

“Kansas Shall Not Have the Right to Legislate Slavery Out”

Slavery and the 1860 Antislavery Law

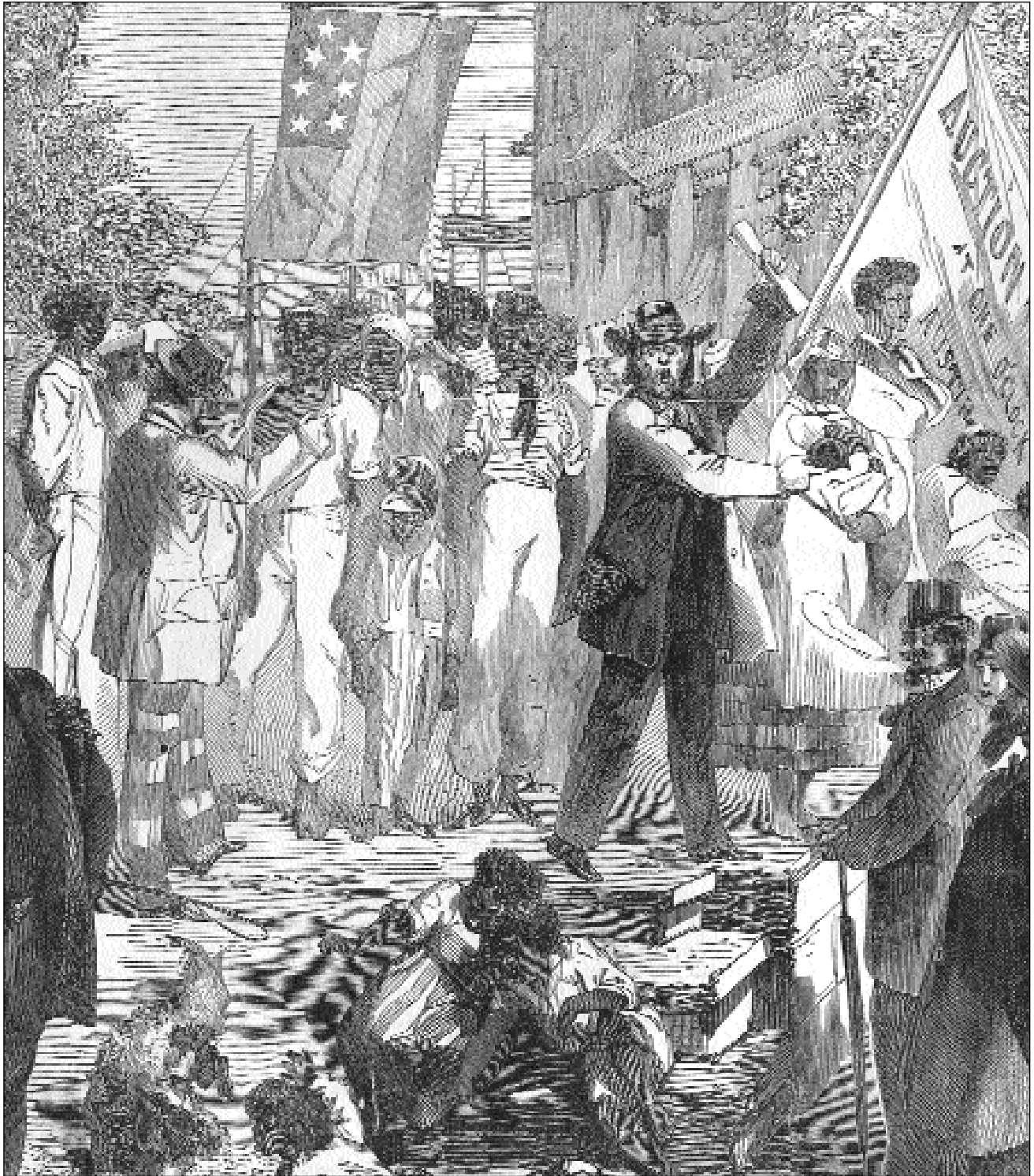
by Gary L. Cheatham

Carved out of the Central Plains following the passage of the Kansas–Nebraska bill of 1854, Kansas Territory became the focal point of a renewed national debate over whether slavery should be allowed to spread westward. The institution was not new to the region that would become Kansas, as pockets of slavery existed in the area approximately twenty years before territorial status was attained. However, these slaves, who were owned by Native Americans and whites, were not part of any widespread westward movement.¹

The Kansas–Nebraska Act created not only Kansas Territory, it repealed the venerated slavery expansion compromise of 1820 and upset the tenuous 1850 agreement. The Missouri Compromise of 1820 appeased North-

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1. Gary E. Moulton, ed., *The Papers of Chief John Ross*, vol. 2 (Norman: University of Oklahoma Press, 1985), 397; Wilson Hobbs, “The Friends’ Establishment in Kansas Territory,” *Kansas Historical Collections*, 1903–1904 8 (1904): 254; Zu Adams, “Slaves in Kansas,” unpublished manuscript, September 28, 1895, Slavery Collection, Library and Archives Division, Kansas State Historical Society; Gunja SenGupta, *For God and Mammon: Evangelicals and Entrepreneurs, Masters and Slaves in Territorial Kansas, 1854–1860* (Athens: University of Georgia Press, 1996), 118.



Slave auction. This sketch by Theodore R. Davis appeared in Harper's Weekly, July 13, 1861.

ern and Southern congressional interests by opening the door for the admission of Missouri as a slave state and prohibiting slavery west of Missouri above the 36°30' line. The disallowed region included the area that became Kansas. However, a lackluster interest in slavery among most southwestern settlers, coupled with a move to admit California as a free state, resulted in another national crisis over the institution. The Compromise of 1850 temporarily diffused the crisis by satisfying the North with the admission of California as a free state, and appeasing the South by allowing slavery into Mexican Cession Territory by the principle of popular sovereignty. Slaveholders also were accommodated by the Fugitive Slave Act of 1850, which provided for the recovery of fugitive slaves in the United States.² When the Kansas–Nebraska bill of 1854 passed, the principle of popular sovereignty, which allowed the slavery question to be decided locally, was applied to the settlement of Kansas and any other states created from the old Louisiana Purchase territory.

Unfortunately, however, the act's cornerstone principle—popular sovereignty—was interpreted differently in the North and the South. As summarized by the *Harrison Flag* of Marshall, Texas, many Southerners believed slavery could not be kept out of Kansas Territory because it was the “joint property” of all Americans, and most Southern Democrats added that slavery could not be outlawed by a territorial government. Northern “Douglas” Democrats, however, tended to adopt the more moderate interpretation presented by Democratic senator Stephen A. Douglas, which stated that a territory was a “distinct political Community” that could pass its own laws on slavery. And Republicans were largely uncompromising in their denunciation of popular sovereignty.³ Within this framework most Kansas territorial legislatures debated the slavery issue, culminating in the passage of an antislavery law

in 1860, which, as this article will show, failed to eradicate the institution and did little to quiet the slavery debate.

A brief discussion of the nature of Kansas territorial government is necessary to set the stage for the development of the antislavery legislation. First, one must note, the president of the United States appointed the governor and three federal judges, constituting a territorial supreme court, for Kansas Territory. This supreme court included one chief and two associate judges serving the three territorial U.S. District Courts in Kansas. Members of the Kansas territorial legislature, which included two chambers called the house and council (senate), were popularly elected by the voters of the territory. House members were called representatives and council members sometimes were referred to as senators. A bill passed by one chamber of the legislature was then sent to the other, and if passed by both the house and the council it was sent to the governor, who either signed the legislation into law or vetoed the measure. A bill vetoed by the governor was returned to the legislature, which had the option of accepting the governor's veto, in which case the bill failed, or attempting to override it. If a two-thirds majority in both branches of the legislature voted to override a veto, the bill became law despite the governor's objections.⁴

By 1855 Kansas slavery proponents realized that the principle of popular sovereignty might not be enough to protect the “peculiar institution” from the emerging free-state movement. The ensuing clash of sentiments between proslavery and antislavery settlers encouraged Kansas Territory lawmakers to attempt to settle the matter with legislation. The first law regarding slavery in Kansas was part of the proslavery statutes passed by the 1855 legislature, known among antislavery settlers as the “bogus” legislature. These laws, which went into effect on September 15, 1855, were designed both to protect slavery and menace the free-state movement. George M. Stroud reported in 1856, “Without entering into the question whether slavery can be sustained at all by *Kansas*,” the law focused on punishing anyone convicted of engaging in “offences against

2. Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 106–10, 157–77; Michael F. Holt, *Political Parties and American Political Development from the Age of Jackson to the Age of Lincoln* (Baton Rouge: Louisiana State University Press, 1992), 70–71.

3. Robert W. Johannsen, “The Kansas–Nebraska Act and Territorial Government in the United States,” in *Territorial Kansas: Studies Commemorating the Centennial* (Lawrence: University of Kansas Publications, 1954), 17–18; *Harrison Flag* (Marshall, Tex.), October 14, 1859; Holt, *Political Parties and American Political Development*, 84; Stephen A. Douglas, *The Dividing Line Between Federal and Local Authority* (New York: Harper and Brothers, 1859), 40; Elbert B. Smith, *The Presidency of James Buchanan* (Lawrence: University Press of Kansas, 1975), 119.

