Lincoln's rejection of Frémont's initiative, Radical Republicans were ready “to make emancipation an objective in the war when Congress assembled in December.” See Harris, *Lincoln and Congress*, 26.

⁴⁷ The politics of the Second Confiscation Act are discussed in Curry, *Blueprint for Modern America*, 75-100; Syrett, *The Civil War Confiscation Acts*, 20-72; Siddali, *From Property to Person*, 120-250; Hamilton, *The Limits of Sovereignty*, 20-81.

⁴⁸ *CG*, 37-2, 12/4/1861, 18-19.

⁴⁹ This was a concession to GOP moderates, like President Lincoln, who favored colonization.

be sold and the proceeds would fund the war and compensate loyal citizens for property damage related to the rebellion.

Trumbull and his supporters soon realized that their preferences on confiscation would not carry the day. Democrats and Unionists, but also some Republicans like Orville Browning (IL) and Jacob Collamer (VT), attacked the bill's disregard for private property rights. For conservatives, the seizure of property could only occur following an individual trial for treason – and only for life. They blasted Trumbull for his willingness to confiscate in a blanket way via legislative edict and disavow the role of the judiciary entirely.

John Sherman (OH), Henry Wilson (MA), and Daniel Clark (NH) led the moderate Republican opposition by fashioning a substitute that limited property confiscation to civil and military leaders in the Confederacy, thus excluding “ordinary” Southerners. Their substitute also stipulated that while property could be seized and used immediately, transfer of title could only occur after individual judicial rulings. Slaves, however, would be set free upon confiscation; whether subsequent judicial rulings would also be required to “validate” their freedom was unstated (and thus open to legal interpretation).

Conservatives also pushed their own substitute bill, written by Jacob Collamer, which required that the judiciary – rather the legislature – handle confiscation and that individual treason trials accompany each case of property seizure. Upon conviction of the party in question, property could only be confiscated for life – not permanently.

Eventually, all sides agreed to the creation of a select committee, with Daniel Clark as chair, to draft a new bill that might garner majority support.⁵⁰ Using Collamer's conservative bill as a starting point, the committee added elements that would appeal mostly to moderates: all property of those aiding the rebellion would be forfeited upon a conviction (but only for life); property of civil and military leaders could be seized and held upon the completion of judicial proceedings; slaves of rebels could be set free if sixty days after the president issued a proclamation to swear allegiance to the Union it was ignored; freed slaves could pursue voluntary colonization; and slaves could be enlisted in the U.S. military. The bill (S. 310) was reported on May 14, 1862.⁵¹

Save for the provision arming escaped slaves, radicals were largely unhappy with Clark's bill. After a week of debate, they successfully moved a postponement.⁵² The Senate then moved on to other business, and the House took center stage.

In the House, on May 14, Thomas Eliot (R-MA), chairman of the select committee charged with developing legislation, reported two bills, one dealing with confiscation (H.R. 471) and the other with emancipation (H.R. 472).⁵³ Both measures tended toward radicalism. The confiscation measure allowed for the immediate seizure of all property of civil and military leaders of the Confederacy, authorized the president to issue a proclamation of allegiance and give rebels sixty days to comply else all of their property would be seized, and subjected all property to limited judicial proceedings (but did not require trials of property owners). The emancipation measure freed all slaves of owners who aided the rebellion and did not require judicial action.

⁵⁰ The vote to create the committee, on May 6, was 24-14, with Republicans voting 15-13. Members of the committee included Clark, Jacob Collamer (R-VT), James Sherman (R-OH), Henry Wilson (R-MA), Edgar Cowan (R-PA), Ira Harris (R-NY), John Brooks Henderson (D-MO), and Waitman Willey (U-VA). Trumbull refused to serve on the committee, believing that it would accomplish little. See Syrett, *The Civil War Confiscation Acts*, 48.

⁵¹ *CG*, 37-2, 5/14/1862, 2112, 2165.

⁵² *CG*, 37-2, 5/21/1862, 2253-54.

⁵³ *CG*, 37-2, 5/14/1862, 2128.

The following week was set aside for debate, and 37 different speeches were made in a series of marathon sessions.⁵⁴ Finally, on May 26, the House voted on the confiscation bill (H.R. 471) and passed it, 82-68, with Republicans voting 79-8.⁵⁵ Later that day, the Republicans considered the emancipation bill (H.R. 472), but to their dismay, it was defeated, 74-78.⁵⁶ Fifteen Republicans voted in opposition, seven more than on the confiscation bill.⁵⁷ The perception was that the bill was too sweeping for some (more conservative) Republicans, who feared their constituents might view its provisions as too radical.⁵⁸

On June 23, 1862, the Senate took up the House confiscation bill (H.R. 471), and Clark moved his Senate bill (S. 310) as a substitute. Four days of debate followed, with Radicals complaining about the ineffectiveness of Clark's substitute as a confiscation measure. Clark responded that only his substitute could be enacted. Finally, on June 28, the Senate voted on Clark's substitute, and it passed 21-17; Republicans were split (15-15), with half favoring the more Radical elements in the House bill, which left the Democrats and Unionists to decide the matter.⁵⁹ The Senate then passed the amended H.R. 471 bill (encapsulating the text of the S. 310 substitute), 28-13; the majority of Republicans (27 of 30) voted yea, with most of the dissenters from the previous roll call "coming home" (albeit grudgingly).⁶⁰

On July 3, the House received the amended H.R. 471 from the Senate and voted overwhelmingly (8-123) not to concur.⁶¹ Five days later, the Senate voted 28-10 to insist upon its amendment and asked for a conference committee to sort of the chambers' difficulties. House members agreed to the request.⁶²

The conference committee reported back a bill on July 11.⁶³ The revised measure was a compromise designed to avoid deadlock.⁶⁴ Sections 1-4 and 10-14 of the amended H.R. 417 – which provided for punishments and fines for those committing treason or involved in insurrection, forbid the return of fugitive slaves, allowed the president to colonize former slaves abroad (should they wish) and employ them in service of putting down the rebellion, granted the president the ability to pardon rebels, and placed enforcement in the hands of the federal courts – were left largely intact. Sections 5-8 were taken from the original H.R. 417. They provided the president with the ability to seize the property of six classes of civilian and military leaders of the Confederacy, as well as other rebels (conditional on a proclamation giving them sixty days to declare allegiance to the United States). Confiscated property could be used immediately but

⁵⁴ Curry, *Blueprint for Modern America*, 89.

⁵⁵ *CG*, 37-2, 5/26/1862, 2361.

⁵⁶ *CG*, 37-2, 5/26/1862, 2363.

⁵⁷ A roll-call analysis (logistic regression) of Republican votes on the emancipation bill finds that first (positive) and second (negative) NOMINATE dimensions are statistically significant. This suggests that Republicans nearest ideologically to the Democrats on both dimensions were more likely to vote nay. These were members who could be labeled as conservative Republicans.

⁵⁸ Curry, *Blueprint for Modern America*, 89-90; Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies during the Civil War* (Cambridge: Harvard University Press, 1997), 224.

⁵⁹ *CG*, 37-2, 6/28/1862, 2996.

⁶⁰ *CG*, 37-2, 6/28/1862, 3006.

⁶¹ *CG*, 37-2, 7/3/1862, 3107.

⁶² *CG*, 37-2, 7/8/1862, 3166, 3178, 3187-88.

⁶³ *CG*, 37-2, 7/8/1862, 3166, 3178; 7/11/1862, 3187-88. The Senate conferees included Clark, Ira Harris (R-NY), and Joseph Wright (U-IN), while the House conferees were Eliot, James Wilson (R-IA), and Erastus Corning (D-NY).

⁶⁴ Five of the six conferees signed the conference report. Only Corning withheld his signature. See *CG*, 37-2, 7/11/1862, 3188.

would require judicial proceedings before title was transferred permanently. Section 9 was the most controversial and held that all slaves of rebels who were captured or escaped (or were behind Union military lines in former-rebel areas) were considered “forever free.”

Conservatives in the House, led by Robert Mallory (U-KY) and Samuel S. Cox (D-OH), complained that the conference committee went beyond its mandate and created (in sections 5-9) what amounted to new legislation. But their complaints were in vain, as the House proceeded to pass the conference report, 82-42, with 78 of 79 Republicans voting in favor.⁶⁵ The following day, July 12, the Senate considered the conference report, and the result was the same: it passed, 28-13, with 27 of 29 Republicans voting yea.⁶⁶

One hurdle remained: President Lincoln, who was contemplating a veto. His chief concern was over the bill’s treatment of private property. Lincoln believed that property seizure should not extend beyond the life of the offender, and GOP leaders sought to address his concern. In the Senate, Clark moved an amendment to a joint resolution (H.J. Res. 110) introduced by Horace Maynard (U-TN). The Maynard resolution was meant to be a straightforward clarification of the confiscation legislation – that it was to be prospective rather than retrospective (which was an uncontroversial interpretation) – to which Clark offered the following amendment: “Nor shall any punishment or proceedings under said act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life.”⁶⁷

Clark explained that his amendment sought to prevent a Lincoln veto. Nevertheless, Lyman Trumbull, Henry Lane (R-IN), Preston King (R-NY), and Benjamin Wade (R-OH) strongly objected to the amendment’s weakening of the bill.⁶⁸ Nevertheless, the Senate proceeded to pass the Clark amendment, 25-15, as 22 of 30 Republicans voted yea.⁶⁹ Maynard’s joint resolution then passed without a roll call, and the measure moved to the House. There, the amendment was concurred in, 83-21, with 74 of 79 Republicans voting in favor.⁷⁰

With the “explanatory resolution” now in place, Lincoln signed the conference bill, making the Second Confiscation Act law.⁷¹ Radicals viewed it as a disappointment. They saw aggressive and punitive property confiscation as a way to spur true social and economic reform in the South. By the end of the process, however, their hopes had been dashed. As Daniel Hamilton writes: “The moderates had ... won the crucial battle over whether confiscation would be legislative or judicial. Now [with the explanatory resolution adopted], not only would confiscation take place one trial at a time, but even after conviction all the government could seize was cumbersome life estate in the offender’s land.”⁷² As far as the Radicals were concerned, this method of property confiscation was unworkable and unenforceable. Ensuring that decisions about property would be made by the Court rather than Congress would prove to be a reliable strategy for moderates and conservatives.

⁶⁵ *CG*, 37-2, 7/11/1862, 3266-67. The only Republican to oppose the conference report was Bradley Granger (MI).

⁶⁶ *CG*, 37-2, 7/12/1862, 3276. The two Republicans who opposed the conference report were Orville Browning (IL) and Edgar Cowan (PA). Note that the initial vote tally was 27-12. Two others – Timothy Howe (R-WI) and Benjamin Stark (D-OR) – were recorded later (as yea and nay votes, respectively). See *CG*, 37-2, 7/12/1862, 3276, 3287.

⁶⁷ *CG*, 37-2, 7/16/1862, 3374.

⁶⁸ *CG*, 37-2, 7/16/1862, 3374-77.

⁶⁹ *CG*, 37-2, 7/16/1862, 3383.

⁷⁰ *CG*, 37-2, 7/16/1862, 3400.

