

STATE OF THE ART

Foreshadowing the Civil Rights Counter-Revolution *Congress and the Fair Housing Act of 1968*

Jeffery A. Jenkins^{1*} and Justin Peck²

¹Price School of Public Policy, University of Southern California, Los Angeles, CA, USA

²Department of Government, Wesleyan University, Middletown, CT, USA

*Corresponding author. Email: jajenkins@usc.edu

Abstract

After overseeing the adoption of two landmark civil rights proposals in 1964 and 1965, the Johnson administration and its allies in Congress sought to implement the third item of its broader agenda: a legal prohibition on racial discrimination in the sale and rental of housing. Enacting fair housing legislation, however, proved to be a vexing process. Advocates had to win support from northern White Democrats skeptical of the policy, as well as Republicans who were often (and increasingly) unreliable allies. Fair housing legislation failed in 1966 (89th Congress) but passed two years later, during the 90th Congress. We provide a legislative policy history detailing how, after three tumultuous years, Congress came to enact the fair housing provision of the Civil Rights Act of 1968. Overall, the battle to enact fair housing legislation presaged a dynamic that would take hold as the Great Society gave way to the Nixon years: once federal civil rights policies started to bear directly on the lives of White northerners, they became much harder to pass and implement. It also showcased the moment at which the Republican Party in Congress first moved to the right on civil rights and explicitly adopted a position of racial conservatism.

Keywords: Civil Rights; Fair Housing; Congress; Legislation; 1960s

Introduction

At the end of World War II, with thousands of troops returning home from Europe and the Pacific Islands, American political elites faced a dilemma. Having spent years fighting a war caused in large part by a global depression, they now confronted the very real risk of yet another significant economic downturn (Tooze 2014).¹ The combined effects of high unemployment, low economic growth, and a restive population of returning soldiers, threatened to produce dangerous political instability at home. Policymakers addressed these linked threats by encouraging home buying and new home construction. Making use of agencies created in the early years of the New Deal—like the Federal Housing Administration (FHA)—federal officials issued loans that made possible the construction of public housing within American cities, and huge numbers of single-family homes in the emerging American suburbs (Jackson 1985; Sander et al., 2018).

One feature of the federal government's broader housing program, we now know, was residential segregation by race (Rothstein 2017). Redlining, restrictive covenants, and the explicitly discriminatory practices of banks and developers, ensured that new suburbs would be reserved for White Americans. "From its inception," explains urban planner

Charles Adams, “FHA set itself up as the protector of the all-White neighborhood” (quoted in Jackson 1985, p. 214).² Housing patterns in the post-war era were primarily characterized by White families financing their escape from areas experiencing racial change. The consequences of “White flight” from America’s urban centers were dramatic. Kenneth Jackson (1985) demonstrates a clear link between income and suburbanization, finding that “in 1970, the median household income of cities was 80 percent of that in the suburbs. By 1980 it had fallen to 74 percent, and by 1983 to 72 percent” (p. 8). At the same time, public housing was increasingly “ghettoized” in American cities. By the 1960s, living conditions for Black citizens in many American cities were unbearable. Urban neglect, segregation, and White flight produced an environment ripe for unrest, and violent uprisings soon spread across the country.³

The epidemic of urban disorder revealed that America’s race problem was not confined to the South, so voting rights alone could not be a solution. Riots in the Watts neighborhood of Los Angeles, for example, took place less than one week after President Johnson signed the Voting Rights Act of 1965.⁴ To address the social and economic problems caused by residential segregation, the federal government would need to intervene in the housing market, a choice that would have a dramatic impact on property owners both North and South. Fair housing legislation would challenge the rules and practices that allowed northern and midwestern cities to segregate. National implications of this kind are particularly problematic because, as had been true since the “first civil rights era” (1861–1918), White northern support for civil rights policies held only so long as most of the rules applied to southerners alone.⁵ Indeed, per Joshua Zeitz (2018), northern Whites “instantly revolted against the Great Society when that struggle came to *their* schools, workplaces, and neighborhoods. The backlash that LBJ’s team had feared in 1964 finally seemed primed to materialize, and in 1966 it crystallized around the issue of open housing” (p. 242).⁶

We pursue two goals in this paper, following from the dynamic we have just described. First, we provide a legislative policy history detailing how Congress came to enact the fair housing provision of the Civil Rights Act of 1968. Unlike the Civil Rights Act of 1964 and the Voting Rights Act of 1965, the Johnson’s administration’s third civil rights initiative has received considerably less scholarly attention.⁷ We remedy this through an examination of congressional proceedings, individual roll-call votes, and eventual policy outcomes associated with fair housing legislation. We also pay particular attention to the pivotal role played by a small group of Republican legislators whose strategic behavior helped defeat fair housing legislation in 1966, and then helped pass a significantly weakened version two years later.

Second, we identify the politics of fair housing as an important turning point in the long history of race politics in the United States. Just as the first civil rights era stalled in the mid-1870s as Congress considered policy that would significantly impact the lives of White northerners, we argue that the “second civil rights era” (1919–1990) witnessed a similar challenge.⁸ Congress’s pursuit of legislation to make housing discrimination illegal would apply to properties in both the North and the South, which led many ostensible allies of the civil rights movement in the North to hesitate and thus threaten the entire project. While a bill did eventually pass in 1968, after three years of heated politicking, it fell far short of its sponsors’ initial aspirations. The fight over fair housing, we argue, foreshadows more than a decade of virulent battles on race-related policy that would be structured by both region and party. From the congressional perspective, momentum from this point forward now shifted back toward those seeking to block or reverse gains made in the early part of the 1960s.

To guide the analysis, we begin by detailing the first, failed effort to enact fair housing policy beginning in 1966, during the 89th Congress (1965–1966). Next, we detail its

eventual success (in a lesser form) in 1968, during the 90th Congress (1967–1968). In conclusion, we discuss how the politics of fair housing legislation follows a pattern that has long defined congressional action on civil rights policy.

Political Misjudgment: Fair Housing Legislation in the 89th Congress

Not long before the Supreme Court's ruling in *Brown v. Board of Education* (1954), which held that school segregation violated the equal protection clause of Fourteenth Amendment, a different integration struggle came to a far more ambiguous conclusion. In the early 1950s, the NAACP and local civil rights advocates in Chicago, IL sought to integrate that city's residential neighborhoods. These activists were ultimately defeated by the city's political leadership, who proved more than willing to abide violent opposition from White Chicagoans opposed to integration. Ten years later, Martin Luther King, Jr. and the Southern Christian Leadership Congress (SCLC) renewed the fight to integrate Chicago, braved a violent White backlash, and were forced to leave the city having achieved few of their aims. The problems that plagued King and his allies in Chicago demonstrate the extent to which residential integration "exposed the political and ideological limits of the civil rights era" (Hirsch 1995, p. 523).⁹

At almost the same time SCLC activists were struggling to end housing discrimination in Chicago, some members of Congress sought a federal policy outlawing racial discrimination in the sale, purchase, and rental of homes. This was not Congress's first effort to ban race-based housing discrimination. Almost one century earlier, the Republican Party included a provision in the Civil Rights Act of 1866—the first civil rights bill to ever pass Congress—formally prohibiting discrimination in the "inheritance, purchase, lease, sale, holding, or conveyance of real and personal property."¹⁰ Despite this provision, with the end of the "first civil rights era" and the rise of Jim Crow, significant housing segregation emerged in both the North and South. As late as 1930, the federal government had taken no action to regulate or monitor local housing markets and at the outset of the Great Depression, residential segregation was "firmly established" throughout the country (Sander et al., 2018, p. 84).

Civil rights activists recognized and worked to end the social and economic inequality resulting from residential segregation. When announcing his plans to begin SCLC's Chicago Freedom Movement, Martin Luther King identified his "primary objective" as the "unconditional surrender of forces dedicated to the creation and maintenance of slums and ultimately to make slums a moral and financial liability upon the whole community" (quoted in Garrow 1999, p. 457). He was echoed by northern activists like Clarence Funnye—one-time director of the Congress of Racial Equality (CORE) in New York—who sought to eliminate "the ghetto, with its attendant ills of slums, inadequate schools, high crime rates, poor police protection, inadequate services, and feeling of hopelessness on the part of the inhabitants" (quoted in Sugrue 2008, p. 413). Throughout the 1950s and 1960s, the "open housing movement" attracted supporters from across the country. The number of local branches of the National Committee Against Discrimination in Housing (NCDH)—the most significant open housing advocacy organization in the country—grew from eighteen in 1959 to more than one thousand in 1965 (Sugrue 2008).

Reflecting these trends, President Johnson used his 1966 State of the Union Address to call on Congress to "prohibit racial discrimination in the sale or rental of housing."¹¹ Three months later, in April 1966, the administration went a step further, sending Congress a broad civil rights bill aggregating various policy proposals supported by different factions of the broad Civil Rights Movement.¹² The bill sought to end discrimination in the selection of federal and state jurors (Titles I and II), to authorize the Attorney General to initiate legal action against those suspected of discriminating in public schools and

accommodations (Title III), and to provide federal protection to civil rights workers (Title V). The fair housing provision (Title IV) proved to be its most controversial section. It aimed to make illegal discrimination in the sale and rental of all new and existing housing stock. To enforce this prohibition, the plan relied on victims of discrimination to pursue damages in the court. The bill also would have empowered the Attorney General to bring so-called “pattern-of-practice” lawsuits against those suspected of repeated, systematic discrimination in the sale or rental of housing.¹³

The Democratic Party controlled both chambers in the 89th Congress. In the House of Representatives, they held a commanding 295-140 advantage; in the Senate, they retained a majority of 68-32. Northern Democrats had overseen the passage of the landmark Voting Rights Act earlier in the Congress, in August 1965, which complemented and extended the Civil Rights Act of 1964 (enacted in the 88th Congress). But the political world had changed in a short amount of time. As Gary Orfield (1975) notes: “Urban riots, the emergence of the Black power movement fragmenting civil rights organizations, and a strong movement of White public opinion against further rapid change” coalesced and stymied the Democrats (p. 87). Case in point: the number of Americans who viewed civil rights as “the most important problem” in the country, per the Gallup Poll, declined from 52% in March 1965 to 27% in September 1965 to 9% in May 1966.¹⁴ For many White Americans, the CRA of 1964 and VRA of 1965 were sufficient when it came to new federal civil rights policy, and they preferred lawmakers to move on to other matters. Amid this public opinion change, southern Democratic members, who were dead-set against any civil rights legislation, stood in opposition. To pass, a new civil rights bill would need support from sympathetic Republicans representing largely non-southern, White constituents. Given the new context, northern Democrats would need to fight hard for their votes.

Well aware of the political headwinds they faced, the administration pursued what Hugh Davis Graham (1990) describes as its “customary House-first strategy.” In the House, the bill would be sent to the Judiciary Committee led by Emmanuel Celler (D-NY), a northern liberal. In the Senate, it would have faced immediate opposition from James Eastland (D-MS), who led the Judiciary Committee. Under Celler’s leadership, the House Judiciary Committee would work to craft a bill that took into consideration the policy preferences of “dependable Republican moderates ... whose bargains tended to command bipartisan respect and hence to stick” (Graham 1990, p. 260). Once persuadable House Republicans bought in, the administration and its supporters believed, it would be easier for Senate Democrats and moderate Republicans to overcome the inevitable, southern-led filibuster.

In early May 1966 the administration began its push to win support for the bill (H.R.14765), as Attorney General Nicholas Katzenbach was dispatched to the House to give testimony on its behalf. In his opening statement, Katzenbach highlighted the fact that 100 years after Congress approved the housing provision of the 1866 Civil Rights Act, housing remained “the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay” (United States Congress 1966, p. 1067). “Segregated living is both a source and an enforcer of involuntary second-class citizenship,” he continued (United States Congress 1966, p. 1070). The constitutionality of Title IV—of which Katzenbach claimed to have “no doubts whatsoever”—was therefore guaranteed by both the Fourteenth Amendment and the Commerce Clause (United States Congress 1966, p. 1070). Importantly, Katzenbach also signaled to the committee that the Administration was open to compromise on the bill. In particular, he suggested that they would be willing to exempt particular kinds of residences from the law (United States Congress 1966, p. 1201). Compromise of this kind would prove particularly important in the weeks ahead.

