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Talking Points for Assembly Bill 662

What This Bill Does:

▸ Current federal law permits the owner of an *owner-occupied* multifamily dwelling of four units or less to advertise for tenants in a way which would ordinarily be discriminatory. Current state law makes no such exception, commonly known at the federal level as the "Aunt Sally" exemption.

▸ Assembly Bill 662 will establish an "Aunt Sally" exception in Wisconsin law. Under this bill, the owners of owner-occupied housing as described in the previous point will be able to advertise for a boarder or roommate in a way which would otherwise be discriminatory. Ads such as "seeking a mature Christian handyman" would be permitted.

▸ This bill will prohibit municipalities from enacting ordinances which would mute or override the "Aunt Sally" exception which this bill seeks to create.

Why This Is Good Legislation:

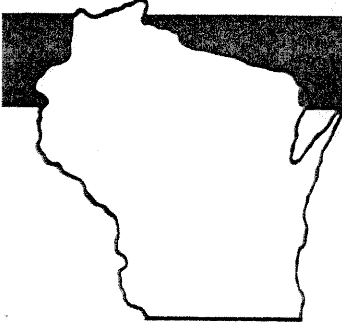
▸ IT WILL MAKE THE STATE AND FEDERAL LAWS ON THIS ISSUE CONSISTENT: Federal law provides that the owner of owner-occupied housing consisting of four or fewer living units may advertise for tenants in a way which would ordinarily be considered discriminatory. Wisconsin law is harsher, preventing a homeowner from choosing his or her own housemates as he or she sees fit. This bill will bring the two sets of laws into compliance, reducing confusion and frustration.

▸ THIS LEGISLATION DOES NOT OVERTHROW FAIR HOUSING PROTECTIONS FOR TENANTS GENERALLY: This bill would apply only to *owner-occupied* housing -- it does not exempt 4-unit housing in which the owner does not reside. Because most multifamily rental housing is not owner-occupied, most such housing will still be required to follow all state and federal anti-discrimination laws and rules.

▸ THE RIGHT OF SELF-DETERMINATION IS GUARANTEED FOR HOMEOWNERS -- THE RIGHT TO FAIR HOUSING IS ASSURED FOR TENANTS: This bill springs, in part, from a case in Hartford where a woman seeking a roommate for her Victorian home was prosecuted by the Metropolitan Milwaukee Fair Housing Council for advertising for a boarder who was a "Christian Handyman." This ad violates current state law by discriminating on the basis of gender (handyMAN) and religion (CHRISTIAN). Our bill will remedy a problem such as this, by allowing homeowners to determine with whom they will share their immediate and proximate living space. It will simultaneously assure that equal opportunity is protected for those seeking housing in the type of multifamily housing comprising the vast majority of that housing stock.

Chairman:
Joint Committee for the Review
of Administrative Rules

Member:
Judiciary (Vice Chair)
Special Committee on Controlled
Substances (Vice Chair)
Labor and Employment
Law Revision
Urban Education
Welfare Reform



WISCONSIN ALLIANCE OF CITIES

14 W. MIFFLIN • P.O. BOX 336 • MADISON, WI 53703-0336 • (608) 257-5881 • FAX 257-5882

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Neenah
Oshkosh
Racine
Sheboygan
Stevens Point
Superior
Two Rivers
Waukesha
Wausau
Wauwatosa
West Allis
Wisconsin Rapids

November 30, 1995

TO: Honorable Members of the Assembly Housing Committee

FROM: Ed Huck and Gail Sumi

RE: AB 662, local housing equal rights ordinances

We are recommending that the membership of the Wisconsin Alliance of Cities oppose AB 662, which exempts landlords of owner occupied housing of four rental units or less from local housing discrimination oversight. The federal exemption for these units was based on the politics of race, not on public policy.

We have attached two historical viewpoints of the 1968 Civil Rights Act which included the Fair Housing Legislation offered by then, Senator Mondale. The proposal divided the U.S. Senate, not on party lines, but North and South.

Senator Mondale and Senator Dirksen of Illinois attempted numerous compromises on the housing provisions but to no avail. Not until shortly after the assassination of Martin Luther King, Jr. did the Civil Rights bill move from Rules and pass the U.S. Senate overwhelmingly. To secure Southern votes the "Mrs. Murphy" Amendment, referred to in the attached articles, had been added to the Fair Housing sections of the bill. The amendment is the "federalization" offered today in AB 662.

AB 662 codifies a federal political compromise based on the racial climate that divided the country in 1968. Current Wisconsin law codifies the spirit of the U.S. Constitution.

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To Note: Under the 1866 Civil Rights Act the responsibility of an owner of property NOT to discriminate based on race still exists. The Act is used to bring suit in states that have adopted legislation like AB 662. While current Wisconsin law allows complaints to be handled outside of Federal Court on a state and local level, passage of this bill will send the wrong signal to landlords and may force disputes into Federal Court.

".....the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, the thirteenth amendment made a promise the Nation cannot keep." - quoted from the majority opinion of the 1968 U.S. Supreme Court decision that ties the 1866 Civil Rights Act to housing issues.

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Washburn Law
Journal
page 149
1969

FAIR HOUSING: A LEGISLATIVE HISTORY AND A PERSPECTIVE

By JEAN EBERHART DUBOFSKY*

New fair housing laws[1] may bring drastic revisions to the black-white pattern of housing in American cities. In the first half of 1968, both Congress and the Supreme Court took a step that until then had seemed next to impossible—the declaration that it is illegal to discriminate because of race in the sale or rental of housing. Whether the law can and will be enforced remains to be seen.

Congressional Action

The 1968 Civil Rights Act, containing landmark open occupancy provisions, became law for several reasons: first, the Senate Housing and Urban Affairs Subcommittee of the Banking and Currency Committee, including more liberals than the normal birthplace of civil rights legislation, the Judiciary Committee, held hearings on a fair housing bill which could be added as an amendment to H.R. 2516[2] providing civil rights workers' protection, originally intended as an election year courtesy to civil rights backers; second, Senate liberals were more organized and tenacious than usual in this legislative battle; and third, the assassination of Martin Luther King sped action in the House of Representatives.

The ultimately successful fair housing effort began in August, 1967, with hearings[3] on Senator Walter F. Mondale's proposal, S. 1358. The original bill provided that fair housing come in three stages: first to all federally-assisted housing; then to all multi-unit housing, and

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* A.B., Stanford, 1964; L.L.B., Harvard, 1967; former legislative assistant to Senator Walter F. Mondale (D.-Minn.); presently attorney with South Florida Migrant Legal Services, Delray Beach.

1. The Fair Housing Provisions of the Civil Rights Act of 1968, §§ 101-119, 42 U.S.C.A. §§ 3601-31 (Supp. July 1968), and Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).
2. H.R. 2516, 90th Cong., 1st Sess. (1967). The original bill, H.R. 2516, was introduced in the House of Representatives by Rep. Emanuel Celler on January 17, 1967. It was reported out of the House Judiciary Committee on June 29, 1967, amended on the House floor, and passed by the House, 326 to 93, on August 16, 1967. The bill then went to the Senate Judiciary Committee, which reported it to the floor of the Senate with an amendment on November 2, 1967. This bill contained no fair housing provisions.
3. *Hearings on S. 1358, S. 2114, and S. 2280 Before a Subcommittee of the Senate Committee on Banking and Currency*, 90th Cong., 1st Sess. (1967).

finally to all single-family residences.[4] Responsibility for administration and enforcement was to rest with the Secretary of Housing and Urban Development who, if his efforts at a voluntary solution in each case proved unsuccessful, had the authority to issue a complaint, hold hearings and if he found discrimination did exist, issue an appropriate order—all subject to judicial review.[5] The Attorney General could initiate suits in United States district courts to eliminate patterns or practices of housing discrimination.[6]

The Subcommittee, chaired by Senator John Sparkman of Alabama, heard a number of witnesses including Attorney General Ramsey Clark and Secretary of Housing and Urban Development Robert Weaver, both testifying in favor of the bill; a panel of law school deans testifying as to its constitutionality; representatives of the real estate profession—some in favor of the bill and some against; and government, church and individual witnesses of the need for fair housing.[7] Senators William Proxmire, Edmund Muskie, Mondale, Sparkman, Wallace Bennett, and Charles Percy attended the hearings, but the committee took no official action to report out the bill.

As the first session of the Ninetieth Congress drew to a close, Senate Majority Leader Mike Mansfield announced that the first order of business for the next session in January would be H.R. 2516, the House-passed civil rights workers' protection bill. Knowing that there would be only one civil rights bill with its attendant filibuster for consideration on the Senate floor during the next session, Senator Mondale asked Senator Edward Brooke, a member of the Banking and Currency Committee but not a member of the Housing Subcommittee, to sponsor with him S. 1358 as an addition to the workers' protection measure. They consulted the Senate civil rights leadership, Senators Philip Hart and Jacob Javits of the Judiciary Committee; their decision was to wait on fair housing and see how the stage set itself for a more far-reaching civil rights measure.

The debate on H.R. 2516 began slowly in January with only the most concerned Southerners and members of the Judiciary Committee

4. S. 1358, 90th Cong., 1st Sess. § 3 (1967).
5. *Id.* §§ 11, 12, 14.
6. *Id.* § 13.
7. *Hearings on S. 1358*, *supra* note 3.

in attendance. H.R. 2516, as reported by the Judiciary Committee, provided that whoever interferes, or threatens to interfere, with one who is voting, attending school, participating in any U. S. program, seeking employment, serving on a jury, using public transportation, receiving federal financial assistance, or using public accommodations or restaurants—the civil rights which the federal government through Supreme Court decisions and legislation has guaranteed to all Americans, regardless of race, in the past fifteen years—or one who is urging others to exercise these rights, is subject to not more than a $1,000 fine or one year imprisonment, or if bodily injury results, not more than a $10,000 fine or ten years imprisonment.[8] On January 25, 1968, Senator Sam Ervin introduced an amendment which would take out the language in H.R. 2516 referring to crimes committed "because of race, color, religion, or national origin."[9] Ervin argued that his amendment would make H.R. 2516 apply to all crimes and bring equal justice for all. In truth, Ervin and the Southerners wanted to emasculate the bill of all civil rights connotation, leaving language urging enforcement for everyone of all laws, an approach so vague and generally of the status quo as to mean nothing. As debate dragged on for two weeks, the Senate Minority Leader and architect of past civil rights compromises, Senator Everett Dirksen, indicated efforts to reach a compromise on the Ervin amendment.[10]

Abruptly, however, debate on the workers' protection measure ended with the adoption by 54 yeas to 29 nays of a Hart motion to table the Ervin amendment.[11] While newspapers reported Dirksen and Ervin and the Justice Department working out a compromise of an already weak bill, Senate liberals had checked their support and found that the Judiciary Committee framework for H.R. 2516 was acceptable to a majority of the members of the Senate, and that rather than compromising the basic bill, more provisions might be added. In retrospect, the Southerners in their own interests should not have fought H.R. 2516; their reflexive inclinations to oppose any and all civil rights legislation—even when the legislation was small in scope—antagonized the proponents and set the stage for a tougher bill.

8. 114 CONG. REC. S494-95 (daily ed. Jan. 26, 1968).
9. *Id.* at S448 (daily ed. Jan. 25, 1968).
10. *Id.* at S978 (daily ed. Feb. 6, 1968).
11. *Id.* at S979.