⁷¹ He also passed along the draft of his would-be veto message to Congress, laying out his views and arguments. Curry, *Blueprint for America*, 98.

⁷² Hamilton, *The Limits of Sovereignty*, 76.

Regardless of Radical complaints, Section 9 was bold in declaring that slaves of rebels who were captured, escaped, or in rebel areas occupied by Union forces were to be “forever free.” And while the actual force of the Second Confiscation Act vis-à-vis emancipation was more limited,⁷³ it underscored that the old status quo – allowing slavery to remain where it existed – was gone forever. Returning to the Union “as it was” was impossible. Lincoln was slow to accept this perspective early in the war – as he fretted about keeping the border states in the Union – but was increasingly persuaded as the war progressed. Emancipation, he came to believe, would require more than a simple act of Congress. Instead “a more effective and constitutional means to that end, for instance by executive proclamation, had to be found.”⁷⁴

The Militia Act of 1862

As the war dragged on, Lincoln grew to appreciate how much slavery was wrapped up in the preservation of the Union. As federal forces drove deeper into rebel territory, it became clear how important the slave population was to the military and economic condition of the Confederacy. Federal officers discovered that confiscating slaves was a win-win proposition: an extra laborer to help the Union cause and one fewer laborer to keep the Confederacy afloat. Slaves also provided valuable intelligence about the makeup of Confederate forces, the nature and effectiveness of supply lines, and the location of roads, rivers, and other landmarks. In short, Lincoln increasingly recognized that slaves were vital to the Union war effort.

At the same time legislation that would become the Second Confiscation Act was being considered in Congress, a bill (S. 384) was introduced that would take the first steps toward a military draft.⁷⁵ S. 384 was focused on a preliminary step – wherein the secretary of war was authorized to draft members of state militias into military service – but gave President Lincoln the ability to call for an additional 300,000 volunteers and specify a nine-month period of service (when three months had been the 1795’s law original term).⁷⁶ However, it would also become the vehicle by which supporters of Black enlistments in the US military (as soldiers) would make their case. S. 384 – known as the Militia Act of 1862 – would further define the evolution of Republicans’ thinking on slavery in the wake of civil war, as Radicals and moderates as well fought not only for emancipation but also for allowing ex-slaves to be a vehicle by which rebel soldiers would be defeated on the battlefield.

⁷³ As John Syrett notes: “If the prospect of confiscation encouraged hopes of emancipation, the law itself made it difficult to free slaves. Under the act, slaves of rebels were free only when they came within the military’s control. The assumption was that emancipation would advance along with the army. However, slaves could be freed individually or in groups only when a federal court found their owners to be rebels; the military had no power to adjudicate the matter themselves. Doubts even arose about whether the military had the power to transfer slaves to federal courts for such proceedings. The second act would have required hundreds of thousands of trials of individual masters. Furthermore, it did not affect slaves owned by non-rebels who could prove they had given no aid to the rebellion or by those who swore allegiance to the North, even minutes before the act became law. It also omitted a method for resolving the issue if slaves claimed freedom under the act while their masters insisted on their loyalty to the Union, a conflict that seemed likely to arise.” Syrett, *The Civil War Confiscation Acts*, 57. Similar points are made in Hamilton, *The Limits of Sovereignty*, 74; Siddali, *From Property to Person*, 233-34.

⁷⁴ Syrett, *The Civil War Confiscation Acts*, 58.

⁷⁵ Timothy S. Huebner, *Liberty and Union: The Civil War Era and American Constitutionalism* (Lawrence: University Press of Kansas, 2016).

⁷⁶ Allan G. Bogue, *The Earnest Men: Republicans of the Civil War Senate* (Ithaca, NY: Cornell University Press, 1981); Douglas R. Egerton, *Thunder at the Gates: The Black Civil War Regiments That Redeemed America* (New York: Basic Books, 2016).

On July 9, 1862, on motion of Sen. Henry Wilson (R-MA), S. 384 – “to amend the act calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, approved February 28, 1795” – was considered in the Committee of the Whole.⁷⁷ Sen. James Grimes (R-IA) immediately offered an amendment to the bill to allow Blacks to perform military duty. Sen. Preston King (R-NY) declared that he had a similar amendment to offer and asked Grimes to allow his amendment instead (with any modifications that Grimes wanted to make) – which Grimes accepted. The King-Grimes amendment thus read:

And be it further enacted, That the President be, and he is hereby, authorized to receive into the service of the United States, for the purpose of constructing intrenchments or performing camp service, or any other labor, or any war service for which they may be found competent, persons of African descent; and such persons shall be enrolled and organized under such regulations, not inconsistent with the Constitution and the laws, as the President may prescribe, and they shall be fed and paid such compensation for their services as they may agree to receive when enrolled.

And be it further enacted, That when any man or both of African descent shall render any such service as is provided for in the preceding section of this act, he, his mother, and his wife and children shall forever thereafter be free, any law, usage, or custom whatsoever to the contrary notwithstanding.

And be it further enacted, That the provisions of the preceding sections shall be construed so as to apply to and include persons of African descent who may hereafter be called into service of the United States; and all persons who have been or who may be hereafter enrolled in the service of the United States as volunteers or militia shall receive the pay and rations of soldiers as now allowed by law according their respective grades.⁷⁸

Sen. Willard Saulsbury (D-DE) immediately decried the effort as an “attempt ... to change the character of the war, and to elevate the miserable nigger, not only to political rights, but to put him in your Army, and to put him in your Navy.” He went to ask: “How long will you keep the Army in the field after adopting such a policy? Do you believe that the free white soldiers of this country will fight side by side with negroes?” Sen. John Sherman (R-OH), who was considered moderate in his leanings, immediately responded that

Gentleman from the slave States ought not to feel so sensitive about this matter. We have come to that condition when we must employ these negroes, not probably as soldiers, but as laborers, as servants, as guards, and spies. Senators seem to think they are not fit for soldiers. It is said that white men will not fight side by side with them. In the South rebels fight side by side with them. In the South the negroes do the labors of the camp. They do all the hard work. Why shall we not avail ourselves of their services to perform the same class of duties?

Sherman then distanced himself from broader claims: “I do not believe the whites and blacks will ever mingle together on terms of equality... I think the law of caste is the law of God; you

⁷⁷ CG, 37-2, 7/9/1862, 3197

⁷⁸ CG, 37-2, 7/9/1862, 3198.

cannot change it. The whites and the blacks will always be separate, or whether they are brought together, one will be inferior to the other. That, however, is not the question now.”⁷⁹

After some back and forth between Saulsbury and Sherman, Sen. Fessenden spoke and backed Sherman’s remarks: “Why should we hesitate when our adversaries do not hesitate in relation to these matters?” And like Sherman, he played down the notion that Blacks would necessarily take up arms: “I am speaking now not so much of what I would do with them as soldiers, or whether I would use them as soldiers, but I am speaking of availing ourselves of the means which they offer us for a thousand other things which are necessary to be done and which they can do better than we can.”⁸⁰ As Fessenden was viewed as a moderate within the Republican Party, his views on the matter were considered an important signal.

A number of other senators made their case. Sen. Henry Rice (D-MN) – “a doughface Democrat and confidant of southern congressional leaders during the late 1850s”⁸¹ – stated that he was “at one time ... not in favor of employing the blacks.” But his views had always been pragmatic, and the need to employ them now was critical: “We have not men enough on the Potomac to authorize an advance, and unless we get them soon we must cease our exertion to maintain the integrity of the Union.”⁸² Sen. Wilson (MA), a Radical, agreed with Sherman and Fessenden on using “loyal colored men” in support roles. He stated that white Union soldiers

ready to meet the enemies of this country, have been worn out and broken down by [the building of fortifications]. The shovel and the spade and the ax have ruined thousands of the young men of the country, and sent hundreds of them to their graves. ... We could have employed thousands of colored men at low rates of wages to do that ditching, and thus save the health, the strength, and the lives of our brave soldiers.⁸³

This pragmatic view was shared by others, but a “bright line” was also stated flatly by some. For example, Sen. Garrett Davis (U-KY) supported “the employment of the negro in all camp and military labor” but was “utterly opposed” to “placing arms in his hands, and forming him into a portion of the soldiery of the United States.”⁸⁴

In discussing the Militia Act of 1862, Douglas Egerton states “that many in Congress doubted that black recruits would every see actual combat.”⁸⁵ And worries about white soldiers blanching at fighting alongside Black soldiers – and white commanders trusting them in the field – were common.⁸⁶ But these soldiering concerns were less important to many Republicans than simply getting additional bodies into the military. McClellan’s disastrous Peninsula Campaign, which concluded just days before, made clear that the war would be prolonged and thus additional men were needed for the Union’s efforts – in various capacities – if the war was to be won.⁸⁷ As a result, Republican leaders looked for ways to make the legislation more palatable to those raising concerns. Sherman, for example, offered two quick amendments to the King-

⁷⁹ All quotes by Saulsbury and Sherman appear in *CG*, 37-2, 7/9/1862, 3198-99.

⁸⁰ *CG*, 37-2, 7/9/1862, 3201.

⁸¹ Bogue, *The Earnest Men*, 162.

⁸² *CG*, 37-2, 7/9/1862, 3202.

⁸³ *CG*, 37-2, 7/9/1862, 3203.

⁸⁴ *CG*, 37-2, 7/9/1862, 3203.

⁸⁵ Egerton, *Thunder at the Gates* 52-53.

⁸⁶ Allen C. Guelzo, *Fateful Lightning: A New History of the Civil War and Reconstruction* (New York: Oxford University Press, 2012), 183.

⁸⁷ Egerton, *Thunder at the Gates*.

Grimes wording shortly after delivering his initial, supportive remarks – to change “war service” to “military or naval service” and to drop the last clause and thus “leave the question of pay open” (and thereby bow to concerns of wage equality between Blacks and whites).⁸⁸

The following day, May 10, 1862, the Senate approved Sherman’s second amendment, deleting the pay clause. When King suggested that they instead insert the intended pay rate for Blacks in that section, Sherman suggested that he preferred to “put in a section by itself defining the pay ... which ought to be defined by law.”⁸⁹ Sherman’s first amendment, however, drew a heated debate, as Sen. John Ten Eyck (R-NJ) proposed deleting the “any military or naval” provision – which would simply leave “service” (undefined) – which he claimed would “strengthen the meaning of the section.” King responded: “I hope the Senate will not strike out these words, which might, by construction, prevent the use of these persons for military purposes.”⁹⁰ Sen. James Doolittle (R-WI) agreed, stating: “I dislike ambiguity in any law passed by Congress ... [and] desire that it shall state clearly what is intended, and no more.”⁹¹

Finally, Sen. Davis moved to strike out the words “or any military or naval service for which they might be found competent” and asked for the yeas and nays, which were ordered.⁹² (Table 1 documents the partisan divisions on this and all roll calls on S. 384.) Davis’s amendment to the amendment was rejected, 11-27, with all but one Republican voting to defeat all Unionists and all but one Democrat.⁹³ Then, after a failed motion to postpone indefinitely consideration of the bill and all amendments, Sen. John Henderson (U-MO) sought to amend the amendment by including only “free persons of African descent, and also such persons of African descent as may owe service or labor to persons engaged in the rebellion” – thus excluding slaves of men loyal to the US government from service.⁹⁴ Henderson called for the yeas and nays, and his amendment failed, 13-22, with all but four Republicans voting to defeat a united coalition of Democrats and Unionists.⁹⁵

⁸⁸ *CG*, 37-2, 7/9/1862, 3203.