Despite Katzenbach’s best effort to both defend the bill and demonstrate the administration’s flexibility, pivotal Republicans immediately condemned the housing language.

After reading the proposal, Senate Minority Leader Everett Dirksen (R-IL) told an interviewer, “if you can tell me what in interstate commerce is involved about selling a house fixed on soil, I’ll eat the chimney on the house” (Freeburg 1966). Senator Jacob Javits (R-NY), usually one of the “dependable Republican moderates” needed to push civil rights legislation through the upper chamber, also predicted that the housing provision would destroy any chance for the bill to overcome a filibuster (Albright 1966). Making matters worse, Title IV provoked sustained opposition from the National Association of Real Estate Brokers (NAREB). This organization boasted 83,000 members, many of whom deluged Congress with calls and letters declaring, “a man’s home is his castle” to dispense with however he chose (Franklin 1966a). For the bill to pass, it would need to calm those members who argued that, as written, it would deprive citizens of the basic right to choose how best to rent or sell personal property.

Celler also led the subcommittee responsible for marking up H.R. 14765, and he commenced a series of hearings for that purpose in 1966. In June, the subcommittee met in executive session for nine days to craft new language reflecting the testimony they received. The full committee then met for an additional nine sessions, during which time Charles Mathias (R-MD) crafted an amendment to Title IV intended to win over moderate Republican holdouts. According to Mathias, it was important to distinguish “the large-scale commercial activities involved in selling or renting ... from the property transactions of the individual homeowner or small landlord” (Mathias and Morris, 1999, p. 22). Stated differently, the Mathias compromise would have allowed individuals, “small landlords,” or sellers who did not use brokers/agents to discriminate against renters/buyers without fear of being punished. Fair housing “compromises” repeatedly make provision for some forms of intentional discrimination against Black citizens.

On June 27, the administration made public its willingness to accept exemptions (Herbers 1966a). Then, on the following day, the committee met in executive session to vote on a number of amendments aiming to make the bill palatable to conservatives. The Mathias exemption was one of those considered and, on the first vote in committee, it went down to defeat. The committee then took up a motion to remove the housing provision entirely. This motion failed 15-17, thereby allowing for additional negotiations (Herbers 1966b). After another night of wrangling, Mathias brought his amendment back to the committee where, on June 29, it was adopted in a vote of 21-13. On this vote, Democrats voted 17-6 in favor of Mathias’ proposal while a majority of Republicans, 4-7, opposed (*Congress and the Nation* 1969). The House Judiciary Committee also adopted, by a vote of 13-4, an amendment offered by John Conyers (D-MI), which proposed to create a Federal Fair Housing Board with enforcement powers like those of the National Labor Relations Board.¹⁵ With these two changes made, the committee then sent H.R. 14765 to the floor.

In order to force the House of Representatives to consider H.R. 14765, Celler chose to maneuver around the Rules Committee which, being led by Howard Smith (D-VA), was likely to scuttle the bill. Celler invoked the 21-day rule, which allows bills approved by a committee but bottled up without a rule to govern debate on the floor, to be brought up for consideration by a majority vote of the entire House. Celler’s strategy engendered opposition from minority leader Gerald Ford (R-MI), who condemned the move and called upon his members to oppose Celler.¹⁶ Democrat Howard Smith responded by pledging that his committee would hold hearings on the bill if only members would vote against Celler’s resolution.¹⁷

Despite bipartisan opposition, the vote to invoke the twenty-one-day rule (formally taken through a roll call vote on H.R. 910) passed, 200-180. As Table 1 illustrates, Northern Democrats, aided by just enough southern Democrats and Republicans, pushed the resolution through.¹⁸ Opposition to H.R. 910 came from the “conservative coalition,”

Table 1. Votes on Civil Rights Act of 1966, 89th Congress

Party	House		House		House		House	
	To Agree to H. Res. 910		To Adopt Mathias Amendment		To Adopt Cramer Amendment		To Adopt Whitener Amendment	
	(1)		(2)		(3)		(4)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	157	14	150	33	160	24	29	155
Southern Democrat	23	62	19	74	92	1	83	11
Republican	20	104	68	69	137	0	102	35
Total	200	180	237	176	389	25	214	201

Party	House		House		Senate		Senate	
	To Recommit H.R. 14765 w/ instructions		To Pass H.R. 14765		To Invoke Cloture on H.R. 14765		To Invoke Cloture on H.R. 14765	
	(5)		(6)		(7)		(8)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	24	160	169	17	37	4	39	3
Southern Democrat	80	12	14	79	5	17	4	17
Republican	86	50	76	61	12	21	9	21
Total	190	222	259	157	54	42	52	41

Source: *Congressional Record*, 89th Congress, 2nd Session (July 25, 1966), 16058; (August 9, 1966), 17914; (August 9, 1966): 17914; August 9, 1966): 17915.

Source: *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966), 17916; (August 9, 1966), 17916; (September 14, 1966): 22670; (September 19, 1966): 23042-43.

(1) To agree to H. Res. 910, the rule permitting consideration of H.R. 14765, the Civil Rights Act of 1966.

(2) To amend H.R. 14765, the Civil Rights Act of 1966, by permitting a real estate broker or his agent to discriminate in the sale or rental of a dwelling on express written instruction to do so from an owner otherwise exempt, provided the broker or agent did not encourage or solicit the instruction. (Mathias Amendment)

(3) To amend H.R. 14765, the Civil Rights Act of 1966, by making it a federal crime to travel in interstate commerce or to use the mails with intent to incite or commit riot, to commit an act of violence or any state or federal felony or to assist or encourage commission of such acts. (Cramer Amendment)

(4) To amend H.R. 14765, the Civil Rights Act of 1966, by requiring a complaint in writing to the attorney general from a person deprived or threatened with loss of equal protection of the laws before the attorney general filed suit to desegregate public schools or facilities. (Whitener Amendment)

(5) To recommit H.R. 14765, the Civil Rights Act of 1966, to the judiciary committee with instructions to delete Title IV, the open housing title.

(6) To pass H.R. 14765, the Civil Rights Act of 1966.

(7) To invoke cloture on Hart motion that the Senate proceed to consider H.R. 14765, the Civil Rights Act of 1966

(8) To invoke cloture on Hart motion that the Senate proceed to consider H.R. 14765, the Civil Rights Act of 1966.

as an overwhelming majority of Republicans voted with a majority of southern Democrats to try and block consideration of the measure.

This procedural victory, however, did not signal that the Judiciary Committee's version of H.R. 14765 had the votes to pass. In the days immediately afterward, the bill's supporters were forced to concede that winning a majority would likely require the fair housing provisions to be weakened (Lyons 1966a; Stewart 1966a, 1966b). These rumors, in turn, angered important supporters of the bill. Roy Wilkins, then-executive director of the NAACP, responded to rumors that further compromises would be needed by declaring that exempting any more homes from coverage would ensure "that the suburbs would remain virtually lily-white and the center city ghettos would become poorer, blacker, and more desperate than at present" (Franklin 1966b). Stokely Carmichael, then leading the Student Non-Violent Coordinating Committee, referred to the bill as "a sham" (Franklin 1966b). *The New York Times* even quoted one "high administration official's" lamentation about the dilemma faced by the administration and its allies in the House. "If we get the bill passed it's a fraud," argued this source, "but if we don't it looks like another racial insult" (Franklin 1966c). Republicans, meanwhile, refused to take a formal position. After a meeting with Roy Wilkins, Gerald Ford told reporters that "it was his disposition not to support open housing" but that "aside from the open housing section ... the bill deserves support" (*Chicago Tribune* Press Service 1966).

Mathias soon validated the rumors about changes to further weaken Title IV. On August 3, he offered a perfecting amendment to the Judiciary Committee's bill stipulating that agents/brokers would be allowed to discriminate without threat of punishment when selling/renting an already exempted home/apartment. Defending this change, Mathias claimed that his amendment "neither strengthens nor weakens the bill. It simply repeats in the active, permissive tense what is already passively implicit."¹⁹ Anticipating objections from more liberal members and from civil rights activists, Celler defended Mathias' amendment. "The all-or-nothing attitude produces nothing except a slogan," he asserted.²⁰ Celler recognized that strong fair housing provisions simply could not pass. Compromise meant allowing discriminatory practices to continue.

In order to demonstrate that stronger language would not pass, Democratic leadership allowed a teller vote on a substitute amendment offered by Clark MacGregor (R-MN). The MacGregor amendment proposed a uniform prohibition on discrimination in the sale of *all* housing. It failed 186-76. Next came a teller vote on the Mathias amendment. It passed 180-179, when the presiding officer, Richard Bolling (D-MO), cast the tiebreaking vote.²¹ While no official vote roll call record exists, news accounts suggest that the Mathias amendment won only 20-25 Republicans. These same reports also suggest that the opposition came from a coalition of conservatives who wanted no housing legislation whatsoever, and liberals who believed that the amendment would fatally weaken the bill (Lyons 1966b). Gerald Ford was reportedly not one of the "yea" votes (Herbers 1966c).

For civil rights advocates seeking open housing language closer to what the administration submitted to Congress, the Mathias amendment was difficult to accept. Contemporaneous estimates suggested that when put into effect the Mathias amendment would reduce the number of homes covered under fair housing protections from sixty million to twenty-three million (United Press International 1966a). Yet after six additional days of debate on the overall bill, hesitant liberals would need to accept more disappointment. On August 9, a rewritten Mathias amendment came up for a roll call vote. The new language allowed homeowners of all existing homes the freedom to direct their agents/brokers to discriminate, but made clear that such direction could not be legally solicited by the agent/broker. As long as the order to discriminate against Black buyers came from the seller, it was legal. Table 1 records the vote on the Mathias amendment. Here we see that the Republican Party split, with nearly an equal number of Republican members voting for and

against the Mathias proposal. Northern Democrats voted overwhelmingly for the amendment, while southern Democrats overwhelmingly opposed.²²

Mathias's amendment was not the only change to H.R. 14765 put to a roll call vote. The House also voted overwhelmingly, 389-25, to adopt an amendment written by William Cramer (R-FL) making it illegal to travel between states for the purpose of "inciting a riot."²³ Anti-riot legislation emerged at this point as a tool used by segregationists to punish those suspected of organizing protests and civil disobedience in American cities.²⁴ The House also voted for language crafted by Basil Whitener (D-NC) requiring the Attorney General to "have received a written complaint of denial of equal protection of the laws before instituting a suit to desegregate public schools or facilities" (*Congress and the Nation* 1969, p. 370). This provision made it more difficult for employees of the Justice Department to spearhead discrimination suits against places ostensibly covered by civil rights laws already on the books. As [Table 1](#) illustrates, this amendment won overwhelming support from the "conservative coalition." It only passed, however, because 29 Northern Democrats voted with the conservatives.²⁵

Before the final passage vote, proponents of H.R. 14765 faced one more obstacle. Representative Arch Moore (R-WV), seeking to kill Title IV specifically, introduced a motion to recommit the bill to the Judiciary Committee with instructions to strike the housing provisions.²⁶ Moore's motion won support from the conservative coalition: 80 of 92 southern Democrats and 86 of 146 Republicans voted for it. Moore's effort failed, however, 190-222 (See [Table 1](#)). The Republicans displayed the most heterogeneity on this key procedural vote, so we examine the determinants of GOP vote choice. Specifically, we examine the ideological, racial, electoral, and state-level factors that may explain why these Republicans voted as they did.

The dependent variable in this model takes a value of 1 for those members who voted "yea" on the proposal to recommit H.R. 14765 with instructions to strip out the housing language, and 0 for those members who voted "nay." In terms of independent variables, we include standard measures of member ideology, first- and second-dimension DW-NOMINATE scores.²⁷ NOMINATE stands for "nominal three-step estimation," and uses roll-call votes as inputs to scale legislators from left to right on one or more issue dimension. NOMINATE scores—the outputs from the estimation procedure—range from -1 (liberal) to +1 (conservative), with a single (first) issue dimension (capturing conflict over economic redistribution, or the role of the government in the economy) having the most explanatory power. A second issue dimension is sometimes important, as it was during the 1960s, and captured preferences on civil rights—again ranging from -1 (liberal) to +1 (conservative).²⁸ We also include the percentage of Black voters in the member's home district, the member's percentage of the two-party vote in 1964, and whether a switcher's home state already had enacted a strong fair housing law. Results of a linear probability model on Republican votes on the motion to recommit appear in [Table 2](#), in three columns (with various independent variables included).

