

THE CONGRESS PROJECT

Assignment Prompt Sheet

Civil Rights Act of 1968

Overview

Act Titles: Civil Rights Act of 1968; The Fair Housing Act

Congress: 90th Congress (1967-1968)

Session/Sessions: 1-2

Statute No: 82 Stat. 73-92

Public Law No: 90 PL 284

Eid: 900284

Gid: 211-009

Bill: HR 2516

Sponsor: Rep. [Emanuel Celler \(D-NY\)](#)

House Committees: Judiciary

Senate Committees: Judiciary

Companion Bill: S 1026

Related Bills: HR 421; HR 5920; S 1358

House Rules: Hres 856; Hres 729; Hres 1110

Past Bills: 89 HR 14765; 89 S 3296

Introduced Date- Law Date:

House Floor Days:

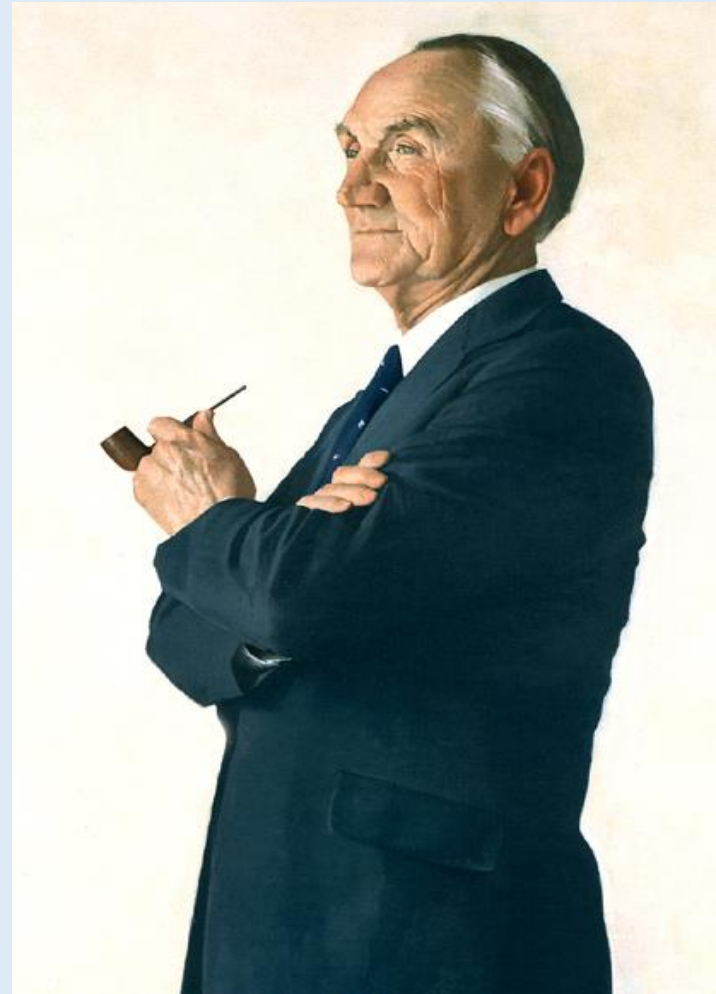
Senate Floor Days:

Roll Call Votes: 33 (3 in the House, 30 in the Senate)

Issues: civil rights; housing; criminal justice

Procedures: open rule; recommit; substitute amendment; rider

Last Updated: 2/19/24



(Above) Senate Majority Leader Mike Mansfield (D-MT), who used a vehicle to aid in the passage of the Civil Rights Act of 1960 (or the Fair Housing Act).

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Legislative History Comments

The *Civil Rights Act of 1968 (90 PL 284)*, also referred to as the [Fair Housing Act](#), is generally considered the most impactful housing legislation the U.S. Congress has passed. As [CRS \(2015, 1\)](#) notes, the 1968 act initially “prohibited discrimination in the sale, rental, or financing of housing based on race, color, religion, and national origin.” The Supreme Court narrowly upheld key portions of the law in the 2015 decision, *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* (see a [vox discussion here](#)).