On the heels of the vote on the Hart motion, Senators Mondale and Brooke presented their fair housing amendment.[12] By pre-arrangement, Vice President Hubert Humphrey was presiding and recognized Mondale. The amendment was S. 1358 with the addition of the "Mrs. Murphy exemption," cutting from coverage 5.5 million dwellings of up to four units, one of which is owner-occupied.[13] By the time the amendment was introduced, a majority of the Banking and Currency Committee's fourteen members had announced their support by agreeing to co-sponsor: they included Senators Mondale and Brooke, Proxmire, Harrison Williams of New Jersey, Muskie, Edward Long of Missouri, Gale McGee, and Percy.[14]

The burden of carrying the floor debate shifted to the liberals. The Majority Leader wanted to be shown enough interest in fair housing legislation to justify a continued Senate time expenditure. In the past, Senate liberals had been notorious for lack of organization and lack of a willingness to work together; as recently as mid-December, 1967, Senators Russell Long of Louisiana and Robert Boyd of West Virginia had succeeded in slipping past the liberals a motion killing debate and liberal hopes for better welfare provisions in the Social Security bill. Senate liberals have had no regular caucus like the Southern one with its tight discipline. To plan strategy and to schedule a speaker and watch-dog for each hour the Senate was in session involved a daily hour and a half meeting for the band of Senators most interested in obtaining the legislation: Mondale and Brooke, Hart and Javits, Edward Kennedy, Joseph Tydings and Percy. Theirs, too, was the behind-the-scenes work persuading others to support the bill, to support a cloture motion and to be present on the Senate floor when needed.

Proponents of open occupancy based their arguments on familiar constitutional grounds,[15] on an effort to dispel myths surrounding the value of property, and on the increasing need by blacks for standard housing in convenient locations. Opponents argued the equally fa-

12. *Id.* at S980-83.
13. *Id.* at S1876 (daily ed. Feb. 28, 1968).
14. *Id.* at S985 (daily ed. Feb. 6, 1968).
15. Attorney General Ramsey Clark testified that a federal fair housing measure is supportable under either the equal protection clause of the fourteenth amendment or the commerce clause. *Hearings on S. 1358*, *supra* note 3, at 8-14.

miliar constitutional grounds of states' rights and the right of the individual to control the disposal of his property.

The case for fair housing included its psychological significance to blacks who will be able to escape the ghetto and the increased opportunities for employment and for decent education. For example, in the first five years of this decade, one-half to two-thirds of all new factories and stores in all areas of the country except the South were located outside the central cities and metropolitan areas.[16] Although jobs moved to the suburbs, black people were prevented from following; eighty percent of the nonwhite population of metropolitan areas in 1967 lived in central cities.[17] These persons, the least able to afford the high cost of transportation from the city to the suburbs, sustained the highest rate of unemployment. Studies of de facto segregation in American schools indicate the impossible task of providing quality education to minority children as long as they are restricted to living in the old and congested parts of a city.[18]

In response to the "forced" housing argument of the conservatives, liberals responded that no one is forced to sell or not to sell a house; the bill simply removes from an economic transaction an irrelevant test based on color dating back to pre-Civil War days when only whites were allowed to own property.[19] Most real estate brokers, builders, and operators of apartment buildings would sell or rent to the first buyer who could meet the seller's terms if they did not feel the pressure described by William J. Levitt, the largest of the nation's homebuilders: "Integration has certainly not hurt us . . . (but) any homebuilder who chooses to operate on an open occupancy basis, where it is not customary or required by law, runs the grave risk of losing business to his competitor who chooses to discriminate."[20] The remedy, pressed by the liberals, creates a situation where when every seller or landlord must by law treat his customers equally, there will be no risk of loss for those who do.

The pressure not to sell or rent to blacks comes not from the occupant who is leaving the house or apartment; it comes, rather, from

16. *Hearings on S. 1358*, *supra* note 3, at 36.
17. *Id.*
18. U.S. Comm. on Civil Rights, Report on Racial Isolation in the Public Schools 1 & 2 (1967).
19. 114 Cong. Rec. S1453 (daily ed. Feb. 20, 1968).
20. *Id.*

those who remain in the neighborhood. They fear the appearance of one black family means property values plummet, to be followed by a mass immigration of blacks. The best known study of the effect when nonwhites move into a previously all-white neighborhood shows property values do not decrease, and often increase in 85% of the cases.[21] Experience under the District of Columbia's fair housing ordinance demonstrates that instead of a deluge of blacks moving into white neighborhoods, the number of blacks in previously all-white areas of the city is regulated strictly by their ability to pay.[22] Although a number of states and cities already have fair housing ordinances, most of them have serious shortcomings in coverage and enforcement. The amendment the Senate was considering remedied that, but it left existing state and local fair housing ordinances in effect, and where coverage and enforcement were sufficient, the Department of Housing and Urban Development must cede its jurisdiction to state or local agencies.

The most persuasive of the arguments advanced by the liberals was the one that segregated housing is the simple rejection of one human being by another without any justification but superior power. No matter a man's university degrees, his income level, his profession, he could suffer the degradation and humiliation of being told he was not good enough to live in a white neighborhood. At a time when riots threatened to close down every major city in the country and black militants preached the basic indecency of white America, a fair housing law could ease the frustration of blacks and the role of the law as a teacher might overcome the ignorance and fear of whites which previously had blocked attempts to lower a black-white barrier.

Ten days after the fair housing amendment had been introduced, Majority Leader Mansfield called for a vote on it. As expected, Senator Ervin objected, leaving the Senate unable to act on civil rights. Having the signatures of twenty-nine Senators, the Majority Leader filed a petition to invoke cloture to be voted upon one hour after the Senate convened on Tuesday, February 20.[23] Immediately the burden of carrying the debate shifted back to the conservatives as they sought votes against cloture. Their expectation was that if cloture

21. *Id.*
22. *Hearings on S. 1358, supra* note 3, at 397.
23. 114 CONG. REC. at S1371 (daily ed. Feb. 16, 1968).

failed and debate continued, they could talk against a civil rights bill until by default the Senate would give up on civil rights and move to other legislation. Southerners argued that 60% of the states, their own excluded, were covered by fair housing legislation,[24] that the effect of fair housing on white property values was a measure for local and state governments to determine, and that the federal government should not force a housing policy on the states which had chosen not to act. Senator Dirksen, opposing cloture, recounted the warning given to him by a former Senator from Illinois, James Hamilton Lewis, "I'll not live to see it, but you will live to see the day when State lines will be for the convenience of tourists and possibly for Rand McNally."[25] After days of debate, Dirksen argued, "If it is approved . . . debate is going to end except for the limitations imposed in the cloture rule . . . let us no longer go around with the fancy cliche on the tips of our tongues when we refer to the Senate as 'the world's greatest deliberative body.'"[26]

Despite a letter from President Johnson supporting fair housing and despite an offer from the President to send Air Force jets to pick up three or four absent supporters of fair housing, the Senate rejected cloture by 55 yeas to 37 nays.[27] (Senate Rule XXII requires two-thirds of those present and voting to invoke cloture.) Mansfield's announced intent after the defeat of cloture was to move to table the Mondale amendment on Wednesday, February 21st, and then to file another cloture petition for a vote on Monday, February 26th. Although the cloture petition had failed, the vote showed an eighteen member margin in support of fair housing legislation covering 97% of the housing in America. In 1966, a fair housing proposal applicable to 40% of housing had failed to achieve cloture by a 52 to 41 vote, a margin of eleven.[28] To further bolster the chances of obtaining cloture on comprehensive civil rights legislation, the Senate refused on the 21st to kill the open housing amendment by a vote of 58 nays to 34 yeas.[29] And this time, forty-four Senators signed the cloture peti-

24. Twenty-two states and 84 cities, villages and counties had adopted some form of fair housing legislation by 1967. 114 CONG. REC. at S1453 (daily ed. Feb. 20, 1968). And see *Hearings on S. 1358, supra* note 3, at 51-72.
25. 114 CONG. REC. at S1454 (daily ed. Feb. 20, 1968).
26. *Id.*
27. *Id.* at S1458.
28. *Id.* at S1474.
29. 114 CONG. REC. at S1583 (daily ed. Feb. 21, 1968).

tion.[30] The success in achieving high attendance by liberals for a succession of votes belonged to the lobbyists: Clarence Mitchell of the NAACP, Joseph Rauh, Jr., and the labor union representatives who could marshal support throughout the country.

In order to attract more votes, the sponsors of the fair housing measure had promised major modifications in the bill before the next cloture attempt on February 26th. The expected modifications would have brought the bill in line with the 1966 fair housing bill, covering all housing except single-family dwellings and the Mrs. Murphy's situation. The talk of compromise reflected thinking which had been going on all along in the daily meetings of Hart, Javits, Mondale, Brooke, Kennedy, Percy and Tydings. From the beginning, Senator Mondale believed that in order to achieve any success on fair housing, the coverage of his bill would have to be cut; the bill was designed in three stages, the third stage covering all single-family dwellings, and it would have been a simple matter to drop the coverage of one or two stages. The problem was to know when to offer a compromise; the general thinking had been to hold on to as much of the bill as possible for as long as possible. On February 21st, it appeared that by the 26th such a compromise would be needed. As the 26th approached, the necessity for changes by then was less pressing since Senator Dirksen had agreed to assist a compromise on fair housing. Because the cloture vote was set, the Senate had to go through the exercise of voting on the same issue again while a compromise was prepared. It was important, however, for the proponents of open occupancy to maintain their strength on each vote because any sign of slippage might be the weakness which would curtail or kill the effort. Cloture, as expected, was defeated again, but there was a switch of one vote as it lost 56 yeas to 36 nays, six votes short of the needed two-thirds.[31] The Democrats' votes were set, aside from attendance problems, so the lobbyists had been pressuring the Republicans. Votes already changed from the 1966 position included those of Senators John Sherman Cooper, Thruston Morton, James Pearson, and Winston Prouty.

Senator Dirksen's compromise, worked out in the form of an amendment to H.R. 2516 to be substituted for Senator Mondale's fair hous-

30. *Id.* at S1644.
31. *Id.* at S1729 (daily ed. Feb. 26, 1968).

ing amendment, emphasized a change in enforcement more than a change in coverage. The liberals had expected Dirksen to insist that all single-family dwellings be excluded from the bill's coverage; he did not. Instead he reduced the enforcement powers of the Secretary of Housing and Urban Development, while increasing to an extent the enforcement powers of the Attorney General. The only reduction in coverage was the removal of single-family dwellings sold by an owner-occupant without the use of a real estate broker. About seven million housing units or 11.2% of all housing fall in this category.[32] The actual delineations of the Dirksen compromise were worked out in a negotiating session, comparing the Mondale provisions with the ones suggested by Dirksen's staff attorneys. The chief negotiators were Attorney General Ramsey Clark, assisted by Assistant Attorney General Stephen Pollack, and Senators Howard Baker and Dirksen. Sitting in on the meeting were Senators Javits, Hart, Mondale, and Brooke, and Senator Roman Hruska, who was non-commital and voted against cloture for the compromise.