We find that ideological differences along the civil-rights dimension do most of the work explaining this vote, as the second NOMINATE dimension is positive and significant.²⁹ This indicates that House Republicans who were more conservative on racial issues were more likely to vote to recommit H.R. 14765 and seek to delete the fair housing title. None of the other variables, including intra-GOP differences along the first NOMINATE (economic) dimension, add anything meaningful.

When H.R. 14765 came up for a final vote it passed 259-157.³⁰ The vote margin suggests that some Republicans voted to recommit the bill *and* to pass the bill with the housing provisions included. Interested in the inconsistency of this position, we identified twenty-six Republican "switchers"—those who voted "yea" to recommit the bill and "yea" for the overall proposal. We assign a value of 1 to those Republican members who voted

Table 2. Linear Probability Model of House Republican Votes on Motion to Recommit with Instructions, 89th Congress

	(1)	(2)	(3)
NOMINATE 1	0.250 (0.217)	0.257 (0.223)	0.230 (0.216)
NOMINATE 2	0.883*** (0.096)	0.904*** (0.098)	0.846*** (0.108)
Previous Vote		0.003 (0.004)	0.003 (0.004)
% Black		-0.002 (0.004)	-0.002 (0.004)
State Law			-0.132 (0.081)
Constant	0.749*** (0.069)	0.603* (0.271)	0.631* (0.255)
<i>N</i>	136	136	136
<i>F</i> -stat	80.25***	45.10***	42.16***
<i>R</i> ²	0.461	0.462	0.474

Note: Robust standard errors in parentheses. The DV =1 if the Republican House member voted “yea” on the motion to recommit with instructions (to return the bill to committee and delete the fair housing provision), and 0 if “nay.”

**p* < .05

***p* < .01

****p* < .001

“yea” on the proposal to recommit H.R. 14765 with instructions to strip out the housing language, and “yea” on the final passage vote. Republicans who voted “yea-nay” are assigned a value of 0. Independent variables, as in the Table 2 analysis, include DW-NOMINATE scores, the percentage of Black voters in the member’s home district, the member’s percentage of the two-party vote in 1964, and whether a switcher’s home state already had enacted a strong fair housing law. The results of a linear probability model are presented in Table 3, in three columns (with various independent variables included).

Here we find that the second NOMINATE dimension is significant, indicating that House Republicans who were more liberal on racial issues were more likely to switch. Neither margin of victory in 1964 nor percent of Black voters in the district prove to be significant predictors of switching. Finally, and perhaps most interestingly, those Republicans from states with a strong fair housing law on the books were significantly (thirty-nine percentage points) more likely to have voted for both recommitment and final passage. This indicates that when the procedural vote failed (which was the party position), a number of Republicans from states with strong fair housing laws pivoted and followed constituent sentiment. This is consistent with political scientist David Mayhew’s (1974) argument focusing on the electoral connection between a member of Congress and her constituents. These Republican members recognized local support for fair housing laws and did not wish to motivate protests through their opposition to the overall bill.

Even as they were fighting to see H.R. 14765 passed in the House, administration officials and supportive Democrats recognized that its ultimate fate hinged on the disposition of Senate Republicans. If the conservative coalition in the Senate coalesced against the bill, they could filibuster it to death. In the days immediately after H.R. 14765 passed, Senate Majority Leader Mike Mansfield (D-MT) made clear that he hoped the Senate Judiciary Committee would act on the administration’s original bill (S. 3296). Yet he

Table 3. Linear Probability Model of House Republican Vote Switchers on Fair Housing, 89th Congress

	(1)	(2)	(3)
NOMINATE 1	-0.210 (0.252)	-0.269 (0.264)	-0.260 (0.268)
NOMINATE 2	-0.640*** (0.165)	-0.563** (0.194)	-0.513** (0.194)
Previous Vote		-0.013 (0.008)	-0.008 (0.008)
% Black		-0.006 (0.004)	-0.005 (0.004)
State Law			0.391** (0.142)
Constant	0.349*** (0.097)	1.138* (0.497)	0.797 (0.489)
<i>N</i>	86	86	86
<i>F</i> -stat	10.94***	5.53***	9.07***
<i>R</i> ²	0.153	0.186	0.262
To pass H.R. 14765, the Civil Rights Act of 1966.			
		Nay	Yea
To recommit H.R. 14765, the Civil Rights Act of 1966, to the Judiciary Committee with instructions to delete Title IV, the open housing title.	Nay Yea	0 60	50 26

Note: Robust standard errors in parentheses. The DV = 1 if the Republican House member voted "yea" on the recommittal motion and then "yea" on final passage, and 0 if "yea-nay." See the 2x2 table for the vote distributions.

* $p < .05$

** $p < .01$

*** $p < .001$

lamented the fact that the Judiciary Committee, run by James Eastland, was unlikely to bring something to the floor "at the end of two weeks, or two months, or two years" (Herbers 1966d). Mansfield pledged to give Eastland until at least September 6, 1966, but he also directed Senate Democrats to invoke Rule 14 which allowed Democrats to bypass the committee stage and place the House-passed bill directly on the Senate calendar.³¹

All eyes now turned to Minority Leader Everett Dirksen (R-IL). As Mansfield told *The New York Times*, "The key to it is Dirksen. Without him we cannot get closure" (Herbers 1966e). Administration officials agreed, with one telling the *Times*, "Senator Dirksen stands at the pass, anything that he is not going to buy is just not going to be bought" (Franklin 1966c). President Johnson himself also testified to Dirksen's influence: "I would hope that we could find some way to get his (Dirksen's) support because I think whether it passes or fails will depend largely upon what the minority leader does about it" (United Press International 1966b). Dirksen was quick to dash the hopes of those who supported the House-passed bill. "I know nobody under the bright blue sky who can say anything to change my mind," he declared in an interview (Semple 1966). While Dirksen had worked with the Johnson administration to enact previous civil rights bills, he was not interested in brokering a deal this time around. He invoked a few rationales to justify his opposition: that the law infringed upon private property, that the law would reward purveyors of violence

(i.e., the rioters), and that law was unconstitutional. But as Rigel Oliveri (2018) argues, “Ultimately Senator Dirksen’s resistance came down to that voiced by so many of the bill’s opponents: that the law simply could not—or at least should not—compel people of different races to live together” (p. 31).

Dirksen’s vocal opposition successfully rallied Republicans against the bill. As Table 1 demonstrates, the conservative coalition worked to defeat cloture votes held on September 14 and September 19. In both cases, nearly double the number of Republicans voted with the southern Democrats to prevent debate on H.R. 14765 than voted for cloture. Following the failure of the second cloture motion, the civil rights bill of 1966 was dead.

The Johnson Administration misjudged the political environment in 1966. LBJ and some Democrats in Congress saw fair housing as just the next item on the broader civil rights agenda, which they believed could win public and elite support. They underestimated the level of opposition that would emerge, even among traditional allies of the civil rights movement. For example, with the midterm elections quickly approaching and the filibuster looming, an anonymous Midwestern Democrat noted: “It’s just not worth sacrificing my political hide [to back the bill]” (Hunter 1966). And one administration official acknowledged to *The New York Times* that “we are probably running the risk of losing some shaky seats in the House by making our guys walk the plank on a bill that we are not sure can get by the Senate” (Franklin 1966c). Recognizing that federal efforts to integrate northern neighborhoods would generate significant opposition, the liberal Americans for Democratic Action (ADA) in August 1966 called on President Johnson not to push Congress to take up fair housing legislation (*Congress and the Nation* 1969). These dire predictions proved true when, in the November elections, Republicans picked up three seats in the Senate and forty-seven in the House.

Pyrrhic Victory: Fair Housing Legislation in the 90th Congress

Lyndon Johnson was determined to enact fair housing protections despite Congress’s failure in 1966 and the significant losses the Democrats absorbed in the November midterms. Accordingly, he pushed his civil rights initiatives as the new (90th) Congress opened. In his January 10, 1967, State of Union message, Johnson asked Congress to legislate on the same civil rights matters that had formed the core of the 1966 bill: federal protection of civil rights workers, nondiscrimination in federal and state jury selection, nondiscrimination in employment, and fair housing (Johnson 1967). And on February 15, 1967, LBJ fleshed these proposals out, noting the similarities from the previous bill as well as a significant change in how the fair housing provisions would be enforced. This time around he sought to empower the Secretary of Housing and Urban Development (HUD) to hold hearings and issue cease-and-desist orders.³²

Yet the Administration’s omnibus civil rights legislation—H.R. 5700 and S. 1026—went nowhere in 1967. “A major reason for this,” as Graham (1990) explains, “was widespread resentment among the House members that they had been required to cast a vote on the bill’s most controversial provision, open housing, just prior to the fall [1966] election, but the Senate had not” (p. 267). The House expected the Senate to act first, and beyond some perfunctory hearings by the Senate Judiciary Subcommittee on Constitutional Rights, nothing got done (*CQ Almanac* 1968b). No committee recommendations were made in either chamber.

As a result, civil rights advocates in Congress broke LBJ’s omnibus legislation into separate bills and worked to pass each individually (*CQ Almanac* 1968c). This strategy produced a bit of success. A five-year extension of the U.S. Commission on Civil Rights, generally considered the least controversial of the president’s proposals, was enacted.³³ In December 1967, the Senate passed by voice vote a bill (S. 989) to prohibit discrimination in

the selection of federal juries (*CQ Almanac* 1968d). The House took no action on the bill before the end of the first session, but passed it in February 1968.³⁴ On August 16, 1967, the House passed a bill (H.R. 2516) to protect civil rights workers (and others from having their civil rights threatened in a range of activities) against violence on a 327-93 vote (see Table 4),³⁵ but it got bogged down in the Senate; by the end of the first session, it had finally made out of the Senate Judiciary Committee by the narrowest of margins (an 8-7 vote).

Lawmakers also sought to crack down on the violence associated with urban unrest across the United States. Between April and early September 1967, more than 100 cities experienced some form of disorder (*U.S. News Staff* 1967), resulting in eighty-three killed, more than 3200 injured, over 8700 arrests, and property damages estimated at \$524.8 million.³⁶ In response, William Cramer (R-FL) once again sponsored a bill (H.R. 421) to establish federal penalties for those accused of “inciting riots.” Here Cramer simply reintroduced as a standalone bill the amendment that he had offered to the Civil Rights Act of 1966. Cramer’s bill passed 348-70.³⁷ By 1967, it was easy for Congress to pass legislation cracking down on angry residents of American cities. No progress, however, was made on open housing.

As the first session of the 90th Congress ended, Senate Majority Leader Mike Mansfield made H.R. 2516 (the civil rights protection bill) the pending business when the chamber reconvened on January 15, 1968. Mansfield’s decision prevented a subsequent motion to bring the bill up for floor consideration (*CQ Almanac* 1969b). Moreover, as Graham (1990) notes, “once the bill was the Senate’s order of business, proposed amendments could not be procedurally filibustered” (p. 270). While the Senate began debate on H.R. 2516, President Johnson again sent a message to Congress, imploring the body to pass the remaining elements of his civil rights agenda. On the issue of fair housing, LBJ stated: “A fair housing

Table 4. House Votes on Civil Rights Act of 1968, 90th Congress

Party	To Pass H. Res. 856		To Pass H.R. 2516		To Order Previous Question on H. Res. 1100		To Pass H. Res. 1100	
	(1)		(2)		(3)		(4)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	140	1	143	5	140	12	137	13
Southern Democrat	24	62	23	63	12	77	13	75
Republican	166	14	161	25	77	106	100	84
Total	330	77	327	93	229	195	250	172

Source: *Congressional Record*, 90th Congress, 1st Session (August 15, 1967): 22678; (August 16, 1967): 22778; 2nd Session (April 10, 1968): 9620; (April 10, 1968): 9621.