4. Homer E. Socolofsky, *Kansas Governors* (Lawrence: University Press of Kansas, 1990), 1; James H. Lowell, “The Romantic Growth of a Law Court,” *Kansas Historical Collections, 1919–1922* 15 (1923): 596; *Rules for the Government of the Legislative Assembly of the Territory of Kansas* (Lawrence: Public Printer, 1858); J. S. Black to Lewis Cass, January 31, 1860, vol. 2, Official Correspondence, June 30, 1858–April 30, 1861, State Department Territorial Papers, Kansas, 1854–61, M218, National Archives, Washington, D.C.

slave property.” Based on the slavery statutes of Virginia and Louisiana, Kansas law even made it a crime to speak against slavery.⁵ This strongly worded statute, which was left untouched by the legislature until 1857, appeared to ensure that the estimated two to three hundred slaves found in Kansas in 1855 were legally enslaved.⁶

The unconstitutionality of the antifree speech element contained in the law, however, troubled many Kansans. In response, the 1857 legislature reconsidered the 1855 statute. Despite its proslavery bearing, the legislature worked with Governor John W. Geary to repeal section 12 of the proslavery law, effective February 5, 1857. Section 12, which made it a felony to speak or publish antislavery sentiments, was discarded because it offended the free speech sentiments of the legislators. This modification to the law had no apparent impact on the slave population, as evidenced by Governor Robert J. Walker’s report that two to three hundred Kansas slaves were still held in 1857.⁷

The next legislature, which was elected in October 1857, was predominately a free-state assembly. Anxious to throw out the “bogus” statutes, this legislature used a few simple words to repeal the 1855 proslavery law, effective February 9, 1858. As a result, the only proslavery law to be passed in Kansas was gone, but repealing the proslavery statute did not outlaw slavery. Thus, several free-state legislators attempted to pass an antislavery bill. However, this effort failed largely because of a lack of council sup-

5. “Slaves: An Act to Punish Offenses Against Slave Property,” *Kansas Territory Statutes* (1855): 715–17; George M. Stroud, *A Sketch of the Laws Relating to Slavery in the Several States of the United States of America*, 2d ed. (Philadelphia: Henry Longstreth, 1856), 255. The 1855 legislature was referred to as “bogus” by free-state Kansans because of the questionable way in which the proslavery members gained control and due to the oppressive proslave statutes they enacted. Stroud considered the “act to punish offences against slave property” a clear violation of the U.S. Constitution: “the territorial government can pass no laws” abridging the fundamental rights of freedom of speech and of the press.

6. An 1855 territorial census enumerated 192 slaves in Kansas Territory, and Horace Greeley and John F. Cleveland reported finding 242 slaves. See *Report of the Special Committee Appointed to Investigate the Troubles in Kansas*, 34th Cong., 1st session, 1856, H. Rept. 200, 72; Horace Greeley and John F. Cleveland, *A Political Text-Book for 1860* (New York: Tribune Association, 1860), 95; William G. Cutler and Alfred T. Andreas, *History of the State of Kansas*, vol. 1 (Chicago: A. T. Andreas, 1883), 105; Abby Huntington Ware, “Dispersion of the Territorial Legislature of 1856,” *Kansas Historical Collections, 1905–1906* 9 (1906): 540–42.

7. Leverett W. Spring, *Kansas: The Prelude to the War for the Union* (Boston: Houghton, Mifflin and Co., 1885), 205; Cutler and Andreas, *History of the State of Kansas*, 156; “An Act Repealing the Twelfth Section of ‘An Act to Punish Offenses Against Slave Property,’” *Kansas Territory Laws* (1857), 77; Charles Estabrook Cory, “Slavery in Kansas,” *Kansas Historical Collections, 1901–1902* 7 (1902): 236.

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port and Governor James W. Denver’s interest in the proslavery Lecompton Constitution. This failure left many Kansans accepting the notion that “Slavery exists among us either with or without law.”⁸ The estimated three hundred or more slaves held in Kansas in 1858 appears to have substantiated this conclusion.⁹

Ignoring the repeal of the proslavery law, slavery proponents focused on the Supreme Court’s 1857 *Dred Scott*

8. “An Act Repealing An Act to Punish Offenses Against Slave Property,” *Kansas Territory Laws* (1858), ch. 62; Shalor Winchell Eldridge, *Recollections of Early Days in Kansas*, Kansas State Historical Society, *Publications* 2 (Topeka: Kansas State Printing Plant, 1920), 156; *Herald of Freedom* (Lawrence), June 26, 1858; Socolofsky, *Kansas Governors*, 66–67; *Kansas National Democrat* (Lecompton), January 27, 1859.

9. Alexander Samuel Diven, a New York state senator, reported in January 1858, “It is a conceded fact that there are some 800 slaves” in Kansas Territory. See Alexander S. Diven, *No More Slave States: Congress has Full Power Over Slavery in the Territories; The Great Wrong of the Decision in the Dred Scott Case; The Duty the Government Owes to Kansas* (N.p., 1858), 4. The basis for Diven’s report is unknown, but his statement supports the view that the Kansas slave population had not declined between 1855 and 1858 and actually may have increased. A slave count by John Speer and J.N.O.P. Wood in the late 1800s, in which they “compared notes” on their “personal knowledge of slaves in Kansas,” identified “over 400” slaves. See John Speer, “Accuracy in History,” *Kansas Historical Collections, 1897–1900* 6 (1900): 68. For general overviews of slavery in Kansas Territory during the 1850s, see Robert Russell, *North America: Its Agriculture and Climate* (Edinburgh: Adam and Charles Black, 1857), 146–48; SenGupta, *For God and Mammon*, 116–29; Lydia Alma Haag, “Slavery Agitation and Its Influence on the State of Kansas” (master’s thesis, Kansas State College of Agriculture and Applied Science, Manhattan, 1934), 43–57; Cory, “Slavery in Kansas,” 229–42.



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decision. This complex decision was legally controversial and politically divisive. Concluding that Congress had no authority to interfere with slavery in the territories, *Dred Scott* empowered proponents of slavery's expansion. Proslavery Kansans eagerly interpreted *Dred Scott* as supporting their belief that slavery could not be outlawed in the territory.¹⁰ *Dred Scott* alone, however, did not shield slavery from the growing free-state movement. Following the third and final failure of the proslavery Lecompton Constitution at the polls in August 1858, the free-state majority clearly was entrenched. As a result, antislavery proponents saw an opportunity to challenge slavery with an antislavery law.

In December 1858 the *Chicago Daily Press and Tribune* predicted that since a "new [Kansas] Legislature, Free State in both branches, meets in January," an antislavery bill "will undoubtedly come before it." Free-state legislators fulfilled this prediction, and in January 1859 a total of five antislavery bills were introduced, including three in the

10. Michael Kent Curtis, "The Crisis Over the Impending Crisis: Free Speech, Slavery, and the Fourteenth Amendment," in *Slavery & the Law*, ed. Paul Finkelman (Madison: Madison House, 1997), 169; Fehrenbacher, *The Dred Scott Case*, 324, 449; *The Rendition of Fugitive Slaves. The Acts of 1793 and 1850, and the Decisions of the Supreme Court Sustaining Them. The Dred Scott Case — What the Court Decided* (Washington, D.C.: National Democratic Campaign Committee, 1860), 13, 15.

house and two in the council. Following a series of debates, on January 19, 1859, with a vote of twenty-two to nine, the house passed H.B. 77, entitled "An Act Abolishing All Laws Establishing or Recognizing Slavery in the Territory of Kansas, and Punishing Certain Offenses in Regard to Persons Held as Slaves." Preferring to debate its own antislavery bill, however, the council ignored H.B. 77, and on February 5, 1859, by a vote of eight to two, passed C.B. 75, entitled "An Act to Abolish and Prohibit Slavery in Kansas Territory." On February 8, 1859, with a vote of seventeen to eleven, the house also passed C.B. 75, and the measure was sent to Governor Samuel Medary for his signature. Believing the legislature had overstepped its authority, however, the governor took no action on the antislavery bill and allowed it to die a "natural death" with the end of the legislative session on February 11, 1859.¹¹

The next legislature assembled on January 2, 1860. The thirty-nine house members included twenty-three Republicans and sixteen Democrats. The council was composed of thirteen senators, initially including eight Republicans and five Democrats. Early in the session, however, the Republicans challenged the election of Atchison County Democrat William J. Marion to a council seat. Republicans accused election officials of accepting illegal ballots cast in favor of Marion and demanded that he be replaced with his election opponent, Republican Milton R. Benton. Following a heated council debate, the Republican majority carried a vote replacing Marion with Benton, changing the makeup of the council to nine Republicans and four Democrats (Table 1).¹² As will be seen, replacing Marion with Benton not only gave the antislavery Republicans a larger majority in the council, it ensured the passage

11. *Chicago Daily Press and Tribune*, December 24, 1858; *Kansas Territory House Journal*, 1859, 69–70, 74, 111, 114, 119–21, 303, 316; *Kansas Territory Council Journal*, 1859, 113, 121, 250–53; *Congressional Globe*, 35th Cong., 2d sess., 1859, 1247; D. W. Wilder, *The Annals of Kansas* (Topeka: Kansas Publishing House, 1886), 252; *Kansas National Democrat*, February 24, 1859.

