

Capitol & White Supremacy (United States): Anti-Klan Act of 1871 takes on the enemy from within

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Mississippi Congressperson Bennie Thompson filed a federal lawsuit on January 16, accusing former United States president Donald Trump, Trump's lawyer Rudy Giuliani and white supremacist outfits the Proud Boys and Oath Keepers of conspiring to incite the violent riot at the US Capitol on January 6.

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Proud Boys members. Photo: Wikimedia Commons CC by 2.0

The lawsuit alleges that, by preventing Congress from carrying out its official duties to certify the 2020 presidential election, Trump, Giuliani and the hate groups directly violated the 1871 Ku Klux Klan Act.

Thompson is chair of the House Homeland Security Committee and a long-serving - and the only - African American Mississippi Congressperson.

Thompson filed the complaint in his personal capacity. The National Association for the Advancement of Colored People (NAACP) is representing him in the suit, with the law firm Cohen Milstein Sellers & Toll.

"It should surprise nobody that an anti-Klan statute can be used against the white people who attacked the Capitol, because the Klan itself is just the fairly normal white response to losing political power to a multiracial coalition," wrote The Nation's Elie Mystal on February 17.

"Whenever white supremacists feel like they're losing, some of them resort to violence. The only people who seem surprised by this are other white people who have the privilege of believing that their cousins and friends are 'joking' when they share violent memes on Facebook."

The NAACP was founded in 1909 after a white race riot in Springfield, Illinois. Forty Black homes

were burned to the ground and two African Americans were murdered.

The NAACP's first campaign was to seek laws to stop lynchings. It hoped to bring back the power of the federal government against white extremism - as was the case, only briefly, after the Civil War and codified in laws such as the anti-KKK law.

The 1871 law

The anti-KKK Act made it illegal to use "force, intimidation, or threat" to prevent government officials from discharging their duties. It was passed because the Klan and other mobs of angry whites were doing exactly that to federal authorities and newly-elected federal representatives in the South during the post-Civil War Reconstruction era (1865-1877).

"The [January 6 coup] attempt was a coordinated, months-long attempt to destroy democracy, to block the results of a fair and democratic election, and to disenfranchise millions of ballots that were legally cast by African-American voters," said the NAACP.

"The NAACP is representing Congressman Thompson in this lawsuit because the events on January 6th were just one more attempt by Donald Trump and his allies to make sure that African-American voters were disenfranchised - this time, by trying to stop members of Congress from doing their job and certifying the election results."

Trump and his supporters represent the anti-democratic enemies from within the country.

The anti-KKK Act, also known as the *Third Force* Act, authorised then-president Ulysses S Grant to declare martial law, impose heavy penalties against terrorist organisations and use military force to suppress the KKK.

"The adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution extended civil and legal protections to former slaves and prohibited states from disenfranchising voters 'on account of race, color, or previous condition of servitude', according to the US Senate's website.

"Forces in some states were at work, however, to deny Black citizens their legal rights. Members of the Ku Klux Klan, for example, terrorized Black citizens for exercising their right to vote, running for public office, and serving on juries.

"In response, Congress passed a series of Enforcement Acts in 1870 and 1871 (also known as the Force Acts) to end such violence and empower the president to use military force to protect African Americans.

"In its first effort to counteract such use of violence and Intimidation, Congress passed the Enforcement Act of May 1870 [\[1\]](#), which prohibited groups of people from banding together 'or to go in disguise upon the public highways, or upon the premises of another' with the intention of violating citizens' constitutional rights.

"Even this legislation did not diminish harassment of Black voters in some areas...

"While these committees were investigating southern attempts to impede Reconstruction, the Senate passed two more Force acts, also known as the Ku Klux Klan acts, designed to enforce the Fourteenth Amendment and the Civil Rights Act of 1866.

"The *Second Force Act* [2], which became law in February 1871, placed administration of national elections under the control of the federal government and empowered federal judges and United States marshals to supervise local polling places.

"The *Third Force Act* [3], dated April 1871, empowered the president to use the armed forces to combat those who conspired to deny equal protection of the laws and to suspend habeas corpus, if necessary, to enforce the act."

The Force Acts showed an understanding that only military force could enforce the freedom of the former slaves and grant them rights without fear of retaliation by white extremists. The Republicans, then a party of abolition and genuine civil rights, used the military for that purpose backed up by the new laws.

The KKK, formed in 1865, engaged in terrorist raids against African Americans and white Republicans at night, employing intimidation, destruction of property, assault and murder to achieve its aims and influence upcoming elections.

In a few Southern states, Republicans organised militia units to break up the Klan. In 1871, passage of the Ku Klux Act led to nine South Carolina counties being placed under martial law and thousands of arrests.

White backlash

Six years later, most whites in the North and the Republican Party gave up. In 1877 a "Great (Betrayal) Compromise" was made between the Republicans and Democrats to remove all Union forces from the South.

White terror became the de facto law of the land. Elected Black officials were removed from office and gains won after the Civil War in the Constitution were made moot.

In 1882, the Supreme Court declared the *Ku Klux Klan Act* unconstitutional [4]. By that time, the Reconstruction era had been defeated, and much of the KKK had faded away, as its leaders became officials of the Democratic Party, local governments and police.

Legal "Jim Crow" segregation became widespread. Lynchings of Blacks without consequences became "normal". Northern Blacks were put in urban ghettos and could not live in or travel to suburbs and other areas without fear.

The idea of using the 1871 law during decades of legal segregation was seen as a waste of resources. The fact that the NAACP sees that law as a weapon today shows the impact of the Black Lives Matter struggle, even as institutional racism remains strong and has grown stronger under Trump and the Republican Party.

The Republican Party under Trump is racist and seeks to go back to the time where domestic terrorist groups ruled as they did after the defeat of Reconstruction.

The aim of the far right is to reverse the victories won after the 1960s civil rights revolution, beginning with the elimination of Black voting rights.

Since the November presidential elections, Republicans have proposed more than 100 laws in state legislatures to limit the voting rights of Blacks and other minorities.

Trump's acquittal on the charge of incitement to insurrection by the Senate has led him and his supporters to go after the conservative Republicans who voted to convict him. Like all cult and mob bosses, Trump expects total loyalty by "bending the knee".

The Biden administration and the Democrats - for the most part - stand quiet in fighting Trumpism. They hope old guard Republicans will do so or Trump will simply fade away.

Long shot, but...

African Americans know from history that Trumpism and anti-Black violence will not disappear without a struggle - legally and by protests in the streets.

The NAACP lawsuit is one weapon in this fight. It aims to put pressure on the government and courts to act against Trump and his right-wing base.

The NAACP case may be a long shot but, combined with the BLM movement, success is possible.

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P.S.

- Green Left. Issue 1298. February 23, 2021:
<https://www.greenleft.org.au/content/united-states-anti-klan-act-1871-takes-enemy-within>

Footnotes

- [1] https://www.senate.gov/artandhistory/history/common/image/EnforcementAct_1870_Page_1.htm
- [2] https://www.senate.gov/artandhistory/history/common/image/EnforcementAct_Feb1871_Page_1.htm-
- [3] https://www.senate.gov/artandhistory/history/common/image/EnforcementAct_Apr1871_Page_1.htm
- [4] <https://www.history.com/topics/us-government/supreme-court-facts>