(1) To pass H. Res. 856, providing an open rule with 3 hours of debate on H.R. 2516, a bill to establish penalties for interference with civil rights.

(2) To pass H.R. 2516, a bill to establish penalties for interference with civil rights. Interference with a person engaged in one of the eight activities protected under this bill must be racially motivated to incur the bill’s penalties.

(3) To order the previous question on H. Res. 1100, a resolution providing that immediately upon the adoption of this resolution, the bill (H.R. 2516) to prescribe penalties for certain acts of violence or intimidation, and for other purposes, with the Senate amendment thereto, be, and the same hereby is, taken from the speaker’s table, to the end that the Senate amendment be, and the same hereby is, agreed to. The bill is the civil rights bill, combining anti-riot legislation and prescribing penalties for interfering with any person in the performance of his civil rights. The Senate amendment referred to in H. Res. 1100 prohibits discrimination on the basis of race, religion, color, or nationality in the sale or rental of housing.

(4) To pass H. Res. 1100, a resolution providing that immediately on the adoption of this resolution, the bill (H.R. 2516) prescribing penalties for interfering with any person in the performance of his civil rights, and making certain anti-riot legislation, shall, together with a Senate amendment thereto, providing penalties for discrimination in the sale or rent of housing, be taken from the speaker’s table, to the end that said amendment is agreed to.

law is not a cure-all for the Nation's urban problems. But ending discrimination in the sale or rental of housing is essential for social justice and social progress" (CQ Almanac 1969c).

In the Senate, Sam Ervin, Jr. (D-NC) introduced a substitute amendment, retaining the language of the protection coverage of H.R. 2516 for federal activities only (and thus eliminating protections for state and local activities) and deleting the phrase "because of his race, color, religion, or national origin" as a provision of the law. On February 6, the Senate voted to table Ervin's weakening amendment, 54-29.³⁸ (For this and all Senate votes on the Civil Rights Act of 1968, see Table 5). But while Senate liberals and conservatives fought about the appropriate language of H.R. 2516 (and whether it should be based on the Equal Protection Clause of the 14th Amendment or the Commerce Clause), a movement was under way to greatly expand the scope of the bill. More specifically, Clarence M. Mitchell, Jr., the chief lobbyist for the Leadership Conference on Civil Rights, "set out to make the bill a vehicle for an open-housing amendment" (CQ Almanac 1969d). In late December 1967, Mitchell worked with Senators Phillip Hart (D-MI), Joseph Tydings (D-MD), and Walter Mondale (D-MN) to draft a bill that would be cosponsored by Mondale and Edward Brooke (R-MA). While Mansfield and Attorney General Ramsey Clark resisted such an amendment, as they feared it would jeopardize passage of H.R. 2516 (and then the civil rights coalition would get nothing), Mitchell slowly built support for his initiative. By early February, the pro-civil rights senators agreed to make a go of it.

After Ervin's amendment was tabled, Mondale offered an open housing amendment (co-sponsored by Brooke). The "Mondale Amendment" (as it became known) differed from the Administration's open housing bill (S. 1358) by providing an exception for "Mrs. Murphy housing," dwellings of up to four separate living units in which the owner maintained a residence. Once the provisions of the Mondale Amendment were fully enacted, it would cover around ninety-one percent of the nation's housing (CQ Almanac 1969b). Not surprisingly, conservatives, led by southern Democrats, objected to the proposal. Speaking for this group, Ervin stated that the amendment sought "to bring about equality by robbing all Americans of their basic right of private property." It allowed, he claimed, "one Cabinet official sitting on the banks of the Potomac" the authority to decide how a homeowner may dispense with her property (CQ Almanac 1969b). Here again we see the position of those opposing fair housing laws: "private" discrimination carried out in the "market" is acceptable.

As expected, Ervin and his southern Democratic colleagues sought to filibuster the amendment on its merits. A cloture vote was attempted on February 20, and it failed, 55-27.³⁹ While not garnering the necessary two-thirds majority of members present and voting, it was closer than many expected: a shift of seven votes would have produced success. Northern and southern Democrats voted in opposite directions, while Republicans were evenly split (18-18). The following day, Mansfield and Minority Leader Everett Dirksen filed a tabling motion on the Mondale Amendment, which failed, 34-58.⁴⁰ Northern and southern Democrats again voted in opposite directions, while a majority of Republicans voted against tabling (16-19). After the failed tabling motion, Dirksen announced to the Mondale group that he was ready to work with them on a compromise open-housing amendment (CQ Almanac 1969b).

Another cloture vote was held on February 26 after the failed motion to table the Mondale Amendment. It failed by six votes, 56-36.⁴¹ Northern and southern Democrats voted exactly as they did on February 20; this time, a majority of Republicans (19-17) voted in favor of cloture, as Norris Cotton (R-NH) changed his vote. On February 27, Dirksen met with Mansfield and announced his support for a new open-housing amendment, built around compromise language from Jacob Javits (R-NY). The compromise would exempt all owners of free-standing homes for sale or rental, if they sold or rented themselves rather

Table 5. Senate Votes on Civil Rights Act of 1968, 90th Congress

Party	To Table Ervin Amendment		To Invoke Cloture on H.R. 2516		To Table Mondale Amendment		To Invoke Cloture on H.R. 2516	
	(1)		(2)		(3)		(4)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	32	1	34	3	3	36	34	3
Southern Democrat	3	15	3	16	15	3	3	16
Republican	19	13	18	18	16	19	19	17
Total	54	29	55	37	34	58	56	36

Party	To Table Mondale Amendment		To Invoke Cloture on H.R. 2516		To Invoke Cloture on H.R. 2516		To Adopt Thurmond Amendment	
	(5)		(6)		(7)		(8)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	33	3	34	4	37	3	33	7
Southern Democrat	18	1	3	17	4	17	19	1
Republican	32	1	22	14	24	12	30	5
Total	83	5	59	35	65	32	82	13

Party	To Adopt Long Amendment		To Adopt Ervin Amendment		To Adopt Substitute for H.R. 2516		To Pass H.R. 2516	
	(9)		(10)		(11)		(12)	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	28	12	37	0	36	1	39	0
Southern Democrat	20	1	16	0	1	15	3	17
Republican	24	10	28	0	24	3	29	3
Total	72	23	81	0	61	19	71	20

Source: *Congressional Record*, 90th Congress, 2nd Session (February 6, 1968): 2269-70; (February 20, 1968): 3427; (February 21, 1968): 3807; (February 26, 1968): 4064-65.

Source: *Congressional Record*, 90th Congress, 2nd Session (February 28, 1968): 17916; (March 1, 1968): 4845; (March 4, 1968): 4960; (March 5, 1968): 5214.

Source: *Congressional Record*, 90th Congress, 2nd Session (March 6, 1968): 5539; (March 8, 1968): 5838; (March 8, 1968): 5839; (March 11, 1968): 5992.

(1) To table Ervin Amendment no. 505 to H.R. 2516, a bill to provide penalties for racially motivated interference with civil rights. The Ervin Amendment would restrict the bill's coverage to rights extended under the interstate commerce clause of the constitution and programs involving federal funds and would make it unlawful to interfere with the performance of these rights, no matter whether interference was racially motivated or not.

(2) To close debate (cloture) on H.R. 2516, a bill to prescribe penalties for racially motivated interference with civil rights.

(3) To table Sen. Mondale's amendment no. 524 to H.R. 2516, which would add a new Title to provide for implementing a policy of open housing.

(4) To close debate (cloture) on H.R. 2516.

(5) To table modified Mondale Amendment no. 524 to H.R. 2516, adding a new Title to provide for implementing a policy of open housing.

(6) To close debate on modified Dirksen amendment no. 554 to H.R. 2516, consisting of Title I on interference with federally protected activities, and Title II on fair housing.

(7) To close debate (cloture) on modified Dirksen Amendment no. 554 to H.R. 2516 consisting of Title I on interference with federally protected activities, and Titles II and III on fair housing.

(8) To amend H.R. 2516, by modifying the anti-riot provisions of the bill so that it be unlawful to use interstate facilities with intent to incite a riot. The amendment was substantially modified by requiring proof of intent to riot rather than presumption of intent as evidenced by certain activities.

(9) To amend H.R. 2516, by adopting proposition 2 of chapter on civil disorders of modified Long (La.) Amendment no. 517, which attaches penalties for teaching use of weapons and for the transport and manufacture of certain weapons for civil disorder.

(10) To amend H.R. 2516 by adding six new titles on the rights of American Indians.

(11) To adopt a committee amendment, in the nature of a substitute for H.R. 2516. The committee amendment had previously been modified by the adoption of the Dirksen amendment in the nature of a substitute for the committee amendment.

(12) To pass H.R. 2516, a bill to prohibit discrimination in sale or rental of housing, and to prohibit racially motivated interference with a person exercising his civil rights, and for other purposes.

than through a real-estate broker/agent. Javits' exemption proposed to reduce the law's coverage of the nation's housing from ninety-one percent to around eighty percent.

Along with a significant decrease in coverage, Javits' compromise also eliminated language allowing the Chairman of the Department of Housing and Urban Development to enforce the law. HUD was allowed to investigate potential cases of discrimination, but all enforcement actions would need to be taken by the Department of Justice.⁴² According to Irving Bernstein (1996), this change guaranteed that the enforcement mechanism included in the bill was "fatally defective" because the DOJ lacked the "stomach for enforcement" (p. 499).

Yet Mondale and his supporters were pleased with Dirksen's efforts. On February 28, Mondale paved the way for the "Dirksen Amendment" by moving to table his own proposal. This motion passed, 83-5.⁴³ The following day, March 1, a third cloture vote was attempted. This one—on the Dirksen compromise—failed by four votes, 59-35.⁴⁴ Northern and southern Democrats continued their opposition to one another, and larger majority of Republicans now voted in support (22-14), as three more Republicans switched their votes: Dirksen, Howard Baker (TN), and Len Jordan (ID). Dirksen was exhausted from the negotiation with his caucus members, so other party leaders, including Richard Nixon, stepped into the fray (Hulsey 2000). On the next (fourth) cloture vote, on March 4, the necessary two-thirds, 65-32 was achieved.⁴⁵ Two additional Republicans—Frank Carlson (KS) and Jack Miller (IA)—switched to supporting cloture. Two Democrats—Howard Cannon (NV) and Albert Gore (TN)—also switched to supporting cloture. (A number of other senators switched from a paired vote to an active vote, or vice versa.)⁴⁶

As we have already noted, Dirksen had been an active and vocal opponent of fair housing in the 89th Congress, and he used his influence to keep a majority of Republicans voting to oppose cloture, thus dooming the legislation. He began the 90th Congress with the same negative position. Why did he switch? Dirksen himself offered a number of explanations: he suggested he changed his mind on the notion that fair housing was a state, rather than a federal, problem; he suggested that doing nothing on fair housing may lead to more riots; he mentioned the need that veterans returning from Vietnam would have for open housing; and he noted the absence of fair housing laws in many states. It was also clear that his hold on the leadership of his caucus was more tenuous than in the past. While the forty-seven-seat pickup for House Republicans had made the chamber more conservative, the three-seat pickup for Senate Republicans had in fact made the chamber more liberal (Graham 1990). According to Byron C. Hulsey (2000), "What moved Dirksen to support fair housing in 1968 was an accurate sense that he had lost control of his caucus" (p. 255).

