

## **Congressional Action on Civil Rights: The Fair Housing Act of 1968**

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Abstract: After overseeing the enactment 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 the broader agenda: a legal prohibition on racial discrimination in the sale and rental of housing. Enactment of fair housing legislation proved to be a vexing process as advocates had to win support from northern white Democrats skeptical of the policy, as well as Republicans who were often unreliable allies. Fair housing advocates failed in 1966 (89th Congress) but were successful in 1968 (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. To do so, we examine the congressional proceedings, individual roll-call votes, and eventual legislative outcomes.

## I. 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 to win a war caused in large part by a global depression, they now confronted the very real risk of yet another significant economic downturn.<sup>1</sup> The combined effects of high unemployment, low growth, and a restive population of returning soldiers, threatened to generate dangerous political instability. One way in which policymakers acted to alleviate the threat of a new recession was to encourage home construction and home buying. Making use of the Federal Home Loan Bank Board, the Home Owners Loan Corporation, and the Federal Housing Administration – agencies created in the early years of the New Deal – federal officials loaned out the money that facilitated construction of public housing within American cities, and single-family homes in the emerging American suburbs.<sup>2</sup>

One aspect of the federal government’s broader housing program, we now know, was support for residential segregation by race.<sup>3</sup> Redlining, restrictive covenants, and the explicitly discriminatory practices of banks and developers, ensured that the suburbanization would primarily be driven by white citizens. In the words of urban planner Charles Adams, “FHA adopted a racial policy that could well have been culled from the Nuremburg Laws. From its

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<sup>1</sup> As Adam Tooze describes, the U.S. 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. For more on the recession of the 1920s see, Adam Tooze, *Deluge: The Great War, America, and the Remaking of the Global Order, 1916-1931* (New York: Penguin, 2014).

<sup>2</sup> For more on federal housing policy in the immediate post-war Yrs see, Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985), 190-231; Richard H. Sander, Yana A. Kucheva, and Jonathan M. Zasloff, *Moving Toward Integration: The Past and Future of Fair Housing* (Cambridge, MA: Harvard University Press, 2018), 83-101.

<sup>3</sup> Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liverlight, 2017).

inception, FHA set itself up as the protector of the all white neighborhood.”<sup>4</sup> Housing patterns in the post-war era were primarily characterized by white families “finance[ing] their escape from areas experiencing racial change.”<sup>5</sup> The consequences of “white flight” from America’s urban centers were dramatic. Kenneth Jackson’s analysis demonstrates the clear link between income and suburbanization. He finds 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.” At the same time, public housing was increasingly “ghettoized” in American cities.<sup>6</sup> By the 1960s, living conditions for black citizens in American cities were unbearable. The conditions had been set for urban unrest and, not surprisingly, by the mid-1960s rioting became a common occurrence.

The epidemic of urban rioting proved so significant because it made very clear that America’s race problem was not confined to the South, nor solvable by simply ensuring that black citizens were guaranteed the right to vote. Making this point very clear, the riots in Watts, Los Angeles took place less than one week after President Johnson signed the Voting Rights Act of 1965.<sup>7</sup> Yet to address the social and economic problems caused by residential segregation, the federal government would need to intervene in the housing market. Intervention of this kind would have a dramatic impact on property owners in both the north and the south, a particular problem because, as has been true since the “first civil rights era,” support among white northerners for civil rights policies held only so long as the only people impacted were southerners.<sup>8</sup> White northerners, in the words of Joshua Zeitz, “instantly revolted against the Great Society when that struggle came to *their* schools, workplaces, and neighborhoods. The

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<sup>4</sup> Adams quoted in Jackson, *Crabgrass Frontier*, 214.

<sup>5</sup> Jackson, *Crabgrass Frontier*, 215.

<sup>6</sup> Jackson, *Crabgrass Frontier*, 8; 219-231.

<sup>7</sup> Johnson signed the law on August 6, 1965 and the rioting started on August 11, 1965.

<sup>8</sup> Jeffery A. Jenkins and Justin Peck, *Congress and the First Civil Rights Era* (manuscript under review).

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."<sup>9</sup>

Our goal in this paper is to provide a legislative policy history detailing how Congress came to enact the fair housing provision of the Civil Rights Act of 1968.<sup>10</sup> To do so, we examine the congressional proceedings, individual roll-call votes, and eventual legislative outcomes. We also pay particular attention to the pivotal role played by a small group of Republican legislators. It was the strategic behavior of this group, we claim, that helped ensure defeat in 1966 and success in 1968. To guide the analysis, we break the remainder of the paper into 2 sections. Section II details the first, failed effort to enact fair housing policy during the 89th Congress (1965-66). Section III details its eventual success during the 90th Congress (1967-68). Section IV concludes

## **II. Fair Housing Legislation in the 89th Congress**

Not long before the Supreme Court's ruling in *Brown v. Board of Education* holding school segregation to violate 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 initiated a struggle to integrate Chicago's residential neighborhoods. These activists were ultimately defeated by the city's political leadership, who put to very effective political use the violent white counter-reaction initiated by white residents opposing neighborhood integration. Ten years later, Martin Luther King Jr. and the Southern Christian Leadership Congress (SCLC) renewed the fight to integrate Chicago, braved the violent white backlash, and were forced to leave the city having achieved few of their aims.

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<sup>9</sup> Joshua Zeitz, *Building the Great Society: Inside Lyndon Johnson's White House* (New York: Viking, 2018), 242.

<sup>10</sup> Fair housing was also often referred to as "open housing." We will use the terms interchangeably in this paper.