The compromise was ready on February 28th, and Senator Mondale moved to table his fair housing amendment; the motion carried by 83 yeas to 5 nays.[33] Senator Dirksen then filed a cloture petition signed by 48 Senators, on his substitute amendment.[34] Senator Dirksen explained his reversed position:[35]

> It will be an exercise in futility for anyone to dig up the speech I made in September, 1966, with respect to fair housing, in which I took the firm, steadfast position that I thought fair housing was in the domain of the State because it was essentially an enforcement problem. . . . one would be a strange creature indeed in this world of mutation if in the face of reality he did not change his mind. . . . I do not want to worsen . . . the restive condition in the United States. . . . There are young men of all colors and creeds and origins who are this night fighting 12,000 miles or more away from home. They will return. They will have families. . . . Unless there is fair housing . . . I do not know what the measure of their unappreciation would be for the ingratitude of their fellow citizens. . . . And so we labor together precisely as we did in 1964 because I am in almost the identical position. It was no easy chore to keep that bill and it was no easy chore to go hat in hand, and to be a little blunt, and to be a little selfish and say to a Member, "I went to your State and campaigned for you. I need a favor and I wish

32. *Id.* at S1876 (daily ed. Feb. 28, 1968).
33. *Id.* at S1877.
34. *Id.* at S1883.
35. *Id.* at S1881, S1882.

now you would pay me back. I wish you would give me a vote on cloture." And so this body voted cloture, and there was the Civil Rights Act of 1964.

But the Dirksen exchange-of-favors approach failed to win any votes other than that of Senator Howard Baker, his son-in-law. The Dirksen cloture motion was rejected on March 1 by 58 yeas to 35 nays, five votes short.[36] However, the Dirksen compromise was part of a momentum and a sense that this was the year the Senate could pass a fair housing bill. On the morning of March 1, the Kerner Commission Report was released.[37] Its blunt language told the Senate as well as the rest of the country that "America is dividing into two societies, black and white, separate and unequal. . . ."[38] The Commission recommended that the federal government enact a comprehensive and enforceable open housing law to cover the sale or rental of all housing, including single-family homes.[39] Recognizing that five potentially favorable votes had been absent that day and that the Kerner Report could be added to the balance, the Majority Leader promptly filed a fourth attempt at cloture.[40]

The vote on March 4 presented a moment of high drama. Although both sides had carefully counted votes, the "undecideds" prevented any prediction of success or failure. One thing was certain; if cloture failed this time, the fair housing amendment would be dropped. To cheers in the gallery, Senator Frank Carlson of Kansas cast the 64th vote for cloture and Senator E. L. Bartlett of Alaska cast the 65th vote to end debate on the civil rights bill,[41] by a vote of 65 yeas to 32 nays,[42] insuring passage of a comprehensive fair housing measure. In addition to Senators Carlson and Bartlett, Senators Howard Cannon,

36. *Id.* at S1972 (daily ed. Mar. 1, 1968).
37. THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT (1968).
38. 114 CONG. REC. at S1960 (daily ed. Mar. 1, 1968).
39. *Id.* at S2029 (daily ed. Mar. 4, 1968).
40. *Id.* at S1974 (daily ed. Mar. 1, 1968).
41. SENATE RULE XXII allows 100 hours of debate after cloture is invoked.
42. 114 CONG. REC. at S2035 (daily ed. Mar. 4, 1968).

Norris Cotton, Len Jordan, and Jack Miller switched to support cloture after having opposed it the previous three times.[43]

The allotted one hundred hours of debate were quickly jammed with votes on amendments. By the time cloture was invoked, 83 amendments to the civil rights bill had been proposed.[44] The managers of the bill accepted the technical ones which served a clarifying purpose. An amendment proposed by Senator Byrd of West Virginia to exempt single-family dwellings sold through a real estate broker was defeated 38 to 56.[45] Another amendment, proposed by Senator Baker, that left the exemption to a homeowner unimpaired when he employed a real estate agent so long as he did not instruct the agent to discriminate in the sale or rental of housing, was rejected 43 to 48.[46] The non-technical amendments accepted by vote included several relating to civil disorders. One prohibited the transporting of guns across state lines if the guns are intended for use in a riot. Another made illegal any demonstration of the use of a gun if the instructor had reason to know the gun will be used in a riot. Six new titles on the rights of American Indians were adopted unanimously. Senator Robert Byrd's amendment on vacation homes, adopted 48 to 45, allowed an exemption from fair housing requirements for a single-family house sold or rented by the owner of not more than three such houses if he has been the most recent resident of the house in question or makes not more than one such sale within 24 months.[47]

Substantially intact, the bill finally passed by a vote of 71 yeas to 20 nays on March 11.[48] Those who voted for final passage but who had not voted for cloture included Senators Hruska, Byrd of West

43. Yeas: Aiken, Allott, Anderson, Baker, Bartlett, Bayh, Boggs, Brewster, Brooke, Burdick, Cannon, Carlson, Case, Church, Clark, Cooper, Cotton, Dirksen, Dodd, Dominick, Fong, Gore, Griffin, Gruening, Harris, Hart, Hartke, Hatfield, Inouye, Jackson, Javits, Jordan of Ind., Kennedy of Mass., Kennedy of N.Y., Kuchel, Lausche, Long of Mo., Magnuson, Mansfield, McGee, McGovern, McIntyre, Metcalf, Miller, Mondale, Monroney, Montoya, Morse, Morton, Moss, Muskie, Nelson, Pearson, Pell, Percy, Prouty, Proxmire, Randolph, Ribicoff, Scott, Smith, Symington, Tydings, Yarborough, Young of Ohio. Nays: Bennett, Bible, Byrd of Va., Byrd of W. Va., Curtis, Eastland, Ellender, Ervin, Fannin, Fulbright, Hansen, Hayden, Hickenlooper, Hill, Holland, Hollings, Hruska, Jordon of N.C., Long of La., McClellan, Mundt, Murphy, Russell, Smathers, Sparkman, Spong, Stennis, Talmage, Thurmond, Tower, Williams of Del., Young of N.D. Absent: McCarthy, Pastore, Williams of N.J.
44. 114 CONG. REC. at S2034 (daily ed. Mar. 4, 1968).
45. *Id.* at S2053.
46. *Id.* at S2239 (daily ed. Mar. 5, 1968).
47. *Id.* at S2360 (daily ed. Mar. 7, 1968).
48. *Id* at S2578 (daily ed. Mar. 11, 1968).

Virginia, Milton Young of North Dakota, Bennett, Alan Bible, Carl Curtis, Clifford Hansen, Carl Hayden, Karl Mundt, and George Murphy.

H.R. 2516 was returned to the House of Representatives for concurrence with the Senate amendments, the most important of which was the fair housing title. Representative William Scott of North Carolina objected to the unanimous consent request, made by Emanuel Celler, Chairman of the Judiciary Committee, to agree to the Senate amendments; H.R. 2516 then was referred to the Rules Committee.[49] The House Rules Committee at first deferred action until April 9, 1968, on H.R. Res. 1100 providing for consideration of H.R. 2516,[50] but the Committee then changed its consideration to March 28th when it began hearing testimony from members of the House. The hearings continued until April 4th, and by that time fears had increased that the Senate's civil rights bill might die in the Rules Committee.

Martin Luther King's assassination on the evening of April 4th accomplished one thing; it dislodged the Civil Rights Bill of 1968 from the Rules Committee. On April 8th, shaken by the disorders in Washington, the Committee concluded its hearings; on April 9th it ordered reported to the House H.R. Res. 1100 providing for agreement to the Senate amendments to H.R. 2516 with no additional amendments by the House allowed. April 10th, with National Guard troops called up to meet riot conditions in Washington still in the basement of the Capitol, the House debated fair housing. Debate was limited to one hour, and then the clerk called the roll twice: first, for the motion to order the previous question which was adopted 229 to 195,[51] and second, for H.R. Res. 1100 which was accepted 250 to 171.[52] On April 11th, President Johnson signed at the White House H.R. 2516, and the Civil Rights Act of 1968 became law.[53]

The new law begins with the following words: "It is the policy of the United States to provide, within constitutional limitations, for fair

49. *Id.* at H1959 (daily ed. Mar. 14, 1968).
50. *Id.* at D221 (daily ed. Mar. 19, 1968).
51. *Id.* at H2825 (daily ed. Apr. 10, 1968).
52. *Id.* at H2826.
53. 42 U.S.C.A. §§ 3601-31 (Supp. July 1968).

housing throughout the United States."[54] It provides, as did Senator Mondale's original bill, for coverage in three stages.[55] Since April 11, 1968, discrimination in either the sale or rental of housing on the basis of race, color, religion or national origin is barred in any housing owned or operated by the federal government, or in dwellings provided by loans or grants from the federal government, or assisted in whole or in part by loans insured or guaranteed by the federal government. This applies to FHA-insured property, but not to property where the mortgage is insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The agreement made with the federal government must have been made after November 20, 1962 (the date of President Kennedy's Executive Order 11063 forbidding discrimination in housing where federal assistance is involved) and the agreement must not have been repaid in full. In addition, all housing which is part of an urban renewal project, if the agreements were signed by the federal government after November 20, 1962, must maintain open occupancy.[56]

Effective January 1, 1969, discrimination in the sale or rental of all multi-unit housing is prohibited.[57] The only exemption in which private discrimination is not prohibited is in the "Mrs. Murphy" case, a building containing no more than four units, one of which is occupied by the owner.[58] On January 1, 1970, the coverage of the law will extend to all single-family dwelling owners if they use the services of a real estate broker in selling their house or if they advertise showing any discrimination or preference.[59] The exception to this is the "vacation" home provision, although the coverage is not limited to "vaca-

54. The Fair Housing Provisions of the Civil Rights Act of 1968, 42 U.S.C.A. § 3601 (Supp. July 1968).
55. 114 CONG. REC. at S2585 (daily ed. Mar. 11, 1968). Chart detailing coverage of fair housing provisions:

	Number	Enactment	Dec. 31, 1968	Dec. 31, 1969
Federally assisted	3,800,000	900,000	....	2,320,000
Multiunit housing	11,800,000	......	11,800,000	....
Nonowner-occupied "Mrs. Murphy"	8,000,000	......	8,000,000	....
Single family	36,000,000	......	....	29,000,000
"Mrs. Murphy" and Byrd	5,500,000	......	....	....
Total	65,100,000	900,000	19,800,000	31,320,000
Total units			52,020,000	

56. The Fair Housing Provisions of the Civil Rights Act of 1968, 42 U.S.C.A. § 3603 (a)(1)(D) (Supp. July 1968).
57. *Id.* § 3603(a)(2).
58. *Id.* § 3603(b)(2).
59. *Id.* § 3603 (b)(1)(A).

tion" homes, proposed by Senator Byrd of West Virginia.[60] (See p. 159 *supra.*) Discrimination is defined to include: (1) the refusal, after making a bona fide offer, to negotiate on or sell or rent a dwelling on the basis of a person's race, color, religion or national origin; (2) a differentiation in the terms of the sale or rental or in the services provided because of a person's race, color, religion or national origin; (3) telling anyone that a dwelling is not available for inspection, sale, or rental because of the person's race, color, religion or national origin; (4) an advertisement indicating a preference based on race, color, religion or national origin; (5) the practice of "blockbusting" which commonly consists of a profiteer inducing people to sell because of the "threat" of blacks moving into a neighborhood.[61]