⁸⁹ *CG*, 37-2, 7/10/1862, 3227.

⁹⁰ Quotes from Ten Eyck and King appear in *CG*, 37-2, 7/10/1862, 3228.

⁹¹ *CG*, 37-2, 7/10/1862, 3229.

⁹² *CG*, 37-2, 7/10/1862, 3229.

⁹³ *CG*, 37-2, 7/10/1862, 3229. Democrats voted 3-1, Unionists 7-0, and Republicans 1-26. The lone Democrat to vote nay was Rice (MN). The lone Republican to vote yea was Cowan (PA).

⁹⁴ *CG*, 37-2, 7/10/1862, 3231.

⁹⁵ *CG*, 37-2, 7/10/1862, 3232. Democrats voted 4-0, Unionists 5-0, and Republicans 4-22. The four Republicans to vote for Henderson’s amendment were Anthony (RI), Browning (IL), Cowan (PA), and Lane (IN).

Table 1. Votes on the Initial Militia Act Legislation (S. 384) in the Senate, 37th Congress

	Davis Amendment		First Henderson Amendment		Second Henderson Amendment		Sherman Amendment	
Party	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Democrat	3	1	4	0	3	0	3	0
Republican	1	26	4	22	12	17	13	16
Unionist	7	0	5	0	5	0	6	0
Total	11	27	13	22	20	17	22	16

Source: *Congressional Globe*, 37th Congress, 2nd Session (July 10, 1862): 3229; (July 10, 1862): 3232; (July 10, 1862): 3233; (July 10, 1862): 3234.

	First Browning Amendment		Second Browning Amendment	
Party	Yea	Nay	Yea	Nay
Democrat	5	0	4	0
Republican	1	16	7	21
Unionist	5	0	6	0
Total	11	16	17	21

Source: *Congressional Globe*, 37th Congress, 2nd Session (July 11, 1862): 3237; (July 11, 1862): 3249.

Henderson then offered another amendment to the King-Grimes amendment (at the end of the first section): “That all loyal persons entitled to the service or labor of persons employed under the provisions of this act shall be compensated for the loss of such service.” As Henderson stated: “if you are going to liberate the slave, I have no objection to paying the slave for his service; but I want you to pay for the master for the loss of his slave.” Sen. Lazarus Powell (D-KY) asked for the yeas and nays, and Henderson’s amendment to the King-Grimes amendment was agreed to, 20-17, with a majority of Republicans voting to defeat a united coalition of Democrats and Unionists.⁹⁶

⁹⁶ *CG*, 37-2, 7/10/1862, 3233. Democrats voted 3-0, Unionists 7-0, and Republicans 12-17, A roll-call analysis (logistic regression) of Republican votes on this amendment finds that first (negative) NOMINATE dimension is statistically significant (but the second (positive) is not). This suggests that Republicans who were nearest ideologically to the Democrats on the first dimension were more likely to vote yeas. These were members who could be labeled as moderate Republicans.

Sherman then pursued a controversial amendment of his own, proposing that the granting of freedom to those men and boys of African descent – and their families – in section two be limited to those who “owe service or labor to any who, during the present rebellion, has levied war or borne arms against the United States, or adhered to their enemies by giving them aid and comfort.”⁹⁷ The effect of Sherman’s amendment was to deny freedom to the slaves of loyal slaveholders from the border states.⁹⁸ Sen. King, who believed that “when we take a slave to serve the country in this emergency ... he should be made free, whether he belongs to a rebel or not,” asked for yeas and nays so that he could record his vote. Sherman’s amendment to the King-Grimes amendment was agreed to, 22-16, with twelve Republicans voting with a united coalition of Democrats and Unionists to defeat a majority of Republicans.⁹⁹

Sen. Orville Browning (R-IL) then offered another amendment to the second section of the King-Grimes amendment, which would strike out the words “his mother, and his wife and children” – thus limiting freedom to the male slave only.¹⁰⁰ Browning argued that determining family relationships would be difficult, and that some family members could in fact be the property of loyal citizens.¹⁰¹ Sen. Powell asked for the yeas and nays, while King stated that he hoped that the amendment would not be adopted. The initial vote was 11-16, with all but one Republican voting to defeat a united coalition of Democrats and Unionists.¹⁰² But the tally was short of a quorum. And with the hour late, the Senate adjourned. The next day, July 11, the Senate voted again, and the Browning amendment to the King-Grimes amendment was rejected, 17-21, with a GOP majority voting to defeat a united coalition of Democrats and Unionists and seven Republicans.¹⁰³ After some additional debate, the Senate moved on to other business.

However, as Allan Bogue notes, “this was the last vote on the provisions of S. 384.”¹⁰⁴ For on July 14, Sen. Wilson (MA) introduced a new bill, S. 394, “to amend the act calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, approved February 28, 1795,” for consideration in the Committee of the Whole.¹⁰⁵ What had happened? Leonard Curry lays out the situation:

Apparently unhappy with the shape which [S. 384] had assumed, the radicals, led by Henry Wilson of Massachusetts, suddenly shelved the measure and ... took up another proposal. This bill (S. 394) empowered the President to call out the militia for any period

⁹⁷ *CG*, 37-2, 7/10/1862, 3233-34.

⁹⁸ Bogue, *The Earnest Men*, 163.

⁹⁹ *CG*, 37-2, 7/10/1862, 3234. Democrats voted 3-0, Unionists 6-0, and Republicans 13-16. A roll-call analysis (logistic regression) of Republican votes on this amendment finds that first (negative) NOMINATE dimension is statistically significant (but the second (positive) is not). This suggests that Republicans who were nearest ideologically to the Democrats on the first dimension were more likely to vote yea. These were members who could be labeled as moderate Republicans.

¹⁰⁰ *CG*, 37-2, 7/10/1862, 3234.

¹⁰¹ Bogue, *The Earnest Men*, 163-64.

¹⁰² *CG*, 37-2, 7/11/1862, 3237. Democrats voted 5-0, Unionists 5-0, and Republicans 1-16. Browning was the lone Republican to vote for the amendment.

¹⁰³ *CG*, 37-2, 7/11/1862, 3249. Democrats voted 4-0, Unionists 6-0, and Republicans 7-21. A roll-call analysis (logistic regression) of Republican votes on this amendment finds that first (negative) NOMINATE dimension is statistically significant (but the second (positive) is not). This suggests that Republicans who were nearest ideologically to the Democrats on the first dimension were more likely to vote yea. These were members who could be labeled as moderate Republicans.

¹⁰⁴ Bogue, *The Earnest Men*, 164.

¹⁰⁵ *CG*, 37-2, 7/14/1862, 3320-21.

up to nine months and authorized him to employ Negroes in any capacity. The Negroes so employed and their immediate families were to be free.¹⁰⁶

More generally, S. 394 followed the basic substance of the original King amendment. The one additional detail, however, was that Wilson and others must have been conscious of the concerns raised in earlier debates about “social equality” between the races. So it was clearly specified that “persons of African descent, who shall be employed, ... are to receive ten dollars per month,” which was three dollars less than what white soldiers received.¹⁰⁷ In addition, at the instigation of Sherman, an amendment was adopted that required \$3 of the \$10 Black soldiers received had to be provided in clothing. King concurred in the amendment, and it was agreed to.¹⁰⁸ This widened the inequality: white soldiers received \$13 per month and had their clothing provided by the government; Black soldiers received \$10 per month and had \$3 subtracted for clothing.

After some additional debate, Sherman was recognized and stated that

I think by an inadvertence, for the Senator from Massachusetts would not have done it otherwise, has left out a very important clause... which was adopted by a deliberative vote of the Senate. I will therefore renew it. It is in section thirteen, line two, after the words, ‘African descent,’ to insert the words ‘who by the laws of a State owes service or labor to any person during the present rebellion has waged war against the United States, or has aided said rebellion.’¹⁰⁹

Sherman went on to explain things plainly: “The Senate, by a deliberate vote and a considerably majority, determined that it would not apply the emancipation clause to any but the slaves of the rebels, and yet now, when the bill is introduced in a new form, that important provision is omitted.” By implication, Sherman was charging Wilson (and his radical allies) with trying in this new bill (S. 394) to emancipate *all* slaves who were employed in military affairs, including those of loyal slaveholders from the border states.

Sen. Lane called the yeas and nays on this “amendment” from Sherman – even as Sherman exclaimed “Oh no. We have voted on it once.” After some back and forth, it became clear that a new vote was required. The question being taken resulted in a 16-9 count in favor of the amendment, with half of Republicans joining with all Democrats and all but one Unionist – but the tally was short of a quorum.¹¹⁰ The Senate then adjourned for the night. (Table 2 documents the partisan divisions on this and all roll calls on S. 394.)

¹⁰⁶ Curry, *Blueprint for Modern America*, 63.

¹⁰⁷ CG, 37-2, 7/14/1862, 3321; Bogue, *The Earnest Men*, 164.

¹⁰⁸ CG, 37-2, 7/14/1862, 3321.

¹⁰⁹ CG, 37-2, 7/14/1862, 3322.

¹¹⁰ CG, 37-2, 7/14/1862, 3322. Democrats voted 3-0, Unionists 5-1, and Republicans 8-8. Interestingly, this roll call does not appear in the ICPSR (and VoteView) data. A roll-call analysis (logistic regression) of Republican votes on this amendment finds that neither NOMINATE dimension is statistically significant. Given the number of Republican abstentions, estimates were noisy. Greater clarity is found on the succeeding Sherman amendment roll call, when 29 Republicans cast votes, as opposed to only 16 on this roll call. See footnote 111.

Table 2. Votes on the Final Militia Act Legislation (S. 394), 37th Congress

	First Sherman Amendment		Second Sherman Amendment		First Browning Amendment		Second Browning Amendment	
Party	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Democrat	3	0	1	0	4	0	4	0
Republican	8	8	12	17	9	20	11	16
Unionist	5	1	5	0	4	0	6	0
Total	16	9	18	17	17	20	21	16

Source: *Congressional Globe*, 37th Congress, 2nd Session (July 14, 1862): 3322; (July 15, 1862): 3339; (July 15, 1862): 3342; (July 15, 1862): 3342.

	Sherman Amendment		Passage of S. 394		<u>House</u> Table S. 394	
Party	Yea	Nay	Yea	Nay	Yea	Nay
Democrat	3	0	1	4	18	4
Republican	12	14	26	0	0	71
Unionist	6	0	1	5	12	2
Total	21	14	28	9	30	77

Source: *Congressional Globe*, 37th Congress, 2nd Session (July 15, 1862): 3351; (July 15, 1862): 3351; (July 16, 1862): 3397.