With cloture invoked, the Senate moved to end consideration of H.R. 2516. A host of amendments—more than eighty in all—had been submitted, and more than forty votes were taken. Some small adjustments were made to the open housing title but the "Dirksen Compromise" largely held. Importantly, a couple of additional titles were added. One was an anti-riot amendment, introduced by arch segregationist Strom Thurmond (R-SC) and co-sponsored by Frank Lausche (D-OH). Modeled after the Cramer Amendment in the House, the Thurmond Amendment made it a federal offense to travel across states or use interstate facilities (mail, telephone, radio, and television) for purposes of participating in or inciting a "riot." Thurmond's amendment achieved widespread support, passing 82-13.⁴⁷

A second amendment, offered by Russell Long (D-LA), pursued a similar goal. It laid out criminal penalties for manufacturing, transporting, or training another person in the use of a firearm or explosive device with the intent that it would be used across states in a civil disorder. The Long Amendment also passed easily, 72-23.⁴⁸ Lastly, Sam Ervin (D-NC) proposed an amendment to protect American Indians from tribal rules that attempted to deprive them of their constitutional rights. The Ervin Amendment passed unanimously (81-0).⁴⁹

The Senate then proceeded to vote on the Dirksen Amendment (as amended) as a substitute for H.R. 2516. This passed, 61-19, with large majorities of northern Democrats and Republicans voting against all but one southern Democrat.⁵⁰ Finally, the Senate passed H.R. 2516 (as modified) by a similarly large margin, 71-20, with the voting coalitions largely repeating themselves.⁵¹

H.R. 2516 (as modified by the Senate) was now sent to the House, where it received a mixed response.⁵² Liberals wanted the chamber to accept the Senate-amended bill without change, while southern Democrats and many Republicans wanted the bill sent to conference. The conservative argument was that the early version of H.R. 2516 was considerably narrower in content (containing only the civil rights protections provision), and that the House deserved to consider the additional provisions adopted in the Senate. Doing so would necessitate the appointment of a conference committee. In effect, the battle was between the Senate-amended bill and a stripped-down version of H.R. 2516, as many believed House conferees (should a committee be appointed) would work to eliminate important elements of the bill, such as the open-housing provision.

While supporters of the modified H.R. 2516, like President Johnson, sought quick action, the House Rules Committee met on March 19 and voted 8-7 to delay action until April 9. In the interim, LBJ kept the pressure on, and various Republican leaders like Richard Nixon and Governor Nelson Rockefeller (NY) also urged the House (and Republicans specifically) to back the Senate amendments. On April 4, Dr. Martin Luther King, Jr. was assassinated, which created additional pressure on the House to act (Brown 2018). Finally, on April 9, the Rules Committee met, and a motion to send the bill to conference was defeated, 7-8.⁵³ The swing vote was John Anderson (R-IL), who had previously voted with the majority to delay consideration. The Rules Committee then voted 9-6 to report H. Res. 1110—agreeing to the Senate-amended H.R. 2516—to the floor.⁵⁴

The showdown vote came the next day, March 10, which involved ordering the previous question on H. Res. 1100. Ray Madden (D-IN), sponsor of H. Res. 1110, urged that the chamber order the previous question. “If the previous question is voted down,” he said, “this legislation is almost certain to be sent back to the other body for probably certain delay, filibustering, and stagnation. This procedure no doubt will mean no civil rights, housing, or antiriot bill in the 90th Congress.”⁵⁵ Minority Leader Gerald Ford (R-MI) instead advocated that the bill be sent to conference (and thus that the previous question be voted down). “If we take the path of expediency, we will live to regret it. I say to you in my judgment we should follow time-tested procedures of parliamentary procedure,” he argued, “because they are primarily in the best interests of our minority groups, and also in the best interests of our citizens.”⁵⁶ A host of other members, on both sides, made similar arguments.

As the time for debate was about to expire, H. Allen Smith (R-CA), the final speaker, made the following announcement:

Mr. Speaker, I yield myself my remaining 30 second to refresh the minds of the Members that the gentleman from Indiana [Mr. Madden] will move the previous question. I will request a yea and a nay vote. A “yea” vote for the previous question will send this bill to the White House. A “nay” vote, if carried, will vote down the previous question. I will offer an amendment to send the bill to conference if a “nay” vote prevails.⁵⁷

The House then voted on ordering the previous question on H. Res. 1100, and it passed, 229-195 (see Table 4).⁵⁸ A large majority of northern Democrats opposed a large majority of southern Democrats. Republicans split, but a significant majority (106 of 183) joined the

majority of southern Democrats in voting against the compromise. Enough Republicans (77) joined with nearly all northern Democrats, however, to successfully order the previous question.

In a set of linear probability models, we examine the Republican votes in more detail, (similar to our 1966 analysis in Table 2). Our goal, as before, is to examine the ideological, racial, electoral, and state-level factors influencing Republican votes. The dependent value takes a value of 1 for those Republicans who voted “yea” on the previous-question motion on H. Res. 1100 (to take up the Senate-amended bill), and 0 if “nay.” Independent variables include first- and second-dimension DW-NOMINATE scores, the percentage of Black voters in the member’s home district, the member’s percentage of the two-party vote in 1966, and whether a switcher’s home state already had enacted a strong fair housing law.⁵⁹ Results appear in Table 6. We find that both economics and civil rights do explain this vote, as both NOMINATE dimensions are negative and significant.⁶⁰ This indicates that House Republicans who were more liberal on both economic and racial issues—those Republicans closer to the preferences of northern Democrats—were more likely to vote in support of ordering the previous question on H. Res. 1100. As in the 1966 analysis, none of the other variables add anything meaningful.

The House then immediately moved to the vote on the resolution itself, and this passed, 250-172.⁶¹ A set of Republicans (22 of 106) switched from “nay” to “yea,” and as a result a majority of Republicans voted with nearly all northern Democrats against nearly all southern Democrats. Thus, H.R. 2516, as amended by the Senate, was passed by the House and sent to President Johnson for his signature. Johnson signed the bill into law the following day (April 11), and the Civil Rights Act of 1968 became *Public Law* 90-284.

Why did those twenty-two House Republicans switch on fair housing, by voting against ordering the previous question on H. Res. 1100 (and thus against the Senate bill) and then

Table 6. Linear Probability Model of House Republican Votes on Ordering the Previous Question on H. Res. 1100, 90th Congress

	(1)	(2)	(3)
NOMINATE 1	-0.720*** (0.210)	-0.776*** (0.214)	-0.747*** (0.206)
NOMINATE 2	-0.844*** (0.070)	-0.805*** (0.077)	-0.768*** (0.079)
Previous Vote		-0.001 (0.003)	-0.002 (0.003)
% Black		-0.004 (0.003)	-0.003 (0.003)
State Law			0.108 (0.062)
Constant	0.431*** (0.064)	0.555** (0.179)	0.442* (0.184)
N	183	183	183
F-stat	192.54***	94.68***	78.16***
R ²	0.514	0.515	0.524

Note: Robust standard errors in parentheses. The DV = 1 if the Republican member voted “yea” on the previous-question motion on H. Res. 1100 (to take up the Senate-amended bill), and 0 if “nay.”

* $p < .05$

** $p < .01$

*** $p < .001$

voting for the Senate bill when the previous question was ordered? To examine this, we conduct a similar analysis to the one in Table 3, by exploring the ideological, electoral, racial (district), and legal (state) determinants of the likelihood of a “switch.” The dependent value is equal to 1 if the Republican member voted “nay” on the previous-question motion and then “yea” on final passage, and 0 if he voted “nay-nay.”

Linear probability model results appear in Table 7. Just as in the 1966 analysis, the second NOMINATE dimension is significant. House Republicans who were more liberal on the second dimension—that is, more liberal on civil rights—were more likely to switch. The inclusion of a member’s previous share of the two-party vote and the percent Black in the district add a bit, as previous vote share is significant, with Republicans who won their prior election by a slimmer margin were more likely to switch. Finally, when the incidence of a strong state fair housing law is included in the model, this proves to be highly significant (and washes out the previous two-party vote result). A House Republican who represented a state with a strong fair housing law already in place was almost thirty-five percentage points more likely to switch. Like in 1966, when the procedural vote failed (the party position), a number of Republicans from states with strong fair housing laws pivoted and

Table 7. Linear Probability Model of House Republican Vote Switchers on Fair Housing, 90th Congress

	(1)	(2)	(3)
NOMINATE 1	−0.175 (0.213)	−0.283 (0.224)	−0.265 (0.214)
NOMINATE 2	−0.553*** (0.162)	−0.507** (0.168)	−0.501** (0.158)
Previous Vote		−0.007* (0.003)	−0.003 (0.003)
% Black		−0.005 (0.003)	−0.002 (0.003)
State Law			0.349** (0.118)
Constant	0.266*** (0.079)	0.754** (0.268)	0.445 (0.264)
<i>N</i>	106	106	106
<i>F</i> -stat	7.66***	5.13***	6.48***
<i>R</i> ²	0.101	0.134	0.233

To pass H. Res. 1100, a resolution providing that immediately on the adoption of this resolution, the bill (H.R. 2516) is agreed to.

		Nay	Yea
To order the previous question on H. Res. 1100, a resolution providing that immediately upon the adoption of this resolution, the bill (H.R. 2516).	Nay	84	22
	Yea	0	77

Note: Robust standard errors in parentheses. The DV = 1 if the Republican member voted “nay” on the previous-question motion and then “yea” on final passage, and 0 if “nay-nay.” See the 2x2 table for the vote distributions.

**p* < .05

***p* < .01

****p* < .001

followed constituent sentiment. Here again we see Republican members behaving in a way that is consistent with the “electoral connection.”

Thus, Congress in 1968 did what it failed to do two years prior: it passed a new civil rights law with a formal prohibition on housing discrimination. The bill that passed won support from a bipartisan coalition because, with near universal opposition from the southern wing of the Democratic Party, that was the only option available to its supporters. The compromises required to get the bill through both the House and Senate, however, turned the fair housing provision into an “empty gesture” (Carter 2009, p. 238). Meeting the demands of northern White voters led lawmakers to exempt millions of homes from the bill’s legal protections. And after making these exemptions, lawmakers gutted the original enforcement mechanism. In response, as Bernstein (1996) contends, “the real estate industry—builders, realtors, appraisers, insurance companies, banks, mortgage lenders, sellers, and buyers—systematically defied and undermined the statute with virtual impunity” (p. 499). Moreover, overwhelming bipartisan majorities voted to include “anti-riot” provisions in the bill, which were understood to be tools for smearing and then punishing those involved with the broader civil rights movement. While the 1964 Civil Rights Act and 1965 Voting Rights Act were hailed as landmark laws signaling progress for Black citizens, the bill Congress passed in 1968 did not have the same effect. Instead, it shed light on an important new political reality: White opinion was turning against efforts to end segregation in the Northeast and Midwest. For those who believed in the value of prohibiting forms of discrimination like housing segregation, the 1968 Civil Rights Act previewed many disappointments that lay in store over the coming decades.

Conclusion

For President Johnson and his allies in Congress, ending discrimination in the sale and rental of housing was supposed to be the next stage of the civil rights agenda. Having pushed through Congress two landmark civil rights laws in 1964 and 1965, they could be forgiven for believing that further progress was achievable. The epidemic of urban rioting driven by the unbearable living conditions in northern and western urban centers seemed, to them, a demonstration of the need for additional federal action. Testifying before Congress in August 1966, Attorney General Nicholas Katzenbach gave voice to this position when he attributed the terrible civil unrest to “disease and despair, joblessness and helplessness, rat-infested housing and long-impacted cynicism” (Sloyan 1966). Putting an end to the ostensibly private practices leading to segregated housing was seen by civil rights activists at the time as one possible way to counteract the social and economic forces producing unequal life outcomes between Black and White Americans. This bill would not meet their expectations.

Passing and then enforcing the fair housing provision of the 1968 Civil Rights Act proved difficult because support from northern and midwestern White voters, a prerequisite for all civil rights initiatives, was very difficult to win. As we have described, the administration’s effort to enact fair housing language in 1966 first required persuading ostensible allies to go along by significantly weakening their proposal. Once weakened, it passed in the House but failed to win enough support from Republican moderates in the Senate to overcome a filibuster. The administration renewed the fight two years later, and a similar dynamic took hold, as the original proposal won supporters only after it was amended to exempt millions of homes and to weaken its enforcement mechanism. This time around, however, Everett Dirksen’s decision to support the proposal, pushed along by more Republicans in the Senate being amenable to the legislation, ensured it would be included in the 1968 Civil Rights Act.