12. *Daily Times* (Leavenworth), January 4, 1860; *Kansas State Record* (Topeka), January 7, 1860; *Weekly Leavenworth Herald*, January 8, 14, 1860; *Atchison Union*, January 7, 1860; *Kansas National Democrat*, January 12, 1860; *Freedom's Champion* (Atchison), January 7, 1860. Democrats were outraged. After Marion was expelled, speeches were made by Democratic members of the legislature in his support, followed by a demonstration of Democratic supporters in Lecompton. The speeches and demonstration, however, only succeeded in spotlighting the Republican control of the house. See *Atchison Union*, January 14, 1860.

TABLE 1

1860 KANSAS TERRITORY COUNCIL MEMBERS (SPECIAL SESSION)

<u>NAME</u>	<u>POLITICAL PARTY</u>	<u>RESIDENT COUNTY</u>	<u>OCCUPATION</u>	<u>WHERE BORN</u>	<u>MOVED TO KANSAS FROM</u>
George Monroe Beebe	Democrat	Doniphan	Attorney	New York	Illinois
Milton R. Benton	Republican	Atchison	Farmer	Kentucky	Kentucky
J. Marion Christison	Democrat	Jefferson	Farmer	Missouri	Missouri
Peter Percival Elder	Republican	Franklin	Attorney	Maine	Maine
James M. Hendry	Republican	Douglas	Attorney	Tennessee	Ohio
Charles G. Keeler	Democrat	Johnson	Merchant	New York	Ohio
John C. Lambdin	Republican	Butler	Farmer	Pennsylvania	Indiana
William G. Mathias	Democrat	Leavenworth	Attorney	Maryland	Maryland
Luther R. Palmer	Republican	Pottawatomie	Physician	New York	Michigan
Watson Stewart	Republican	Allen	Farmer	Ohio	Indiana
Chester Thomas	Republican	Shawnee	Farmer	Pennsylvania	Pennsylvania
William W. Updegraff	Republican	Lykins	Physician	Pennsylvania	Indiana
J.B. Woodward	Republican	Riley	Physician	Vermont	Vermont

Sources: U.S. Bureau of the Census, *Eighth Census of the United States, 1860: Population* (Washington, D.C.: U.S. Census Office, 1860); *Kansas Territory Council Journal*, 1860; *Kansas Territory Council Journal*, Special Session, 1860; *Lawrence Republican*, February 23, 1860; *Freedom's Champion* (Atchison), January 14, 1860; *Weekly Leavenworth Herald*, November 5, 1859; *Kansas State Record* (Topeka), January 7, 1860; *Emporia News*, February 2, 1861; *Kansas National Democrat* (Lecompton), January 12, 1860; Homer E. Socolofsky, *Kansas Governors* (Lawrence: University Press of Kansas, 1990), 75; David E. Ballard, "The First State Legislature," *Kansas Historical Collections*, 1907–1908 10 (1908): 254; William G. Cutler and Alfred T. Andreas, *History of the State of Kansas*, 2 vols. (Chicago: A.T. Andreas, 1883), 405, 579–80, 610, 979, 1450, 1573.

of an antislavery law. Encouraged by the adoption of the antislavery Wyandotte Constitution in October 1859, antislavery Kansans called upon the Republicans in the legislature to pass a "bill abolishing Slavery at once." In so doing, it was believed, the free-state Democrats, "who howl about being . . . free-statesmen," would be brought "to the test," having little choice but to help abolish slavery.¹³

The expectation among antislavery Kansans that the Republican majority in the 1860 legislature would quickly outlaw slavery was soon replaced with frustration when only one antislavery bill was considered in the council. The bill, which was introduced by Republican Senator Chester Thomas on January 10, 1860, drew little attention, however, and quietly died when the legislature adjourned on January 18, 1860.¹⁴

13. "The Contest," *National Democratic Quarterly Review* (October 1860): 601; Stephen A. Douglas, *Remarks of Hon. Stephen A. Douglass [sic]: Kansas, Utah, and the Dred Scott Decision, Delivered in the State House at Springfield, Illinois, on 12th of June, 1857* (Chicago: Daily Times Book and Job Office, 1857), 6; *Freedom's Champion*, February 4, 1860.

14. *Kansas Territory Council Journal*, 1860, 60, 67.

Criticizing the legislature for failing to pass laws "of a general nature, which calls imperiously upon your immediate action," Governor Medary called a special session of the legislature, ordering the members to reassemble on January 19, 1860. The special session began with a slightly different membership makeup than found with the first session. A contested election influenced Republicans to challenge the seat of James S. Magill, the Democratic representative from Marshall County. Following a heated debate the Republican majority carried a vote to replace Magill with his election opponent, Republican George G. Pierce.¹⁵ As a result, the political party makeup of the house became twenty-four Republicans and fifteen Democrats.

The membership of the legislature comprised mainly farmers, business owners, attorneys, and physicians. Two representatives were born in Europe, but most of the legislators were born in the North. This included twenty-seven

15. *Kansas National Democrat*, January 26, 1860; *Manhattan Express*, January 21, 1860; *Daily Times*, January 20, 1860; Eldridge, *Recollections of Early Days in Kansas*, 162.

TABLE 2

1860 KANSAS TERRITORY HOUSE MEMBERS (SPECIAL SESSION)

<u>NAME</u>	<u>POLITICAL PARTY</u>	<u>RESIDENT COUNTY</u>	<u>OCCUPATION</u>	<u>WHERE BORN</u>	<u>MOVED TO KANSAS FROM</u>
Amasa Bartlett	Republican	Pottawatomie	Attorney	Vermont	Vermont
Thomas A. Blake	Democrat	Jefferson	Farmer	North Carolina	Indiana
Paul R. Brooks	Republican	Douglas	Merchant	Maine	Maine
Frederick Brown	Democrat	Leavenworth	Saw Mill Owner	Germany	Indiana
Samuel R. Canniff	Republican	Shawnee	Miller	New York	New York
Martin Cave	Republican	Nemaha	Farmer	Kentucky	Iowa
Daniel L. Chandler	Republican	Riley	Farmer	New Hampshire	Illinois
Gustavus A. Colton	Republican	Lykins	Attorney	Vermont	Illinois
L.S. Cornwell	Democrat	Johnson	Merchant	Kentucky	Missouri
Hartwin Rush Dutton	Republican	Brown	Farmer/Engineer	New York	Iowa
Stephen G. Elliott	Republican	Breckenridge	Farmer	Illinois	Iowa
William H. Fitzpatrick	Republican	Shawnee	Farmer	Kentucky	Indiana
Erastus Heath	Republican	Douglas	Farmer	New York	Delaware
James H. Jones	Republican	Linn	Farmer	Virginia	Iowa
Horatio Knowles	Republican	Bourbon	Merchant	Maine	Wisconsin
Thomas Lindsay	Republican	Anderson	Physician	Ohio	Iowa
Franklin Lombard	Democrat	Atchison	Farmer	Massachusetts	Ohio
Edward Lynde	Republican	Jefferson	Farmer	Connecticut	Ohio
William L. McMath	Democrat	Wyandotte	Attorney	Ohio	Ohio
Prince G.D. Morton	Republican	Butler	Attorney	Maine	Massachusetts
John C. Murphy	Democrat	Leavenworth	Plasterer	Ireland	Mississippi
George W. Nelson	Republican	Coffey	Physician	Ohio	Iowa
William Noel	Democrat	Atchison	Farmer	Kentucky	Missouri
Paschal S. Parks	Democrat	Leavenworth	Attorney	Indiana	Indiana
George G. Pierce	Republican	Marshall	Farmer	Connecticut	New York
William A. Rankin	Republican	Douglas	Farmer	Ohio	Illinois
Robert Reynolds	Democrat	Davis	Farmer	Illinois	Illinois
Hugh Robertson	Republican	Doniphan	Farmer	Indiana	Missouri
John Walter Scott	Republican	Allen	Physician	Pennsylvania	Indiana
O.H. Sheldon	Republican	Osage	Farmer	New York	New York
Henry Shively	Republican	Franklin	Farmer	Kentucky	Missouri
Charles Sims	Democrat	Johnson	Farmer	Virginia	Missouri
Richard Sopris	Democrat	Arapahoe	Miner	Pennsylvania	Indiana
Byron Steward	Republican	Jackson	Farmer	Ohio	Iowa
Thomas Jefferson Vanderslice	Democrat	Doniphan	Merchant	Kentucky	Kentucky
William R. Wagstaff	Democrat	Linn	Attorney	Pennsylvania	Ohio
Carey B. Whitehead	Democrat	Doniphan	Farmer	Virginia	Mississippi
Samuel Newitt Wood	Republican	Chase	Farmer	Ohio	Ohio
John Wright	Democrat	Leavenworth	Farmer	Indiana	Missouri

Sources: U.S. Bureau of the Census, *Eighth Census of the United States, 1860: Population* (Washington, D.C.: U.S. Census Office, 1860); *Kansas Territory House Journal*, 1860; *Kansas Territory House Journal*, Special Session, 1860; *Lawrence Republican*, February 23, 1860; *Freedom's Champion* (Atchison), January 14, 1860; *Weekly Leavenworth Herald*, November 5, 1859; *Kansas State Record* (Topeka), January 7, 1860; *Manhattan Express*, February 18, 1860; John S. Dawson, "The Legislature of 1868," *Kansas Historical Collections, 1907-1908* 10 (1908): 278; Daniel W. Wilder, "The Story of Kansas," *Kansas Historical Collections, 1897-1900* 6 (1900): 337; David E. Ballard, "The First State Legislature," *Kansas Historical Collections, 1907-1908* 10 (1908): 239, 242, 245, 250-52; William G. Cutler and Alfred T. Andreas, *History of the State of Kansas*, 2 vols. (Chicago: A.T. Andreas, 1883), 333, 343, 583, 882-83, 885-86, 896. The *Lawrence Republican* reported that Charles Sims was a "Douglas" Democrat, and L.S. Cornwell was a Whig instead of a Democrat. See *Lawrence Republican*, February 23, 1860. Some sources list Morton's name as Prince D.G. Morton.

of the thirty-nine house members and nine of the thirteen council members. Their free-state backgrounds appear even more robust when considering that twenty-nine of the thirty-nine house members and ten of the thirteen council members had lived in free states before moving to Kansas (Tables 1 and 2). Although nativity or former residence did not necessarily determine how a legislator might vote, the backgrounds of the legislature were preponderantly free-state.