These repeated failures demonstrate the extent to which residential integration “exposed the political and ideological limits of the civil rights era.”<sup>11</sup>

At almost the exact same time SCLC activists were struggling to end housing discrimination in Abraham Lincoln’s home state, some members of Congress were pushing 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 exactly 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.<sup>12</sup> Regardless, the end of the “first civil rights era” and the rise of Jim Crow led to significant housing segregation in both the north and south.<sup>13</sup> 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.<sup>14</sup>

Civil rights activists recognized, and worked to confront, 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

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<sup>11</sup> Arnold R. Hirsch, “Massive Resistance in the Urban North: Trumbull Park, Chicago, 1953-1966,” *The Journal of American History* 82 (September 1995): 523; For more on the effort to integrate Chicago’s neighborhoods see, Thomas J. Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North* (New York: Random House, 2008); Taylor Branch, *At Canaan’s Edge: America in the King Yrs, 1965-1968* (New York: Simon and Schuster, 2007); James R. Ralph, Jr., *Northern Protest: Martin Luther King, Jr., Chicago, and the Civil Rights Movement* (Cambridge, MA: Harvard University Press, 1993).

<sup>12</sup> 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>.

<sup>13</sup> Jenkins and Peck, *Congress and the First Civil Rights Era*.

<sup>14</sup> Sander, Kucheva, and Zasloff, *Moving Toward Integration*, 84.

ultimately to make slums a moral and financial liability upon the whole community.”<sup>15</sup> He was echoed by northern activists like Clarence Funnye – one-time director of 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.”<sup>16</sup> Over the 1950s and 1960s, the “open housing movement” attracted proponents 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 18 in 1959 to more than one thousand in 1965.<sup>17</sup> 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.”<sup>18</sup>

In April 1966, the administration acted on Johnson appeal by sending to Congress a broad civil rights proposal.<sup>19</sup> The 1966 bill was an aggregation of various items sought by different factions of the civil rights movement. More specifically, the bill aimed 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). Title IV of the bill, the fair housing provision, proved to be its most controversial section.<sup>20</sup> As written, the administration proposed to make illegal discrimination in the sale and rental of all new and existing housing stock. To enforce this prohibition, the plan relied on

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<sup>15</sup> King quoted in David J. Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (New York: Harper Collins, 1999), 457.

<sup>16</sup> Funnye quoted in Sugrue, *Sweet Land of Liberty*, 413.

<sup>17</sup> Sugrue, *Sweet Land of Liberty*, 413.

<sup>18</sup> Johnson’s speech can be read here: <https://millercenter.org/the-presidency/presidential-speeches/january-12-1966-state-union>

<sup>19</sup> 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.

<sup>20</sup> The House sponsor of the bill – H.R. 14765 – was Representative Emanuel Celler (D-NY).

victims of the discriminatory action to pursue damages in the court. Yet the bill also would have empowered the Attorney General to bring so-called “pattern-or-practice” lawsuits against those suspected of repeated, systematic discrimination in the sale or rental of housing.<sup>21</sup>

The Democratic Party controlled both houses in the 89<sup>th</sup> Congress. In the House of Representatives, they held a commanding 295-140 advantage; in the Senate, they retained a majority of 68-32. Yet the role and influence of southern members who were dead-set against any civil rights legislation meant that any successful bill would need to win votes from sympathetic Republicans. Well aware of the political headwinds they faced, the administration pursued what Hugh Davis Graham describes as its “customary House-first strategy.” In the House, the bill would be sent to the Judiciary Committee led by Representative Emmanuel Celler (D-NY), a northern liberal. In the Senate, it would have faced immediate opposition from Mississippi Democrat James Eastland who led the Judiciary Committee in the upper chamber. With the House Judiciary committee well-disposed to the bill, the administration and its supporters could then “negotiate its early compromises with dependable Republican moderates ... whose bargains tended to command bipartisan respect and hence to stick.”<sup>22</sup> Once House Republicans bought in, they 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) by sending Attorney General Katzenbach 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, it remained “the one commodity in

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<sup>21</sup> For a more detailed summary of the Administration’s proposal see, *Congress and the Nation, Volume II: 1965-1968* (Washington, D.C.: Congressional Quarterly Service, 1969), 365-369.

<sup>22</sup> Hugh Davis Graham, *The Civil Rights Era: Origins and Development of National Policy, 1960-1972* (New York: Oxford University Press, 1990), 260.

the American market that is not freely available on equal terms to everyone who can afford to pay.” “Segregated living is both a source and an enforcer of involuntary second-class citizenship,” he continued. 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.<sup>23</sup> 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.<sup>24</sup> 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. Senate Minority Leader Everett Dirksen (R-IL), for example, responded to the administration’s proposal by proclaiming to 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.”<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> For the bill to pass,

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<sup>23</sup> United States Congress, *Civil Rights: 1966: Hearings Before Subcommittee No. 5*, 89th Congress, 2nd Session (Washington, D.C.: U.S. Government Printing Office, 1966), 1067; 1070.

<sup>24</sup> *Civil Rights: 1966: Hearings Before Subcommittee No. 5*, 89th Congress, 2nd Session (Washington, D.C.: U.S. Government Printing Office, 1966), 1201.

<sup>25</sup> “Dirksen Hits Bid for Fair Housing Law,” *Chicago Tribune*, May 3, 1966.

<sup>26</sup> “Senate Sets Stage for 3d Rights Fight in 3 Yrs,” *Washington Post*, May 4, 1966.

<sup>27</sup> “Realtors Lobby Calls for Fight on Open Housing,” *New York Times*, July 29, 1966; Charles McC. Mathias, Jr. and Marion Morris, “Fair Housing Legislation: Not an Easy Row to Hoe,” *Cityscape: A Journal of Policy Development and Research* 4 (1999): 22.



it would need to calm those members who voiced that argument that, as written, it would deprive citizens of the basic right to choose how best to rent or sell personal property.