The following day, July 15, the Sherman amendment was considered again. After some back and forth between Sens. James Lane (R-KS), Jacob Howard (R-MI), and Sherman,¹¹¹ Sherman's amendment was agreed to, 18-17, with all Democrats and Unionists joining with twelve Republicans to defeat a majority of the GOP.¹¹²

Sen. Browning then, once again, offered an amendment that would strike out the words "his mother, and his wife and children" from the thirteenth section – thus limiting freedom to the

¹¹¹ *CG*, 37-2, 7/15/1862, 3337-39.

¹¹² *CG*, 37-2, 7/15/1862, 3339. Democrats voted 1-0, Unionists 5-0, and Republicans 12-17. A roll-call analysis (logistic regression) of Republican votes on this amendment finds that first (negative) NOMINATE dimension is statistically significant (but the second (positive) is not). This suggests that Republicans who were nearest ideologically to the Democrats on the first dimension were more likely to vote yeas. These were members who could be labeled as moderate Republicans.

male slave only.¹¹³ After remarks by Sens. Ira Harris (R-NY), Timothy Howe (R-WI), and Howard, Sen. Lane called for the yeas and nays and Browning's amendment was rejected, 17-20, with a majority of the GOP voting to defeat a united coalition of Democrats and Unionists and nine Republicans.¹¹⁴ Browning quickly offered another amendment, with the same intention in mind but a more precise distinction made, via the addition of the following sentence to section thirteen:

That the mother, wife, and children of such man or boy of African descent shall not be made free by the operation of this act except where such mother, wife, or children owe service or labor to some person who, during the present rebellion, has borne arms against the United States, or adhered to their enemies by giving them aid or comfort.¹¹⁵

Browning called for the yeas and nays and his amendment was agreed to, 21-16, with eleven Republicans joining with a united coalition of Democrats and Unionists to defeat a majority of the GOP.¹¹⁶

After some additional debate in the Committee of the Whole, the bill was reported to the Senate as amended.¹¹⁷ Sen. Howard asked for a separate vote on the Sherman amendment, before final passage on S. 394 was had, and called for the yeas and nays. As before, the Sherman amendment was agreed to, but this time by a greater margin – 21-14, with twelve Republicans joining with a united coalition of Democrats and Unionists to defeat a majority of the GOP.¹¹⁸ S. 394, as amended, was then ordered to be engrossed for a third reading; it was then read the third time. On passage, Sen. Saulsbury called for the yeas and nays and they were ordered – and S. 394 passed, 28-9, with all Republicans voting to defeat majorities of Democrats and Unionists.¹¹⁹

S. 394 then moved to the House, which took it up the following day. The bill was read a first and second time, after which Rep. Thaddeus Stevens (R-PA) demanded the previous question. Rep. Holman (D-IN), however, was recognized and moved that S. 394 be laid on the table; Rep. Allen (D-IL) demanded the yeas and nays, which were ordered. Holman's tabling motion failed, 30-77, with all Republicans defeating majorities of Democrats and Unionists.¹²⁰

¹¹³ *CG*, 37-2, 7/15/1862, 3341.

¹¹⁴ *CG*, 37-2, 7/15/1862, 3342. Democrats voted 4-0, Unionists 4-0, and Republicans 9-20. A roll-call analysis (logistic regression) of Republican votes on this amendment finds that neither NOMINATE dimension is statistically significant.

¹¹⁵ *CG*, 37-2, 7/15/1862, 3342. Democrats voted 4-0, Unionists 6-0, and Republicans 11-16.

¹¹⁶ *CG*, 37-2, 7/15/1862, 3342. Why did this amendment pass, but Browning's earlier one fail? Sen. Henderson grasped the difference. In describing Browning's second amendment, Henderson stated: "I believe the object of this amendment is to provide that no slaves shall be made free under the provisions of this act, unless those slaves belong to rebels. It is provided by the amendment which has been adopted on the motion of the Senator from Ohio [Sherman], that the particular slave during the service shall not be freed unless he belongs to a rebel; and yet, by the refusal to strike out the provision making free the mother, wife, and children of the slave, it is now provided that those parties may be freed in the hands of loyal men. It strikes me as manifestly unjust." A roll-call analysis (logistic regression) of Republican votes on this amendment finds that neither NOMINATE dimension is statistically significant.

¹¹⁷ *CG*, 37-2, 7/15/1862, 3351.

¹¹⁸ *CG*, 37-2, 7/15/1862, 3351. Democrats voted 3-0, Unionists 6-0, and Republicans 12-14. A roll-call analysis (logistic regression) of Republican votes on this amendment finds that neither NOMINATE dimension is statistically significant.

¹¹⁹ *CG*, 37-2, 7/15/1862, 3351. Democrats voting 1-4, Unionists 1-5, and Republicans 26-0. The single Democrat who voted for passage was Rice (MN). The single Unionist who voted for passage was Wright (IN).

¹²⁰ *CG*, 37-2, 7/16/1862, 3397. Democrats voting 18-4, Unionists 12-2, and Republicans 0-71.

The previous question was then seconded, and the main question ordered and to be put. The bill was then ordered to a third reading, and it was read a third time. Rep. Stevens then moved the previous question on passage of the bill, which was seconded, and the main question was ordered. Rep. Charles Wickliffe (U-KY) demanded the yeas and nays on passage of the bill, but they were not ordered. The bill was then passed. Rep. Stevens then moved to reconsider the vote by which the bill was passed and also moved to lay the motion to reconsider on the table. The latter motion was agreed to.¹²¹

S. 394, passed by both chambers, was then sent to the president for his signature. The following day, July 17, 1862, President Lincoln signed the bill, and it became law.¹²² The Militia Act of 1862 was a major step in the direction of a formal military draft, and a conscription act would come the following year. But its legacy, perhaps, was that it also authorized slaves of rebels (and rebel states more generally) to enlist as laborers and soldiers (see the Appendix for the relevant provisions). Congress had thus continued to take the lead – ahead of President Lincoln – in formulating aggressive emancipation policy. And with the Militia Act, Congress had also paved the way for former slaves to participate actively in the war effort against their former masters.

The Downstream Effects of the Militia Act of 1862

Historian Allan Guelzo argues: “Not until Congress amended the Militia Act in July 1862 did Lincoln have the presidential discretion to begin enlisting black soldiers as he saw fit, and only after the Emancipation Proclamation became official was black recruitment begun in earnest.”¹²³ In fact, in July 1862, Lincoln was still cool on the topic of Black men serving in a soldiering capacity. Only days after the Militia Act was enacted, in a cabinet meeting, Lincoln was said to have “expressed himself as averse to arming negroes.”¹²⁴ At the same time, he had warmed to the idea of emancipation for slaves in Confederate territory and made his thoughts clear in his Preliminary Emancipation Proclamation, which he set aside until a suitable Union military victory could be achieved. After the Battle of Antietam, on September 22, 1862, Lincoln released his Preliminary Emancipation Proclamation, which stated that – unless Confederates laid down their arms – all slaves in those portions of states in rebellion against the United States would be freed effective January 1, 1863.

By the time he signed and released the Emancipation Proclamation on January 1, 1863, however, Lincoln’s view on the nature of the war had changed. Restoring the Union – which he stated repeatedly – had been his impetus initially. But by the fall of 1862, the war had become, in his mind, something greater: a war for emancipation.¹²⁵ As a result, his views on Blacks serving in a distinctly military role had changed as well. The final Emancipation Proclamation included this language:

¹²¹ *CG*, 37-2, 7/16/1862, 3398.

¹²² *CG*, 37-2, 7/17/1862, 3403; 12 *Stat.* 597.

¹²³ Guelzo, *Fateful Lightning*, 184.

¹²⁴ Quoted in Foner, *The Fiery Trial*, 218.

¹²⁵ As historian William C. Harris writes: “By the fall of 1862, Lincoln had made emancipation, on whatever condition or constitutional justification, a Union purpose in the war.” William C. Harris, *Lincoln and the Border States: Preserving the Union* (Lawrence: University Press of Kansas, 2011), 193.

And I further declare and make known, that such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

Of this, Eric Foner says “Lincoln’s invitation to African-American men to enlist in the Union army... [was] among the most radical provisions of the Emancipation Proclamation.”¹²⁶ He also became a chief recruiter, authorizing Governor John Albion Andrew of Massachusetts to organize a Black regiment. This led to the creation of the Fifty-fourth Massachusetts, a troop of Black volunteers, led by Robert Gould Shaw, the son of a prominent Boston abolitionist. He also authorized the War Department in March 1863 to recruit heavily in the occupied South, perhaps in response to the successful use of the First and Second South Carolina Volunteers, almost all ex-slaves, led by General David Hunter, to occupy Jacksonville, Florida. That same month, Lincoln reached out to Andrew Johnson, the military governor of Tennessee, and encouraged him to raise a “negro military force.”¹²⁷

In May 1863, the War Department issued General Order No. 143 to establish a procedure for receiving Blacks into the armed forces. The order created the Bureau of Colored Troops, which designated African American regiments as United States Colored Troops (USCT).

By the end of the Civil War, Black troops – of which around 180,000 served – constituted roughly 10 percent of the federal army. Another 20,000 served in the federal navy, constituting around a quarter of the total. The USCT fought in every major military campaign during the last two years of the Civil War, including the Battle of Nashville (Tennessee), the Battle of Chickamauga (Tennessee), the Battle of Spotsylvania Courthouse (Virginia), the Battle of the Crater (Virginia), and the Battle of Fort Wagner (South Carolina). On June 15, 1864, in response to their valor on the battlefield, Congress enacted legislation – provisions in the Army Appropriations Act of 1864 – to eliminate the unequal pay provision (and to make it retroactive to the time of their enlistment) of the Militia Act of 1862.¹²⁸

Considering Conscription in the Confederate Congress

Proposals for involving slaves in the Confederate military had been percolating among southern leaders since the beginning of the war. In the first few years of the war, Confederate armies relied on slaves for manual labor to support troops, but they were not given arms. Spurred by a series of losses in military campaigns during the spring of 1863, and the observation that the Union had begun arming black soldiers following the Militia Act, southern leaders sent several recommendations to the Capitol for raising black troops.¹²⁹ After more military defeats in the summer of 1863, military leaders – particularly Major General Patrick Cleburne, an Irish-born veteran of the British army who had immigrated to the South as an adult – began to seriously embrace the idea of arming slaves.

However, President Jefferson Davis at that time would not support such measures, understanding that southerners were not yet ready to debate arming slaves. In less than two

¹²⁶ Foner, *That Fiery Trial*, 249.

¹²⁷ These efforts, and many others, are documented well in Dudley Taylor Cornish, *The Sable Arm: Black Troops in the Union Army, 1861-1865* (Lawrence: University Press of Kansas, 1987).

¹²⁸ 13 Stat. 126.