The Fair Housing Act is often criticized today for both a lack of enforcement and not going far enough to remedy existing housing inequities. On the latter point, Richard Rothstein, author of “The Color of Law: A Forgotten History of How Our Government Segregated America,” argues explicitly that it was “inadequate to undo the damage our government had previously wrought ([New York Times 2020](#)).” Problems with enforcement further undermined the measure. During the Nixon administration, an attempt to fully enforce the measure was made by the HUD Secretary, former Michigan Governor George Romney (R-MI). Nixon eventually rejected Romney’s efforts and forced him out of office (see e.g. [New York Times 2018](#)). In recent years, efforts to step up enforcement were made under the Obama administration, reversed by President Trump and reinstated again by President Biden (see [Washington Post 2021](#)).

Fair housing legislation has long been controversial. A comparable piece of legislation died in the 89th Congress. While the measure, HR 14765, passed the House by a 259-157 vote, two cloture votes were defeated in the Senate and the measure was abandoned. Reverend Martin Luther King asserted the vote “surely heralds darker days for this social era of discontent ([CQ Almanac 1966](#)).” In 1968, the Kerner Commission asserted housing segregation played a large causal factor race riots, like the 1967 Detroit Riot (see e.g. [New York Times 2018](#)).

As you might expect, passage of the Civil Rights Act of 1968 was controversial. The enacted bill, HR 2516, was essentially a vehicle. It initially passed the House as a bill protecting civil rights workers. Senate Majority Leader Mike Mansfield (D-MT) and chamber liberals then attached housing as an amendment (this allowed them to avoid a filibuster on the motion to proceed). The amendment was filibustered for around a month before a compromise was reached. That compromise included language from HR 421, a measure that sought to punish rioters and had passed the House in July of 1967. It was eventually folded into HR 2516 on the Senate floor. HR 2516 was considered in the House under three separate special rules (Hres 825; Hres 1100; Hres 1118).

I’d recommend taking a look at [CQ \(1967\)](#) and [CQ \(1968\)](#) and/or e-mailing me if you have additional questions regarding the process.

Finally, here’s a “Last Week Tonight” bit on School Segregation that hits on a lot of the issues caused by discriminatory housing policies:

- <https://www.youtube.com/watch?v=o8yiYCHMAIM>

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Assignments

For the sections below, you're going to want to answer the questions and write-up the process sections that correspond to your assigned number.

#1.

#2.

#3.

#4.

Background Questions

1. What specifically does this bill do? What were the problems it was trying to rectify? Connect this bill to the broader Civil Rights movement. Why wasn't this included in earlier legislation? How aggressively were supporters pressing for it?

The CRS piece below might be helpful in highlighting what the law actually does:

<https://fas.org/sgp/crs/misc/R44557.pdf>

2. So this isn't Congress's (nor the Johnson administration's) first rodeo when it comes to trying to enact open housing legislation. In this section I would definitely touch on the failure of housing legislation in the previous Congress (89 HR 14765; 89 S 3296), what motivated that issue, its outlook in the 90th Congress (which according to Sidney 2001 was bleak) and King's assassination. Basically, give us some background on this issue.

In addition to the Sidney piece, Zelizer (2015) provides some fantastic background on the issue and past attempts.

3. What was the political climate like in this Congress? Who was the President? What party controlled the House and the Senate? Were there other key issues on the agenda when this measure was being considered? What did newspapers say about the measure? Was it a key part of the President's agenda?

The Stathis (2014) piece might worth a citation here.

4. What specifically is "open housing"? Why is it so important? What was the problem that it sought to rectify?

Were there other controversial issues that needed to be dealt with under this issue? The final bill included a measure punishing rioters. Why was that important?

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Process Sections

Please write-up the sections that correspond to your number. Feel free to incorporate any notes I might have dumped in the margins. The indices for HR 421 and HR 2516 (first session above, second underneath) can be found below:

H.R. 421—To amend title 18 of the United States Code to prohibit travel or use of any facility in interstate or foreign commerce with intent to incite a riot or other violent civil disturbance, and for other purposes.