Republican representative Samuel Newitt Wood, who had met his wife, Margaret W. Lyon, while helping “run-away slaves” in Ohio, introduced the first antislavery bill of the special session. The bill, introduced on January 21, 1860, was numbered H.B. 6 and entitled “An Act to Prohibit Slavery and Involuntary Servitude in Kansas.” Referring to Republican support and Democratic opposition, Leavenworth’s *Daily Times* stated that as soon as the bill “was taken up . . . a very spicy discussion commenced.” Topeka’s *Kansas State Record* supported the effort to eradicate slavery, stating, “To rid the Territory, of this curse, we consider one of the first and most urgent duties of the Legislature.” Pointing to the existence of “a number of slaves” held in Douglas County, despite its reputation among “pro slaveryites” [*sic*] as the “hot bed of Kansas abolitionism,” the antislavery *Lawrence Republican* demanded the passage of an antislavery law.¹⁶

During the house debate over H.B. 6, Representative Prince G. D. Morton, a Maine native, rallied Republican support for the bill by stating there “was a necessity” for an antislavery law because “slavery did exist here.” Morton added that he had “seen persons sell . . . their slaves.” Republican representative Erastus Heath, a native New Yorker and immigrant from the slave state of Delaware, added that any debate over H.B. 6 was unnecessary since the slavery question already “had been discussed in Kansas for about five years.” Heath’s statement expressed the sentiments of antislavery representatives such as Republicans Wood, William A. Rankin, and Paul R. Brooks, who held a typical Northern view that slavery was a labor-degrading institution. The debate became particularly

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heated when Morton accused “persons in this House” of owning slaves. In response, Democrat John C. Murphy, a native of Ireland and former resident of Mississippi, proudly proclaimed, “yes, I own four.”¹⁷

At first, with the exception of Richard Sopris, most house Democrats opposed H.B. 6. Only three Democrats, Robert Reynolds, Carey B. Whitehead, and Murphy, opposed the bill primarily because of their proslavery sentiments. Reynolds, a native of Illinois, had been a proslavery probate judge in Kansas, and Whitehead and Murphy were slaveholders. Whitehead, who had lived in Mississippi, also announced that he was “a pro-slavery man.” Most of the arguments against the bill, however, came from Democrats with less interest in protecting slavery than in defending their belief that Kansas could not outlaw slavery while still a territory. William L. McMath expressed this position by stating he opposed the bill because the legislature had “no jurisdiction” in the matter. Thomas A. Blake, a native North Carolinian and “the most prominent Democrat in the House,” referred to the bill as a “farce.” Blake added, “Slavery ar [*sic*] here; it ar [*sic*] here by the Constitution of the United States; it ar [*sic*] here by

16. *Kansas Territory House Journal*, Special Session, 1860, 50; David E. Ballard, “The First State Legislature,” *Kansas Historical Collections*, 1907–1908 10 (1908): 242; *Daily Times*, February 2, 1860; *Kansas State Record*, January 21, 1860; *Lawrence Republican*, February 2, 1860.

17. Cutler and Andreas, *History of the State of Kansas*, 333, 343, 583; SenGupta, *For God and Mammon*, 11–12; *Freedom’s Champion*, February 11, 1860; *Daily Times*, February 4, 1860.

TABLE 3

1860 KANSAS TERRITORY HOUSE MEMBERS (SPECIAL SESSION)

Vote on H.B. 6 (February 2, 1860)—Antislavery Bill; Vote on Whether to Indefinitely Postpone H.B. 46 (February 10, 1860)—“An Act to Prohibit Free Negroes from Coming Into the Territory”; Vote on Whether to Override the Governor’s Veto of H.B. 6 (February 21, 1860).

<u>NAME</u>	<u>POLITICAL PARTY</u>	<u>RESIDENT COUNTY</u>	<u>H.B. 6</u>	<u>POSTPONE H.B. 46</u>	<u>OVERRIDE</u>
<u>VETO</u>					
Amasa Bartlett	Republican	Pottawatomie	Yes	No	Yes
Thomas A. Blake	Democrat	Jefferson	Yes	Not Voting	Not Voting
Paul R. Brooks	Republican	Douglas	Yes	Yes	Yes
Frederick Brown	Democrat	Leavenworth	Yes	No	Yes
Samuel R. Canniff	Republican	Shawnee	Yes	Yes	Yes
Martin Cave	Republican	Nemaha	Yes	No	Yes
Daniel L. Chandler	Republican	Riley	Yes	Yes	Yes
Gustavus A. Colton	Republican	Lykins	Not Voting	Not Voting	Yes
L.S. Cornwell	Democrat	Johnson	Yes	Yes	Yes
Hartwin Rush Dutton	Republican	Brown	Yes	No	Yes
Stephen G. Elliott	Republican	Breckenridge	Not Voting	Not Voting	Yes
William H. Fitzpatrick	Republican	Shawnee	Yes	Yes	Yes
Erastus Heath	Republican	Douglas	Yes	No	Yes
James H. Jones	Republican	Linn	Yes	No	Yes
Horatio Knowles	Republican	Bourbon	Yes	No	Yes
Thomas Lindsay	Republican	Anderson	Yes	Yes	Yes
Franklin Lombard	Democrat	Atchison	No	Yes	No
Edward Lynde	Republican	Jefferson	Yes	No	Yes
William L. McMath	Democrat	Wyandotte	No	No	No
Prince G.D. Morton	Republican	Butler	Yes	No	Yes
John C. Murphy	Democrat	Leavenworth	Yes	Not Voting	No
George W. Nelson	Republican	Coffey	Yes	Yes	Yes
William Noel	Democrat	Atchison	No	Not Voting	No
Paschal S. Parks	Democrat	Leavenworth	Yes	Not Voting	Yes
George G. Pierce	Republican	Marshall	Yes	Yes	Yes
William A. Rankin	Republican	Douglas	Yes	Yes	Yes
Robert Reynolds	Democrat	Davis	No	Not Voting	No
Hugh Robertson	Republican	Doniphan	Yes	Yes	Yes
John Walter Scott	Republican	Allen	Yes	Yes	Yes
O.H. Sheldon	Republican	Osage	Not Voting	Yes	Yes
Henry Shively	Republican	Franklin	Yes	Yes	Yes
Charles Sims	Democrat	Johnson	Yes	No	Yes
Richard Sopris	Democrat	Arapahoe	Yes	Yes	Yes
Byron Steward	Republican	Jackson	Yes	No	Yes
Thomas Jefferson Vanderslice	Democrat	Doniphan	No	No	No
William R. Wagstaff	Democrat	Linn	Yes	No	Yes
Carey B. Whitehead	Democrat	Doniphan	No	Yes	No
Samuel Newitt Wood	Republican	Chase	Yes	No	Yes
John Wright	Democrat	Leavenworth	Yes	Not Voting	Not Voting

(cont'd.)

TABLE 3 CONT'D.