¹²⁹ Philip D. Dillard, *Jefferson Davis’s Final Campaign: Confederate Nationalism and the Fight to Arm Slaves* (Macon, GA: Mercer University Press, 2017), 8-13.

years, that view would change. Recognizing the dire state of the Confederate's military situation, Davis addressed Congress in November 1864 and called for serious consideration of employing slaves in the war effort, and for emancipation.¹³⁰ Soon after, Robert E. Lee explicitly supported both arming and emancipating slaves in a letter to Congressman Barksdale, who introduced the bill that would eventually arm slaves. On the idea of arming slaves, Lee wrote:

“I think the measure not only expedient but necessary. The enemy will certainly use them against us if he can get possession of them; and, as his present numerical superiority will enable him to penetrate many parts of the country, I cannot see the wisdom of the policy of holding them to await his arrival, when we may, by timely action and judicious management, use them to arrest his progress. I do not think that our white population can supply the necessities of a long war without overtaxing its capacity, and imposing great suffering upon our people; and I believe we should provide resources for a protracted struggle, – not merely for a battle or a campaign.”¹³¹

Unlike Davis and Lee, William P. Miles (D-SC), the “secessionist firebrand” chair of the House Military Affairs Committee, was a staunch opponent of arming slaves, and his views did not change even as Confederate losses continued to mount.¹³² Throughout legislative debates on impressment and conscription, Miles consistently led attempts to kill proposals to arm slaves.¹³³ When Barksdale (D-MS) introduced the bill that would eventually pass to arm the slave, a bill supported by Robert E. Lee, Miles immediately moved to reject the bill, but his motion failed. During the debate over two bills that considered conscripting slaves, Miles was a constant thorn in the side of proponents of arming slaves, forcing votes on dilatory amendments that barely changed the bill under consideration and on other procedural motions against proposals from his own party.¹³⁴

Before taking up consideration of arming slaves at the end of 1864, the Confederate Congress first considered impressing slaves into the employment of the army as laborers. By February 1864, the Confederate Congress had passed a bill impressing 20,000 slaves. As the war dragged on and Confederate losses continued to mount, the Confederate Congress was still unwilling to arm slaves by legislation even as late as January 1865, two months after Davis' 1864 address. The Confederate Congress did, however, pass another impressment bill in late January 1865 that did not explicitly foreclose conscripting and arming slaves. During debate over that impressment bill, the House defeated amendments that would have explicitly foreclosed conscription but fell short of including positive provisions for the arming of slaves. Two months later, in March 1865, Congress finally passed and President Davis signed a bill calling for the conscription and arming of slaves. But it was too late. The Confederacy would surrender the next month.

¹³⁰ Dillard, *Jefferson Davis's Final Campaign*, 8-9.

¹³¹ Quoted in Robert F. Durden, *The Gray and the Black: The Confederate Debate on Emancipation* (Baton Rouge, LA: Louisiana State University Press, 1972), 206.

¹³² Bruce Levine, *Confederate Emancipation: Southern Plans to Free and Arm Slaves during the Civil War* (New York: Oxford University Press, 2006), 41-42.

¹³³ See, e.g., Dillard, *Jefferson Davis's Final Campaign*, 8-13.

¹³⁴ In addition to Miles' opposition, majorities of the North Carolina delegation opposed arming slave, which one historian chalks up to “the political influence of the slaveholding elite in the Old North States.” Mark L. Bradley. 2003. “‘This Monstrous Proposition’: North Carolina and the Confederate Debate on Arming Slaves.” *North Carolina Historical Review* 80(2): 153-187.

The Confederate Congress considered two bills related to the conscription and arming of slaves into the Confederate war effort. The first was Senate Bill 129 (1864-5), which was intended as an impressment bill “to provide for the employment of free negroes and slaves to work upon fortifications and perform other labor connected with the defense of the country,” but left the door open for arming enslaved people when the House defeated several amendments that would have forbidden enslaved people or free Black people from having arms. The second was House Bill 367 (1865) “to increase the military force of the Confederate States” by conscripting and arming enslaved people and free Black people across the South. The next two sections detail their legislative history.

Senate Bill 129: Leaving the Door Open

The Senate passed S.129 on December 12, 1864 and the House referred the bill to the Committee on Military Affairs. The House considered a motion to suspend the rules to consider the bill as early as December 15, 1864 but it failed without a recorded roll call vote.¹³⁵ Consideration of S.129 in the House began with an overwhelmingly affirmative vote to suspend the rules and consider the bill on January 27, 1865: 56 voted yea and only 5 voted against (Democrats: 21-3; Whigs 26-1; others: 9-1).¹³⁶

That same day, the House considered several amendments. The first was introduced by Miles (D-SC) to strike a cap on the total number of free and enslaved Black people impressed to 30,000 east of the Mississippi River and 10,000 west of the Mississippi River. The amendment passed 46-28, with Democrats voting 23-9, Whigs voting 15-16, and others voting 8-2. The next amendment was introduced by Foster (W-AL) to reduce the maximum eligible age for impressment from forty-five to forty. The amendment barely passed 37-36, with Democrats voting 15-17, Whigs voting 20-10, and others voting 2-9.¹³⁷ The bill was then amended without a recorded vote to cap pay for free Black people at eighteen dollars a month.¹³⁸ Then, Lester (D-GA) introduced an amendment to compensate slaveholders for slaves who were physically injured, but it failed without a recorded vote.¹³⁹ Next, an amendment was introduced to reintroduce the language the Miles amendment had stricken capping impressment at 30,000 east and 10,000 west of the Mississippi River, which passed without a recorded vote, thereby undoing the chamber’s previous amendment.¹⁴⁰ Miles then introduced an amendment changing language about the number of people to be impressed from “as may be necessary” to “as the wants of the service may require,” which passed without a recorded vote.¹⁴¹ Next, Goode (D-VA) introduced an amendment deferring to state laws on impressment where they existed. The amendment passed 62-12, with Democrats voting 29-5, Whigs voting 23-5, and others voting 10-2.¹⁴² Atkins (D-TN) then moved to reconsider the vote but the motion failed.

¹³⁵ *JCCSA*, 4, 12/12/1864, 334, 358; *Southern Historical Society Papers*, vol. 52, 12/12/1864, 7.

¹³⁶ *JCCSA*, 7, 1/27/1865, 504.

¹³⁷ *JCCSA*, 7, 1/27/1865, 505. On both votes, members to the left of the first dimension were more likely to vote to pass the amendment than those to the right

¹³⁸ *JCCSA*, 7, 1/27/1865, 505; *SHSP*, 52, 1/27/1865, 240.

¹³⁹ *JCCSA*, 7, 1/27/1865, 505; *SHSP*, 52, 1/27/1865, 240-1.

¹⁴⁰ *JCCSA*, 7, 1/27/1865, 506.

¹⁴¹ *JCCSA*, 7, 1/27/1865, 506.

¹⁴² *JCCSA*, 7, 1/27/1865, 506; *SHSP*, 52, 1/27/1865, 241. Members to the right of both ideological dimensions were more likely to vote to pass the amendment than those on the left

Opponents of conscription then attempted to explicitly foreclose conscription, a provision that would eventually be considered in secret session. After a speech by Leach (W-NC) expressing fear that the bill would impress, and in turn, conscript, those raised under it, Ramsay (W-NC) introduced an amendment providing that slaves who were impressed “shall not be armed or used as soldiers,” foreclosing the possibility of conscription at a later date.¹⁴³ Before voting on the substance of the amendment, Chrisman (D-KY) moved that the Ramsay amendment be considered in secret session. The motion failed without a recorded vote. Marshall (W-KY) then also moved that further consideration be considered in secret session. That motion also failed 35-39, with Democrats voting 19-15, Whigs voting 8-21, and others voting 8-3.¹⁴⁴

After some debate, Bruce (D-KY) introduced yet another motion to consider the Ramsay amendment in secret session “for reasons which he would give when the House went into secret session,” which did pass 43-29, with Democrats voting 21-11, Whigs voting 12-16, and others voting 10-2).¹⁴⁵ Two members switched from not voting to voting yea (1 Democrat, 1 other); six members switched from voting no to voting yea (1 Democrat, 4 Whigs, and 1 other); four members switched from not voting to voting nay (2 Democrats, 1 Whig, and 1 other); and eight members switched from voting nay to not voting (5 Democrats; 2 Whigs, and 1 other). In the secret session to consider the Ramsay amendment foreclosing the arming of enslaved people, Moore (D-KY) rose to a point of order that Ramsay’s amendment was not in order but the chair, Baldwin (W-VA), overruled the point of order. Foster (W-AL) then appealed the chair’s ruling but the chamber voted to uphold the chair’s judgement. Atkins (D-TN) then moved to table the Ramsay amendment and the motion passed 45-26, with Democrats voting 22-10, Whigs voting 12-15, and others voting 11-1.¹⁴⁶

The House then resolved itself into open session and considered a separate provision foreclosing arming slaves. J. M. Leach (W-NC) introduced an amendment providing that no impressed people “shall...have arms placed in their hands, or be mustered into the Confederate States service, or be used at any time as soldiers in said service.” The amendment failed 21-48, with Democrats voting 7-23, Whigs voting 13-14, and others voting 1-11.¹⁴⁷ The House then voted to table Leach’s amendment which passed 50-23, with Democrats voting 21-9, Whigs voting 17-13, and others voting 12-1.¹⁴⁸ The House had successfully defeated an attempt to foreclose conscription, leaving the door open but not stepping through. On all substantive votes on foreclosing conscription, members to the left of the first ideological dimension, those closer to the average Whig position, were most supportive.

After adjourning, the House returned the next day, January 28, 1865, and continued consideration of the S. 129. Baldwin (W-VA) introduced an amendment exempting slaveowners with less than five male slaves, rather than just one, from impressment, which passed without a recorded vote. Then the House considered a committee amendment substituting a national

¹⁴³ *JCCSA*, 7, 1/27/1865, 507; *SHSP*, 52, 1/27/1865, 241-2.

¹⁴⁴ *JCCSA*, 7, 1/27/1865, 507; *SHSP*, 52, 1/27/1865, 242-3. Members to the right of both ideological dimensions were more likely to vote to consider the Ramsay amendment in secret session than those on the left

¹⁴⁵ *JCCSA*, 7, 1/27/1865, 507; *SHSP*, 52, 1/27/1865, 243. Again, members to the right of both ideological dimensions were more likely to vote to consider the Ramsay amendment in secret session than those on the left

¹⁴⁶ *JCCSA*, 7, 1/27/1865, 509. Members to the right of both ideological dimensions were more likely to support tabling

¹⁴⁷ *JCCSA*, 7, 1/27/1865, 507-8; *SHSP*, 52, 1/27/1865, 232-4. Members to the left of the first ideological dimension were most likely to support the amendment.