The law defines real estate brokers and prohibits them from discriminating and from denying a minority group member access to a multiple-listing service.[62] It also prevents banks, insurance companies and loan agencies from discriminating in the financing of loans for the purchase or repair of property.[63] Religious organizations, if the religion does not restrict membership on the grounds of race or national origin, and private clubs, which only incidentally provide housing, may limit occupancy of housing to their members if the housing is noncommercial.[64]

Chief enforcement responsibility lies with the Secretary of Housing and Urban Development who may appoint an Assistant Secretary to administer the law and to make studies of discrimination. An individual may file a written complaint with HUD; the Secretary must investigate the claim (he has subpoena powers similar to those of a United States district court on civil matters) and if he finds a violation, attempt to reach a conciliation within 30 days. However, if a comparable state or local law has conciliation features, the Secretary must defer to the state or local law for 30 days. The Secretary may step back into the proceedings only if it is necessary to protect the rights of the parties or serve the interests of justice. If the Secretary is not successful in achieving reconciliation, the individual may file a

60. *Id.*
61. *Id.* § 3604.
62. *Id.* § 3606.
63. *Id.* § 3605.
64. *Id.* § 3606.

civil action in the appropriate federal district court. A person may also file a civil action without first going to HUD. The Dirksen compromise took away the Secretary's power to issue orders and to resolve the dispute in any manner other than conciliation. Any complaint must be filed with HUD within 180 days from the time the action took place.[65] One hundred eighty days are also allowed for an aggrieved party to bring his case to the appropriate district court; however, if the person first takes his case to HUD, and the Secretary cannot get voluntary compliance within 30 days, the person is given 30 days to file with the district court, and the amount in controversy is immaterial.[66] If a suit is filed without a request for HUD to act, the court may continue the case while the Secretary pursues promising conciliatory efforts. Any sale or rental made prior to a court order will not be affected by court proceedings if the purchaser or tenant had no knowledge of the complaint. Either a federal or state court can issue injunctions and temporary restraining orders, award actual damages, up to $1,000 punitive damages, and award court costs and attorney fees in appropriate cases.[67] The Attorney General may bring a civil action in district court to enforce the law if he believes that a person or group of persons is practicing a pattern of prohibited discrimination or if a group of persons has been denied protected rights and the issue is of general public importance.[68] Court action, either by private persons or the Attorney General, is to be heard at the earliest possible date.[69] The exercise of rights protected under the fair housing section of the law is included in the section preventing the intimidation of those exercising certain protected rights.[70]

Judicial Action

Another route of court protection was opened on June 17, 1968, when the Supreme Court decided *Jones v. Alfred H. Mayer Company.*[71] The Court upheld the invocation of federal equity power to restrain racial discrimination by private individuals in the sale of real estate. The statutory authority for such use of federal judicial power,

65. *Id.* § 3610 (a)(b).
66. *Id.* § 3610 (d).
67. *Id.* § 3612.
68. *Id.* § 3613.
69. *Id.* § 3614.
70. *Id.* §§ 3617, 3621.
71. 392 U.S. 409 (1968). See also Comment, p. 268 *infra.*

Section 1 of the Civil Rights Act of 1866, now referred to as § 1982,[72] reads: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." Mr. Justice Stewart, speaking for the Court, said, "We hold that § 1982 bars *all* racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment."[73] The enabling clause of the thirteenth amendment, since the *Civil Rights Cases*, has been interpreted as clothing "Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States."[74] The Court in *Jones* concludes that "when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery. . . . At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep."[75]

The Court distinguished the case from the Fair Housing Title of the Civil Rights Act of 1968;[76] one is a "general statute applicable only to racial discrimination in the rental and sale of property and enforceable only by private parties acting on their own initiative," and the other is "a detailed housing law, applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority."[77] The majority of the Court claimed that the enactment of the Civil Rights Act of 1968 "had no effect upon § 1982 and no effect upon this litigation."[78] Dissenting, Mr. Justice Harlan

72. Act of April 9, 1866, ch. 31, § 1, 14 Stat. 27 (1866), now codified at 42 U.S.C. § 1982 (1964).
73. 392 U.S. 409, 413 (1968). The thirteenth amendment reads:
(1) Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
(2) Congress shall have power to enforce this article by appropriate legislation.
74. 109 U.S. 3, 20 (1883).
75. 392 U.S. 409, 442-43 (1968).
76. 42 U.S.C.A. §§ 3601-31 (Supp. July 1968).
77. 392 U.S. 409, 417 (1968).
78. *Id.* at 416-17.

suggested that the passage of the Civil Rights Act so diminished the case's public significance that the Court should have dismissed the writ as improvidently granted.[79]

In fact, the *Jones* case may very well have extended the coverage of the fair housing laws back up to one hundred percent when the discrimination is racial. It may mean that an individual can take a single-family dwelling owner, who elects not to use the assistance of a real estate broker in selling his house and does discriminate on racial grounds against the individual, into court and obtain relief under § 1982. Mr. Justice Stewart, indicating that Congress was aware of the pending case and that Congress and the Attorney General Ramsey Clark intended that the new Act should stand independently of § 1982, comments only that "although § 1982 contains none of the exemptions that Congress included in the Civil Rights Act of 1968, it would be a serious mistake to suppose that § 1982 in any way diminishes the significance of the law recently enacted by Congress."[80] Mr. Justice Harlan, dissenting, is more explicit: "In effect, this Court, by its construction of § 1982, has extended the coverage of federal 'fair housing' laws far beyond that which Congress in its wisdom chose to provide in the Civil Rights Act of 1968."[81] Because the facts in *Jones* involved a developer, a situation which will be covered by the 1968 fair housing provisions after January 1, 1970, the case in itself does not extend the enacted law; however, the language and rationale of the Court's holding on § 1982 apply whether an individual or a real estate broker, both private persons, discriminate in the sale of real estate.

In footnote number five at the beginning of the *Jones* opinion, the Court notes, "Because we have concluded that the discrimination alleged in the petitioners' complaint violated a federal statute that Congress had the power to enact under the Thirteenth Amendment, we find it unnecessary to decide whether that discrimination also violated the Equal Protection Clause of the Fourteenth Amendment."[82] Arthur Kinoy argues that *Jones*' greatest significance is as a redefinition of the

79. *Id.* at 450.
80. *Id.* at 415.
81. *Id.* at 478.
82. *Id.* at 413.

constitutional dimensions of the national right of Negro freedom.[83] Instead of stretching the "state action" rhetoric—a possibility in the *Jones* case because a land developer operates with licenses from the state and has quasi-municipal powers—and basing the decision on "equal protection of the law" under the Fourteenth Amendment, the Court spoke in terms of "a *nationally* created right which constitutionally requires for its protection the invocation of direct and plenary *national* power."[84] Kinoy hopes that this will lead to national enforcement of fair housing and a national responsibility which will achieve better results than those achieved in school desegregation under *Brown v. Board of Education*[85] which was based on the fourteenth amendment. He concludes, "If ghettoization of America's black citizens is a 'relic' of the slave system, then a compelling affirmative duty lies upon all levels of government to take measures to secure its prompt eradicaton. Failure to adopt and implement such measures calls for rapid and decisive judicial intervention."[86]

Enforcement

Whether the fair housing law will be enforced remains to be seen. The Department of Housing and Urban Development will have no enforcement power; conciliation depends upon voluntary compliance by those who have discriminated. The Attorney General can enforce the law, but he can choose, which, if any, cases he will bring, and his choice will depend upon his personal convictions and the efficiency of his Department. Private litigation may bring individual redress of grievances, but it does not prevent discrimination in the first instance and to most people, the expense and effort of litigation to redress a past wrong without the possibility of specific performance is not worth the trouble. But fair housing is now the law of the land. Patterns of segregation in housing can be ended if all Americans, including ironically and especially those who deplore the "lack of law and order" in the country, voluntarily comply with the law.

83. Kinoy, *The Constitutional Right of Negro Freedom Revisited: Some First Thoughts on Jones v. Alfred H. Mayer Company* 22 Rutgers L. Rev. 537 (1968).
84. *Id.* at 540.
85. 347 U.S. 483 (1954).
86. Kinoy, *supra* note 83, at 551.

RACE RELATIONS AND THE LAW IN ENGLAND

By Winifred H. Hamilton*

In the early 1950's there were in Britain probably no more than 100,000 coloured people (people with non-white skins and with their origins in the Caribbean, Africa, Asia, etc.). Most of those lived in the dockland areas of London, Liverpool, Cardiff, etc. A small minority were students or professional people. Today it is estimated that the number has passed the million mark (or 2 per cent of the total British population). According to Ministry of Health figures that number includes 525,000 West Indians, 200,000 Indians, 125,000 Pakistanis and 150,000 from Africa and other parts of the Commonwealth. The Ministry forecast that, assuming the present rates of immigration and fertility remain constant, the coloured population will be 1,750,000 (3 per cent) by 1975.

It is not only in the startling increase in numbers that the position differs today from that in the early 1950s—but also in the fact that immigrants are no longer isolated in a few dockland areas. Immigrants are to be found in almost every large town in the country—and in most industries.

How to account for the startling increase? Obviously the desire for economic betterment was one of the main factors. As far as immigrants from the Caribbean are concerned the passing of the McCarran Act[1] in 1952, closing the former outlet to the States, was an additional impetus.

The influx of such a large number of immigrants who were easily identifiable, in a relatively short space of time, not unnaturally created problems. The main difficulties have been those of accommodation and in the general field of white-coloured relations. Immigrants were undoubtedly discriminated against. Reactions were in some instances violent and shocking. In 1958 so-called race riots occurred in Nottingham and Notting Hill, London.

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1. McCarran-Walter Act (Immigration, Naturalization and Nationality), ch. 477, 66 Stat. 163 (1952).

eligible applicants to swelling units in accordance with a plan that provides for assignment on a community-wide basis in sequence based upon (1) the date and time the application is received, (2) the size or type of unit suitable, and (3) factors affecting preference or priority established by the recipient's regulations which are not inconsistent with the objectives of Title VI and the regulations issued pursuant thereto.

The Department of Housing and Urban Development issued a procedural regulation setting forth practices and procedures for hearings under Title VI. This regulation, which was effective December 30, 1967, expanded on the hearing procedures set forth in the substantive regulation.

The sanctions under both Executive Order 11063 and Title VI are applied against the recipient of federal funds. The procedures are directed toward that end although the complainant, the ultimate beneficiary, such as a tenant or an applicant for the rental of housing, frequently benefits from the proceedings leading to the imposition of sanctions.

Many of the recipients of federal funds such as states, counties, municipalities and agencies thereof are prohibited from discriminating by the equal protection clause of the 14th Amendment to the Constitution of the United States. The executive order and Title VI, however, provided a means to hold back federal funds where discriminatory conduct occurred by state action. In its report entitled *Title VI—One Year After* relating to a survey of desegregation of health and welfare services in the South, the United States Commission on Civil Rights said:

> "Seldom has any piece of legislation been so broad in scope, sweeping across departmental, geographical, and political lines, as Title VI of the Civil Rights Act of 1964."

The bulk of housing in the United States was not affected by either the issuance of Executive Order 11063 or the enactment of Title VI, as neither covered housing which was conventionally financed or housing which was federally financed prior to the issuance of the order and the enactment of Title VI, except in the case of public housing.