SUMMARY OF THE VOTE ON H.B. 6

<u>POLITICAL PARTY</u>	<u>FOR H.B. 6</u>	<u>AGAINST H.B. 6</u>	<u>NOT VOTING</u>	<u>TOTAL</u>
Democrat	9	6	0	15
Republican	21	0	3	24
TOTALS	30	6	3	39

SUMMARY OF THE VOTE ON WHETHER TO INDEFINITELY POSTPONE H.B. 46

<u>POLITICAL PARTY</u>	<u>FOR POSTPONING H.B. 46</u>	<u>AGAINST POSTPONING H.B. 46</u>	<u>NOT VOTING</u>	<u>TOTAL</u>
Democrat	4	5	6	15
Republican	12	10	2	24
TOTALS	16	15	8	39

SUMMARY OF THE VOTE ON WHETHER TO OVERRIDE THE GOVERNOR'S VETO OF H.B. 6

<u>Political Party</u>	<u>Override Veto</u>	<u>Uphold Veto</u>	<u>Not Voting</u>	<u>Total</u>
Democrat	6	7	2	15
Republican	24	0	0	24
TOTALS	30	7	2	39

*Voting records based on *Kansas Territory House Journal*, Special Session, 1860.

the Supreme Court; it ar [sic] here by a power higher than us. I shall vote agin [sic] the Bill just for them reasons thar [sic]." The *Manhattan Express* reported that Blake's speech was met with "Applause in the lobby" of the house chambers, showing a measure of public support for his opposition to the bill. Several Democrats, including most notably William R. Wagstaff and Paschal S. Parks, also were hesitant to support H.B. 6 because it did not give slaveholders any time to remove their slaves from Kansas. In particular, Parks, formerly of Indiana, failed in an attempt to amend the bill to "give a little time to those who hold slaves here to get them away." Before the final vote was taken, several Democrats "made speeches against the Bill," but not wanting to appear proslavery most of them voted for the legislation. Even Murphy, a slaveholder, voted for the bill hoping that it would pass so the courts would rule it unconstitutional. On February 2, 1860, H.B. 6 passed in the house by a vote of thirty to six (Table 3).¹⁸

18. *Kansas Territory House Journal*, Special Session, 1860, 99, 148, 159-61, 190; William Elsey Connelley, "The Lane Trail," *Kansas Historical Collections*, 1913-1914 13 (1915): 279; Cory, "Slavery in Kansas," 241; *Kansas State Record*, February 4, 11, 1860; *Daily Times*, February 2, 3, 4, 1860; *Manhattan Express*, February 4, 18, 1860; *Freedom's Champion*, February 11, 1860; *Lawrence Republican*, February 9, 1860; *Elwood Free Press*, February 11, 1860; *Kansas National Democrat*, February 9, 1860.

While H.B. 6 was being debated the house also considered H.B. 46, which was introduced on January 23, 1860, by Democrat representative Blake and entitled "An Act to Prohibit Free Negroes from Coming into this Territory." At a glance, Blake's proposal resembled the actions of several Northern states that had passed legislation prohibiting free black settlement. However, H.B. 46 was primarily designed to prevent free black settlers from "getting on an equality with the whites." Dissatisfied that the bill did not also prohibit slaves from entering the territory, Representative Wood, an ardent antislavery Republican, offered a substitute that excluded all blacks, "bond or free." The substitute failed, however, and H.B. 46 was lost when a motion to "indefinitely postpone the whole subject," introduced by Representative Sopris, an antislavery Democrat, narrowly passed on February 10, 1860, by a vote of sixteen to fifteen (Table 3).¹⁹

When compared with the vote on the antislavery bill, the disparate voting record on H.B. 46 reflected the racial attitudes of many Democrats and Republicans in Kansas

19. *Kansas Territory House Journal*, Special Session, 1860, 70, 99, 275; *Atchison Union*, January 28, 1860; *Kansas Press* (Council Grove), February 20, 1860; Eric Foner, "Racial Attitudes of the New York Free Soilers," *New York History* 46 (October 1965): 311.



The slavery issue divided Northern and Southern Democrats, but both camps included some members opposed to racial equality.

and the nation. Although the slavery issue generally divided Northern and Southern Democrats, both camps included some members opposed to racial equality. Also, although typically antislavery, some Republicans opposed the full integration of blacks in society.²⁰ These heterogeneous racial attitudes were mirrored in the legislature. For example, Representative Whitehead, a proslavery Democrat, showed support both for slavery and free black immigration by opposing the antislavery bill and H.B. 46. On the other hand, some antislavery representatives supported H.B. 46. Displeased with the failure to pass H.B. 46, some antislavery house members even supported a resolution, introduced on February 15, 1860, by Republican representative Wood, calling slavery “evil” and stating that it was “against the interest of the people of Kansas, to encourage the settlement of free negroes in this Territory.” By a vote of twenty-two to twelve, however, the resolution was tabled.²¹

20. Kenneth M. Stampp, *America in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990), 106, 133; Richard H. Sewell, *Ballots for Freedom: Antislavery Politics in the United States, 1837–1860* (New York: Oxford University Press, 1976), 321.

21. *Kansas Territory House Journal*, Special Session, 1860, 370–71.

While the house debated slavery, the council considered its own antislavery bill. On January 23, 1860, Senator Thomas, a Pennsylvania native, introduced C.B. 27, entitled “An Act to Prohibit Slavery and Involuntary Servitude in the Territory of Kansas.” However, interest in the council bill faded following the passage of H.B. 6 in the house. On February 8, 1860, Republican senator Peter Percival Elder, a Maine native, convinced the council that C.B. 27 should be dropped in order to consider H.B. 6.²²

The initial mixed reception of H.B. 6 in the council, which included solid Democratic opposition and some Republican hesitation, suggested that the bill might not easily pass. Early in the debate Democrat senator George Monroe Beebe, a native New Yorker, “made every move in his power . . . to retard its passage.” Beebe also introduced an amendment to the bill, stating “The right of property in slaves now legally exists in this Territory.” Since, according to Beebe, there currently was no law protecting the “between one-fourth and one-half a million dollars of property in slaves” in Kansas, he hoped to convince the council of the importance of acknowledging the reality of slavery in Kansas before debating its demise. However, opposing this notion the Republican majority carried a vote of nine to four against the amendment. By the same majority, on February 11, 1860, the council passed H.B. 6 (Table 4). The four senators opposing the bill were all Democrats. Senators Beebe and J. Marion Christison, an immigrant from Missouri, opposed the bill on the grounds that Kansas Territory could not outlaw slavery. Senator Charles G. Keeler, a native New Yorker, opposed the bill on the grounds that it would cause “injury” to the Shawnee Indians who were the “largest slave owners in the Territory.” Warning that “Their slaves will have to be paid for if set free,” Keeler declared he would work toward the passage of a “bill providing that the Territory shall pay them for their slaves liberated by this law.” Senator William G. Mathias, a “Southern gentleman” who had immigrated from Maryland with former proslavery chief justice Samuel D. Lecompte, voted against H.B. 6 because he still favored the proslavery law contained in the “old Bogus Statutes.”²³

22. *Kansas Territory Council Journal*, Special Session, 1860, 42, 58, 175, 199, 220–21, 223.

23. *Ibid.*, 226, 247–48, 253–55; *Kansas Chief* (White Cloud), March 1, 8, 1860; *Elwood Free Press*, March 10, 1860; *Daily Times*, February 13, 1860; *Lawrence Republican*, February 16, 1860; *Manhattan Express*, February 25, 1860; *Daily Leavenworth Herald*, January 27, 1861; Socolofsky, *Kansas Gov-*

TABLE 4

1860 Kansas Territory Council Members (Special Session); Vote on H.B. 6 - "Antislavery Bill" (February 11, 1860); Vote on Whether to Override the Governor's Veto of H.B. 6 (February 23, 1860).

<u>NAME</u>	<u>POLITICAL PARTY</u>	<u>RESIDENT COUNTY</u>	<u>H.B. 6</u>	<u>OVERRIDE VETO</u>
George Monroe Beebe	Democrat	Doniphan	No	No
Milton R. Benton	Republican	Atchison	Yes	Yes
J. Marion Christison	Democrat	Jefferson	No	No
Peter Percival Elder	Republican	Franklin	Yes	Yes
James M. Hendry	Republican	Douglas	Yes	Yes
Charles G. Keeler	Democrat	Johnson	No	No
John C. Lambdin	Republican	Butler	Yes	Yes
William G. Mathias	Democrat	Leavenworth	No	No
Luther R. Palmer	Republican	Pottawatomie	Yes	Yes
Watson Stewart	Republican	Allen	Yes	Yes
Chester Thomas	Republican	Shawnee	Yes	Yes
William W. Updegraff	Republican	Lykins	Yes	Yes
J.B. Woodward	Republican	Riley	Yes	Yes

SUMMARY OF THE VOTE ON H.B. 6

<u>POLITICAL PARTY</u>	<u>FOR H.B. 6</u>	<u>AGAINST H.B. 6</u>	<u>TOTAL</u>
Democrat	0	4	4
Republican	9	0	9
TOTALS	9	4	13

SUMMARY OF THE VOTE ON WHETHER TO OVERRIDE THE GOVERNOR'S VETO OF H.B. 6

<u>POLITICAL PARTY</u>	<u>OVERRIDE VETO</u>	<u>UPHOLD VETO</u>	<u>TOTAL</u>
Democrat	0	4	4
Republican	9	0	9
TOTALS	9	4	13

*Voting records based on *Kansas Territory Council Journal*, Special Session, 1860.

Two weeks before the passage of H.B. 6 in the council, on January 28, 1860, Senator Keeler introduced C.B. 59 entitled "An Act to Authorize the Owners of Slaves to Dispose of the Same." Briefly stated, C.B. 59 was designed to allow slaveholders time to remove their slaves before the institution was outlawed. However, the bill received support only from the Democrats and Republican senator Luther R. Palmer. The Republican majority successfully blocked efforts to call a final vote on C.B. 59, and the bill died with the end of the legislative session.²⁴

From the time H.B. 6 was introduced until it passed, its momentum dominated any other legislative discussion regarding the slavery issue. However, H.B. 6 would only be made law if Governor Medary supported it. Since Medary, a Northern Democrat, supported the view that Kansas could not outlaw slavery while a territory, the *Manhattan Express* predicted, "Gov. Medary will undoubtedly veto the Bill." Medary fulfilled this prediction, vetoing the bill on February 20, 1860. Rejecting the bill on constitutional grounds, Medary sent a sixteen-page message to the legislature outlining his reasons for the veto.²⁵

ernors, 75; SenGupta, *For God and Mammon*, 143–44; H. Miles Moore, *Early History of Leavenworth City and County* (Leavenworth: Sam'l Dodsworth Book Co., 1906), 258.