Representative Celler also led the subcommittee responsible for marking up H.R. 14765 and he commenced a series of hearings through May 1966. In June, the subcommittee met in executive session for nine days to craft new language reflecting the testimony they received. Subsequently the full committee met an additional nine sessions, during which time Representative Charles McC. 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.”<sup>28</sup> 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.

On June 27, the administration made public its willingness to accept exemptions of this kind.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> On this vote, Democrats voted 17-6 in favor of Mathias’ proposal while a majority of

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<sup>28</sup> Mathias, Jr. and Morris, “Fair Housing Legislation,” 22.

<sup>29</sup> “Johnson to Yield on Open Housing to Aid Rights Bill,” *New York Times*, June 27, 1966.

<sup>30</sup> “Open Housing Kept in Rights Bill by 17-to-15 Vote of House Panel,” *New York Times*, June 28, 1966.

<sup>31</sup> It is unclear what happened overnight. Regardless, those voting *for* the Mathias amendment: Reps. Celler (D-NY), Feighan (D-OH), Chelf (D-KY), Willis (D-LA), Rodino (D-NJ), Rogers (D-CO), Donohue (D-Mass), Brooks (D-TX), Toll (D-PA), Gilbert (D-NY), Corman (D-CA), St Onge (D-CT), Senner (D-AZ), Edwards (D-CA), Tenzer (D-NY), Greider (D-TN), Jacobs (D-IN), McCulloch (R-OH), Mathias (R-MD), McClory (R-IL), Smith (R-NY). Those

Republicans, 4-7, opposed.<sup>32</sup> The House Judiciary Committee also adopted, by a vote of 13-4, an amendment offered by Rep. John Conyers (D-MI), which proposed to create a Federal Fair Housing Board with “enforcement powers akin to those of the National Labor Relations Board.”<sup>33</sup> With these two changes made, the committee then sent H.R. 14765 to the floor.

In order to force consideration of H.R. 14765, Celler chose to maneuver around the House Rules Committee which, being led by Virginia Democrat Howard Smith, was likely to scuttle the bill. To do so, Celler invoked the 21-day rule which allows, by majority vote, bills approved by a committee, but bottled up without a rule to govern debate on the floor, to be brought up for consideration. Celler’s procedural gambit sparked predictable opposition. Representative Gerald Ford (R-MI), leader of the House minority, condemned the move and called upon his members to oppose Celler.<sup>34</sup> Howard Smith took the floor to pledge that his committee would hold hearings on the bill if only members would vote against Celler’s resolution.<sup>35</sup>

Despite these protestations, the vote to invoke the 21-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.<sup>36</sup> Opposition to H.R. 910 took to form of the “conservative coalition,” as an overwhelming majority of

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voting *against* the Mathias amendment: Tuck (D-VA), Ashmore (D-SC), Kastenmeier (D-WI), Conyers (D-MI), Dowdy (D-TX), Whitener (D-NC), Poff (R-VA), Cramer (R-FL), Moore (R-WV), Cahill (R-NJ), Macgregor (R-MN), King (R-NY), Hutchinson (R-MI).

<sup>32</sup> *Congress and the Nation, Volume II: 1965-1968*, 370.

<sup>33</sup> Hugh Davis Graham presents 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.” See: Graham, *The Civil Rights Era*, 261.

<sup>34</sup> *Congressional Record*, 89th Congress, 2nd Session (July 25, 1966): 16837.

<sup>35</sup> *Congressional Record*, 89th Congress, 2nd Session (July 25, 1966): 16834.

<sup>36</sup> *Congressional Record*, 89th Congress, 2nd Session (July 25, 1966): 16839.

Republicans voting alongside a majority of Southern Democrats to prevent consideration of the measure.

This procedural victory did not, however, indicate 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.<sup>37</sup> These rumors, in turn, led to public conflicts among the proponents of the bill. Roy Wilkins, executive director of the NAACP at the time, responded to the notion of additional compromise by holding a press conference during which he declared that any additional exemptions would "exempt so many single-family homes that the suburbs would remain virtually lily-white and the center city ghettos would become poorer, blacker, and more desperate than at present."<sup>38</sup> Stokely Carmichael, who was leading the Student Non-Violent Coordinating Committee, referred to the bill as "a sham."<sup>39</sup> 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."<sup>40</sup> 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."<sup>41</sup>

Representative Mathias soon validated the rumors about changes to further weaken Title IV. On August 3, he took the floor to offer a perfecting amendment to the Judiciary Committee's

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<sup>37</sup> "House May Limit Open Housing Law," *Boston Globe*, July 27, 1966; "No GOP Decision Yet on Open Housing," *Boston Globe*, July 29, 1966; "Civil Rights Bill in Trouble," *Boston Globe*, July 31, 1966

<sup>38</sup> "Wilkins Presses for Open Housing," *New York Times*, July 27, 1966.

<sup>39</sup> "Wilkins Presses for Open Housing," *New York Times*, July 27, 1966.

<sup>40</sup> "House Taking Up Rights Bill Today," *New York Times*, July 25, 1966.