K. Supervision of federal agencies under Title VI

On February 5, 1965, President Johnson issued Executive Order 11197 establishing the President's Council on Equal Opportunity. The vice president of the United States was chairman of the council. Various cabinet officials including the attorney general as well as heads of a number of federal agencies including the administrator of the Housing and Home Finance Agency were on the council. The objective of the executive order as stated in the preamble was to fill a need for a single body to review and assist in coordinating the activities of all departments and agencies of the federal government which are directed toward the elimination of discrimination and the promotion of equal opportunity. The council coordinated efforts of the federal government in carrying out its responsibilities under Title VI of the Civil Rights Act of 1964.

On September 24, 1965, President Johnson issued Executive Order 11247 providing for the coordination by the attorney general of enforcement of Title VI or the Civil Rights Act of 1964. This order revoked Executive Order 11197 which created the President's Council on Equal Opportunity.

II. The Fair Housing Act of 1968

A. Legislative history of the 1968 act

The enactment of the Civil Rights Act of 1964 was a giant step forward in congressional action for the protection of civil rights. In addition to Title VI, the act covered voting rights, discrimination in public accommodations, desegregation of public facilities, and desegregation of public education. It also granted additional powers to the United States Commission on Civil Rights, provided for equal employment opportunity, and established in the Department of Commerce a Community Relations Service with the function of providing assistance to communities in resolving disputes relating to discriminatory practices. In 1966, the Community Relations Service was transferred to the Justice Department.

The movement to bring racial and ethnic minorities into the mainstream of American life

was gaining momentum. In 1965, Congress enacted the Voting Rights Act of 1965. In 1966, the White House conference "To Fulfill These Rights" was held, and many significant recommendations were made in its report to enhance these rights.

Significant strides in attaining civil rights for minorities were made after the enactment of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Public accommodations were generally opened to minorities; the dual school systems were breaking down; fair employment practices were becoming a reality; and hundreds of thousands of Negroes were voting for the first time. Housing was the one commodity on the American market not freely available on equal terms to everyone who could afford to pay. Housing discrimination led to confinement in the ghettos with all its deprivations. The time was approaching for the federal government to take a strong stand against discrimination in housing. The opposition was powerful and very well organized.

In 1966, President Johnson sent a message to Congress on the elimination of racial discrimination in which he said, "The fruits of the Voting Rights Act and of the Civil Rights Act of 1964 are already impressively apparent."

The president in discussing discrimination in housing said:

"We must give the Negro the right to live in freedom among his fellow Americans.

"I ask the Congress to enact the first effective Federal law against discrimination in the sale and rental of housing.

"The time has come for the Congress to declare resoundingly that discrimination in housing and all the evils it breeds are a denial of justice and a threat to the development or our growing urban areas.

"The time has come to combat unreasoning restrictions on any family's freedom to live in the home and the neighborhood of its choice."

To carry out the recommendation contained in the president's message, and administration proposed the "Civil Rights Act of 1966." The proposals were incorporated in H.R. 14765 introduced by Rep. Celler and S. 3296 which was introduced by Sen. Hart and 19 other senators, including members of both parties. The provisions relating to fair housing were incorporated in Title IV of these bills.

Title IV prohibited discrimination in all housing without exception. It also prohibited discriminatory lending practices and discriminatory membership practices in any multiple-listing service or other service or facilities related to the business of selling or renting dwellings. These bills contained no provision for administrative enforcement but authorized individuals to seek judicial relief from discriminatory practices. They also authorized the attorney general to bring civil action in any appropriate United States District Court in pattern-or-practice cases.

Lengthy hearings on these bills were conducted by the judiciary committees of the Senate and the House of Representatives. The Senate committee failed to report the bill. The Judiciary Committee of the House, however, reported the bill after making some very substantial amendments in the provisions relating the fair housing. The House Judiciary Committee incorporated in the bill provisions for administrative enforcement by a Fair Housing Board which would have powers similar to the National Labor Relations Board. It restricted coverage, however, in several ways. First, coverage was limited to real estate brokers and salespersons and others engaged in the business of housing. Second, it exempted owner-occupied dwellings containing four or fewer units as well as certain housing operated by religious institutions and fraternal organizations.

H.R. 14765 was amended on the floor of the House to provide that no real estate broker, agent, or salesperson or any of their employees or agents would be prohibited from complying with the express written instruction of any person not in the business of building, developing, selling, renting, or leasing dwellings, or otherwise not subject to the prohibition relating to the sale or rental of housing.

H.R. 14765 was bitterly debated in the Senate for several months without any action by that body. A filibuster was conducted by a number of senators against the fair housing provision, and several motions to close debate on a motion to take up this bill were

defeated. However, support for the fair housing provision was growing in the Senate as 54 senators voted for cloture. On February 16, 1967, President Johnson sent another message to the Congress on Civil Rights after a number of large cities experienced racial riots.

In the message, President Johnson said in part:

"Last year I proposed the enactment of important civil rights legislation. I proposed that legislation because it was right and just.

"The civil rights legislation of 1966 was passed by the House of Representatives, and brought to the floor of the Senate. Most of its features commanded a strong majority in both Houses. None of its features was defeated on the merits.

"Yet it did not become law. It could not be brought to a final vote in the Senate.

"Some observers felt that the riots which occurred in several cities last summer prevented the passage of the bill.

"Public concern over the riots was great, as it should have been. Lawlessness cannot be tolerated in a nation whose very existence depends upon respect for law. It cannot be permitted because if injures every American and tears at the very fabric of our democracy.

"We want public order in America, and we shall have it. But a decent public order cannot be achieved solely at the end of a stick, nor by confining one race to self-perpetuating poverty.

"Let us create the conditions for a public order based upon equal justice."

The administration's proposed Civil Rights Act of 1967 contained provisions relating to discrimination in housing. In some respects, the proposal was substantially different from that contained in the Administration's proposed Civil Rights Act of 1966. The new legislative recommendations provided for coverage by progressive stages. In the first year, it would cover housing accommodations previously covered by the Executive Order on Equal Opportunity in Housing. During 1968, the coverage was to be increased to include all dwellings no part of which is occupied by the owner and dwellings for five or more families. In 1969, it would cover all housing with limited exemptions. The proposed legislation also would outlaw discriminatory practices in financing housing and in providing real estate brokers services, as well as blockbusting. The secretary of Housing and Urban Development would be authorized to administer the law.

The proposed Civil Rights Act of 1967 (S. 1026) was introduced by Sen. Hart and 26 co-sponsors on February 20, 1967, and referred to the Committee on the Judiciary. A companion bill (H.R. 5700) was introduced in the House of Representatives by Rep. Celler, chairman of the House Judiciary Committee, on February 20, 1967.

The House Judiciary Committee did not act on H.R. 570, but reported another bill; H.R. 2516, a bill to prescribe penalties for certain acts of violence or intimidation and for other purposes, but which contained no fair housing title. It was amended by the House and passed by a roll call vote of 326 yeas and 93 nays. H.R. 2516 as passed by the House was referred to the Senate Committee on the Judiciary on August 25, 1967, which reported it with an amendment on November 2, 1967, but no further action was taken on it during the remainder of the first session of the 90th Congress. The reported bill contained no fair housing title.

On January 18, 1968, action on H.R. 2516 was resumed in the Senate, where the Fair Housing Act of 1968 had its genesis in S. 1358, a bill which originally was offered by Sen. Walter Mondale as an amendment to H.R. 2516.[1]

The debated over the passage of the Fair Housing Act occurred in a period marked by large scale civil rights and anti-war demonstrations. The peaceful, non-violent protests and marches which began during the early 1960s had given way to devastating urban riots which left vast areas of major cities in flames. In this highly charged atmosphere, the debates over fair housing commenced. Hearings on the fair housing bill, S. 1358, began in

[1] H.R. 2516, 90th Cong., 1st Sess. (1967).

August 1967.[2] The subcommittee conducting the hearings secured the testimony of several individuals including Attorney General Ramsey Clark, Secretary of Housing and Urban Development Robert Weaver, various law professors, government employees and church leaders. Some of these individuals spoke in favor of the bill, while others opposed its passage.[3] However, the committee took no action on the bill at that time.

The next session of the Senate convened in January of 1968. Majority Leader Mike Mansfield announced that the house-passed bill providing protection to civil rights workers would be taken up as the first order of business during this session. Meanwhile, Sen. Mondale secured the support of other senators to add his fair housing proposal to the civil rights bill. The "Mrs. Murphy" exemption was added, which removed from the bill's coverage dwellings containing up to four units if one of the units was occupied by the owner.[4] Most of the Banking and Currency Committee members supported Sen. Mondale's amendment.[5]

When the Senate debates began, the attorney general testified that the legislation was supported by the equal protection and commerce clauses of the United States Constitution.[6] Other witnesses testified that fair housing would have a positive psychological and economic impact on black Americans because of the employment and educational opportunities which were available outside ghetto areas. Testimony offered during the hearings revealed, among other things, that many jobs had relocated from inner-city areas to the surrounding suburbs, and that residents of inner-city areas, who did not have access to the suburban jobs suffered from severe unemployment rates.[7]

Opponents to the fair housing bill argued that the legislation would interfere impermissibly with the right of citizens to control the disposition of their property.[8] Sen. Sam Ervin Jr. contended that the bill was "an attempt to destroy the basic property rights of all Americans. It is proposed to rob all Americans, 200 million Americans of all races, of a basic right, in the expectation that such action will make them forget race or religion and live in integrated fashion."[9] Other opponents feared that the bill would force integration by the use of racial quotas in housing. One opponent wondered whether "our society [will] benefit from sending a swarm of Federal investigators and enforcers over the land to break down the doors of private boardinghouses or close them down?"[10]

Responding to these arguments, the proponents assured the opposition that the basic right to buy, sell or rent property would not be affected. The proposal, they explained, simply prohibited racial discrimination. As one supporter explained "[t]he basic purpose of this legislation is to permit people who have the ability to do so to buy any house offered to the public if they can afford to buy it. It would not overcome the economic problem of those who could not afford to purchase the house of their choice."[11] Supporters of the bill emphasized that the legislation would require sellers, landlords and real estate agents to treat all prospective buyers or tenants equally, regardless of race.[12]

Sen. Mondale argued, for example, that "America's goal must be that of an integrated society, a stable society. . . . If America is to escape apartheid we must begin now, and the best way for this Congress to start on the true road to integration is by enacting fair housing legislation."[13] Another supported, Sen. Edward Brooke, expressed his belief that the

[2] Hearings on S. 1358, S. 2114 and S. 2280 before a Subcomm. of the Senate Comm. of Banking and Currency, 90th Cong., 1st Sess. (1967).

[3] Hearings, supra note 34.

[4] 114 Cong. Rec. S. 1876 (daily ed. Feb. 28, 1968).

[5] 114 Cong. Rec. S. 985 (daily ed. Feb. 6, 1968).

[6] Hearings, supra note 34 at 8-14.

[7] Id. at 3.

[8] 114 Cong. Rec. S. 1453 (daily ed. Feb. 20, 1968).

[9] 114 Cong. Rec. S. 3249 (1968).

[10] Statement of Sen. Stennis (114 Cong. Rec. 3346).

[11] Statement of Senator Mondale (114 Cong. Rec. 3421).

[12] 114 Cong. Rec. S. 1453 (daily ed. Feb. 20, 1968).