¹⁴⁸ *JCCSA*, 7, 1/27/1865, 508; *SHSP*, 52, 1/27/1865, 244. Members to the right of both ideological dimensions were most likely to support tabling.

standard for exemption for a clause deferring to state laws exempting certain enslaved people from impressment. The amendment was overwhelmingly defeated by a vote of 8-61, with Democrats voting 3-24, Whigs voting 2-26 and others voting 3-11.¹⁴⁹ Miles (D-SC) then moved that the part to be stricken under the previous amendment concerning deference to state laws be stricken, but the substitute text had not been inserted and therefore there was nothing to strike. However, that amendment passed 35-29, with Democrats voting 17-10, Whigs voting 11-16, and others voting 7-3.¹⁵⁰ Goode (D-VA) then introduced an amendment providing that the statute should not be construed as “exempting any State from furnishing its fair quota of slaves,” which passed without a recorded vote.¹⁵¹

The House then considered eight amendments, five of which failed and three of which passed, all without recorded votes. The failed amendments were introduced by, in chronological order, Fuller (W-NC), Perkins (D-LA), Gholson (W-VA), Logan (W-NC), and Blandford (GA). The successful amendments were introduced by, in chronological order, Staples (W-VA), Miles (D-SC), and Garland (W-AR).¹⁵² The only recorded yeas and nays during consideration of the previous eight amendments was a motion to reconsider the negative vote on Blandford’s amendment, and the motion failed 31-33, with Democrats voting 11-17, Whigs voting 17-9, and others voting 3-7.¹⁵³ Finally, the House passed the bill without a recorded vote.¹⁵⁴ The failed vote on the Ramsay and Leach amendments expressed the House’s opinion not to foreclose the possibility of arming enslaved people, thereby leaving the door open to conscription at a later date.

Zooming out of the details of the pre-passage legislative history of Senate Bill 129, we can take stock of general patterns and deduce whether they are consistent with partisan or nonpartisan explanations of legislative outcomes. Twenty-two amendments were offered: ten (45%) by Democrats, ten (45%) by Whigs, and two (9%) by non-affiliated legislators. The overall passage rate was 64% (14 of 22). The passage rate for amendments introduced by Democrats was 80% (8 of 10), for Whigs was 50% (5 of 10), and for others was 50% (1 of 2). Although Whigs and Democrats submitted equal numbers of amendments, the passage rate for Democrats was substantially higher (30 percentage points). Of course, these calculations do not take into account the importance of each amendment but the aggregate measure is nonetheless useful. Perhaps the two most important amendments, those clarifying that the law would not arm enslaved people, were both introduced by Whigs and both failed. Table 1 displays the average proportion of each party voting in the affirmative on the amendments with recorded roll call votes. Amendments offered by Democrats received more support than those introduced by Whigs.

Table 1. Amendments

¹⁴⁹ *JCCSA*, 7, 1/27/1865, 511-2. Garland quickly introduced a perfecting amendment clarifying that the national standard would be men under forty, not forty-five, which passed without a recorded vote.

¹⁵⁰ *JCCSA*, 7, 1/27/1865, 512. Members to the right of both ideological dimensions were most likely to support the amendment

¹⁵¹ *JCCSA*, 7, 1/27/1865, 512.

¹⁵² *JCCSA*, 7, 1/28/1865, 513-5.

¹⁵³ *JCCSA*, 7, 1/28/1865, 514. Members to the left of the first ideological dimension were most likely to support reconsideration

¹⁵⁴ *JCCSA*, 7, 1/28/1865, 515; *SHSP*, 52, 1/28/1865, 255.

Introducer's Party	Overall Yea	Democrats Yea	Whigs Yea	Others Yea	Passage Rate
Democrat	67%	73%	57%	78%	100%
Whig	46%	43%	62%	18%	50%
Other	66%	60%	75%	57%	100%

We also consider procedural votes and dilatory motions. In total, twenty-four procedural motions were considered, seventeen (71%) of which were dilatory in nature. Of all procedural votes, eight (33%) were introduced by Democrats, fourteen (58%) by Whigs, and two (8%) by others. The overall passage rate was 30% (12% for dilatory motions and 71% for non-dilatory motions). For Democrats, the overall passage rate was 25%, for Whigs it was 21%, and for others it was 100%. The Democratic passage rate for dilatory motions was 0% (0 of 5) and for non-dilatory motions was 67% (2 of 3); the Whig passage rate for dilatory motions was 9% (1 of 11) and for non-dilatory motions was 67% (2 of 3); and the passage rate for other legislators for dilatory motions was 100% (1 of 1) and for non-dilatory motions was 100% (1 of 1). Table 2 displays this information in tabular form. Overall, Whigs offered the most dilatory motions (11), mostly motions to reconsider (9 of 11). The other two dilatory motions offered by Whigs were a motion to adjourn, and a motion appealing a ruling of the chair in secret session. The dilatory motions offered by Democrats were more diverse: one was to postpone consideration of the bill to consider a memorial (failed), two were to reconsider previous votes (both failed), one was a point of order in secret session asking for a ruling that the Ramsay amendment foreclosing arming of enslaved people was out of order (failed), and one was a motion to adjourn (failed). The one dilatory motion offered by an unaffiliated legislator was to adjourn (failed).

Table 2. Motions

Party	Non-Dilatory Passage Rate	Dilatory Passage Rate	Aggregate Passage Rate
Democratic	67%	0%	25%
Total Motions	(3)	(5)	(8)
Whig	67%	9%	21%
Total Motions	(3)	(11)	(14)
Other	100%	100%	100%
Total Motions	(1)	(1)	(2)

Senate Bill 129

		Democrat	Whig	No Party	Total	Party vote?
Suspend the rules	Yea	21	26	9	56	No
	Nay	3	1	1	5	
	Yea	23	15	8	46	Yes

Miles (D-SC) Amendment	Nay	9	16	2	27	
Foster (W-AL) Amendment	Yea Nay	15 17	20 10	2 9	37 36	No
Goode (D-VA) Amendment	Yea Nay	29 5	23 5	10 2	62 12	No
Move to Secret Session (Marshall, W-KY)	Yea Nay	19 15	8 21	8 3	35 39	Yes
Move to Secret Session (Bruce, D- KY)	Yea Nay	21 11	12 16	10 2	43 29	Yes
Table Ramsay (W- NC) Amendment	Yea Nay	22 10	12 15	11 1	45 26	Yes
Leach (W-NC) Amendment	Yea Nay	7 23	13 14	1 11	21 48	No
Table Leach (W- NC) Amendment	Yea Nay	21 9	17 13	12 1	50 23	No
Shewmake (NA- GA) Amendment	Yea Nay	18 12	21 7	4 3	43 22	No
Colyar (W-TN) Amendment	Yea Nay	22 9	23 7	5 8	50 24	No
Baldwin (W-VA) Amendment	Yea Nay	3 24	2 26	3 11	8 61	No
Miles (D-SC) Clarification	Yea Nay	17 10	11 16	7 3	35 29	Yes
Reconsider Blandford (NA-GA) Amendment	Yea Nay	11 17	17 9	3 7	31 33	Yes

House Bill 367: Successfully Arming Slaves

The bill that finally passed into law arming enslaved people began as House Bill 367 (short title “to increase the military force of the Confederate States”) was introduced simultaneously in the House and Senate on February 10, 1865. The bill was introduced by Barksdale (D-MS) in the House and Oldham (D-TX) in the Senate.¹⁵⁵ Upon the bill’s introduction in the House, Miles (D-SC) moved to reject the bill which failed 22-52, with Democrats voting 7-23, Whigs voting 13-

¹⁵⁵ *SHSP*, 52, 2/10/1865, 325-31.

16, and others voting 2-13.¹⁵⁶ Then, Wickham (W-VA) moved that the bill be indefinitely postponed which failed without a recorded vote.¹⁵⁷ After, Barksdale moved that the bill be considered by a select committee of one member from each state rather than the military affairs committee and that motion passed without a recorded vote after surviving an amendment from Rogers (NA-FL) to refer it instead to the military affairs committee.¹⁵⁸ The military affairs committee was composed of one member from each state except Missouri, so the creation of the ad hoc committee in essence gave Missouri a say at the committee stage and undercut Miles' power to stop the bill from progressing. The military affairs committee and committee of states was remarkably similar with respect to party: each had eight Democrats and three Whigs. However, the median members on the committee of states on the first dimension was farther to the right and on the second dimension was farther to the left.¹⁵⁹

About a week later, Atkins (D-TN) moved that the bill be considered in secret session before Barksdale had a chance to begin his speech on the bill. The motion passed 37-35, with Democrats voting 19-9, Whigs voting 9-22 and others voting 9-4.¹⁶⁰ Two days later, Cruikshank (W-AL) moved the previous question (from the secret session), but less than a quorum voted, prompting Moore (D-KY) to move a call of the House, which failed 35-30, with Democrats voting 15-14, Whigs voting 12-15, and others voting 3-6.¹⁶¹ Neither ideology nor other variables predict vote choice. A question from the secret session was then ordered which failed 25-42, with Democrats voting 14-16, Whigs voting 9-19 and others voting 2-7.¹⁶² Marshall (W-KY) then submitted an amendment to an amendment of Swan's (W-TN), the text of which is not recorded in the *Journal*, authorizing the President to conscript as many of "the male colored population, whether free or slave, between the ages of eighteen and forty-five years" as necessary to prosecute the war.¹⁶³ Before the House could vote, Colyar (W-TN) moved that the House resolve itself into open session which passed without a recorded roll call vote.

Two days later a series of amendments related to arming enslaved people were introduced. First, Atkins (D-TN) submitted an amendment adding the following language to the bill:

"But after forty days, if the President shall be satisfied that the volunteer system is not bringing into the service the number of troops which the exigencies of the serve may demand, then he may order the conscription of as many slaves as can be armed and equipped, and which shall be done under regulations to be prescribed by the Secretary of War."¹⁶⁴

¹⁵⁶ *SHSP*, 52, 2/10/1865, 331; *JCCSA*, 7, 2/10/1865, 562. Members to the left of both ideological dimensions were most likely to support rejecting the bill.

¹⁵⁷ *JCCSA*, 7, 2/10/1865, 562.

¹⁵⁸ *SHSP*, 52, 2/10/1865, 330; *JCCSA*, 7, 2/10/1865, 562.

¹⁵⁹ The ad hoc committee of the states comprised Barksdale (D-MS), Marshall (W-KY), Gholson (W-VA), Hartridge (D-GA), Miles (D-SC), Smith (W-NC), Rogers (NA-FL), Gray (W-LA), Batson (NA-AR), Snead (D-MO), Atkins (D-TN), Darden (D-TX), and Dickinson (D-AL). *SHSP*, 52, 2/11/1865, 337.

¹⁶⁰ *SHSP*, 52, 2/16/1865, 365; *JCCSA*, 7, 2/16/1865, 595.

¹⁶¹ *JCCSA*, 7, 2/18/1865, 603.

¹⁶² *JCCSA*, 7, 2/18/1865, 603.

¹⁶³ *JCCSA*, 7, 2/18/1865, 604.

¹⁶⁴ *JCCSA*, 7, 2/20/1865.

