



## Primer on the Ku Klux Klan Act of 1871

Frustrated by the federal government's persistent inability to put a stop to white supremacist terrorism by the Ku Klux Klan, Congress passed the [Ku Klux Klan Act of 1871](#) to put an end to the Klan's reign of terror. The bill used nearly all of Congress's constitutional powers to enact a comprehensive strategy to respond to the Klan's coordinated political violence and intimidation.

- **Section 1.** (now codified at 42 U.S.C. § 1983) Possibly the single most important statutory provision in modern American civil rights law, this section allowed individuals to sue in federal court when state and local officials violate federal law.
- **Section 2.** This section banned a host of private conspiracies in which the Klan engaged — such as insurrection, witness intimidation, and voter intimidation — that interfered with newly emancipated Americans' civil rights. ***This section includes the statutory provision, 42 U.S.C. § 1985(3), being used by the plaintiffs in Cervini v. Cisneros.***
- **Sections 3-4.** This section gave the president the power to call on the Army, Navy, and militia against any local rebellions and suspend habeas corpus.
- **Section 5.** This section allowed federal judges to keep Klan conspirators off juries.
- **Section 6.** (now codified at 42 U.S.C. § 1986) This section required everyone — public servants and private citizens alike — that knew about an illegal conspiracy to interfere with civil rights banned by Section 2 of the Klan Act to take actions to prevent the illegal conspiracy, and made them liable in court for a negligent or intentional failure not to. ***This section is being used by the plaintiffs in Cervini v. Stapp.***

This provision was specifically designed to ensure that Southern law enforcement officers would help protect *all* Americans from political violence. An exchange during the House's consideration of the provision between Representative Shellabarger of Ohio (who introduced the Klan Act in the House), Representative Willard, and Representative Bingham (the principal framer of the Fourteenth Amendment) is demonstrative:

Mr. Willard: I desire to ask the gentleman a question just there.

Mr. Shellabarger: Very well; I will hear the gentleman.

Mr. Willard: I understand that under the provisions of [42 U.S.C. § 1986], if an individual receives the notice we frequently read of being sent to these Union

men that he must leave the district or be killed or whipped . . . if he should go to the sheriff of the county or to his neighbors and give information of that, and ask them to protect him, they would be liable.

Mr. Shellabarger: They would be liable.

Mr. Bingham: So they ought to be.<sup>1</sup>

## The Klan Act Falls into Obscurity

After the bill's passage, President Grant and the Department of Justice set out to break the power of the Klan in the South, and they largely succeeded. Attorney General Amos Ackerman oversaw the arrest and conviction of hundreds of Klansmen, and by 1872-73 the Klan had been [effectively crushed](#). (Racist white supremacist terrorism would continue throughout the South, however). It wasn't until the Klan's 1915 re-establishment by William J. Simmons that the Klan would reemerge as a powerful force in American politics.

With the end of Reconstruction, Klan Act litigation precipitously declined — a trend that accelerated further after the Supreme Court found [some](#) (but not [all](#)) portions of the Klan Act's criminal enforcement provisions unconstitutional, and Congress repealed at least one [other](#). With the exception of Section 1 of the Klan Act (aka 42 U.S.C. § 1983), the remaining provisions of the Klan Act largely faded into obscurity for over a century.

Klan Act litigation was quite rare from 1880-2016. That's not to say that the provision was never used. Civil rights lawyers occasionally invoked the provision to protect [voter registration](#) and [demand protection from the Klan and the American Nazi Party](#). In the 1960s, a [Freedom Rider used it against FBI agents](#) for failing to protect him in the face of known risks of white supremacist violence in Alabama.

## A Recent Resurgence in Klan Act Lawsuits

With the increase in political violence and voter intimidation during the Trump era, civil rights lawyers are again dusting off provisions of the Klan Act to stop organized political intimidation and violence. Members of Congress and injured Capitol Police officers have filed [Klan Act suits against](#) the alleged perpetrators of the January 6 attacks. Victims of the "Unite the Right" rally in Charlottesville have [used](#) the Act to sue neo-Nazis. Virginians falsely accused of voter fraud used the Act [to sue](#) a former member of the Pence-Kobach "voter fraud" commission and his non-profit for voter intimidation. And Lafayette Square protesters, led by Black Lives Matter, are bringing [Klan Act claims](#) against senior government officials for tear-gassing a peaceful protest.

The two lawsuits being filed in response to the attack on the Biden-Harris campaign bus are the latest example of how the Klan Act can be utilized to deter voter intimidation and political violence — and safeguard our democracy.

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<sup>1</sup> 42 Cong. Globe, 42d Cong., 1st Sess. 805 (1871).