In this way, the battle to see fair housing legislation enacted reaffirms a pattern that has long influenced congressional action on civil rights policy: legislative proposals to end particular forms of discrimination run contrary to the preferences of northern White

voters and, as a consequence, fail to achieve their ostensible aims. Almost one century earlier, a very similar dynamic played out as Congress considered legislation authored by Senator Charles Sumner (R-MA). Sumner played an integral role in crafting laws designed to protect the rights of the previously enslaved who had been freed by the Civil War. Late in his life, Sumner continued working to end “social” segregation in businesses and other “personal” aspects of society both North and South.⁶² Sumner took aim at the effects of segregation in terms that would apply just as well in 1968. Discussing segregated schools, for example, he argued that they could “not fail to have a depressing effect on the mind of colored children, fostering the idea in them and others that they are not as good as other children” (quoted in Wyatt-Brown 1965, pp. 763–764). The bill Sumner first proposed in 1872 therefore aimed to ensure that any “legal institution, anything created or regulated by law ... must be opened equally to all without distinction of color.”⁶³ We could easily apply Sumner’s thinking to the sale or rental of homes in the United States.

When Sumner first introduced his civil rights bill it met immediate opposition from more “moderate” Republicans. They believed it was unconstitutional to try to legislate “social” equality. The bill went nowhere until 1875 when, after Sumner’s death, the GOP passed legislation in “honor” of Sumner that ran contrary to all of the goals he had pursued. Most importantly, it explicitly endorsed the principle of “separate but equal.” William Gillette (1982) describes the bill as representative of “the bankruptcy of legislative sentimentalism and reconstruction rhetoric, which demeaned noble ideals and undercut vital interests” (p. 279). In short, the Civil Rights Act of 1875 demonstrated to the country that the civil rights coalition responsible for landmark achievements—like the 1866 Civil Rights Act and the Fourteenth Amendment—could not put together the votes required to address forms of segregation that diminished the lives and livelihoods of Black Americans living outside the South. From this moment until the beginning of the second civil rights Era, all the momentum was behind those who sought to block new civil rights laws or to reverse those which were already on the books.

The political process that led to enactment of the Civil Rights Act of 1968 played out in very similar ways. Once again, support from White voters outside the South was required to get an important civil rights law passed. Those voters were hesitant to endorse provisions that would impact their social and economic lives. Their representatives in Congress behaved accordingly by ensuring that the legislation Congress did pass could not possibly counteract the problem it was supposed to address. What happened in 1968 also previews what was to come as the Great Society gave way to the Nixon years: once federal civil rights policies started to bear directly on the lives of northerners, they became much harder to pass and implement. These battles in the 1970s, on issues like busing and school integration, split the parties and sometimes split the Democrats by region (Delmont 2016). Republicans had joined with northern Democrats on civil rights legislation through 1965, while working to weaken said legislation for their constituents, wherever they could. Beginning in 1966, the GOP would move to the right on civil rights legislation and quickly establish racial conservatism as the party’s congressional position.

Acknowledgments

Jeffery A. Jenkins thanks the Lusk Center for Real Estate at the University of Southern California for a research award to help support the research conducted for this article.

Notes

¹ As Tooze describes, the United States experienced a significant recession as a consequence WWI demobilization. There were concerns that a similar dynamic would begin once the federal government stopped spending

to fight Japan and Germany. A pressing concern for policymakers after the war was, therefore, figuring out how best to stimulate the domestic economy.

- ² For more on racialized housing see Taylor (2019).
- ³ For recent accounts of these uprisings see Hinton (2021) and Levy (2018).
- ⁴ Johnson signed the law on August 6, 1965 and the rioting started on August 11, 1965.
- ⁵ On the first civil rights era, see Jenkins and Peck (2021).
- ⁶ Note that fair housing was also often referred to as “open housing.” We will use the terms interchangeably.
- ⁷ A small literature has examined the legislative politics of the Fair Housing Act. Examples include Dubofsky (1969); Metcalf (1988); Massey and Denton (1993), Chapter 7; Oliveri (2018).
- ⁸ For more on the second civil rights era, see Jenkins and Peck (2021), pp. 313–314.
- ⁹ For more on the effort to integrate Chicago’s neighborhoods, see Sugrue (2008) and Ralph (1993).
- ¹⁰ The Civil Rights Act of 1866 can be read here: <https://www.loc.gov/law/help/statutes-at-large/39th-congress/session-1/c39s1ch31.pdf>.
- ¹¹ Johnson’s speech can be read here: <https://millercenter.org/the-presidency/presidential-speeches/january-12-1966-state-union>
- ¹² In the House, Rep. Emmanuel Celler (D-NY) introduced the bill as H.R. 14765. In the Senate it was introduced by Philip Hart (D-MI) as S. 3296.
- ¹³ For a more detailed summary of the Administration’s proposal see, *Congress and the Nation* (1969), pp. 365–369.
- ¹⁴ Gallup data taken from Orfield (1975), p. 87, fn. 13.
- ¹⁵ Graham (1990) considers the overwhelming committee support for Conyers’ proposal as something of a mystery. At the same time the committee was weakening the bill with the Mathias amendment, it was also proposing to “create a potentially powerful new watchdog agency ... armed with cease-and-desist authority, with its orders enforceable through the federal courts of appeals” (p. 261).
- ¹⁶ *Congressional Record*, 89th Congress, 2nd Session (July 25, 1966): 16837.
- ¹⁷ *Congressional Record*, 89th Congress, 2nd Session (July 25, 1966): 16834.
- ¹⁸ *Congressional Record*, 89th Congress, 2nd Session (July 25, 1966): 16839.
- ¹⁹ *Congressional Record*, 89th Congress, 2nd Session (August 3, 1966): 18115.
- ²⁰ *Congressional Record*, 89th Congress, 2nd Session (August 3, 1966): 18116.
- ²¹ *Congressional Record*, 89th Congress, 2nd Session (August 3, 1966): 18134.
- ²² *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18737.
- ²³ *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18737.
- ²⁴ For more on anti-riot laws, see O’Reilly (1988).
- ²⁵ *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18738.
- ²⁶ *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18739.
- ²⁷ On NOMINATE scores, see Poole and Rosenthal (2007) and Everson et al. (2016). Data regarding states with fair housing laws on the books in 1966 come from Collins (2006, p. 19). These states were Alaska, Colorado, Connecticut, Indiana, Massachusetts, Michigan, New Hampshire, New Jersey, New York, and Rhode Island. We define a fair housing law to be “strong” if it included owner-occupied housing. Data on percent Black by district comes from Adler (2002). Two-party vote data was provided by Jamie Carson.
- ²⁸ The second NOMINATE dimension in the 89th House was associated with civil rights, with negative scores indicating more liberal positions. See Poole and Rosenthal (2007, p. 59).
- ²⁹ A logit model, with the two NOMINATE dimensions as the covariates, correctly classifies 86.8% of individual votes. This generates a Proportional Reduction in Error (PRE) of 0.55 relative to a naïve model (where everyone votes in the winning direction).
- ³⁰ *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18739.
- ³¹ *Congressional Record*, 89th Congress, 2nd Session (August 12, 1966): 19174.
- ³² For the full text of Johnson’s message, see CQ Almanac (1968a). As for employment discrimination, LBJ also proposed giving the Equal Employment Opportunity Commissions (EEOC) cease-and-desist authority. These fair-housing and employment changes were based on recent task-force recommendations. For details, see Graham (1990, pp. 262–267).
- ³³ *Public Law* No. 90-198.
- ³⁴ On February 26, 1968, the House passed the bill, 307-45, with several minor amendments and sent it back to the Senate. On March 14, the Senate accepted the House amendments by voice vote (*CQ Almanac* 1969a). The legislation became known as The Federal Jury Selection and Service Act of 1968 (*Public Law* No. 90-274).
- ³⁵ *Congressional Record*, 90th Congress, 1st Session (August 16, 1967): 22778.
- ³⁶ Figures provided by the Legislative Reference Service of the Library of Congress. See CQ Almanac (1968e).
- ³⁷ *Congressional Record*, 90th Congress, 1st Session (July 19, 1967): 19433-34.
- ³⁸ *Congressional Record*, 90th Congress, 2nd Session (February 6, 1968): 2269-70.

- ³⁹ *Congressional Record*, 90th Congress, 2nd Session (February 20, 1968): 3427.
- ⁴⁰ *Congressional Record*, 90th Congress, 2nd Session (February 21, 1968): 3807.
- ⁴¹ *Congressional Record*, 90th Congress, 2nd Session (February 26, 1968): 4064–65.
- ⁴² On the changes made during the compromise negotiations, see *CQ Almanac* (1969b); Oliveri (2018, pp. 34–35).
- ⁴³ *Congressional Record*, 90th Congress, 2nd Session (February 28, 1968): 17916.
- ⁴⁴ *Congressional Record*, 90th Congress, 2nd Session (March 1, 1968): 4845.
- ⁴⁵ *Congressional Record*, 90th Congress, 2nd Session (March 4, 1968): 4960.
- ⁴⁶ The full set of cloture votes on the Civil Rights Acts of 1966 and 1968 appears in the Appendix, Table A1 (Democrats) and Table A2 (Republicans).
- ⁴⁷ *Congressional Record*, 90th Congress, 2nd (March 5, 1968): 5214.
- ⁴⁸ *Congressional Record*, 90th Congress, 2nd Session (March 6, 1968): 5539.
- ⁴⁹ *Congressional Record*, 90th Congress, 2nd Session (March 8, 1968): 5838. For more on the “Indian Civil Rights Act,” see Burnett (1972).
- ⁵⁰ *Congressional Record*, 90th Congress, 2nd Session (March 8, 1968): 5839.
- ⁵¹ *Congressional Record*, 90th Congress, 2nd Session (March 11, 1968): 5992.
- ⁵² For a summary, see *CQ Almanac* (1969b).
- ⁵³ Voting to send the bill to conference were Bernice Sisk (D-CA), William M. Colmer (D-MS), James Delaney (D-NY), H. Allen Smith (R-CA), David Martin (R-NE), James Quillen (R-TN), and Delbert Latta (R-OH). Anderson joined with Ray Madden (D-IN), Richard Bolling (D-MO), Tip O’Neill (D-MA), John Young (D-TX), Claude Pepper (D-FL), Spark Matsunaga (D-HA), and William Anderson (D-TN) to defeat the motion. See Hunter (1968).
- ⁵⁴ The earlier coalitions flipped, except Sisk now joined the earlier group of eight. *Ibid.*
- ⁵⁵ *Congressional Record*, 90th Congress, 2nd Session (April 10, 1968): 9554.
- ⁵⁶ *Congressional Record*, 90th Congress, 2nd Session (April 10, 1968): 9613.
- ⁵⁷ *Congressional Record*, 90th Congress, 2nd Session (April 10, 1968): 9620.
- ⁵⁸ *Ibid.*
- ⁵⁹ Note that between 1966 and 1968, four additional states—Hawaii, Iowa, Minnesota, and Vermont—adopted strong fair housing laws. See Collins (2006, p. 19).
- ⁶⁰ A logit model, with the two NOMINATE dimensions as the covariates, correctly classifies 88.5% of individual votes. This generates a PRE of 0.727 relative to a naïve model (where everyone votes in the winning direction).
- ⁶¹ *Congressional Record*, 90th Congress, 2nd Session (April 10, 1968): 9621.
- ⁶² For a complete explanation of the Sumner’s bill and its treatment by Congress, see Jenkins and Peck (2021, pp. 174–189).
- ⁶³ *Congressional Globe*, 42nd Congress, 1st Session (January 31, 1872): 727

References

- Adler, E. Scott. (2002). *Congressional District Data File*, [89th Congress]. University of Colorado, Boulder, CO.
- Albright, Robert C. (1966). Senate Sets Stage for 3rd Rights Fight in 3 Yrs. *The Washington Post*, May 4. <https://www.proquest.com/docview/142973479/412EDCEA39F2491CPQ/12?accountid=14749> (accessed September 21, 2021).
- Bernstein, Irving (1996). *Guns or Butter: The Presidency of Lyndon Johnson*. New York: Oxford University Press.
- Brown v. Board of Education of Topeka* (1954). 347 U.S., 483
- Brown, DeNeen L. (2018). The Fair Housing Act Was Languishing in Congress. Then Martin Luther King Was Killed. *The Washington Post*, April 11. <https://www.washingtonpost.com/news/retropolis/wp/2018/04/11/the-fair-housing-act-was-languishing-in-congress-then-martin-luther-king-jr-was-killed/> (accessed September 21, 2021).
- Burnett, Donald L., Jr. (1972). An Historical Analysis of the 1968 ‘Indian Civil Rights’ Act. *Harvard Journal on Legislation*, 9(4): 557–626.
- Carter, David C. (2009). *The Music Has Gone Out of the Movement: Civil Rights and the Johnson Administration, 1965–1968*. Chapel Hill, NC: University of North Carolina Press.
- Chicago Tribune Press Service (1966). House Starts Voting Today on Rights Bill,” *Chicago Tribune*, July 29. <https://www.proquest.com/docview/179024399/9B32B108E15D4CB5PQ/4?accountid=14749> (accessed September 21, 2021).
- Collins, William J. (2006). The Political Economy of State Fair Housing Laws Before 1968. *Social Science History*, 30(1): 15–49.
- Congress and the Nation, Volume II: 1965–1968: A Review of Government and Politics During the Johnson Years* (1969). Washington, DC: Congressional Quarterly, Inc.