Before voting on the Atkins amendment, Akin (W-GA) submitted an amendment to the amendment striking the Atkins amendment in its entirety and substituting the following language:

“That if, under the previous sections of this act, the President shall not be able to raise a sufficient number of troops to prosecute the war successfully and maintain the sovereignty of the States and the independence of the Confederate States, then he is hereby authorized to call on each State, whenever he thinks it expedient, for her quota of three hundred thousand troops, or so many thereof as the President may deem necessary for the purposes herein mentioned, to be raised from such classes of population in each State, irrespective of color, as the proper authorities thereof may determine.”¹⁶⁵

Garland (W-AR) then moved the previous question, which passed 50-23, with Democrats voting 21-10, Whigs voting 19-8 and others voting 10-5.¹⁶⁶ Before considering the amendments, Barksdale (D-MS) moved that further proceedings be had in open session and that the injunction of secrecy be removed from past proceedings, but the motion failed without a recorded roll call vote. Smith (W-NC) then moved that further proceedings be held in open session, which also failed without a recorded roll call vote.¹⁶⁷

The House then considered Akin’s amendment to Atkin’s amendment, which failed 25-48, with Democrats voting 14-17, Whigs voting 7-20, and others voting 4-11.¹⁶⁸ The House then considered Atkin’s original amendment, which also failed 29-43, with Democrats voting 12-18, Whigs voting 9-18, and others voting 8-7.¹⁶⁹ The question then recurred on Marshall’s amendment to the Swan amendment, authorizing the President to conscript Black men, free or enslaved. The amendment barely failed 37-39, with Democrats voting 17-17, Whigs voting 11-17, and others voting 9-5.¹⁷⁰ The House then voted on the original Swan amendment (the text of which does not appear in the *Journal*), which also failed 36-41, with Democrats voting 17-17, Whigs voting 11-17, and others voting 8-7.¹⁷¹

After consideration of amendments, the question was put on ordering the bill to be engrossed for a third reading which passed 41-37, with Democrats voting 19-15, Whigs voting 12-17, and others voting 10-5.¹⁷² Conrad (W-LA) then moved that the vote be reconsidered, which passed without a recorded roll call vote.¹⁷³ The House was not done debating. Conrad then submitted an amendment very similar to Akin’s amendment:

“That if, under the previous section, the President shall not be able to raise a sufficient number of troops to prosecute the war successfully and maintain the sovereignty of the States and the independents of the Confederate States, then he is hereby authorized to call

¹⁶⁵ JCCSA, 7, 2/20/1865, 609.

¹⁶⁶ JCCSA, 7, 2/20/1865, 609.

¹⁶⁷ JCCSA, 7, 2/20/1865, 609.

¹⁶⁸ JCCSA, 7, 2/20/1865, 610.

¹⁶⁹ JCCSA, 7, 2/20/1865, 610. Members to the right of the second ideological dimension were more likely to vote yes and members more invested in the slave economy were more likely to vote no

¹⁷⁰ JCCSA, 7, 2/20/1865, 610. Members to the right of both ideological dimensions were more likely to vote yes

¹⁷¹ JCCSA, 7, 2/20/1865, 611. Members to the right of both ideological dimensions were more likely to vote yes.

¹⁷² JCCSA, 7, 2/20/1865, 611. Members to the right of the first ideological dimension were more likely to vote yes ($p < 0.05$) and members more invested in the slave economy were more likely to vote no

¹⁷³ JCCSA, 7, 2/20/1865, 611.

on each State, whenever he thinks it expedient, for her quota of three hundred thousand troops, in addition to those subject to military service under existing laws, or so many thereof as the President may deem necessary for the purposes herein mentioned, to be raised from such classes of the population, irrespective of color, in each State as the proper authorities thereof may determine.”¹⁷⁴

Conrad’s amendment passed 46-29, with Democrats voting 26-7, Whigs voting 11-17, and others voting 9-5.¹⁷⁵ The House then voted again to engross the bill for a third reading which passed 39-36, with Democrats voting 19-13, Whigs voting 11-17, and others voting 9-6.¹⁷⁶ The House then voted on final passage of the bill, which passed 40-37, with Democrats voting 20-14, Whigs voting 11-17, and others voting 9-6.¹⁷⁷

Barksdale (D-MS) then moved to reconsider the vote and Smith (W-NC) demanded the yeas and nays, but before they could be taken, Wickham (W-VA) moved a call of the House, which failed 19-53, with Democrats voting 4-27, Whigs voting 13-15, and others voting 2-11.¹⁷⁸ Gholson (W-VA) then moved that the House resolve itself into open session, which failed without a recorded roll call vote.¹⁷⁹ Fuller (W-NC) then moved to take a recess until 8 o’clock, which failed without a recorded roll call vote.¹⁸⁰ Then Atkins (D-TN) moved that the House resolve itself into open session, which failed 22-50, with Democrats voting 6-24, Whigs voting 13-15, and others voting 3-11.¹⁸¹ The House then voted on the motion to reconsider final passage made by Barksdale, which failed 31-40, with Democrats voting 11-19, Whigs voting 15-13, and others voting 5-8.¹⁸² So, the bill was passed.

Zooming out of the details of the pre-passage legislative history of House Bill 367, we can take stock of general patterns and deduce whether they are consistent with partisan or nonpartisan explanations of legislative outcomes. The *Journal* refers to five amendments, four (80%) were introduced by Whigs and one (20%) was introduced by a Democrat. The overall passage rate was 20% (1 of 5). The passage rate for amendments introduced by Democrats was 0% (0 of 1) and for Whigs was 25% (1 of 4). Table 3 displays the average proportion of each party voting in the affirmative on the amendments with recorded roll call votes. Amendments offered by Whigs received more support than those introduced by Democrats for both Whigs and Democrats.

Table 3. Amendments

Introducer's Party	Overall Yea	Democrats Yea	Whigs Yea	Others Yea	Passage Rate
Democrat	41%	40%	33%	53%	0%
Whig	48%	56%	36%	52%	25%

¹⁷⁴ JCCSA, 7, 2/20/1865, 611-2.

¹⁷⁵ JCCSA, 8, 2/20/1865, 612. Members to the right of the first ideological dimension were more likely to vote yes

¹⁷⁶ JCCSA, 7, 2/20/1865, 612. Members to the right of the first and second ideological dimensions were more likely to vote yes

¹⁷⁷ JCCSA, 7, 2/20/1865, 612-3. Members to the right of both ideological dimensions were more likely to vote yes.

¹⁷⁸ JCCSA, 7, 2/20/1865, 613. Members to the right of the first ideological dimension were more likely to vote no.

¹⁷⁹ JCCSA, 7, 2/20/1865, 613.

¹⁸⁰ JCCSA, 7, 2/20/1865, 613.

¹⁸¹ JCCSA, 7, 2/20/1865, 613. Members to the right of the first ideological dimension were more likely to vote no.

¹⁸² JCCSA, 7, 2/20/1865, 614. Members to the left of the first ideological dimension were more likely to vote yes.

We also consider procedural votes and dilatory motions. In total, fifteen procedural motions were considered, eight (53%) of which were dilatory in nature. Of all procedural votes, seven (47%) were introduced by Democrats, seven (47%) by Whigs, and one (6%) by others. The overall passage rate was 15% (13% for dilatory motions and 29% for non-dilatory motions). For Democrats, the overall passage rate was 29%, for Whigs it was 14%, and for others it was 0%. The Democratic passage rate for dilatory motions was 0% (0 of 3) and for non-dilatory motions was 50% (2 of 4); the Whig passage rate for dilatory motions was 20% (1 of 5) and for non-dilatory motions was 0% (0 of 2). Table 4 displays this information in tabular form.

Table 4.

Party	Non-Dilatory Passage Rate	Dilatory Passage Rate	Aggregate Passage Rate
Democratic	50%	0%	29%
Total Motions	(4)	(3)	(7)
Whig	0%	20%	14%
Total Motions	(2)	(5)	(7)
Other	0%	NA	0%
Total Motions	(1)	(0)	(1)

House Bill 367

		Democrat	Whig	No Party	Total	Party vote?
Reject bill	Yea	7	13	2	22	No
	Nay	23	16	13	52	
Move to Secret Session (Atkins, D- TN)	Yea	19	9	9	37	Yes
	Nay	9	22	4	35	
Call of the House (Moore, D-KY)	Yea	15	12	3	30	Yes
	Nay	14	15	6	35	
Question from Secret Session	Yea	14	9	2	25	No
	Nay	16	19	7	42	
Previous Question (Garland, W-AR)	Yea	21	19	10	50	No
	Nay	10	8	5	23	
Akin Amendment to Atkins Amendment	Yea	14	7	4	25	No
	Nay	17	20	11	48	
Atkins (D-TN) Amendment	Yea	12	9	8	29	No
	Nay	18	18	7	43	
	Yea	17	11	9	37	No

Marshal Amendment to Swan Amendment	Nay	17	17	5	39	
Engorss for third reading	Yea	19	12	10	41	Yes
	Nay	15	17	5	37	
Conrad (W-LA) Amendment	Yea	26	11	9	46	Yes
	Nay	7	17	5	29	
Engross for third reading	Yea	19	11	9	39	Yes
	Nay	13	17	6	36	
To Pass	Yea	20	11	9	40	Yes
	Nay	14	17	6	37	
Call of the House (Gholson, W-VA)	Yea	4	13	2	19	No
	Nay	27	15	11	53	
Move to Open Session (Atkins, D-TN)	Yea	6	13	3	22	No
	Nay	24	15	11	50	
To Reconsider Final Passage	Yea	11	15	5	31	Yes
	Nay	19	13	8	40	

Conclusions

One month after the Davis signed into law the bill arming slave in the South, the Confederacy surrendered to the Union at Appomattox. Whether the Confederacy arming slaves once military leaders deemed it necessary would have changed the course of the war is hard to say. However, suffice it to say that the only way it could have made a difference would have been if the Confederate Congress had acted upon the recommendations of high-ranking military and executive officers, something it was clearly unwilling to do until March 1865, at that point much too late.

Despite similar conditions in the North and South, specifically inadequacies of all-white armies and explicit calls among military leaders to arm slaves, the North moved quickly to arm slaves and the South did not. Although social and cultural institutions, racism, and fear of how slaves would use arms if given them were surely critical to general southern sentiment against arming slaves, on the dozens of roll calls on arming slaves in the Confederate Congress analyzed here, investment in the slave economy at the legislator level never had an independent association with vote choice. Key opponents of arming slaves came from both the Democratic and Whig parties, and in particular from the Democratic chair of the Military Affairs Committee, clearly out of step with the majority of his party that voted to arm slaves. In a partisan legislature where party leaders have tools at their disposal to incentivize party loyalty, particularly the allocation of committee chairs, such an intransigent chair of such an important committee would be unlikely to be appointed to such a role.

A key difference between the history of arming slaves in the North and South is where the impetus originated. In the North, Radical Republicans in Congress led the way until a reticent Lincoln finally capitulated. In the South, a proactive President Davis and military leaders led the way only to be stymied for years by a sclerotic Congress. Majority parties in both the North and

South suffered after the 1862 midterms, due in part to war casualties. The Militia Act passed in the summer of 1862, before several midterm elections were held, and those who stood for election after passage did better on average.¹⁸³ In addition to potentially change the course of battles during the US Civil War, had the Confederacy been able to raise additional troops by arming slaves, it is possible the Democrats would not have suffered as much as they did in the midterms. The Confederate Congress's reticence may have had dire political consequences.

¹⁸³ Jamie L. Carson, Jeffery A. Jenkins, David W. Rohde, and Mark A. Souva. 2001. "The Impact of National Tides and District-Level Effects on Electoral Outcomes: The U.S. Congressional Elections of 1862-62." *American Journal of Political Science* 45(4): 887-898.