[13] 114 Cong. Rec. S. 3422.

nation had a moral obligation to assure fair housing. "America's future," he argued, "must lie in the successful integration of all our many minorities, or there will be no future worthy of America."[14]

Approximately two weeks after the fair housing bill's introduction, Senate Majority Leader Mansfield called for a vote. Opponents led by Sen. Ervin objected. Sen. Ervin and other opponents argued that the federal government should defer fair housing policy to the states, especially since a majority of the states already had some form of fair housing legislation. After obtaining the signatures of twenty-nine senators, Majority Leader Mansfield filed a petition to invoke cloture.[15] The Senate rejected cloture 55 to 37[16] but supporters refused to let the bill die, as evidenced by a vote of 58 to 34 in opposition to a move to permanently table the amendment[17] and by the signatures of the 44 senators who endorsed the next cloture petition.[18] This second cloture vote failed by a vote of 56 to 37.[19]

The Fair Housing Amendments Act of 1988 might have been unnecessary if the original bill had passed without the deletion of certain key provisions. The original bill provided for enforcement by HUD with provisions for conciliation of complaints as the first step in the enforcement process. If conciliation failed, the secretary could issue a complaint, hold hearings, and if discrimination was found, the secretary could issue enforcement orders subject to judicial review. In an effort to secure needed support for the legislation, Sen. Everett Dirksen developed a compromise to replace these provisions. The Dirksen amendment drastically reduced the Department of Housing and Urban Development's enforcement powers. It also removed from the bill's coverage single-family homes that were sold by owner-occupants who did not utilize the services of a real estate broker.[20] Senator Mondale later proposed that his amendment to H.R. 2516 be tabled. It was, by a vote of 83 to 5.[21] Sen. Dirksen submitted a cloture petition on his substitute amendment, which was signed by 48 senators.[22] The Senate rejected cloture again by 58 to 35.[23]

Additional support for the fair housing bill was generated by the report of the Kerner Commission which was issued on March 1, 1968. The Kerner Commission described at length the dismal state of American race relations. In a much-quoted conclusion, the report found that "America is dividing into two societies, black and white, separate and unequal."[24] After the report was received, the majority leader filed for cloture a fourth time.[25] The Senate was finally able to reach cloture on the amendment to H.R. 2516 by a vote of 63 to 32 (the two-thirds required) and the legislation's passage was virtually assured since all of the senators who voted in favor of cloture also would vote in favor of the Dirksen amendment.[26]

By the time cloture finally occurred, more than 80 amendments to the Dirksen amendment had been proposed.[27] One notable amendment offered by Sen. Robert Byrd of West Virginia exempted from the act's coverage single-family homes sold through a real estate agent. The Senate rejected this proposed amendment.[28] Nevertheless another exemption excluding certain vacation homes passed.[29] The Senate finally passed H.R. 2516, as amended, on March 11, 1968, by a vote of 71 to 20.[30] The bill was later returned to the House of Representatives for approval. When the Senate bill reached the House, an

[14] 114 Cong. Rec. S. 2525.
[15] 114 Cong. Rec. S. 1371 (daily ed. Feb. 16, 1968).
[16] 114 Cong. Rec. S. 1454 (daily ed. Feb. 20, 1968).
[17] 114 Cong. Rec. S. 1583 (daily ed. Feb. 21, 1968).
[18] Id. at S. 1644.
[19] 114 Cong. Rec. S. 1729 (daily ed. Feb. 26, 1968).
[20] 114 Cong. Rec. S. 1876 (daily ed. Feb. 28, 1968).
[21] 114 Cong. Rec. S. 1877 (daily ed. Feb. 28, 1968).
[22] 114 Cong. Rec. S. 1883 (daily ed. Feb. 28, 1968).
[23] 114 Cong. Rec. S. 1972 (daily ed. March 1, 1968).
[24] 114 Cong. Rec. S. 1960 (daily ed. March 1, 1968).
[25] 114 Cong. Rec. S. 1974 (daily ed. March 1, 1968).
[26] 114 Cong. Rec. S. 2035 (daily ed. March 1, 1968).
[27] 114 Cong. Rec. S. 2034 (daily ed. March 4, 1968).
[28] 114 Cong. Rec. S. 2053 (daily ed. March 4, 1968).
[29] 114 Cong. Rec. S. 2360 (daily ed. March 4, 1968).
[30] 114 Cong. Rec. S. 2578 (daily ed. March 11, 1968).

objection was made to the Senate's request for unanimous consent to the amendments; thus, H.R. 2516 was sent to the Rules Committee.[31]

Dr. Martin Luther King Jr.'s assassination on April 4, 1968, and the resulting widespread civil unrest provided the final impetus needed to push H.R. 2516 out of the House Rules Committee. During the final debates, a House member urged the bill's approval stating that "[t]he assassination of Martin Luther King, Jr., has given us a tragic reminder of the urgency for Federal protection of the exercise of civil rights. It is required unless the explosive concentration of Negroes in the urban ghettos is to continue. The hour is late. If Congress delays, it may be writing the death warrant of racial reconciliation."[32] On April 9, the House decided to approve the Senate's version of the H.R. 2516 without any additional amendments. Debates were held on the following day. During those debates, Representative Ryan concluded that fair housing legislation was "a means to achieve the aim of an integrated society."[33] Another supporter, Rep. Celler, the chairman of the House Committee on the Judiciary, also pressed for the bill's passage "to eliminate the blight of segregated housing."[34] The House eventually approved H.R. Res. 1100 by a vote of 250 to 195.

The Fair Housing Act of 1968 finally became law when President Johnson signed H.R. 2516 on April 22, 1968.[35] It was designated as Public Law 90-284. Upon signing the bill the president stated in part:

> "I shall never forget that it is more than 100 years ago when Abraham Lincoln issued the Emancipation Proclamation—but it was a proclamation; it was not a fact.
>
> "In the Civil Rights Act of 1964, we affirmed through law that men equal under God are also equal when they seek a job, when they go to get a meal in a restaurant, or when they seek lodging for the night in any State of the Union.
>
> "Now the Negro families no longer suffer the humiliation of being turned away because of their race.
>
> "In the Civil Rights Act of 1965, we affirmed through law for every citizen in this land the most basic right of democracy—the right of a citizen to vote in an election in his country. In the five States where the act had its greater impact, Negro voter registration has already more than doubled.
>
> "Now, with this bill, the voice of justice speaks again.
>
> "It proclaims that fair housing for all—all human beings who live in this country—is now a part of the American way of life."

During the several years of debate in Congress, proposals for fair housing legislation always received bipartisan support. The debates to a considerable extent centered on constitutional issues and the relationship between human rights and property rights.

Shortly after the enactment of Title VIII, the National Association of Home Builders, the National Association of Real Estate Boards and the Council of Housing Producers consisting of 11 of the largest home builders in North America, indicated their support for fair housing. The American Bankers Association also pledged its support.

B. Substantive provisions of the 1968 act

Title VIII of the Civil Rights Act of 1968, known as the federal Fair Housing Act, was broad in its coverage of housing. It prohibited discrimination based on race, color, religion, sex, and national origin in connection with the sale or rental of residential housing. The law was applicable in stages. On the date of enactment it covered dwellings owned and operated by the federal government or receiving federal financial assistance after November 20, 1962, under agreements that were outstanding at the time of the passage of Title VIII. In general on the date of enactment it covered housing

[31] 114 Cong. Rec. H.R. 1959 (daily ed. March 14, 1968).
[32] Statement of Representative Ryan (114 Cong. Rec. 9589 1968).
[33] 114 Cong. Rec. H.R. 9591 (1968).
[34] 114 Cong. Rec. H.R. 9559 (1968).
[35] 114 Cong. Rec. H.R. 2826 (1968).

pattern-and-practice cases as well as cases which raised issues of general public importance.[56] Damage awards were not available in actions brought under this section. "Pattern and practice" was construed to mean discriminatory policies or practices which affected groups or classes rather than isolated episodes which affected individuals.

D. *Jones v. Mayer Co.*

The public policy debate that surrounded passage of the Fair Housing Act of 1968 focused increased attention in legal circles on the Civil Rights Act of 1866 [¶ 3152]. This act provided that all citizens have the same right as white persons to purchase and lease real and personal property. The act lay dormant for 100 years because it had been construed to apply only in cases where state action was involved. On June 17, 1968, in the case of *Jones v. Mayer Co.*, 392 U.S. 409 (1968) [1 EOH ¶ 13,011], the United States Supreme Court in a 7-2 decision reversed the lower court and held that the racially motivated refusal of a private residential developer to sell a home to the petitioners (a black husband and white wife) violated the 1866 statute. The court upheld the constitutionality of this law, stating that it was a valid exercise of the power of Congress to enforce the 13th Amendment [¶ 3122], the antislavery amendment.

In rendering this decision, the majority opinion stated:

"Negro citizens, North and South, who saw in the Thirteenth Amendment a promise of freedom—freedom to 'go and come at pleasure' and to 'buy and sell when they please'—would be left with a 'mere paper guarantee' if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep." In the same opinion the court said:

"And when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery."

E. Constitutional foundation for fair housing legislation

Whereas the constitutionally of the 1866 law was based on the 13th Amendment to the United States Constitution, the constitutionality of Title VIII is primarily based on the commerce clause and the 14th Amendment. This was the position taken by the attorney general in recommending the enactment of the Fair Housing Act. He contended that the commerce clause was applicable because the materials used in the construction of housing are in interstate commerce, the financing of housing is provided by financial institutions involved in interstate dealings, and the people who purchase, rent and occupy housing frequently move from state to state. He urged further that the 14th Amendment was applicable because Congress is empowered under this amendment to remove obstacles in the way of persons securing the equal benefits of government and to correct the evil effects of past unconstitutionally discriminatory government action. Although the petitioners in *Jones v. Mayer Co.* argued that the 14th Amendment to the United States Constitution was applicable on the theory that state action is involved in the development of housing projects by the granting of building permits, the installation of water and sewer systems, the provision of roads, and many other activities, the Supreme Court did not act on this contention and based its decision on the anti-slavery amendment.

The court in *Jones v. Mayer Co.* held that the Civil Rights Act of 1866, 42 U.S.C. 1982, and Title VIII of the Civil Rights Act of 1968 stand independently and do not limit or impinge on each other.

F. Enforcement activities under the 1968 act

Shortly after the enactment of the 1968 act, the Justice Department established a section consisting of approximately 30 individuals within the Civil Rights Division which was responsible for pursuing fair housing enforcement actions. During the 12-year period

[56] Id. §813(a).

Testimony on AB 662
To Assembly Committee on Housing
November 30, 1995
Brenda K. Konkel
For Information Only

Hello, my name is Brenda Konkel. I'm a tenant, I represent tenants as a Housing Attorney, but I have also been a housing counselor and provided information and referral to tenants and landlords since March 1992. I also have co-taught full day seminars for tenant advocates and landlords on tenant/landlord issues, including fair housing, throughout the state for the past two years. I am a member Dane County Affordable Housing Coalition, Renters Services Task Force, Housing Coalition of Wisconsin and Wisconsin Coalition Against Homelessness. I am currently the Executive Director of, although not representing today, the Tenant Resource Center.