<sup>41</sup> "House Starts Voting Today on Rights Bill," *Chicago Tribune*, July 29, 1966.

bill. His new language stipulated 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.”<sup>42</sup> Anticipating objections from more liberal members and from civil rights activists, Representative Celler defended Mathias. “The all-or-nothing attitude produces nothing except a slogan,” he asserted.<sup>43</sup>

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) proposing to cover *all* housing sales. That vote failed 186-76. Next came a teller vote on the Mathias amendment. It passed by a single vote, 180-179, when the presiding officer, Richard Bolling (D-MO), broke a tie.<sup>44</sup> 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.<sup>45</sup> Gerald Ford was reportedly not one of the “yea” votes.<sup>46</sup>

For civil rights advocates seeking open housing language closer to what the administration submitted to Congress, the Mathias amendment was tough to swallow. Contemporaneous estimates suggested that the effect of this change would be to reduce the number of homes covered under Title IV from 60 million (under the administration’s original proposal) to 23 million.<sup>47</sup> Yet after six additional days of debate on the overall bill, hesitant

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<sup>42</sup> *Congressional Record*, 89th Congress, 2nd Session (August 3, 1966): 18115.

<sup>43</sup> *Congressional Record*, 89th Congress, 2nd Session (August 3, 1966): 18116.

<sup>44</sup> *Congressional Record*, 89th Congress, 2nd Session (August 3, 1966): 18134.

<sup>45</sup> “House Softens Rights Housing by 1 Vote,” *Washington Post*, August 4, 1966.

<sup>46</sup> “House Backs Curb on Housing Bias,” *New York Times*, August 6, 1966; “Exemption .

<sup>47</sup> “Open Occupancy Debate Sparks Action in House,” *Baltimore Afro-American*, August 6, 1966.

liberals would be forced to swallow again. 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. 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 meanwhile voted overwhelmingly for the amendment, and southern Democrats overwhelmingly opposed.<sup>48</sup>

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 Rep. William Cramer (R-FL) making it illegal to travel between states for the purpose of inciting a riot.<sup>49</sup> More controversially, the House then 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."<sup>50</sup> As Table 1 illustrates, this amendment won overwhelming support from the "conservative coalition," yet it only passed because 29 Northern Democrats supported them.<sup>51</sup>

Before the final passage vote, proponents of H.R. 14765 faced one final 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.<sup>52</sup> Moore's motion won support from the conservative coalition – 80 of 92 Southern Democrats and 86 of 146 Republicans voted for it – but it failed, 190-222 (See Table 1). As the Republicans displayed the most heterogeneity on this key procedural vote, we examine the determinants of

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<sup>48</sup> *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18737.

<sup>49</sup> *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18737.

<sup>50</sup> *Congress and the Nation, Volume II: 1965-1968* (Washington, D.C.: Congressional Quarterly Service, 1969), 370.

<sup>51</sup> *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18738.

<sup>52</sup> *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18739.

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 value 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.” Independent variables include the 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 1964, and whether a switcher’s home state already had enacted a strong fair housing law.<sup>53</sup> Results of a linear probability model on Republicans votes on the motion to recommit appear in Table 2. We find that a simple ideological model does the work on this vote, as the second NOMINATE dimension is positive and significant.<sup>54</sup> 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.<sup>55</sup> None of the other variables prove to add anything meaningful.

H.R. 14765 then came up for a final vote and it passed 259-157.<sup>56</sup> 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 26 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 “yea” on the proposal to recommit

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<sup>53</sup> Data regarding states with fair housing laws on the books in 1966 come from William J. Collins, “The Political Economy of State Fair Housing Laws Before 1968,” *Social Science History* 30 (Spring 2006): 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 E. Scott Adler, “Congressional District Data File, [89th Congress],” University of Colorado, Boulder, CO. Congressional voting data was provided by Jamie Carson.

<sup>54</sup> A logit model, with the two NOMINATE dimensions as the covariates, correctly classifies 86.8 percent of individual votes. This generates a PRE of 0.55 relative to a naïve model (where everyone votes in the winning direction).

<sup>55</sup> As Keith Poole and Howard Rosenthal note, the second NOMINATE dimension in the 89th House was associated with civil rights, with negative scores indicating more liberal positions. See Keith T. Poole and Howard Rosenthal, *Ideology and Congress* (New Brunswick, NJ: Transaction Publishers, 2007), 59.

<sup>56</sup> *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18739

**Of the 86 who voted to recommit, 26 then voted for the bill. We test only those who voted 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 the First and Second Dimension DW-NOMINATE scores, the percentage of black voters in the members’ 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, which are presented in Table 3, illustrate 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 fair housing law on the books were significantly (39 percentage points) more likely to have voted for both recommittal and final passage.

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 Democratic Leader Mike Mansfield made clear that he hoped the Senate Judiciary Committee would act on the administration’s original bill (S. 3296). Yet he 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.”<sup>57</sup> Mansfield pledged to give Eastland until at least September 6, 1966, but he also directed Senate Democrats to invoke Rule XIV which allowed Democrats to bypass the committee stage and place the House-passed bill directly on the Senate calendar.<sup>58</sup>

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<sup>57</sup> “Rights Bill Foes in Senate Force Delay in Debate,” *New York Times*, August 12, 1966.

<sup>58</sup> *Congressional Record*, 89th Congress, 2nd Session (August 12, 1966): 19174.

All eyes now turned to Minority Leader Everett Dirksen (R-IL). “The key to it is Dirksen,” Mansfield told the *New York Times*, “without him we cannot get closure.”<sup>59</sup> 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.”<sup>60</sup> President Johnson himself even 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.”<sup>61</sup> 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.<sup>62</sup> 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 mentioned various things in explaining 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 Olivi 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.”<sup>63</sup>

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.

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<sup>59</sup> “Rights Bill Foes in Senate Force Delay in Debate,” *New York Times*, August 12, 1966.

<sup>60</sup> “House Takes Up Rights Bill Today,” *New York Times*, July 25, 1966.

<sup>61</sup> “LBJ says Rights Bill Depends on Dirksen,” *Chicago Daily Defender*, September 14, 1966.

<sup>62</sup> “Dirksen Refuses Rights Bill Shift,” *New York Times*, September 14, 1966.