Mr. Cramer; Committee on the Judiciary, 103.—Reported with amendment (H. Rept. 472), 17975.—Made special order (H. Res. 729), 19347.—Debated, 19359.—Amended and passed House, 19434.—Referred to Senate Committee on the Judiciary, 19624.

H.R. 2516—To prescribe penalties for certain acts of violence or intimidation, and for other purposes.

Mr. Celler; Committee on the Judiciary, 713.—Reported with amendment (H. Rept. 473), 17975.—Made special order (H. Res. 856), 22670.—Debated, 22678, 22743.—Amended and passed House, 22778.—Referred to Senate Committee on the Judiciary, 24131.—Reported with amendment (S. Rept. 721), 31151.—Debated, 37117.

H.R. 2516—To prescribe penalties for certain acts of violence or intimidation, and for other purposes.

Debated in Senate, 329, 385, 532, 656, 668, 673, 912, 1014, 1150, 1157, 1275, 1276, 1287, 1382, 1391, 1394, 1689, 1708, 1790, 1795, 1817, 1990, 2083, 2094, 2102, 2264, 2524, 2687, 2703, 2717, 2984, 3119, 3121, 3133, 3235, 3331, 3345, 3421.—Cloture motion rejected, 3426.—Debated, 3746, 3805, 4048, 4049.—Cloture motion rejected, 4064.—Debated, 4143, 4287, 4295, 4544, 4568, 4672, 4678, 4683, 4697, 4700, 4831, 4845, 4847, 4848, 4954, 4960, 4964, 4971, 4984, 4985, 5032, 5186, 5200, 5211, 5214, 5225, 5227, 5513, 5517, 5522, 5525, 5529, 5530, 5531, 5631, 5633, 5634, 5638, 5639, 5667, 5709, 5807, 5812, 5819, 5824, 5840, 5983, 5986.—Amended and passed Senate, 5992.—House concurs in Senate amendment, objected to, 6474, 6489.—Pursuant to H. Res. 1100 House agrees to Senate Amendment, 9553, 9621.—Examined and signed, 9493, 9637.—Presented to the President, 9682.—Approved [Public Law 90-284], 10322.

#1. House Consideration of HR 421 (July 19, 1967)

HR 421 was a measure punishing rioters. It passed the House and a version was folded into HR 2516 in the Senate. The 90th Congress passed two related civil rights laws—one extended the Civil Rights Commission (HR 10895; 90 PL 108) and one provided for Federal Jury Selection (S 989; 90 PL 274).

HR 421 was considered under an open rule, Hres 729. It was only reported out by the Judiciary Committee after the bill sponsor, Cramer (R-FL), filed a resolution (Hres 517) to have the Rules Committee discharge the Judiciary.

HR 421 was [adopted 348-70](#) on July 19, 1967.

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#2. Initial House Consideration of HR 2516 (August 15-16, 1967)

HR 2516 was considered under an open rule, Hres 856. There's a motion to recommit by Wiggins (I believe without instructions) that's rejected by voice before the bill passes 333-98. 25 Republicans joined 73 (mostly Southern) Democrats in voting no. Feel free to use this graph from Voteview:

- <https://voteview.com/rollcall/RH0900113>

#3. Senate Consideration of HR 2516 (January 15-March 11, 1968)

So the bill was referred to the Judiciary Committee (there was speculation it might be avoided). The Committee reported it out in late 1967 but Mansfield, fearing a filibuster, opted against considering it. He did, however, move the Senate proceed to consider the bill right before adjournment on December 15. This passed via voice. Southern Democrats were upset by this upon returning to the chamber in January 1968. They argued Mansfield pulled a fast one by them in avoiding a filibuster on the motion to proceed.

The bill may have been set aside at some point during the January 15-March 11th period, but it was substantially debated. There were four cloture votes, with only the last one being agreed to.