24. *Kansas Territory Council Journal*, Special Session, 1860, 106, 224; *Kansas State Record*, February 4, 1860; *Elwood Free Press*, February 11, 1860.

25. *Kansas Territory House Journal*, Special Session, 1860, 453–68; *Manhattan Express*, February 18, 1860.

The Republican press immediately took issue with Medary's veto message, criticizing it as unnecessarily long and contrary to the wishes of most Kansans. Sam Wood's *Kansas Press* of Council Grove refused to print the message because it was "opposed to light literature." The *Lawrence Republican* referred to the veto message as "hidden under a mass of loose and irrelevant verbiage." The Lawrence paper added, "It could all have been condensed into this one sentence: Gentlemen, I veto your bill prohibiting slavery in Kansas, because the Constitution of the United States establishes and protects it here." The Atchison *Freedom's Champion* suggested that Medary's veto stood in the face of "nine-tenths of the people of Kansas, who demanded the passage of a prohibitory bill." On the other hand, the Democratic press generally supported the veto. The *Weekly Leavenworth Herald* praised it as necessary for preventing the territory from illegally outlawing slavery. The *Topeka Tribune* argued that the "Republican journals" should not act so surprised that the governor vetoed a bill that already had been "a thousand times declared unconstitutional." The *Kansas National Democrat* of Leocompton predicted that the veto would stand, adding that this would be the "third Abolition Legislature" to fail to pass an antislavery law. However, some observers, such as the *Dallas (Texas) Herald*, accurately predicted the veto would be overturned.²⁶

The public debate ended when the legislature took up the question of whether to override the veto, which required a two-thirds majority vote in both the house and council. With most house members sustaining their position on H.B. 6, the house easily overrode the veto on February 21, 1860, by a vote of thirty to seven (Table 3). Notable exceptions include the actions of three Democratic representatives. Apparently not wanting to oppose their Democratic governor, John Wright, an immigrant from Missouri, and Blake abstained by not voting on the veto, and Murphy, a slaveholding Democrat, decided to show his true opposition to the antislavery bill by voting to uphold the veto. The council also considered the governor's objection to H.B. 6. The two-thirds rule meant that at least

26. *Emporia News*, March 10, 1860; *Kansas State Record*, February 25, 1860; *Kansas Press*, March 19, 1860; *Lawrence Republican*, February 23, 1860; *Freedom's Champion*, March 3, 1860; *Weekly Leavenworth Herald*, March 3, 1860; *Topeka Tribune*, March 3, 1860; *Kansas National Democrat*, March 1, 1860; *Dallas (Tex.) Herald*, March 7, 1860; Cutler and Andreas, *History of the State of Kansas*, 804.

nine council votes were necessary to overturn the veto. As a result, the earlier Republican success in replacing Democrat Marion with Republican Benton played a crucial role. On February 23, 1860, with only Republican support, the council barely overrode the veto by a vote of nine to four (Table 4).²⁷ In overriding the veto, effective February 23, 1860, the legislature outlawed slavery. In its totality, the law read as follows:

Section 1. That Slavery or involuntary servitude, except for the punishment of crime, whereof the party shall have been duly convicted, is and shall be forever prohibited in this Territory.

Section 2. This act shall take effect and be in force from and after its passage.²⁸

The passage of the law, however, did not spell the end of opposition to it. This opposition included a proposed congressional bill, introduced on February 23, 1860, by Mississippi Democratic senator Albert Gallatin Brown entitled "An Act to Punish Offenses Against Slave Property in the Territory of Kansas." The bill remained under consideration until June 11, 1860, when the U.S. Senate accepted the Committee on Territories' recommendation to drop the measure.²⁹ Opposition in Kansas also surfaced. The *Kansas National Democrat*, "the most ultra-proslavery paper in Kansas," opposed the antislavery statute and pointed out that the legislature had "not provided any penalty for a violation of their law." As a result, critics of the law proclaimed that it was superfluous and would not "bring about any change." Believing that the law would fail, Representative Blake warned, "You may pass law upon law, and you can't never enforce your law." Representative Wagstaff, who had supported the bill, recognized the weakness of the statute by suggesting that slavery existed "because it was permitted by society."³⁰

Some antislavery proponents believed the codification of H.B. 6, coupled with the passage of the antislavery

27. *Kansas Territory House Journal*, Special Session, 1860, 558–59; *Kansas Territory Council Journal*, Special Session, 1860, 511; *Rules for the Government of the Legislative Assembly of the Territory of Kansas*, 41.

28. "An Act to Prohibit Slavery in Kansas," *Kansas Territory Laws* (1860), ch. 111.

29. Albert Gallatin Brown, *An Act to Punish Offenses Against Slave Property in the Territory of Kansas*, 36th Cong., 1st sess., February 23, 1860, S. Rept. 203; *Congressional Globe*, 36th Cong., 1st sess., 1860, 861, 2744.

30. *Kansas National Democrat*, February 9, September 13, 1860; *Manhattan Express*, February 18, 1860; *Emporia News*, January 19, 1861; *Freedom's Champion*, January 26, 1861; *Daily Times*, February 4, 1860.

Wyandotte Constitution in October 1859, meant the end of slavery in Kansas. Even though the Wyandotte Constitution would not be in force until statehood, these proponents believed the antislavery law would propel the territory into early free-state status. Reflecting this belief the Leavenworth *Daily Times* proclaimed, "So this is now a free Territory by virtue of positive law."³¹ As will be seen, however, the passage of this law did not end slavery in Kansas.

To understand the scope of the failure of this law to eliminate slavery, one should first consider the extent to which slavery survived under it. If referring only to the 1860 U.S. Census final report, which was compiled from the original census enumeration taken during the summer of 1860, it would appear that the law had been largely successful. This final report concluded that only two slaves resided in the territory.³² When consulting the Census Office's original enumeration schedules, however, it becomes evident that this final census report was in error.

The original census enumeration records identify thirteen slaves being held in Kansas during the spring and summer of 1860. This includes two Anderson County slaves, seven slaves in Doniphan County, two in Jefferson County, and one each in Leavenworth and Arapahoe Counties.³³ Compelling evidence indicates that more than these thirteen slaves were held in Kansas following the passage of the antislavery law.

In 1860 Kansas census enumerators were given "free schedules" for use in recording the free population, but no

Representative Blake warned, "You may pass law upon law, and you can't never enforce your law."



"slave schedules." Furthermore, enumerators were instructed by the census manual to record only free persons on the "free schedule." Reflecting the Census Office's failure to plan for a slave census in Kansas, the specific questions enumerators would be asking residents, which were published by the *Kansas Press*, did not include any questions regarding slaves.³⁴ If residents were not asked about slavery and enumerators given no official means to record slaves, problems in accurately recording the slave population could be expected.

In an attempt to follow the census manual instructions, enumerators appear to have employed three methods for dealing with any slaves they encountered. First, a few enumerators ignored the census manual instructions by listing slaves on the free schedule. Second, some census takers appear either to have disregarded the presence of slaves or, perhaps, did not have the slaves reported to them. For example, James H. Barlow, a Paris, Kansas, attorney and farmer, is recorded as owning "several slaves" on his Linn County farm until the Civil War. However, the 1860 census record shows Barlow, and his wife and son, as living on a

31. *Annual Report of the American Anti-Slavery Society, By the Executive Committee, For the Year Ending May 1, 1860* (New York: American Anti-Slavery Society, 1861), 6-7; *Daily Times*, February 25, 1860.

32. Joseph C. G. Kennedy, *Population of the United States in 1860: Compiled from the Original Returns of the Eighth Census* (Washington, D.C.: Government Printing Office, 1864), 160. Kennedy's report of only two slaves in Kansas was referenced by some early Kansas historians to support an abolitionist view that, by 1860, slavery was practically nonexistent in the territory. Some early accounts even seemed to apologize for the report of as many as two slaves, by suggesting that they probably were considered by their owners as more family members than slaves. For example, see R. G. Elliott, "The Grasshopper Falls Convention and the Legislature of 1857," *Kansas Historical Collections, 1907-1908* 10 (1908): 184.

33. U.S. Bureau of the Census, *Eighth Census of the United States, 1860: Population*, Kansas Territory (hereafter cited as *1860 Kansas Census*), vol. 7 (Washington, D.C.: U.S. Census Office, 1860), Anderson County, 47; *ibid.*, vol. 1, Doniphan County, 160; *ibid.*, vol. 5, Jefferson County, 7; *ibid.*, vol. 10, Leavenworth County, 181; *ibid.*, vol. 11, Arapahoe County, 466; U.S. Bureau of the Census, *Eighth Census of the United States, 1860: Industries, Mortality and Social Statistics*, Kansas Territory, vol. 12 (Washington, D.C.: U.S. Census Office, 1860), 3, 5.