- CQ *Almanac 1967* (1968a). Message to Congress: Johnson's Civil Rights Message. 23rd ed., 20-62-A-20-66-A. Washington, DC: Congressional Quarterly, Inc. <http://library.cqpress.com/cqalmanac/document.php?id=cqal67-1312014> (accessed September 19, 2021).
- CQ *Almanac 1967* (1968b). Senate Hearings Held on 1967 Civil Rights Act. 23rd ed., 08-775-08-777. Washington, DC: Congressional Quarterly, Inc. <http://library.cqpress.com/cqalmanac/cqal67-1312858> (accessed September 19, 2021).
- CQ *Almanac 1967* (1968c). Civil Rights Bill Split up, Few Proposals Passed. 23rd ed., 08-772-08-775. Washington, DC: Congressional Quarterly, Inc. <http://library.cqpress.com/cqalmanac/cqal67-1312853> (accessed September 19, 2021).
- CQ *Almanac 1967* (1968d). Senate Passes Bill on Federal Jury Selection. 23rd ed., 08-787-08-788. Washington, DC: Congressional Quarterly, Inc. <http://library.cqpress.com/cqalmanac/cqal67-1312876> (accessed September 19, 2021).
- CQ *Almanac 1967* (1968e). Chronology of Violence in American History. 23rd ed., 08-793-08-795. Washington, DC: Congressional Quarterly, Inc. <http://library.cqpress.com/cqalmanac/cqal67-1312888> (accessed September 19, 2021).
- CQ *Almanac 1968* (1969a). Federal Jury Reform. 24th ed., 09-169-9-169. Washington, DC: Congressional Quarterly, Inc. <http://library.cqpress.com/cqalmanac/cqal68-1283475> (accessed September 19, 2021).
- CQ *Almanac 1968* (1969b). Congress Enacts Open Housing Legislation. 24th ed., 14-152-14-165. Washington, DC: Congressional Quarterly, Inc. <http://library.cqpress.com/cqalmanac/cqal68-1283454> (accessed September 19, 2021).
- CQ *Almanac 1968* (1969c). Message to Congress: Johnson on Civil Rights. 24th ed., 20-36-A-20-39-A. Washington, DC: Congressional Quarterly, Inc. <http://library.cqpress.com/cqalmanac/cqal68-1284443> (accessed September 19, 2021).
- CQ *Almanac 1968* (1969d). Effective Lobbying Put Open Housing Bill Across. 24th ed., 14-166-14-168. Washington, DC: Congressional Quarterly, Inc. <http://library.cqpress.com/cqalmanac/cqal68-1283472> (accessed September 19, 2021).
- Delmont, Matthew F. (2016). *Why Busing Failed: Race, Media, and the National Resistance to School Desegregation*. Berkeley, CA: University of California Press.
- Dubofsky, Jean E. (1969). Fair Housing: A Legislative History and a Perspective. *Washburn Law Journal*, 8(2): 149–166.
- Everson, Phil, Rick Vallery, Arjun Vishwanath, and Jim Wiseman (2016). NOMINATE and American Political Development: A Primer. *Studies in American Political Development*, 30(2): 97–115.
- Franklin, Ben A. (1966a). Realtors Lobby Calls for Fight on Open Housing. *The New York Times*, July 29. <https://www.proquest.com/docview/116973958/19F4CEBB3BEB46E6PQ/1?accountid=14749> (accessed September 21, 2021).
- Franklin, Ben A. (1966b). Wilkins Presses for Open Housing. *The New York Times*, July 27. <https://www.proquest.com/docview/117236737/63E036765D504FDDPQ/1?accountid=14749> (accessed September 21, 2021).
- Franklin, Ben A. (1966c). House Taking Up Rights Bill Today. *The New York Times*, July 25. <https://www.proquest.com/docview/117532115/5E822B0B841247E7PQ/1?accountid=14749> (accessed September 21, 2021).
- Freeburg, Russell (1966). Dirksen Hits Bid for Fair Housing Law. *Chicago Tribune*, May 3. <https://www.proquest.com/docview/178996210/937B1603410D4259PQ/1?accountid=14749> (accessed September 21, 2021).
- Garrow, David J. (1999). *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference*. New York: Harper Collins.
- Gillette, William (1982). *Retreat from Reconstruction, 1869–1879*. Baton Rouge, LA: Louisiana State University Press.
- Graham, Hugh Davis (1990). *The Civil Rights Era: Origins and Development of National Policy, 1960–1972*. New York: Oxford University Press.
- Herbers, John (1966a). Johnson to Yield on Open Housing to Aid Rights Bill. *The New York Times*, June 27. <https://www.nytimes.com/1966/06/28/archives/johnson-to-yield-on-open-housing-to-aid-rights-bill-will-accept.html> (accessed September 20, 2021).
- Herbers, John (1966b). Open Housing Kept in Rights Bill by 17-to-15 Vote of House Panel. *The New York Times*, June 29. <https://www.proquest.com/docview/117516097/A914E3EFFE8347D2PQ/1?accountid=14749> (accessed September 21, 2021).
- Herbers, John (1966c). House Backs Curb on Housing Bias. *The New York Times*, August 6. <https://www.proquest.com/docview/117276029/520783462F5C48B4PQ/2?accountid=14749> (accessed September 21, 2021).
- Herbers, John (1966d). Rights Bill Foes in Senate Force Delay in Debate. *The New York Times*, August 12. <https://www.proquest.com/docview/117193037/A95A4E52E5654A08PQ/2?accountid=14749> (accessed September 21, 2021).

- Herbers, John (1966e). Rights Bill Foes in Senate Force Delay in Debate. *The New York Times*, August 12. <https://www.proquest.com/docview/117193037/64C1EBE3B8D240E1PQ/1?accountid=14749> (accessed September 21, 2021).
- Hinton, Elizabeth (2021). *America on Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s*. New York: W.W. Norton.
- Hirsch, Arnold R. (1995). Massive Resistance in the Urban North: Trumbull Park, Chicago, 1953–1966. *The Journal of American History*, 82(2): 522–550.
- Hulse, Byron C. (2000). *Everett Dirksen and His Presidents: How a Senate Giant Shaped American Politics*. Lawrence, KS: University Press of Kansas.
- Hunter, Marjorie (1966). Democrats Split on Open Housing. *The New York Times*, August 1. <https://www.proquest.com/docview/117535686/FCB15D88ED634920PQ/1?accountid=14749> (accessed September 21, 2021).
- Hunter, Marjorie (1968). Rules Panel Clears Rights Bill for Vote In the House Today. *The New York Times*, April 10. <https://www.proquest.com/docview/118172622/DB3390438CF945BCPQ/2?accountid=14749> (accessed September 21, 2021).
- Jackson, Kenneth T. (1985). *Crabgrass Frontier: The Suburbanization of the United States*. New York: Oxford University Press.
- Jenkins, Jeffery A., and Justin Peck (2021). *Congress and the First Civil Rights Era, 1861–1918*. Chicago, IL: University of Chicago Press.
- Johnson, Lyndon B. (1967). Text of Message by President Johnson to Congress on the State of the Union. *The New York Times*, January 11. <https://www.proquest.com/docview/117952840/834681CA0F4044FEPQ/6?accountid=14749> (accessed September 21, 2021).
- Levy, Peter B. (2018). *The Great Uprising: Race Riots in Urban America*. New York: Cambridge University Press.
- Lyons, Richard (1966a). House May Limit Open Housing Law. *Boston Globe*, July 27. <https://www.proquest.com/docview/366175098/941C4082AAD14404PQ/16?accountid=14749> (accessed September 21, 2021).
- Lyons, Richard (1966b). House Softens Rights Housing by 1 Vote. *The Washington Post*, August 4. <https://www.proquest.com/docview/142753349/8A4E03623B94B7BPQ/1?accountid=14749> (accessed September 21, 2021).
- Massey, Douglas S., and Nancy A. Denton (1993). *American Apartheid: Segregation and the Making of the Underclass*. Cambridge, MA: Harvard University Press.
- Mathias, Charles McC., Jr., and Marion Morris (1999). Fair Housing Legislation: Not an Easy Row to Hoe. *Cityscape: A Journal of Policy Development and Research*, 4(3): 21–33.
- Mayhew, David R. (1974). *Congress: The Electoral Connection*. New Haven, CT: Yale University Press.
- Metcalf, George R. (1988). *Fair Housing Comes of Age*. New York: Greenwood Press.
- O'Reilly, Kenneth (1988). The FBI and the Politics of Riots, 1964–1968. *The Journal of American History*, 75(1): 91–114.
- Oliveri, Rigel C. (2018). The Legislative Battle for the Fair Housing Act (1966–1968). In Gregory D. Squires (Ed.), *The Fight for Fair Housing: Causes, Consequences, and Future Implications of the 1968 Federal Fair Housing Act*, pp. 28–39. New York: Routledge.
- Orfield, Gary (1975). Congress, the President, and Anti-Busing Legislation, 1966–1974. *Journal of Law and Education*, 4(1): 81–139.
- Poole, Keith T., and Howard Rosenthal (2007). *Ideology and Congress*. New Brunswick, NJ: Transaction Publishers.
- Ralph, James R., Jr. (1993). *Northern Protest: Martin Luther King, Jr., Chicago, and the Civil Rights Movement*. Cambridge, MA: Harvard University Press.
- Rothstein, Richard (2017). *The Color of Law: A Forgotten History of How Our Government Segregated America*. New York: Liveright.
- Sander, Richard H., Yana A. Kucheva, and Jonathan M. Zasloff (2018). *Moving Toward Integration: The Past and Future of Fair Housing*. Cambridge, MA: Harvard University Press.
- Semple, Robert B., Jr. (1966). Dirksen Refuses Rights Bill Shift. *The New York Times*, September 14. <https://www.proquest.com/docview/116977014/86A4C4642C334AE0PQ/1?accountid=14749> (accessed September 21, 2021).
- Sloyan, Patrick J. (1966). Ghetto Life Caused Riots: Katzenbach. *Chicago Daily Defender*, August 18. <https://www.proquest.com/docview/494224969/51881C057B384A42PQ/1?accountid=14749> (accessed September 21, 2021).
- Stewart, Richard (1966a). No GOP Decision Yet on Open Housing. *Boston Globe*, July 29. <https://www.proquest.com/docview/366166940/F259D0AF52F3419FPQ/56?accountid=14749> (accessed September 21, 2021).
- Stewart, Richard (1966b). Civil Rights Bill in Trouble. *Boston Globe*, July 31. <https://www.proquest.com/docview/814685974/A536EBE61681488DPQ/16?accountid=14749> (accessed September 21, 2021).
- Sugrue, Thomas J. (2008). *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North*. New York: Random House.

Taylor, Keeanga-Yamahatta (2019). *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*. Chapel Hill, NC: University of North Carolina Press.