In my experience dealing with both landlords and tenants from around the state, there is a lot of misunderstanding about what fair housing laws mean and what appropriate landlord practices are. When I speak to a group of landlords about fair housing, there is usually quite a bit of hostility when I begin. By the end of the workshop or seminar, they are thanking me for the information that I have given them.

I'd like to provide some basic information for the committee today about our current law. In a nutshell, when dealing with discrimination, you need to ask three questions.

1. **Were you treated differently than other tenants or prospective tenants?**

   Activities prohibited include:

* Refuse to rent, negotiate or discuss terms of renting or permit inspection, denying housing is available
* Having a different, more stringent terms or conditions of lease, providing different privileges, services or facilities available with the housing
* Advertising in a manner that indicates discrimination by preference or limitation
* Refusing to renew a lease, causing the eviction of a tenant or harassment of a tenant

There is no law against a landlord being a jerk. If a landlord is a jerk to everyone (slow repairs, rude, etc.) and you are not treated differently, you are not being illegally discriminated against.

2. **Do you belong to a protected class?**

Wisconsin		Federal	
race	color	race	color
religion	sex	religion	sex
national origin	ancestry*	national origin	
sexual orientation*	disability	mental or physical handicap/disability	
marital status*	age	familial status (including pregnancy)	
lawful source of income*			
familial status			

Examples of common people who are <u>not protected classes</u> under state or federal law: smokers, vegetarians, students, democrats, criminals, people who wear sunglasses, cohabitant etc. Local cities and counties can have additional protected classes.

3. **Were you treated differently <u>because of</u> that protected class?**

Example: If a landlord refused to rent to you, were you refused because you were (hispanic, female, unmarried, had children, gay, etc.) or because (you have a bad credit rating, poor landlord references, eviction record, poor payment history, etc.) Fair housing laws do not require you to rent to persons in protected classes if you have a legitimate reason to deny them. Poor tenants are a bad risk for small landlords and they can screen out bad tenants.

Smaller landlords often complain that fair housing laws are too complicated; in fact, fair housing laws are quite simple. Set up a set of non-discriminatory procedures and follow them consistently regardless of what class a person belongs to.

<u>Tips for landlords:</u>

1. Set up procedures for showing apartments and follow them consistently. Have a checklist of activities you do with each caller and person you show an apartment to.

2. Set up screening criteria that will ensure you get good tenants. Check landlord, employment and personal references. Do credit checks. Review the application thoroughly for missing information or inaccurate information. Check eviction records. Income verification.

3. Advertise the features of the apartment, not who you want to rent the apartment to. Avoid using terms like: "perfect for . . ."

4. Treat all tenant complaints and requests in a consistent manner.

Additionally, I did some research on how many units in Wisconsin this bill would affect:

Statewide, this bill would effect 50,000 to 65,000 rental units in Wisconsin. Which is roughly 1 out of 10 units.

Counties most effected by this would be:

Sheboygan	19.3% of rental units (2,216)
Manitowoc	15.2% of rental units (1,355)
Milwaukee	15.3% of rental units (27,470)
Kenosha	12.8% of rental units (1,888)
Washington	12.0% of rental units (1,039)

Cities/towns greatly effected by this would be:

Kohler	59.1%
Elm Grove	54.9%
Kenosha	29.7%
Kiel	26.9%
Pleasant Prairie	21.9%
Chilton	21.3%
Cudahy	20.0%

If you have any further questions, please feel free to contact me at 257-0143(w) or 251-2412 (h).

1995 Assembly Bill 662

My name is Anthony Brown. I am the Executive Director for the Madison Equal Opportunities Commission. I am here today representing Mayor Paul R. Soglin and the City of Madison to speak in opposition to Assembly Bill 662.

We oppose the undermining of the City's Home Rule Authority which allows municipal governments to adopt fair housing laws that are more comprehensive than that of the State. The City of Madison adopted the Equal Opportunities Ordinance in 1963 prohibiting discrimination in housing.

Proponents of this bill would say that it only requires that local and State laws mirror Federal law. Congress did, however, allow, and in fact **encouraged**, State and local governments to adopt more comprehensive local laws than Title VIII. Now you may say that if it's good enough for the feds, it should be good enough for Madison. The truth of the matter is that the federal government has consciously limited its jurisdiction for two reasons:

1. The federal government does not have jurisdiction over intrastate commerce. The federal government has attempted to avoid this conflict by limiting the size of entities over which it has jurisdiction. This is true under both Title VII of the 1964 Civil Rights Act which prohibits discrimination in employment and Title VIII of the 1968 Civil Rights Act which prohibits discrimination in housing; and

2. The federal government has relied upon the argument of administrative burden to lessen its workload, particularly with the expansion of Title VIII in 1988 prohibiting discrimination based on disability and familial status.

As the Equal Opportunities Ordinance states, "The practice of providing equal opportunities in housing . . . is a desirable goal of the City of Madison and a matter of legitimate concern to its government. Discrimination against any of Madison's citizens or visitors endangers the rights and privileges of all. The denial of equal opportunity

intensifies group conflict, undermines the foundations of our democratic society, and adversely affects the general welfare of the community. . . Denial of equal opportunity in housing compels individuals and families who are discriminated against to live in dwellings below the standards to which they are entitled."

The City of Madison's Common Council has exempted roommate selection from its ordinance. However, expanding the exemption to cover buildings with four or less units with at least one being owner occupied is a step backward that goes too far. The adoption of AB 662 will have a devastating impact on housing choice throughout the State of Wisconsin affecting a significant portion of the housing supply in some communities. In Milwaukee and more northern communities it has been estimated that as much as 1/3 to 3/4 of the rental housing supply may be exempt from prohibitions against discrimination.

The owners of these properties are in the business of providing housing to the public. When individuals choose to purchase property for

rental, we expect them to comply with certain State and local regulations. We would not exempt smaller units from compliance with building or fire codes or State or local landlord/tenant laws. So why, if we believe that freedom from discrimination is important, should we exempt these units from the provisions of State and local fair housing laws. Being discriminated against is a devastating experience for its victims. Individuals report loss of sleep, loss of appetite, and in some cases individuals have required services of a medical professional to learn to cope with the affects of discrimination.

The current law does not require housing providers to rent to the first person who knocks on their door. They have the right to screen tenants to assure that they have adequate income, will pay their rent on time, will not disturb the landlord or other tenants and will keep the unit in good condition. These tools are adequate to protect the interests of housing providers. Our goal should be to integrate our communities making as much of our housing supply available to persons of color, low

income households and families with children, not to encourage segregation by allowing policies that exclude people. I urge you to oppose this legislation.

TESTIMONY FOR THE PUBLIC HEARING ON AB662

November 30, 1995

INTRODUCTION

MY NAME IS NANCY BOSIN. I HAVE BEEN THE EXECUTIVE DIRECTOR OF THE FAIR HOUSING COUNCIL OF DANE COUNTY FOR ALMOST THREE YEARS. THE FAIR HOUSING COUNCIL IS A PRIVATE NON-PROFIT AGENCY THAT, IN THE MOST BASIC DEFINITION, PROMOTES EQUAL ACCESS TO HOUSING THROUGH THE ENFORCEMENT OF ALL FAIR HOUSING LAWS AND /OR ORDINANCES.

POSITION

WE OPPOSE THE PASSAGE OF AB662 BECAUSE:

- ♦ IT WILL REDUCE THE CURRENT LEVEL OF EQUAL ACCESS TO HOUSING WITHIN THE STATE OF WISCONSIN;
- ♦ IT WILL DIMINISH THE EFFECTIVENESS OF THE DANE COUNTY FAIR HOUSING ORDINANCE, AND THE CITY OF MADISON EQUAL OPPORTUNITY ORDINANCE;
- ♦ IT WILL PUT THE STATE OF WISCONSIN OUT OF COMPLIANCE WITH THE FEDERAL FAIR HOUSING ACT, AS AMENDED!

EFFECTS OF AB662

HAVING LIVED IN DANE, ROCK, WALWORTH, MARATHON, AND SHAWANO COUNTIES; I AM FAMILIAR WITH HOUSING MARKETS IN VARIOUS PARTS OF THE STATE. POPULATION DENSITY MAY CHANGE THROUGHOUT WISCONSIN, BUT THE NEED FOR EQUAL ACCESS TO HOUSING DOES NOT. POPULATION CHARACTERISTICS MAY CHANGE THROUGHOUT WISCONSIN, BUT THE NEED FOR EQUAL ACCESS TO HOUSING DOES NOT.

MOST PEOPLE WOULD ACCEPT THE PREMISE THAT CHILDREN ARE THE MOST VULNERABLE OF THOSE WHO RECEIVE PROTECTION UNDER THE WISCONSIN OPEN HOUSING LAW, BECAUSE CHILDREN CANNOT EVEN ENTER INTO A CONTRACT AND THEREFORE MOST RELY ON AN ADULT TO CONTRACT FOR THEIR SHELTER/THEIR HOUSING. SO, IF AB662 IS PASSED INTO LAW, APPROXIMATELY 11% OF ALL HOUSING IN THE STATE OF WISCONSIN COULD BE LEGALLY EXCLUDED FROM USE AS A HOME, AS SHELTER FOR FAMILIES WITH CHILDREN.

DOES ANYONE KNOW HOW MANY HOUSING PROVIDERS, OF THE OWNER-OCCUPIED FOUR UNIT OR LESS CATEGORY, UTILIZE VERBAL OR MONTH-TO-MONTH LEASES? LET US SUPPOSE THAT ALL OF THEM CURRENTLY USE VERBAL, MONTH-TO-MONTH LEASES. LET US FURTHER SUPPOSE THAT THIS LEGISLATION PASSED AND BECOMES LAW. AT THAT POINT, IT WOULD BECOME LEGAL FOR THE OWNERS OF 11% OF THE HOUSING STOCK WITHIN WISCONSIN TO GIVE THEIR CURRENT TENANTS NOTICE OF NON-RENEWAL, REGARDLESS OF RACE/COLOR, NATIONAL ORIGIN/ANCESTRY, RELIGION, SEXUAL ORIENTATION, AGE, MARITAL STATUS, DISABILITY, SEX, LAWFUL SOURCE OF INCOME, OR, FAMILY STATUS. AND, IT WOULD STILL BE A LAWFUL ACT IF IT WERE TO OCCUR IN THE MONTH OF JANUARY!

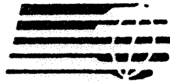
AFFORDABLE HOUSING IS A GROWING ISSUE EVERYWHERE; BUT IN DANE COUNTY, AFFORDIBILITY HAS BEEN A MAJOR ISSUE FOR SOME TIME. THE ELIMINATION OF EQUAL ACCESS TO EVEN 1% OF THE HOUSING STOCK IN DANE COUNTY WOULD HAVE A MAJOR IMPACT ON DIVERSE HOUSEHOLDS, FAMILIES, THE ELDERLY, PERSONS WITH DISABILITIES, ON THE TOTAL FABRIC OF OUR COMMUNITIES. THIS PROPOSED LEGISLATION WOULD DENY ACCESS TO 9% OF THE HOUSING STOCK WITHIN DANE COUNTY ALONE.

THIS PROPOSED LEGISLATION WOULD PROHIBIT DANE COUNTY AND THE CITY OF MADISON FROM MAINTAINING THEIR FAIR HOUSING AND EQUAL OPPORTUNITY ORDINANCES AS WRITTEN.