34. U.S. Census Office, *Eighth Census of the United States, 1860: Instructions to Marshals* (Washington, D.C.: Public Printer, 1860), 8, 12-20; *Kansas Press*, June 11, 1860.



The casual law enforcement attitude regarding the antislavery statute must have reassured slaveowners.

large Linn County farm, without any slaves.³⁵ Additionally, Charles E. Cory reported that a Bourbon County slave named Mary Davis was held at Fort Scott, by an unnamed family, from early in the territorial period until being sold when the Civil War began in 1861. However, the 1860 Bourbon County census does not record the presence of Mary Davis. The 1860 census also fails to report that John Mathews, who settled in present Labette County before territorial status, owned a slave until his death in 1861.³⁶ Third, some enumerators appear to have recorded slaves as black individuals living in white households, but with no occupation or family relationship indicated. For example, in July 1860 an enumerator recorded one black female named America, with no occupation or relationship, as living in the household of Numeris Humber, of Easton, Leavenworth County. Because a November 5, 1860, Leavenworth *Daily Times* article identified Humber as “one of the largest slaveholders in the country,” it seems likely that America was a slave.³⁷ Similarly, Benjamin Brantley, who

resided near Fort Scott, is recorded as being a slaveholder until “he left the territory, and his holdings were confiscated.” The August 1860 enumeration of the Brantley household includes a black woman named Penny, who is listed without any occupation or family relationship. It seems reasonable to conclude that Penny was a slave.³⁸

Evidence of slaves being brought into Kansas Territory following the passage of the antislavery law also can be found. Eliza Whitmire, a former slave in Indian Territory, recalled that her enslaved parents were removed from Indian Territory to Kansas by their owner, George Sanders, just before the Civil War began in 1861. Sanders settled at Lawrence with several slaves, including Whitmire’s mother, Jennie Sanders, and father, whose name is unknown. Although it is unclear how long these blacks were held as slaves, Whitmire claimed her parents remained in bondage at Lawrence “until the war was over, and the slaves were set free.”³⁹ Also, on February 6, 1860, a settlement was ordered by the District Court at Leavenworth against S. Nolen Simpson and two other defendants, resulting in two auctions. The first auction, which was described by the *Kansas Press* on March 12, 1860, reported that a “Slave Girl was sold a few days since in Leavenworth, by the Sheriff of that county. She was levied upon as the property of S. N. Simpson, of Lawrence.” The report stated that “a judgement had been obtained against Simpson in Leavenworth county for \$4000.” Attempting to recover part of the debt, the sheriff, Alexander Repine, had the woman seized and transported to Leavenworth from Missouri, where Simpson, who was away on a trip to the East, had left her. Once in his custody, Repine sold the woman in Leavenworth for one thousand dollars. Although she was not being held in the territory at the time, the woman was brought to Leavenworth and publicly sold by a Kansas law enforcement officer following the passage of the antislavery law. The second sale occurred at Lawrence on March 15, 1860, when Douglas County Sheriff Samuel Walker auctioned some

35. “Some of the Lost Towns of Kansas,” *Kansas Historical Collections, 1911–1912* 12 (1912): 430; *1860 Kansas Census*, vol. 7, Linn County, 139.

36. Cory, “Slavery in Kansas,” 236; Nelson Case, *History of Labette County, Kansas, From the First Settlement to the Close of 1892* (Topeka: Crane and Co., 1893), 21–23, 25.

37. *1860 Kansas Census*, vol. 10, Leavenworth County, 201; *Daily Times*, November 5, 1860. Apparently either the census enumerator missed recording some slaves owned by Humber, or Humber acquired additional slaves sometime after the census was taken.

38. *1860 Kansas Census*, vol. 2, Bourbon County, 145; T.F. Robley, *History of Bourbon County, Kansas, To the Close of 1865* (Fort Scott, Kans.: T. F. Robley, 1894), 59–60; Cory, “Slavery in Kansas,” 238.

39. Eliza Whitmire, interview by James R. Carselowey, Vinita, Oklahoma, 1935, in *Indian–Pioneer History Collection*, ed. Grant Foreman (Oklahoma City: Oklahoma Historical Society, 1978), 75: 252; Eliza Whitmire, Freedmen Census Card no. 902, *The Final Rolls of the Citizens and Freedmen of the Five Civilized Tribes in Indian Territory, 1902–1906*, M1186, roll 25, National Archives, Washington, D.C.

Lawrence real estate owned by Simpson and the other two defendants.⁴⁰

The casual law enforcement attitude regarding the antislavery statute must have reassured slaveowners. The case of Carey B. Whitehead, a member of the territorial legislature and resident of Washington Township, Doniphan County, serves as a clear example of a slaveholders' lack of concern over the law. As a "joke," during an election in November 1860, Whitehead tried to get Wathena election officials to accept a ballot from his slave named Orange. However, the *Elwood Free Press* reported that the "board of inspectors" failed to see the humor and rejected the ballot. Whitehead showed no concern that the "joke" might draw official attention to his violation of the law. In fact, the *Elwood* paper ignored the law when reporting that Whitehead, as a slaveholder, feared only the "abolitionists, who break through and steal chattles."⁴¹

The case of Horace N. Haley not only serves as another example of slaveholding after the antislavery law went into effect, it became the banner legal case showing that the law was unenforceable. In 1860 Haley, a resident of Kickapoo Township, Leavenworth County, brought suit against F. R. Foard to recover a runaway slave named Fanny. Haley's suit claimed that Fanny had "left his custody some time ago, and went to live at the house of F. R. Foard. Haley petitioned to recover possession of the 'property,' and Foard demurred, on the ground that Fanny was not a slave" under the antislavery law. Haley's legal counsel included two well-known proslavery Leavenworth attor-

neys, former chief justice Samuel D. Lecompte and Senator William G. Mathias. When the case went to court in December 1860, Judge John Pettit, chief justice of Kansas Territory, ruled in the District Court at Leavenworth that Fanny had to be returned to Haley on the grounds that "the law prohibiting slavery in Kansas was unconstitutional."⁴²

Judge Pettit's ruling resulted in a public debate over the statute that was reminiscent of the battle over the bill when it was before the legislature in early 1860. The *Atchison Freedom's Champion* complained that, in "testing the Constitutionality of the bill prohibiting Slavery in Kansas passed by the Legislature last winter," Judge Pettit had effectively ruled that slavery was legal despite the law. The *Wyandotte Commercial Gazette* reported that some Kansans interpreted the court ruling as having "sustained" William L. McMath's objections to the antislavery law when it was a house bill. The *Wyandotte* paper added that McMath still opposed the law and had "resurrected his famous speech of last winter in the Legislature on this bill."⁴³

Although the ruling was controversial, Judge Pettit's decision could not have been a surprise, since the press had warned that *Dred Scott* threatened the antislavery law when it was still a house bill. As early as January 1860 Leavenworth's *Daily Times* reported that slavery proponents had abandoned "Squatter Sovereignty" in favor of *Dred Scott*, which would be used to find that "Kansas shall not have the right to legislate slavery out." In August 1860

40. *Kansas Press*, March 12, 1860; *Lawrence Republican*, March 1, 1860. The *Weekly Leavenworth Herald* reported that Alexander Repine, a native of Pennsylvania, Democrat, and "old resident of this city," was elected Leavenworth County sheriff on November 8, 1859. He served two consecutive terms as sheriff of Leavenworth County. See *Weekly Leavenworth Herald*, November 5, 12, 1859; *Leavenworth City Directory and Business Mirror, for 1860-61* (Leavenworth: James Sutherland, 1860), 131, 192; *Leavenworth City Directory and Business Mirror, for 1862-63* (Leavenworth: Buckingham and Hamilton, 1862), 100, 156; Cutler and Andreas, *History of the State of Kansas*, 457. Cutler and Andreas accurately report that Repine served two terms as sheriff but incorrectly report that he was first elected sheriff in 1860.

41. *Elwood Free Press*, November 17, 1860; *1860 Kansas Census*, vol. 1, Doniphan County, 84. Carey B. Whitehead and his family were enumerated by the census taker on July 23, 1860. Orange was not listed in the Whitehead household. It is unknown if the census enumerator failed to record Orange, or if Whitehead had purchased Orange sometime between July and November 1860.

42. *Daily Times*, January 1, 1861; *Commercial Gazette* (Wyandotte), January 5, 1861; *Freedom's Champion*, January 5, 1861; *Kansas Territory Laws* (1860), ch. 78; *1860 Kansas Census*, vol. 10, Leavenworth County, 259. The court record regarding *Haley v Foard* appears lost, making it difficult to date the case. Based on a story that ran in Leavenworth's *Daily Times* on December 10, 1860, entitled "Another 'Dred Scott' Decision Coming," *Haley v Foard* appears to have been argued in court in early December 1860, but Judge Pettit did not render an immediate decision in the case. Some newspapers, such as the *Emporia News*, suggest that Judge Pettit rendered his decision on January 4, 1861. However, when tracing all of the press reports back to their original source, it becomes clear that the *Daily Times* was the first paper to break the story of Judge Pettit's decision in the case. Based on the *Daily Times* report Judge Pettit apparently rendered his decision on December 31, 1860. See *Emporia News*, January 5, 1861; *Daily Times*, December 10, 1860, January 1, 1861. On April 13, 1860, Haley was found in contempt of Judge Pettit's court. This contempt charge suggests that the proceedings surrounding *Haley v Foard* may have begun in the spring of 1860, shortly after the passage of the antislavery law. See *U.S. v Horace N. Haley (Contempt)*, First Judicial Court, Kansas Territory, B121 USDC 146, April 23, 1860, Records of the District Courts of the United States, RG21, National Archives—Central Plains Region, Kansas City, Mo.