<sup>63</sup> Rigel C. Oliveri, “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* (New York: Routledge, 2018), 31.



The Johnson Administration seems to have misjudged the political environment in 1966. LBJ and some Democrats in Congress saw fair housing as the next piece of the broader civil rights agenda but they underestimated the level of opposition that would emerge, even among traditional allies. With the midterm elections quickly approaching and the filibuster looming, 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.”<sup>64</sup> “It’s just not worth sacrificing my political hide [to back the bill],” explained an anonymous Midwestern Democrat.<sup>65</sup> Recognizing that federal efforts to integrate northern neighborhoods would generate significant opposition from even “allies” of the civil rights movement, the liberal Americans for Democratic Action in August 1966 called on President Johnson not to push Congress to take up fair housing legislation.<sup>66</sup> These dire predictions proved true when, in the November elections, Republicans picked up 3 seats in the Senate and 47 in the House. Fair housing was not dead, however. It would simply take a renewed effort in 1968 to push this legislation through Congress.

### **III. Fair Housing Legislation in the 90th Congress**

Despite the failure to enact a fair housing bill in 1966, and the significant losses the Democrats absorbed in the November midterms, LBJ sought to push forward with his civil rights initiatives in the new (90th) Congress. In his January 10, 1967, State of Union message, he 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,

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<sup>64</sup> “House Takes Up Rights Bill Today,” *New York Times*, July 25, 1966.

<sup>65</sup> “Democrats Split on Open Housing,” *New York Times*, August 1, 1966.

<sup>66</sup> *Congress and the Nation, Volume II: 1965-1968* (Washington, D.C.: Congressional Quarterly Service, 1969), 369-370.

nondiscrimination in employment, and fair housing.<sup>67</sup> 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.<sup>68</sup>

Yet the Administration's omnibus civil right legislation – H.R. 5700 and S. 1026 – achieved little in 1967. “A major reason for this,” as Hugh Davis Graham 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.”<sup>69</sup> The House expected the Senate to act first, and beyond some perfunctory hearings by the Senate Judiciary Subcommittee on Constitutional Rights, nothing got done.<sup>70</sup> 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 sought success in a piecemeal fashion.<sup>71</sup> 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.<sup>72</sup> In December 1967, the Senate passed by voice vote a bill (S. 989) to prohibit discrimination in the selection of federal

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<sup>67</sup> “Text of Message by President Johnson to Congress on the State of the Union,” *New York Times*, January 11, 1967, 16.

<sup>68</sup> For the full text of Johnson's message, see “Message to Congress: Johnson's Civil Rights Message.” In *CQ Almanac 1967*, 23rd ed., 20-62-A-20-66-A. Washington, DC: Congressional Quarterly, 1968. <http://library.cqpress.com/cqalmanac/cqal67-1312014>. 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, *The Civil Rights Era*, 262-67.

<sup>69</sup> Graham, *The Civil Rights Era*, 267.

<sup>70</sup> See “Senate Hearings Held on 1967 Civil Rights Act.” In *CQ Almanac 1967*, 23rd ed., 08-775-08-777. Washington, DC: Congressional Quarterly, 1968. <http://library.cqpress.com/cqalmanac/cqal67-1312858>.

<sup>71</sup> See “Civil Rights Bill Split up, Few Proposals Passed.” In *CQ Almanac 1967*, 23rd ed., 08-772-08-775. Washington, DC: Congressional Quarterly, 1968. <http://library.cqpress.com/cqalmanac/cqal67-1312853>.

<sup>72</sup> *Public Law* 90-198.

juries.<sup>73</sup> The House took no action on the bill before the end of the first session, but passed it in February 1968.<sup>74</sup> On August 16, 1967, the House passed a bill (H.R. 2516) to protect civil rights workers (and others from enjoying their civil rights in a range of activities) against violence on a 327-93 vote (see Table 4),<sup>75</sup> 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 that was occurring in cities across the nation due to widespread rioting. In total, more than 100 cities were affected between April and early September 1967,<sup>76</sup> resulting in 83 killed, more than 3,200 injured, over 8,700 arrests, and property damaged estimated at \$524.8 million.<sup>77</sup> As a result, Rep. William Cramer (R-FL) sponsored a bill (H.R. 421) to establish federal penalties for inciting riots – essentially reintroducing as a standalone bill the amendment that he had offered to the Civil Rights Act of 1966. Cramer’s bill passed 348-70.<sup>78</sup> 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, after the holidays. Mansfield’s decision prevented a subsequent motion to bring the up for floor consideration.<sup>79</sup> Moreover, per Hugh Davis Graham, “once the

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<sup>73</sup> See “Senate Passes Bill on Federal Jury Selection.” In *CQ Almanac 1967*, 23rd ed., 08-787-08-788. Washington, DC: Congressional Quarterly, 1968. <http://library.cqpress.com/cqalmanac/cqal67-1312876>.

<sup>74</sup> 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. See “Federal Jury Reform.” In *CQ Almanac 1968*, 24th ed., 09-169-9-169. Washington, DC: Congressional Quarterly, 1969. <http://library.cqpress.com/cqalmanac/cqal68-1283475>. The legislation became known as The Federal Jury Selection and Service Act of 1968 (*Public Law No. 90-274*).

<sup>75</sup> *Congressional Record*, 90th Congress, 1st Session (August 16, 1967): 22778.

<sup>76</sup> <https://www.usnews.com/news/national-news/articles/2017-07-12/race-troubles-109-us-cities-faced-violence-in-1967>.

<sup>77</sup> Figures provided by the Legislative Reference Service of the Library of Congress. See “Chronology of Violence in American History.” In *CQ Almanac 1967*, 23rd ed., 08-793-08-795. Washington, DC: Congressional Quarterly, 1968. <http://library.cqpress.com/cqalmanac/cqal67-1312888>.