Tooze, Adam (2014). *Deluge: The Great War, America, and the Remaking of the Global Order, 1916–1931*. New York: Penguin.

United Press International (1966a). Open Occupancy Debate Sparks Action in House. *Baltimore Afro-American*, August 6. <https://www.proquest.com/docview/532183255/2BC2734476374003PQ/1?accountid=14749> (accessed September 21, 2021).

United Press International (1966b). LBJ says Rights Bill Depends on Dirksen, *Chicago Daily Defender*, September 14. <https://www.proquest.com/docview/494267904/1F997CA20E1C43F2PQ/1?accountid=14749> (accessed September 21, 2021).

United States Congress (1966). *Civil Rights: 1966: Hearings Before Subcommittee No. 5. 89th Congress, 2nd Session*. Washington, DC: U.S. Government Printing Office.

U.S. News Staff (1967). Race Troubles. *U.S. News and World Report*. August 14. <https://www.usnews.com/news/national-news/articles/2017-07-12/race-troubles-109-us-cities-faced-violence-in-1967> (accessed September 21, 2021).

Wyatt-Brown, Bertram (1965). The Civil Rights Act of 1875. *Western Political Quarterly*, 18(4): 763–775.

Zeitj, Joshua (2018). *Building the Great Society: Inside Lyndon Johnson's White House*. New York: Viking.

Appendix

Table A1. Democratic Votes to Invoke Cloture on Civil Rights Acts of 1966 and 1968

Name	State	89th Congress		90th Congress			
		9/14/66	9/19/66	2/20/68	2/26/68	3/1/68	3/4/68
HOLLINGS, Ernest Frederick	SC	.	.	N	N	N	N
SPONG, William Belser, Jr.	VA	.	.	N	N	N	N
ROBERTSON, Absalom Willis	VA	N	N	.	.	.	.
RUSSELL, Donald Stuart	SC	N	N	.	.	.	.
CANNON, Howard Walter	NV	N	N	aN	N	N	Y
BIBLE, Alan Harvey	NV	N	N	N	N	N	N
EASTLAND, James Oliver	MS	N	N	N	N	N	N
ELLENDER, Allen Joseph	LA	N	N	N	N	N	N
ERVIN, Samuel James, Jr.	NC	N	N	N	N	N	N
FULBRIGHT, James William	AR	N	N	N	N	N	N
HILL, Joseph Lister	AL	N	N	N	N	N	N
HOLLAND, Spessard Lindsey	FL	N	N	N	N	N	N
JORDAN, Benjamin Everett	NC	N	N	N	N	N	N
LONG, Russell Billiu	LA	N	N	N	N	N	N
McCLELLAN, John Little	AR	N	N	N	N	N	N
RUSSELL, Richard Brevard, Jr.	GA	N	N	N	N	N	N
SPARKMAN, John Jackson	AL	N	N	N	N	N	N
STENNIS, John Cornelius	MS	N	N	N	N	N	N
TALMADGE, Herman Eugene	GA	N	N	N	N	N	N
BYRD, Harry Flood, Jr.	VA	N	N	N	N	N	N
BYRD, Robert Carlyle	WV	N	N	pN	N	N	N
SMATHERS, George Armistead	FL	N	N	pN	pN	pN	N
LAUSCHE, Frank John	OH	N	Y	Y	Y	Y	Y
BARTLETT, Edward Lewis (Bob)	AK	nv	Y	N	pN	pN	Y
MAGNUSON, Warren Grant	WA	pN	pN	N	aN	N	N
McGEE, Gale William	WY	pY	pY	pY	Y	Y	Y
HAYDEN, Carl Trumbull	AZ	pY	Y	Y	Y	pY	Y

(Continued)

Table A1. *Continued*

Name	State	89th Congress		90th Congress			
		9/14/66	9/19/66	2/20/68	2/26/68	3/1/68	3/4/68
BASS, Ross	TN	Y	Y	.	.	.	.
DOUGLAS, Paul Howard	IL	Y	Y	.	.	.	.
NEUBERGER, Maurine Brown	OR	Y	Y	.	.	.	.
MONRONEY, Almer Stillwell Mike	OK	Y	Y	aY	Y	Y	Y
HARTKE, Rupert Vance	IN	Y	Y	pY	Y	Y	Y
MANSFIELD, Michael Joseph (Mike)	MT	Y	Y	pY	pY	Y	Y
PASTORE, John Orlando	RI	Y	Y	pY	pY	pY	aY
ANDERSON, Clinton Presba	NM	Y	nv	Y	Y	Y	Y
BREWSTER, Daniel Baugh	MD	Y	Y	Y	Y	Y	Y
BURDICK, Quentin Northrup	ND	Y	Y	Y	Y	Y	Y
CHURCH, Frank Forrester	ID	Y	Y	Y	Y	pY	Y
CLARK, Joseph Sill	PA	Y	Y	Y	Y	Y	Y
DODD, Thomas Joseph	CT	Y	Y	Y	Y	Y	Y
GORE, Albert Arnold	TN	Y	Y	Y	Y	N	Y
GRUENING, Ernest Henry	AK	Y	Y	Y	Y	Y	Y
HART, Philip Aloysius	MI	Y	Y	Y	Y	Y	Y
INOUE, Daniel Ken	HI	Y	Y	Y	Y	Y	Y
JACKSON, Henry Martin (Scoop)	WA	.	.	N	N	N	N
LONG, Edward Vaughn	MO	Y	Y	Y	Y	Y	Y
McCARTHY, Eugene Joseph	MN	Y	Y	Y	Y	Y	Y
McGOVERN, George Stanley	SD	Y	Y	Y	aY	Y	aY
METCALF, Lee Warren	MT	Y	Y	Y	aN	Y	Y
MONTOYA, Joseph Manuel	NM	Y	Y	Y	Y	Y	Y
MORSE, Wayne Lyman	OR	Y	Y	Y	Y	Y	Y
MOSS, Frank Edward (Ted)	UT	Y	Y	Y	Y	Y	Y
MUSKIE, Edmund Sixtus	ME	Y	Y	Y	Y	Y	Y
PROXMIRE, William	WI	Y	Y	Y	Y	Y	Y
RANDOLPH, Jennings	WV	Y	Y	Y	Y	Y	Y
RIBICOFF, Abraham Alexander	CT	Y	Y	Y	Y	Y	Y
SYMINGTON, William Stuart (Stuart)	MO	Y	Y	Y	Y	Y	Y
WILLIAMS, Harrison Arlington, Jr.	NJ	Y	Y	Y	Y	Y	Y
YARBOROUGH, Ralph Webster	TX	Y	Y	Y	Y	Y	aY
YOUNG, Stephen Marvin	OH	Y	Y	Y	pY	Y	Y
BAYH, Birch Evans	IN	Y	Y	Y	Y	Y	Y
HARRIS, Fred Roy	OK	Y	Y	Y	Y	Y	Y
KENNEDY, Edward Moore (Ted)	MA	Y	pY	Y	Y	Y	Y
KENNEDY, Robert Francis	NY	Y	Y	Y	Y	Y	Y
McINTYRE, Thomas James	NH	Y	Y	Y	Y	Y	Y
MONDALE, Walter Frederick	MN	Y	Y	Y	Y	Y	Y
NELSON, Gaylord Anton	WI	Y	Y	Y	Y	Y	Y
PELL, Claiborne de Borda	RI	Y	Y	Y	Y	Y	Y
TYDINGS, Joseph Davies	MD	Y	Y	Y	Y	Y	Y

Note: Y=Yea, N=Nay, pY=paired Yea, pN=paired Nay, aY=announced Yea, aN=announced Nay, nv=not voting, .=not a member.

Table A2. Republican Votes to Invoke Cloture on Civil Rights Acts of 1966 and 1968

Name	State	89th Congress			90th Congress		
		9/14/66	9/19/66	2/20/68	2/26/68	3/1/68	3/4/68
BAKER, Howard Henry, Jr.	TN	.	.	N	N	Y	Y
HANSEN, Clifford Peter	WY	.	.	N	N	N	N
BROOKE, Edward William, III	MA	.	.	Y	Y	Y	Y
HATFIELD, Mark Odom	OR	.	.	Y	Y	Y	Y
PERCY, Charles Harting	IL	.	.	Y	Y	Y	Y
SIMPSON, Milward Lee	WY	N	N	.	.	.	.
BENNETT, Wallace Foster	UT	N	N	N	N	N	N
CARLSON, Frank	KS	N	N	N	N	N	Y
COTTON, Norris H.	NH	N	N	N	Y	Y	Y
CURTIS, Carl Thomas	NE	N	N	N	N	N	N
DIRKSEN, Everett McKinley	IL	N	N	N	N	Y	Y
HICKENLOOPER, Bourke Blakemore	IA	N	N	N	N	N	N
HRUSKA, Roman Lee	NE	N	N	N	N	N	N
MUNDT, Karl Earl	SD	N	N	N	N	N	N
THURMOND, James Strom	SC	N	N	N	N	N	N
WILLIAMS, John James	DE	N	N	N	N	N	N
YOUNG, Milton Ruben	ND	N	N	N	N	N	N
FANNIN, Paul Jones	AZ	N	N	N	N	N	N
JORDAN, Leonard Beck (Len)	ID	N	N	N	N	Y	Y
MILLER, Jack Richard	IA	N	N	N	N	N	Y
MURPHY, George Lloyd	CA	N	N	N	N	N	N
TOWER, John Goodwin	TX	N	N	N	N	N	N
COOPER, John Sherman	KY	N	pN	Y	Y	Y	Y
MORTON, Thruston Ballard	KY	N	N	Y	Y	Y	Y
PROUTY, Winston Lewis	VT	N	N	Y	Y	Y	Y
PEARSON, James Blackwood	KS	N	N	Y	Y	Y	Y
SALTONSTALL, Leverett	MA	Y	Y	.	.	.	.
AIKEN, George David	VT	Y	Y	Y	Y	Y	Y
ALLOTT, Gordon Llewellyn	CO	Y	pY	Y	Y	Y	Y
BOGGS, James Caleb	DE	Y	Y	Y	Y	Y	Y
CASE, Clifford Philip	NJ	Y	Y	Y	Y	Y	Y
FONG, Hiram Leong	HI	Y	Y	Y	Y	Y	Y
GRIFFIN, Robert Paul	MI	Y	Y	Y	Y	Y	Y
JAVITS, Jacob Koppel	NY	Y	Y	Y	Y	Y	Y
KUCHEL, Thomas Henry	CA	Y	N	Y	Y	Y	Y
SCOTT, Hugh Doggett, Jr.	PA	Y	Y	Y	Y	Y	Y
SMITH, Margaret Chase	ME	Y	Y	Y	Y	Y	Y
DOMINICK, Peter Hoyt	CO	Y	pY	Y	Y	Y	Y

Note: Y=Yea, N=Nay, pY=paired Yea, pN=paired Nay, aY=announced Yea, aN=announced Nay, nv=not voting, .=not a member.

Jeffery A. Jenkins is the Provost Professor of Public Policy, Political Science, and Law, the Judith and John Bedrosian Chair of Governance and the Public Enterprise, director of the Bedrosian Center, and director of the Political Institutions and Political Economy Collaborative in the Price School of Public Policy at the University of Southern California. His research interests include American Political Institutions and Development (with a special emphasis on Congress and political parties), lawmaking, separation-of-powers, and political economy. He is the recent author of *Congress and the First Civil Rights Era, 1861-1918* (University of Chicago Press, 2021) with Justin Peck and *Republican Party Politics and the American South, 1865-1968* (Cambridge University Press, 2020) with Boris Heersink.

Justin Peck is Assistant Professor of Government at Wesleyan University. His research interests include Congress, the presidency, and American Political Development. He is the recent author of *Congress and the First Civil Rights Era, 1861-1918* (University of Chicago Press, 2021) with Jeffery A. Jenkins.

Cite this article: Jenkins, Jeffery A. and Justin Peck (2022). Foreshadowing the Civil Rights Counter-Revolution: Congress and the Fair Housing Act of 1968. *Du Bois Review: Social Science Research on Race*, 19: 329–356. <https://doi.org/10.1017/S1742058X21000370>