43. *Freedom's Champion*, January 5, 1861; *Commercial Gazette*, January 5, 1861.

the Leavenworth paper reinforced this warning by publishing a letter written by Judge Pettit, in which he stated that under *Dred Scott* Kansas Territory could not legally deprive someone of their right to own a slave. As late as the winter of 1860–1861 few Kansans expected the antislavery law to be enforced since, as reported by the *Daily Times*, it “will surely be declared void by the Judiciary whenever it shall be presented in a legal form.”⁴⁴

The failure of the courts to enforce the law incensed antislavery activists. James Montgomery, a “notorious” antislavery militant in southeastern Kansas, interpreted the law as empowering his “band” of followers to free slaves on both sides of the Kansas–Missouri border. Believing that court officials would not enforce the law, in November 1860 Montgomery went so far as to threaten officials and warn that the U.S. District Court “should not convene at Fort Scott.” Adopting a more moderate interpretation, Charles R. Jennison, another famous Kansas jayhawker from Mound City, wrote to the Leavenworth *Daily Times* that he believed the statute only applied “when a slave comes to Kansas of his own will.” Under this circumstance, Jennison believed, the “Laws of Kansas” allowed citizens to help free slaves.⁴⁵ Unlike the militants, however, most antislavery Kansans were unwilling to take the law into their own hands.

The statute’s weakness, as evidenced by its lack of enforcement, resulted in an erosion of support for it among many antislavery Kansans. This was possible since, as true nationally, the typical antislavery settler was not an abolitionist. Moreover, “irrespective of their own private opinions on the subject of Slavery,” many antislavery settlers could not support militant abolitionist efforts because they “felt bound to sustain” the law as interpreted by Congress

44. *Daily Times*, January 20, August 20, December 10, 1860. The general expectation that federal judges would protect slavery in Kansas before statehood was reinforced by highly publicized cases such as *U.S. v Lewis L. Weld*, which was decided on April 23, 1860, in the District Court at Leavenworth. Although finding fault with the application of the Fugitive Slave Law in the apprehension of a Kentucky slave who had fled to Kansas Territory, Judge Pettit’s overall support of the Fugitive Slave Law in Kansas gave notice that, if given the opportunity, he would rule against the 1860 antislavery law. See James McCahon, *Reports of Cases Determined in the Supreme Court of the Territory of Kansas* (Chicago: Callaghan and Cockcroft, 1870), 185–97; *Daily Times*, April 24, 1860; *Western Journal of Commerce* (Kansas City, Mo.), May 17, 1860.

45. “Documents in Relation to Border Difficulties Accompanying the Governor’s Message,” *Missouri House Journal*, 1st sess., 1861, appendix, 5; Albert Castel, *A Frontier State at War: Kansas, 1861–1865* (Ithaca: Cornell University Press, 1958), 42; *Daily Times*, December 5, 1860.

and the courts. Lecompton’s *Kansas National Democrat* stated that a large portion of the population began to see the antislavery law as “rather unimportant.” The Lecompton paper added that many of the original supporters of the legislation now had “but little interest” in the law. By the summer of 1860 many Kansans had grown weary of the slavery controversy, concluding that “bleeding Kansas is played out—or rather, bled out” by the continuing debate. As a result, most settlers apparently acquiesced to the continuing practice of slavery as long as Kansas remained a territory.⁴⁶

Although the enforcement of the antislavery statute was largely ignored, the proslavery minority in Kansas still wanted this law repealed. Overturning the statute would do little to prop up the faltering institution, but its repeal might rejuvenate proslavery politics. In the autumn of 1860 several candidates seeking political office showed their opposition to the law by running on a proslavery platform, generally on the Democratic ticket. The existence of these proslavery candidates underscored St. Joseph’s *Weekly West*’s reference to Kansas Democrats as the “unterrified of the Territory.”⁴⁷

Proslavery candidates included James H. Barlow, a slaveholder and former proslavery probate judge, who ran in the autumn 1860 election for Linn County representative to the 1861 territorial legislature. Barlow lost the election to Republican candidate John T. Snoddy.⁴⁸ Democrat

46. *Emporia News*, June 16, 1860; *Kansas National Democrat*, September 13, 1860; *Appleton’s Companion Hand-Book of Travel to the United States and British Provinces* (London: D. Appleton and Co., 1861), 267; *Kansas Statesman* (Junction City), June 30, 1860; Henry Sherman, *Slavery in the United States of America*, 2d ed. (Hartford: Hurlburt and Pond, 1860), 165; *Neosho Valley Register* (Burlington), July 14, 1860; Keith Sutherland, “Congress and the Kansas Issue in 1860,” *Kansas Historical Quarterly* 35 (Spring 1969): 17; Henry Mayer, *All on Fire: William Lloyd Garrison and the Abolition of Slavery* (New York: St. Martin’s Press, 1998), 364.

47. *Weekly West* (St. Joseph, Mo.), April 7, 1860.

48. William Ansel Mitchell, *Linn County, Kansas: A History* (Kansas City: Campbell–Gates, 1928), 95; W. A. Mitchell, “Historic Linn,” *Kansas Historical Collections*, 1923–1925 16 (1925): 630; *La Cygne Weekly Journal*, April 19, 1895; *Mound City Report*, November 16, 1860. Some sources list Barlow’s first name as John rather than James. Also, several decades after the election the *La Cygne Weekly Journal* and William A. Mitchell reported that Barlow ran in the autumn of 1860 as the proslavery candidate for Linn County probate judge. However, the *Mound City Report* stated in 1860 that Barlow ran in the autumn of that year as the Linn County representative to the house of representatives. When compared with the 1860 Mound City newspaper account, the later reports from Mitchell and the *La Cygne* newspaper appear based on faded memories that confused Barlow’s earlier service as probate judge with his run for legislative office in the autumn of 1860.

Robert Reynolds, who opposed the antislavery law in the 1860 legislature, sought reelection as the representative from Davis and Dickinson Counties that fall. The endorsement of the *Junction City Statesman*, whose co-editor, W. W. Herbert, became a Confederate army officer, helped Reynolds win the house contest.⁴⁹

Several Leavenworth and Doniphan County Democratic candidates were particularly vocal about their opposition to the antislavery law during the 1860 campaign. This included Numeris Humber, a well-known slaveholder and candidate for Leavenworth County representative. After hearing that Humber had denounced the antislavery law and stated that he was “in favor of protecting his ‘property’ by Legislative enactment,” Paschal S. Parks warned Humber and the other Leavenworth County proslavery candidates not to challenge a law supported by “four-fifths of the people of this county.” Humber was not deterred, however, and he was elected to the 1861 territorial legislature.⁵⁰ Two Doniphan County Democratic candidates, who were former members of “the old pro-slavery guard,” also ran on a platform opposing the antislavery law. One was Charles Bleckley, candidate for Doniphan County sheriff, and the other was William D. Wood, candidate for the Doniphan County seat in the 1861 territorial council. Both men lost by narrow margins to their Republican challengers.⁵¹

The resignation of Governor Samuel Medary on December 17, 1860, once again opened the door for opposition to the antislavery law. On January 10, 1861, acting Governor George M. Beebe asked the territorial legislature to re-

49. *Junction City Statesman*, October 13, 1860; George W. Martin, “The George Smith Memorial Library,” *Kansas Historical Collections, 1913–1914* 13 (1915): 405; Connelley, “The Lane Trail,” 279; Cutler and Andreas, vol. 2, *History of the State of Kansas*, 1006, 1008; *Independent* (Oskaloosa), November 21, 1860; *Commercial Gazette*, December 1, 1860. Reynold’s son George eventually joined the Confederacy as well.

50. *Daily Times*, October 15, 29, November 5, 1860; Ballard, “The First State Legislature,” 249; *Independent*, November 21, 1860.

51. *Daily Times*, October 18, 1860; *Elwood Free Press*, October 13, November 10, 1860; *Doniphan County Dispatch* (Troy), November 8, 1860.

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peal the antislavery statute. However, as reported by the *Freedom’s Champion*, Beebe’s proslavery stance was largely unpopular in Kansas. Even the generally politically neutral *Wyandotte Commercial Gazette*, which reported that Beebe’s comments were only “refreshing to old [proslavery] residents of Kansas,” criticized his proposal.⁵² When the 1861 Kansas territorial legislature failed to act on Beebe’s request, it was clear that the law would not be repealed. Indeed, the renewed debate was even cut short. Kansas was admitted into the Union as a free state on January 29, 1861, and in the end the 1860 antislavery law served as the final chapter in the territory’s protracted and often bitter struggle with the “peculiar institution.”

52. S. Medary to Lewis Cass, December 17, 1860, vol. 2, Official Correspondence; *Kansas Territory House Journal*, 1861, 49; Socolofsky, *Kansas Governors*, 76–77; *Freedom’s Champion*, January 26, 1861; *Emporia News*, January 19, 1861; *Commercial Gazette*, January 19, 1861.