<sup>78</sup> *Congressional Record*, 90th Congress, 1st Session (July 19 1967): 19433-34.

<sup>79</sup> See “Congress Enacts Open Housing Legislation.” In *CQ Almanac 1968*, 24th ed., 14-152-14-165. Washington, DC: Congressional Quarterly, 1969. <http://library.cqpress.com/cqalmanac/cqal68-1283454>.

bill was the Senate's order of business, proposed amendments could not be procedurally filibustered."<sup>80</sup> 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 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."<sup>81</sup>

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.<sup>82</sup> (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."<sup>83</sup> 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

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<sup>80</sup> Graham, *The Civil Rights Era*, 270.

<sup>81</sup> See "Message to Congress: Johnson on Civil Rights." In *CQ Almanac 1968*, 24th ed., 20-36-A-20-39-A. Washington, DC: Congressional Quarterly, 1969. <http://library.cqpress.com/cqalmanac/cqal68-1284443>.

<sup>82</sup> *Congressional Record*, 90th Congress, 2nd Session (February 6, 1968): 2269-70.

<sup>83</sup> See "Effective Lobbying Put Open Housing Bill Across." In *CQ Almanac 1968*, 24th ed., 14-166-14-168. Washington, DC: Congressional Quarterly, 1969. <http://library.cqpress.com/cqalmanac/cqal68-1283472>.

the civil rights coalition would get nothing), Mitchell slowly built up support for his initiative over January. And 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," or dwellings of up to four separate living units in which the owner maintained a residence. Overall, the Mondale Amendment, once the provisions were fully enacted, would cover around 91 percent of the nation's housing.<sup>84</sup> Not surprisingly, conservatives – led by Southern Democrats – opposed the amendment. 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" and allowed "one Cabinet official sitting on the banks of the Potomac" the authority to determine who would determine to whom a person may sell or rent their property.<sup>85</sup>

As expected, Ervin and his Southern Democratic colleagues sought to filibuster the amendment on its merits. On February 20, a cloture vote was attempted, and it failed, 55-27.<sup>86</sup> While not garnering the necessary 2/3 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.<sup>87</sup> Northern and Southern Democrats again voted in opposite directions, while a majority of Republicans voted against tabling (16-19). After the

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<sup>84</sup> See "Congress Enacts Open Housing Legislation."

<sup>85</sup> Ervin quoted in *ibid.*

<sup>86</sup> *Congressional Record*, 90th Congress, 2nd Session (February 20, 1968): 3427.

<sup>87</sup> *Congressional Record*, 90th Congress, 2nd Session (February 21, 1968): 3807.

failed tabling motion, Dirksen announced to the Mondale group that he was ready to work with them on a compromise open-housing amendment.<sup>88</sup>

Another cloture vote was held on February 26 – arranged by Mansfield immediately after the failed motion to table the Mondale Amendment – and it failed by six votes, 56-36.<sup>89</sup> 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 a compromise design by Jacob Javits (R-NY). The compromise would exempt owners of free-standing homes that they occupied (from sale or rental) if they sold or rented themselves rather than through a real-estate broker/agent. This provision would reduce coverage of the Nation’s housing from 91 percent to around 80 percent. The compromise also eliminated language that would provide enforcement power to the Chairman of HUD, but strengthened federal-court provisions for enforcement.<sup>90</sup>

The Mondale group was pleased with Dirksen’s efforts, and on February 28 Mondale paved the way for the “Dirksen Amendment” by moving to table his own amendment – which passed, 83-5.<sup>91</sup> The following day, March 1, a third cloture vote was attempted. This one – on the Dirksen compromise – failed by four votes, 59-35.<sup>92</sup> 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 of Tennessee, and Len Jordan of Idaho. Dirksen was exhausted from the negotiation with his caucus

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<sup>88</sup> See “Congress Enacts Open Housing Legislation.”

<sup>89</sup> *Congressional Record*, 90th Congress, 2nd Session (February 26, 1968): 4064-65.

<sup>90</sup> On the changes made during the compromise negotiations, see “Congress Enacts Open Housing Legislation”; Oliveri, “The Legislative Battle for the Fair Housing Act (1966-1968),” 34-35.

<sup>91</sup> *Congressional Record*, 90th Congress, 2nd Session (February 28, 1968): 17916.

<sup>92</sup> *Congressional Record*, 90th Congress, 2nd Session (March 1, 1968): 4845.

members, so other party leaders – including Richard Nixon – stepped into the fray.<sup>93</sup> On the next (fourth) cloture vote, on March 4, the necessary two-thirds was *exactly* reached on a 65-32 vote.<sup>94</sup> Two additional Republicans – Frank Carlson of Kansas and Jack Miller of Iowa – switched to supporting cloture. Two Democrats – Howard Cannon of Nevada and Albert Gore of Tennessee – also switched to supporting cloture. (A number of other senators switched from a paired vote to an active vote, or vice versa.)<sup>95</sup>

As noted previously, 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 in the “N” camp on cloture votes – thus dooming the legislation. He began the 90th Congress with the same negative position. Why did he switch? He 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 47-seat pickup for House Republicans had made the chamber more conservative, the 3-seat pickup for Senate Republicans had in fact made the chamber more liberal.<sup>96</sup> Per the thinking of Bryon Hulsey: “What moved Dirksen to support fair housing in 1968 was an accurate sense that he had lost control of his caucus.”<sup>97</sup>

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<sup>93</sup> Byron C. Hulsey, *Everett Dirksen and His Presidents: How a Senate Giant Shaped American Politics* (Lawrence: University Press of Kansas, 2000), 255.