The Senate debated a number of substantive amendments and cast recorded votes on at least 23 of them. The bill passed on March 11, 1968, 78-23.

- <https://voteview.com/rollcall/RS0900346>

#4. Final House Consideration of HR 2516 (April 10, 1968)

Rather than going to a conference committee, the House opted to concur in the Senate's amendments. They did this by adopting Hres 1100—a “self-executing” special rule—on April 10, 1968.¹ Self-executing rules like this had been used during consideration of the Civil Rights Act of 1957 and 1964.²

¹ Sometimes referred to as a “deem and pass” rule. A self-executing rule is a special rule that provides “the House—upon adoption of the special rule—is considered or “deemed” to have taken some other action as well (Binder 2011).” Typically the other action is the passage of the bill itself. This type of rule is sometimes used for strategic reasons to avoid another direct vote on the bill. This rule can also be used to speed up the passage of legislation on uncontroversial measures. See Binder (2010) here:

- <https://www.brookings.edu/blog/up-front/2010/03/17/a-primer-on-self-executing-rules/>

² Here's the text of the rule:

“H. Res. 1100 Resolved, 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 there- to, be, and the same hereby is, taken from the Speaker's table, to the end that the Senate amendment be, and the same is hereby, agreed to (Congressional Record, 90th Congress, April 10, 1968, 9554).”

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Both this process (of voting on a self-executing rule) and some of the changes made in the Senate alienated some of the members that previously supported the bill. Members like Rules Committee Chair William Colmer (D-MS)—who always opposed the bill—argued that by accepting the Senate’s changes wholesale, the House was weakening its standing. He argued the “gag rule” placed the House in “a straight-jacket,” and that by accepting “the Senate version [without debate]” the House made itself “second-class legislators (*Congressional Record*, 90th Congress, April 10, 1968, 9602).”

In contrast, the rule manager, Rep. Ray Madden (D-IN) argued: “Under the procedure of the “previous question” our Members can vote to accept or reject the Senate bill H.R. 2516. If the previous question is voted down, 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 (*Congressional Record*, 90th Congress, April 10, 1968, 9554).”

The PQ motion on Hres 1100 passed 231-196 and the rule 252-173.

- <https://voteview.com/rollcall/RH0900295>

Member Spotlight

Choose one of the following for your member spotlight:

#1. Rep. Emanuel Celler (D-NY); Rep. H.R. Gross (R-IA); Sen. Richard Russell (D-GA); House Speaker John McCormack (D-MA)

#2. Sen. Paul Douglas (D-IL); Rep. Ray Madden (D-IN); Sen. Jacob Javits (R-NY); Sen. Frank Church (D-ID); Sen. Everett Dirksen (R-IL)

#3. Rep. Richard Bolling (D-MO); Rep. Homer Thornberry (D-TX); Sen. Strom Thurmond (D-SC)³; Sen. Sam Ervin (D-NC)

#4. Rep. Charles Goodell (R-NY); Rep. John Anderson (R-IL); Rep. Adam Clayton Powell (D-NY); Rep. William Colmer (D-MS)

³ In addition to setting the filibuster record, a few years later, Thurmond would get into a wrestling match in a committee during a dispute over civil rights (see Senate.gov, “[Senators Wrestle to Settle Nomination](#).”) For more on Thurmond, see [Roll Call \(2003\)](#); [Washington Post \(2013\)](#).

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Aftermath Questions

1. How was passage of this bill viewed at the time? What has been the bill's legacy? Have scholars been supportive of it? Outline any controversies here. What is redlining? Why did the bill fail to prevent it?
2. What happened with this law moving forward? It was the focus of a wide-range of Supreme Court cases. I would provide some discussion of those here. Was it amended by subsequent laws as well? I'd touch on the debates over the limitations of Act in this section (redlining, schools, etc.) See e.g. Massey 2015; Nier 1999; Larkin 2007.
3. How has this issue evolved since the law was adopted? It generated some attention in the 2020 election. What issues in the civil rights/housing domain are being pressed by advocates today? Why? Has there been widespread support for addressing them? Some of the newspaper citations below might be helpful here.
4. Broadly speaking, how successful has the Civil Rights Act of 1968 been in meeting its stated goals? [The Atlantic \(2018\)](#), for example, argues that 50 years after its passage "America is still sharply segregated. According to a study by the Brookings Institution, 76 percent of black Chicago-area residents, for example, would have to move in order to fully integrate the region, and another study showed that some cities like Los Angeles are resegregating." Is this a fair characterization? Why or why not? And if so, what caused this failure?