THIS PROPOSED LEGISLATION WOULD PUT THE STATE OF WISCONSIN OUT OF COMPLIANCE WITH THE FEDERAL FAIR HOUSING ACT, AS AMENDED. AB662 ALLOWS OWNERS OF THE SPECIFIED HOUSING STOCK TO DISCRIMINATE IN THE ADVERTISING OF THOSE UNITS. THE FEDERAL FAIR HOUSING ACT AS AMENDED, EFFECTIVE MARCH 12, 1989, READS AS FOLLOWS:

> Sec. 803. [42 U.S.C. 3603] subsection (b) *Nothing in section 804 of this title* ***(other than subsection (c))*** shall apply to-- (1) any single-finally house sold or rented by an owner..... (2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently........
>
> **Sec. 804 [42 U.S.C. 3604]** ***subsection (c))*** *TO MAKE, PRINT, OR PUBLISH, OR CAUSE TO BE MADE, PRINTED, OR PUBLISHED ANY NOTICE, STATEMENT, OR ADVERTISEMENT, WITH RESPECT TO THE SALE OR RENTAL OF A DWELLING THAT INDICATES ANY PREFERENCE, LIMITATION, OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN, OR AN INTENTION TO MAKE ANY SUCH PREFERENCE, LIMITATION , OR DISCRIMINATION.*

BECAUSE OF THE ISSUES RAISED HERE, I THEREFORE STRONGLY URGE THE OPPOSITION OF AB662. I FURTHER URGE THE OPPOSITION OF AB629.



LUTHERAN OFFICE FOR PUBLIC POLICY IN WISCONSIN

MEMORANDUM

DATE: NOVEMBER 30, 1995
TO: MEMBERS OF THE ASSEMBLY HOUSING COMMITTEE
REGARDING: ASSEMBLY BILL 629, AND ASSEMBLY BILL 662
FROM: REV. SUE MOLINE LARSON, DIRECTOR, LOPPW

In its 1993 churchwide assembly, the Evangelical Lutheran Church in America adopted a social statement on: "Freed in Christ: Race, Ethnicity, and Culture" which states that: "This church will support legislation, ordinances, and resolutions that guarantee to all persons equally: civil rights, including full protection of the law and redress under the law of discriminatory practices; (and) the right to rent, buy, and occupy housing in any place." In light of this statement, the ELCA, and its six member synods with congregations in Wisconsin, oppose the creation of exemptions for discriminatory practices in state statutes and local ordinances in regard to rental property.

The introduction to the social statement recounts humanity's enslavement to sin and the need for divine reconciliation which will put an end to the hostility of divisions based on race, ethnicity, gender and economic class. In a phone conversation on Thursday, November 29, the director of Lutheran Social Services' Refugee Resettlement program in Wisconsin spoke of the variety of rationales used by property owners to deny housing to some of the people with whom she works, usually because of misconceptions and unfounded suspicions. Acknowledging the reality of these human tendencies often to act on less than positive inclinations or motivations, the creation of additional rationales for discrimination is unwise and even irresponsible on the part of legislative policy-makers.

An additional concern in relation to A.B. 629 involves the disallowance of access to housing for those who require consideration because of physically handicapping conditions. This contradicts the mandates of the Americans with Disabilities Act, signed into law by President George Bush. The state of Wisconsin should not become a place where such mandates are watered down or contradicted. Such an effort appears to be an undemocratic attempt to reverse our tradition of providing equal protection to all people. As the legislative advocate in Wisconsin of the Evangelical Lutheran Church in America, I urge Chairperson Owens and the members of the Housing Committee to disapprove A.B. 629, and A.B. 662. If not, I ask you significantly to revise these bills by strengthening rather than weakening the statutes that define ordinances against housing discrimination. No one is well-served by the passage of legislation that permits increased discrimination of any kind for select groups of citizens in this state.

322 East Washington Avenue Madison, Wisconsin 53703-2834 608/255/7399

Advocating justice for disempowered people and responsible stewardship of creation
A ministry of the Evangelical Lutheran Church in America
Division for Church in Society, in partnership with
Northern Great Lakes Synod Northwest Synod of Wisconsin
East-Central Synod of Wisconsin Greater Milwaukee Synod
South-Central Synod of Wisconsin La Crosse Area Synod

printed on recycled paper

Testimony on AB 662
Tom Conrad, Community Action Coalition for South Central Wis. Inc.

FOR INFORMATION PURPOSES

Thank you for the opportunity to testify for informational purposes on this important issue. My name is Tom Conrad. I have counseled tenants in Dane County since 1990 at the Community Action Coalition for South Central Wisconsin Inc., the CAP agency for this area.

We serve households with incomes at or below 80% of the median income and provide financial assistance only to families with incomes below half of the median. Our emergency rent assistance programs are available to only those families with incomes below half of the median income. These programs are funded through Dane County, the State Division of Housing, The Madison CDBG office, the United Way.

We are concerned about the effects AB 662 would have on the low-income renters that we serve.

Many tenants pay more than half of their income for rent while low-income families with children frequently pay rent higher than the cost home ownership.

These low-income renters face many barriers to finding and maintaining affordable housing. Minimum income standards, credit history requirements and high cost already limit their housing options.

If AB 662 becomes law, these families will lose some of the remaining housing options available when some landlords will choose to deny them housing simply because they have children.

We are concerned that this practice would further concentrate low-income families into larger apartment complexes where discrimination on the basis of family status would continue to be illegal.

While there are other concerns we have about the impact of AB 662, we would like to call your attention to hard-working families with children who already face significant challenges in finding housing and the discrimination they could not be protected against under this bill.

Thank you for your consideration.

November 29, 1995

Dear Members of the Housing Committee:

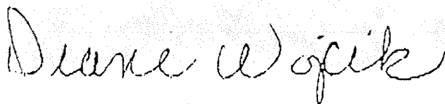
My name is Diane Wojcik. I am writing in strong opposition to AB 662. As a small business owner and a landlord, I have had to work within the legal requirements of both my local, state and federal governments. One of those requirements is the prohibition of discriminating against my renters for reasons such as age, ancestry, color, disability, family status, lawful source of income, marital status, national origin, race, religion, sex or sexual orientation.

As a landlord, I have *never* had an problems obeying the law which you propose to amend. The legal means allowed to insure I rent to responsible people, such as credit and previous rental references have provided me with the information I need to make my decisions. I think it unfair and unethical that this type of discrimination would be allowed in any type of independent living unit.

Further, having worked with disabled people for 12 years, I am especially opposed to any provision that would allow someone to be denied housing because of a disability.

I thank you in advance for stopping AB 662, and for your time.

Sincerely,



Diane Wojcik
N9772 Highland Park Road
Malone, WI 53049

AIDS RESOURCE CENTER
OF WISCONSIN, INC.

Testimony in Opposition to AB-662

Chairwoman Owens, Committee members thank you for the opportunity to testify on AB-662. My name is Mike Gifford, I am the Director of Public Policy for the AIDS Resource Center of Wisconsin, Inc.(ARCW) and am also pleased to speak on behalf of the Madison AIDS Support Network -- together we serve over 80% of people living with AIDS in Wisconsin. We are strongly opposed to AB-662 which allows for discrimination in the provision of housing. It is a retreat from Wisconsin's proud history of support for fair housing and we urge the Committee to reject the bill.

AB-662 will worsen the already difficult problems of housing for people living with HIV/AIDS and will likely result in an increase in the cost of care for people living with HIV/AIDS.

The AIDS Resource Center of Wisconsin will provide services to 1,300 individuals and families with HIV and AIDS. This assistance will include housing, health and dental care, transportation, emotional support, case management and emergency food and financial assistance. Also, we provide numerous aggressive HIV prevention strategies to slow the spread of AIDS, and community-based clinical drug trials for experimental HIV therapies.

The AIDS epidemic is worsening in Wisconsin. Earlier this fall, Wisconsin marked a solemn milestone when the 3,000th case of AIDS was reported in the state. Over 25% of these cases have been reported in just the last 21 months. Between 12,000 and 15,000 individuals in Wisconsin may be living with HIV.

Providing housing for people living with HIV/AIDS is a serious problem in Wisconsin. As HIV progresses into AIDS, housing becomes a primary concern for our 1,300 individual and family clients. Often times people living with HIV/AIDS experience a reduction or loss in employment and medical bills begin to consume a larger portion of income. 65% or more of our clients seek help each year to obtain safe, stable housing or to maintain their current housing situation. Well over 800 of our clients are in jeopardy of homelessness each year. With as many as 30% of our clients living in housing affected by this legislation, AB-662 which sanctions discrimination against most of our clients will worsen the already difficult housing problems for the AIDS community in Wisconsin.

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The impact of AB-662 on the AIDS epidemic will be far reaching in Wisconsin:

- people living with HIV/AIDS who are homeless or have unstable housing conditions are less likely to access medical care including early HIV intervention and medications for the prevention of opportunistic infections. Bypassing early, regular medical care for HIV increases the cost of AIDS care

- with the reduction of housing availability, people with HIV/AIDS are likely to be forced into high cost hospital or nursing home care to meet their housing needs.

Enacting the provisions of AB-662 is a serious threat to our collective effort to minimize the impact of the AIDS epidemic in Wisconsin.

The AIDS Resource Center of Wisconsin and the Madison AIDS Support Network urge this Committee to reject AB-662 to ensure that the difficult challenges in accessing housing for people living with HIV/AIDS are not worsened.

November 29, 1995

461 N. Few Street
Madison, WI 53703

Representative Carol Owens
Chair, Assembly Housing Committee
State Assembly - Room 410
100 N. Hamilton Street
Madison, WI 53703

Re: Assembly Bill 662 -- Fair Housing Amendments

Dear Representative Owens:

This is to register my opposition to changes in AB 662 which make it possible for owner-occupants of 4 or fewer units to engage in housing discrimination when renting unit(s).

At first blush this "Mrs. Murphy" exemption appears quite reasonable. After all, why shouldn't an owner who lives on site be able to select whomever he or she wants in the building.

The problem with this view is it overlooks the fundamental principle that all persons should have an equal opportunity to obtain housing of their choice . What is it about "Mrs. Murphy" that she should be "empowered" to turn people away simply because she doesn't happen to like a person's age, their sex, their national origin, the color of their skin or their religion? Why would the legislature want to grant her the "right" to treat people that way?

The fact is landowners have countless legal and acceptable methods for selecting tenants. They can set income limits, check past tenant history, require quiet, etc. To suggest they should have the "right" to turn people away because of their own prejudices, fears and stereotypes is fundamentally contrary to the intent of the fair housing law.

It should be understood that the people most likely to be hurt by this change are people who now struggle in the housing market to find decent, affordable housing. One to four unit buildings constitute a significant portion of housing in the state. In Milwaukee alone, it is likely that over one-third of all units are in this category. Even though "only" owner-occupant properties are affected, we simply cannot afford to broaden "permission" to discriminate and also maintain the integrity of the fair housing law.

Finally, the section which bars a municipality from having more comprehensive fair housing protections is directly at odds with the law. To "force" muncipalites to change their laws so that discrimination can be "broadened" is contrary to the law's intent of ensuring the welfare, health, peace and dignity of the people of the state.

Sincerely

Paul J. Fieber

cc: Representative Tammy Baldwin
Senator Fred Risser