<sup>94</sup> *Congressional Record*, 90th Congress, 2nd Session (March 4, 1968): 4960.

<sup>95</sup> The full set of cloture votes on the Civil Rights Acts of 1966 and 1968 appears in in Appendix 1 (Democrats) and Appendix 2 (Republicans).

<sup>96</sup> Graham, *The Civil Rights Era*, 270.

<sup>97</sup> Hulsey, *Everett Dirksen and His Presidents*, 255. On Dirksen’s motives, also see Sander, Kucheva, and Zasloff, *Moving Toward Integration*, 133-34, 136-37; Oliveri, “The Legislative Battle for the Fair Housing Act (1966-1968),” 34.

With cloture invoked, the Senate moved to a conclusion on H.R. 2516. A host of amendments – more than 80 in all – had been submitted, and more than 40 votes were taken. Some small adjustments were made to the open housing title. But, importantly, a couple of additional titles were added. One was an anti-riot amendment, introduced by 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.<sup>98</sup> A second amendment, offered by Russell Long (D-LA), was in the same vein – as 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.<sup>99</sup> 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).<sup>100</sup> 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.<sup>101</sup> Finally, the Senate passed H.R. 2516 (as modified) by a similarly large margin, 71-20, with the voting coalitions largely repeating themselves.<sup>102</sup>

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<sup>98</sup> *Congressional Record*, 90th Congress, 2nd (March 5, 1968): 5214.

<sup>99</sup> *Congressional Record*, 90th Congress, 2nd Session (March 6, 1968): 5539.

<sup>100</sup> *Congressional Record*, 90th Congress, 2nd Session (March 8, 1968): 5838. For more on the “Indian Civil Rights Act,” see Donald L. Burnett, Jr., “An Historical Analysis of the 1968 ‘Indian Civil Rights’ Act,” *Harvard Journal on Legislation* 9 (1972): 557-626.

<sup>101</sup> *Congressional Record*, 90th Congress, 2nd Session (March 8, 1968): 5839.

<sup>102</sup> *Congressional Record*, 90th Congress, 2nd Session (March 11, 1968): 5992.



H.R. 2516 (as modified by the Senate) was now sent to the House, where it received a mixed response.<sup>103</sup> Liberals wanted the chamber to accept the Senate-amended bill without change, while conservatives (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 bill's additional provisions (as adopted in the Senate) in more detail – which required 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 – like 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.<sup>104</sup> Finally, on April 9, the Rules Committee met, and a motion to send the bill to conference was defeated, 7-8.<sup>105</sup> The swing vote was Republican John Anderson (IL), who had previously voted with the majority to delay consideration. The Rules

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<sup>103</sup> For a summary, see “Congress Enacts Open Housing Legislation.”

<sup>104</sup> See DeNeen L. Brown, “The Fair Housing Act Was Languishing in Congress. Then Martin Luther King, Jr. Was Killed,” *Washington Post*, April 11, 2018. [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/?utm\\_term=.1df3b922e71e](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/?utm_term=.1df3b922e71e)

<sup>105</sup> 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 Marjorie Hunter, “Rules Panel Clears Rights Bill for Vote In the House Today,” *New York Times*, April 10, 1968, 1.

Committee then voted 9-6 to report H. Res. 1110 – agreeing to the Senate-amended H.R. 2516 – to the floor.<sup>106</sup>

The showdown vote came the next day, March 10, which involved ordering the previous question on H. Res. 1100. Rep. 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.”<sup>107</sup> 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.”<sup>108</sup> 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.<sup>109</sup>

The House then voted on ordering the previous question on H. Res. 1100, and it passed, 229-195.<sup>110</sup> A large majority of Northern Democrats opposed a large majority of Southern

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<sup>106</sup> The earlier coalitions flipped, except Sisk now joined the earlier group of eight. *Ibid.*

<sup>107</sup> *Congressional Record*, 90th Congress, 2nd Session (April 10, 1968): 9554.

<sup>108</sup> *Congressional Record*, 90th Congress, 2nd Session (April 10, 1968): 9613.

<sup>109</sup> *Congressional Record*, 90th Congress, 2nd Session (April 10, 1968): 9620.

<sup>110</sup> *Ibid.*

Democrats. Republican were split, but a significant majority (106 of 183) joined the majority of Southern Democrats in voting nay. Enough Republicans (77) joined with nearly all Northern Democrats, however, to successfully order the previous question. We examine the Republican votes in more detail, in a set of linear probability models (similar to our 1966 analysis in Table 2). Our goal, as before, is to examine the ideological, racial, electoral and state-level factors to determine why these Republicans voted as they did. 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 the 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.<sup>111</sup> Results appear in Table 6. We find that a simple ideological model does the work on this vote, as both NOMINATE dimensions are negative and significant.<sup>112</sup> This indicates that House Republicans who were more liberal on economic and racial issues 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.<sup>113</sup> Thus, H.R. 2516, as amended by the Senate, was passed by the House and sent to President Johnson for his signature.<sup>114</sup> On this vote, 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.

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<sup>111</sup> Note that between 1966 and 1968, four additional states – Hawaii, Iowa, Minnesota, and Vermont – adopted strong fair housing laws. See Collins, “The Political Economy of State Fair Housing Laws before 1968,” 19.

<sup>112</sup> A logit model, with the two NOMINATE dimensions as the covariates, correctly classifies 88.5 percent of individual votes. This generates a PRE of 0.727 relative to a naïve model (where everyone votes in the winning direction).

<sup>113</sup> *Congressional Record*, 90th Congress, 2nd Session (April 10, 1968): 9621.