Appendix

Sections of the Militia Act of 1862 Pertaining to the Use of Black Troops

SEC. 12. *And be it further enacted*, That the President be, and he is president may hereby, authorized to receive into the service of the United States, for employ persons the purpose of constructing entrenchments, or performing camp service, or any other labor, or any military or naval service for which they may be found competent, persons of African descent, and such persons shall be enrolled and organized under such regulations, not inconsistent with the Constitution and laws, as the President may prescribe.

SEC. 13. *And be it further enacted*, That when any man or boy of Slaves render. African descent who by the laws of any State shall owe service or labor in each service, to any person who, during the present rebellion, has levied war or has borne arms against the United States, or adhered to their enemies by giving them aid and comfort, shall render any such service as is provided for in this act, he, his mother and his wife and children, shall forever thereafter be free, any law, usage, or custom whatsoever to the contrary notwithstanding: *Provided*, That the mother, wife and children of such man or boy of African descent shall not be made free by the operation of this act except where such mother, wife or children owe service or labor to some person who, during the present rebellion, has borne arms against the United States or adhered to their enemies by giving them aid and comfort.

SEC. 15. *And be it further enacted*, That all persons who have been or shall be hereafter enrolled in the service of the United States under this act shall receive the pay and rations now allowed by law to soldiers, according to their respective grades: *Provided*, That persons of African descent, who under this law shall be employed, shall receive ten dollars per month and one ration, three dollars of which monthly pay may be in clothing.

An Act to Provide for the Employment of Free Negroes and Slaves to Work Upon Fortifications

SECTION 1. *Whereas*, The efficiency of the army is at times greatly diminished by the withdrawal from the ranks of soldiers to perform labor and duties which can as well be done by free negroes and slaves—

The Congress of the Confederate States of America do enact, That all free male negroes, between the ages of eighteen and fifty years, shall be held liable to perform any labor or discharge any duties with the army, or in connection with the military defences of the country, such as working upon fortifications, producing and preparing materials of war, building and repairing roads and bridges, and doing other work usually done by engineer troops and pontoniers, acting as cooks, teamsters, stewards and waiters in military hospitals, or other like labor, or similar duties which may be required or prescribed by the Secretary of War or the general commanding the Trans-Mississippi department, from time to time. And said free negroes, whilst thus engaged, shall receive rations and clothing, under such regulations as the Secretary of War may prescribe, and shall receive pay at the rate of eighteen dollars per month.

SEC. 2. That the Secretary of War and the general commanding the Trans-Mississippi department are each authorized to employ, for duties like those named in the first section of this act, as many male negro slaves, between the ages of eighteen and forty-five years, not to exceed thirty thousand in the States east of the Mississippi river, and ten thousand in the States west of the Mississippi river, as the wants of the service may require. And the said slaves, whilst so employed, shall be furnished rations and clothing as provided in the preceding section, and the owners paid such hire for their services as may be agreed upon; and in the event of the loss of any slaves whilst so employed, by the act of the enemy, or by escape to the enemy, or by wounds whilst in any service required of said slaves, and by reason of said service, then the owners thereof, respectively, shall be entitled to receive the full value of such slaves, to be ascertained and fixed by agreement at the time said slaves are so hired, under rules to be prescribed by the Secretary of War.

SEC. 3. That whenever the Secretary of War or the general commanding the Trans-Mississippi department shall be unable to procure the services of slaves by hiring them, as above provided, in sufficient numbers, then it shall be lawful for the said Secretary or General to order the impressment, and to impress as many male slaves, within the ages named in the second section of this act, and for the purposes and uses above stated, not at any time to exceed thirty thousand in the States east of the Mississippi river, and ten thousand in the States west of the Mississippi river, as may be necessary: *Provided*, That slaves so impressed shall, whilst in the government employment, receive the same clothing and rations allowed to slaves hired from their owners, and in the event of their loss or death in the manner or from the causes above stated, their value shall be estimated and fixed as provided by the law regulating impressments, and paid as in the case of slaves hired from their owners, and the value of the hire of said slaves shall be fixed in like manner.

SEC. 4. That the Secretary of War and the general commanding the trans-Mississippi department shall, in ordering the impressment of slaves, regulate the same, as far as practicable, so that slaves shall be taken from each State in proportion to the number liable to impressment therein under this act, but not more than one in every five male slaves, within the said ages of eighteen and forty-five years, shall be taken from any one owner if said slaves are employed by said owner or his lessee uniformly in agriculture or in mechanical pursuits, nor, where an owner has but one male slave within said ages, shall said slave be impressed, and all impressments under this act shall, as far as practicable, be taken in equal ratio from all owners in the same locality, city, county, or district; but when the slaves in any locality or of any person or persons have been or shall be exempted by the laws or regulations of any State from impressment to labor on the fortifications or other public works of the Confederate States, then the said slaves shall not be impressed for any purpose whatever by the authorities of the Confederate States: *Provided*, however, That nothing herein contained shall be so construed as to exempt any State from furnishing its fair quota of slaves for the purposes herein specified and according to the provisions of this act: *Provided*, further, That in each case care, be taken to allow each owner a credit for all male slaves between the ages aforesaid heretofore impressed, or impressed under this act, or hired to the government, who are still in service, or who may have died or been lost while in service: *Provided*, further, That, if the Governor of any State shall certify to the Secretary of War or the Commanding General of the trans-Mississippi department, that slaves cannot be impressed in any locality, county, district, parish, or city, in such State without great

detriment to such locality, county, district, parish or city, then the quota of said locality, county, district, parish or city shall be impressed from other portions of such State.

SEC. 5. Duplicate rolls shall be prepared of all the slaves hired or impressed under this act, which shall contain a description of the slaves, the names and residences of the owners; and a statement of the value and rate of hire of the slaves at the date they are hired or impressed, one of which rolls shall, in the States east of the Mississippi river, be forwarded to the Secretary of War, and in those west of the Mississippi river, to the head-quarters of the general commanding that department, and the other roll shall be sent to the general commanding the army where said slaves may be employed; and the officer having charge of said slaves, or of the work upon which they may be engaged, shall have a copy of said roll, and shall regularly enter thereon the nature of the labor or duties in which said slaves are engaged, and any changes which may be made therein, and of the absence, sickness, or death of any of said slaves, and make monthly returns thereof to the general commanding the army where said slaves are employed, who shall transmit the same to the Secretary of War or to the Commanding General in the trans-Mississippi department, as the case may be.

SEC 6. That all laws or parts of laws providing for the hiring or impressment of slaves be, and the same are hereby repealed, except so far as they may provide for regulating and fixing, in case of impressment, the value of said slaves, or the value of their services.

An Act to Increase the Military Force of the Confederate States, 1865

I. The following act of Congress and regulations are published for the information and direction of all concerned:

AN ACT to increase the military force of the Confederate States.

The Congress of the Confederate States of America do enact, That, in order to provide additional forces to repel invasion, maintain the rightful possession of the Confederate States, secure their independence, and preserve their institutions, the President be, and he is hereby, authorized to ask for and accept from the owners of slaves, the services of such number of able-bodied negro men as he may deem expedient, for and during the war, to perform military service in whatever capacity he may direct.

SEC 2. That the General-in-Chief be authorized to organize the said slaves into companies, battalions, regiments, and brigades, under such rules and regulations as the Secretary of War may prescribe, and to be commanded by such officers as the President may appoint.

SEC 3. That while employed in the service the said troops shall receive the same rations, clothing, and compensation as are allowed to other troops in the same branch of the service.

SEC 4. That if, under the previous sections of this act, the President shall not be able to raise a sufficient number of troops to prosecute the war successfully and maintain the sovereignty of the States and the independence of the Confederate States, then he is hereby authorized to call on

each State, whenever he thinks it expedient, for her quota of 300,000 troops, in addition to those subject to military service under existing laws, or so many thereof as the President may deem necessary to be raised from such classes of the population, irrespective of color, in each State, as the proper authorities thereof may determine: *Provided*, That not more than twenty-five per cent. of the male slaves between the ages of eighteen and forty-five, in any State, shall be called for under the provisions of this act.

SEC 5. That nothing in this act shall be construed to authorize a change in the relation which the said slaves shall bear toward their owners, except by consent of the owners and of the States in which they may reside, and in pursuance of the laws thereof.

II. The recruiting service under this act will be conducted under the supervision of the Adjutant and Inspector General, according to the regulations for the recruiting service of the Regular Army, in so far as they are applicable, and except when special directions may be given by the War Department.

III. There will be assigned or appointed for each State an officer who will be charged with the collection, enrollment, and disposition of all the recruits that may be obtained under the first section of this act. One or more general depots will be established in each State and announced in orders, and a suitable number of officers will be detailed for duty in the staff departments at the depots. There will be assigned at each general depot a quartermaster, commissary, and surgeon, and the headquarters of the superintendent will be at the principal depot in the State. The proper officers to aid the superintendent in enlisting, mustering, and organizing the recruits will be assigned by orders from this office or by the General-in-Chief.

IV. The enlistment of colored persons under this act will be made upon printed forms, to be furnished for the purpose, similar to those established for the regular service. They will be executed in duplicate, one copy to be returned to this office for file. No slave will be accepted as a recruit unless with his own consent and with the approbation of his master by a written instrument conferring, as far as he may, the rights of a freedman, and which will be filed with the superintendent. The enlistments will be made for the war, and the effect of the enlistment will be to place the slave in the military service conformably to this act. The recruits will be organized at the camps in squads and companies, and will be subject to the order of the General-in-Chief under the second section of this act.

V. The superintendent in each State will cause a report to be made on the first Monday of every month showing the expenses of the previous month, the number of recruits at the various depots in the State, the number that has been sent away, and the destination of each. His report will show the names of all the slaves recruited, with their age, description, and the names of their masters. One copy will be sent to the General-in-Chief and one to the adjutant and Inspector General.

VI. The appointment of officers to the companies to be formed of the recruits aforesaid will be made by the President.

VII. To facilitate the raising of volunteer companies, officers recruiting therefor are authorized to muster their men into service as soon as enrolled. As soon as enrolled and mustered, the men will be sent, with descriptive lists, to the depots of rendezvous, at which they will be instructed until assigned for service in the field. When the organization of any company remains incomplete at the expiration of the time specified for its organization, the companies or detachments already mustered into service will be assigned to other organizations at the discretion of the General-in-Chief.

VIII. It is not the intention of the President to grant any authority for raising regiments or brigades. The only organizations to be perfected at the depots or camps of instructions are those of companies and (in exceptional cases where the slaves are of one estate) of battalions consisting of four companies, and the only authority to be issued will be for the raising of companies or the aforesaid special battalions of four companies. All larger organizations will be left for future action as experience may determine.

IX. All officers who may be employed in the recruiting service, under the provisions of this act, or who may be appointed to the command of troops raised under it, or who may hold any staff appointment in connection with them, are enjoined to a provident, considerate, and humane attention to whatever concerns the health, comfort, instruction, and discipline of those troops, and to the uniform observance of kindness, forbearance, and indulgence to their treatment of them, and especially that they will protect them from injustice and oppression.