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Suggested Sources

Scholarly Articles

Rothstein, Richard. *The color of law: A forgotten history of how our government segregated America*. Liveright Publishing, 2017.

Zasloff, Jonathan. "The secret history of the Fair Housing Act." *Harv. J. on Legis.* 53 (2016): 247.

Pedriana, Nicholas, and Robin Stryker. "From legal doctrine to social transformation? Comparing US voting rights, equal employment opportunity, and fair housing legislation." *American Journal of Sociology* 123.1 (2017): 86-135.

Massey, Douglas S. "The legacy of the 1968 fair housing act." *Sociological Forum*. Vol. 30. 2015.

Squires, Gregory D., ed. *The fight for fair housing: Causes, consequences, and future implications of the 1968 Federal Fair Housing Act*. Routledge, 2017.

O'Regan, Katherine M. "The fair housing act today: Current context and challenges at 50." *Housing Policy Debate* 29.5 (2019): 704-713.

Lamb, Charles M. *Housing segregation in suburban America since 1960: Presidential and judicial politics*. Cambridge University Press, 2005.

Sidney, Mara S. "Images of race, class, and markets: rethinking the origin of US Fair Housing Policy." *Journal of Policy History* 13.2 (2001): 181-214.

Larkin, Brian Patrick. "The Forty-Year First Step: The Fair Housing Act as an Incomplete Tool for Suburban Integration." *Colum. L. Rev.* 107 (2007): 1617.

Zelizer, Julian E. 2015. *The Fierce Urgency of Now: Lyndon Johnson, Congress, and the Battle for the Great Society*. New York: Penguin Press.

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Newspaper Pieces

- <https://www.npr.org/2020/07/23/894794169/president-trump-to-repeal-obama-era-fair-housing-rule-aimed-to-combat-racial-bia>
- <https://www.bloomberg.com/news/articles/2020-09-09/how-hud-rewrote-the-rules-on-fair-housing>
- <https://www.vox.com/2020/8/3/21347565/suburban-lifestyle-dream-trump-tweets-fair-housing>
- <https://www.washingtonpost.com/news/the-fix/wp/2015/07/10/a-look-at-just-how-badly-the-fair-housing-act-has-failed/>
- <https://www.nytimes.com/2020/01/03/us/politics/trump-housing-segregation.html>
- <https://www.washingtonpost.com/business/2020/01/03/ben-carsons-latest-plan-weaken-fair-housing-enforcement/>
- <https://www.vox.com/2015/6/25/8845477/supreme-court-fair-housing-texas>
- <https://www.nytimes.com/2020/01/20/opinion/fair-housing-act-trump.html>
- <https://www.nytimes.com/2018/05/13/opinion/ben-carson-hud-fair-housing-act.html>
- <https://www.theatlantic.com/politics/archive/2018/03/the-unfulfilled-promise-of-fair-housing/557009/>
- https://www.washingtonpost.com/realestate/for-black-homeowners-a-common-conundrum-with-appraisals/2021/01/20/80fbfb50-543c-11eb-a817-e5e7f8a406d6_story.html
- <https://www.vox.com/22249001/biden-racial-equity-executive-order-explained>
- <https://www.history.com/topics/black-history/fair-housing-act>
- <https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/>
- <https://www.theatlantic.com/business/archive/2014/05/the-racist-housing-policy-that-made-your-neighborhood/371439/>
- <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>
- <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/>