<sup>114</sup> 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 22 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 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 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, this proves to be highly significant (and washes out the previous vote-share result). A House Republican who represented a state with a strong fair housing law already in place was almost 35 percentage points more likely to switch.

#### **IV. Conclusion**

For President Johnson and his allies in Congress, ending discrimination in the sale and rental of housing was to be the third 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 they had momentum. Moreover, the epidemic of urban rioting driven by the unbearable living conditions in northern and western urban centers seemed to demonstrate 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.”<sup>115</sup> For those seeking to counteract the social and economic forces believed to be responsible for the seething anger of so many black citizens, putting an end to the ostensibly private practices leading to segregated housing was the best possible solution.

Implementing this facet of the civil rights program proved difficult because support from northern whites – required for civil rights initiatives to pass – proved very difficult to win. As we have described above, the administration’s effort to enact fair housing language in 1966 first required winning over ostensible allies by significantly weakening its 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 once it was amended to provide less coverage. 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 presages 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 northerners – as they would in school integration and busing – they became much harder to pass and implement.

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<sup>115</sup> “Ghetto Life Caused Riots: Katzenbach,” *Chicago Daily Defender*, August 18, 1966.

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

| Party             | <u>House</u><br>To Agree to<br>H. Res. 910 |     | <u>House</u><br>To Adopt<br>Mathias<br>Amendment |     | <u>House</u><br>To Adopt<br>Cramer<br>Amendment |     | <u>House</u><br>To Adopt<br>Whitener<br>Amendment |     |
|-------------------|--|-----|--|-----|---|-----|---|-----|
|                   | 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 |

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

| Party             | <u>House</u><br>To Recommit<br>H.R. 14765 w/<br>instructions |     | <u>House</u><br>To Pass<br>H.R. 14765 |     | <u>Senate</u><br>To Invoke<br>Cloture on<br>H.R. 14765 |     | <u>Senate</u><br>To Invoke<br>Cloture on<br>H.R. 14765 |     |
|-------------------|--|-----|---------------------------------------|-----|--|-----|--|-----|
|                   | 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 (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.

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

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

\* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$



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

|                       | (1)                  | (2)                 | (3)                 |
|-----------------------|----------------------|---------------------|---------------------|
| NOMINATE 1            | -0.210<br>(0.252)    | -0.269<br>(0.264)   | -0.260<br>(0.268)   |
| NOMINATE 2            | -0.640***<br>(0.165) | -0.563**<br>(0.194) | -0.513**<br>(0.194) |
| Previous Vote         |                      | -0.013<br>(0.008)   | -0.008<br>(0.008)   |
| % Black               |                      | -0.006<br>(0.004)   | -0.005<br>(0.004)   |
| State Law             |                      |                     | 0.391**<br>(0.142)  |
| Constant              | 0.349***<br>(0.097)  | 1.138*<br>(0.497)   | 0.797<br>(0.489)    |
| <i>N</i>              | 86                   | 86                  | 86                  |
| <i>F</i> -stat        | 10.94***             | 5.53***             | 9.07***             |
| <i>R</i> <sup>2</sup> | 0.153                | 0.186               | 0.262               |

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 below for the vote distributions.

\**p* < .05, \*\**p* < .01, \*\*\**p* < .001

|  |     | 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 | 0   | 50  |
|  | Yea | 60  | 26  |

Note: One Republican did not cast a vote on the recommittal motion (but announced a “paired-yea”) and then voted “nay” on final passage.

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

| Party             | To Pass<br>H. Res. 856 |     | To Pass<br>H.R. 2516 |     | To Order Prev<br>Question on<br>H. Res. 1100 |     | To Pass<br>H. Res. 1100 |     |
|-------------------|------------------------|-----|----------------------|-----|--|-----|-------------------------|-----|
|                   | 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 8 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 antiriot 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.

**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 |     |
|-------------------|--------------------------|-----|--------------------------------|-----|----------------------------|-----|--------------------------------|-----|
|                   | 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  |

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.

| Party             | To Table Mondale Amendment |     | To Invoke Cloture on H.R. 2516 |     | To Invoke Cloture on H.R. 2516 |     | To Adopt Thurmond Amendment |     |
|-------------------|----------------------------|-----|--------------------------------|-----|--------------------------------|-----|-----------------------------|-----|
|                   | 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  |

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

| Party             | To Adopt Long Amendment |     | To Adopt Ervin Amendment |     | To Adopt Substitute for H.R. 2516 |     | To Pass H.R. 2516 |     |
|-------------------|-------------------------|-----|--------------------------|-----|-----------------------------------|-----|-------------------|-----|
|                   | 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 (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 6 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.

**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***<br>(0.210) | -0.776***<br>(0.214) | -0.747***<br>(0.206) |
| NOMINATE 2            | -0.844***<br>(0.070) | -0.805***<br>(0.077) | -0.768***<br>(0.079) |
| Previous Vote         |                      | -0.001<br>(0.003)    | -0.002<br>(0.003)    |
| % Black               |                      | -0.004<br>(0.003)    | -0.003<br>(0.003)    |
| State Law             |                      |                      | 0.108<br>(0.062)     |
| Constant              | 0.431***<br>(0.064)  | 0.555**<br>(0.179)   | 0.442*<br>(0.184)    |
| <i>N</i>              | 183                  | 183                  | 183                  |
| <i>F</i> -stat        | 192.54***            | 94.68***             | 78.16***             |
| <i>R</i> <sup>2</sup> | 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

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

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

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 below for the vote distributions.

\**p* < .05, \*\**p* < .01, \*\*\**p* < .001

|   |     | 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: One Republican did not cast a vote on the previous-question motion but then voted “yea” on passage.

## Appendix 1: 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      |
| 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      |
| INOUYE, 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.



## Appendix 2: 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.