

Congress and the Politics of Anti-Busing Legislation, 1966-1986

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The bipartisan congressional coalition responsible for passing the 1964 Civil Rights Act did not intend to implement a nation-wide busing program to integrate segregated schools. Yet when it came time to implement relevant portions of the law, busing proved to be the primary method for pursuing its stated goal of reversing “separate but equal” education. In this paper, we provide a legislative policy history detailing the unanticipated but nearly two-decade long congressional battle over busing. Through a detailed examination of congressional proceedings, individual roll-call votes, and legislative outcomes, we demonstrate the collapse of the pro-civil rights coalition responsible for the landmark achievements of the early 1960s. In its place emerged a new, bipartisan and interregional bloc of lawmakers deeply opposed to busing for the purpose of ending segregation both north and south.

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I. Introduction

At the outset of the twentieth century all federal efforts to defend the rights of black citizens had disappeared from the congressional agenda.¹ On the state-level, laws passed during the “radical” phase of post-Civil War Reconstruction had collapsed under the pressures of violence, disenfranchisement, and fraud. White supremacist “redeemers” governed throughout the south, and represented their states in Washington, D.C. Republicans representing those living in the north and west, meanwhile, had largely given up the fight to ensure equal rights for black citizens. In the words of Rayford Logan, black citizens were “betrayed” by GOP acquiescence to the “subnational authoritarianism” that had taken root in the South.² The bipartisan consensus responsible for maintaining Jim Crow held until the presidency of Franklin Roosevelt when, due to the political organizing of black citizens and the nation-wide mobilization for World War II, elected officials faced renewed pressure to address the manifold injustices faced by African-Americans.³ In 1957 and 1960, Congress passed two federal civil rights laws—the first since 1875. In 1962, Congress passed the 24th amendment banning the poll tax. Three years later, the Civil Rights Act (CRA) and Voting Rights Act (VRA) were on the books. Lawmakers responsible for these achievements could not know, however, that they represented the high point of the Second Civil Rights Era.

The legal enactments responsible for the formal end to Jim Crow could not have passed without the support of a bipartisan, pro-civil rights coalition in Congress. With southern

¹ For more on the collapse of the “First Civil Rights Era,” see Jeffery A. Jenkins and Justin Peck, *Congress and the First Civil Rights Era: 1861-1918* (Chicago, IL: University of Chicago Press, 2021).

² Rayford W. Logan, *The Betrayal of the Negro From Rutherford B. Hayes to Woodrow Wilson* (New York: Da Capo Press, 1997); Robert Mickey, *Paths Out of Dixie: The Democratization of Authoritarian Enclaves in Americas Deep South, 1944-1972* (Princeton, NJ: Princeton University Press, 2015).

³ The literature exploring civil rights reforms during the New Deal era is huge. We are informed here by, Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (New York: Liverlight, 2013); Steven White, *World War II and American Racial Politics* (New York: Cambridge University Press, 2021).

Democrats voting as a bloc against any legislation challenging white supremacy, northern Democrats championing new legal protections for black citizens needed support from Republicans, both liberal and conservative. The pro-civil rights coalition that emerged in the first half of the 1960s included liberals like Representative Emmanuel Celler (D-NY) and Senator Hubert Humphrey (D-MN), as well as conservatives like Representative Charles McCulloch (R-OH) and Senator Everett Dirksen (R-IL). Bipartisan cooperation between lawmakers with very different ideological perspectives helped overcome the southern filibuster in the Senate. By the latter half of the 1960s, however, tensions internal to this coalition made further civil rights enactments very difficult to achieve.

In 1966, for example, President Johnson proposed a third new civil rights bill which, among other things, aimed to outlaw discrimination in the sale or rental of houses nation-wide. The response to Johnson's bill was deep and committed opposition from lawmakers—both Democrat and Republican—outside the ex-Confederacy. Supporters of the bill muscled it through the House only to see it killed by a filibuster in the Senate. Congress did pass a new civil rights act in 1968, but only after northern lawmakers—both Democrat and Republican—insisted on including provisions that would allow individuals to continue legally discriminating against black home buyers.⁴ Congress, in other words, chose not to legislate an end to the residential segregation that characterized post-war suburbanization. This fact was clear to civil rights activists. According to Roy Wilkins, executive director of the NAACP, compromises that allowed the 1968 bill to pass ensured that “that the suburbs would remain virtually lily-white and the center city ghettos would become poorer, blacker, and more desperate than at present.”⁵

⁴ For more on Congress's effort to pass the Civil Rights Act of 1968 see, Jeffery A. Jenkins and Justin Peck, “Foreshadowing the Civil Rights Counter-Revolution: Congress and the Fair Housing Act of 1968,” *Du Bois Review*: DOI: <https://doi.org/10.1017/S1742058X21000370>

⁵ “Wilkins Presses for Open Housing,” *New York Times*, July 27, 1966.

For those who desired Congress to continue using federal law to protect black civil rights, Richard Nixon's victory in 1968 was another worrisome signal. They were right to worry. Domestic political momentum had indeed shifted in the direction of those who aimed to block or reverse the broader civil rights agenda. In Congress, many legislators who supported the civil rights initiatives of the early 1960s now refused to endorse initiatives challenging the structural bases of racial hierarchy. Residential segregation and, correspondingly, the segregation of elementary and secondary schooling, were two examples of structural racism that proved immune to legal reform. Rooting them out would have required laws impacting the lives of citizens living in the south, where segregation was legally protected. It would also require reform in the north where segregation, it was argued at the time, was "informal and almost 'natural.'"⁶

Standing in the way of such legislation was a bipartisan coalition organized to advocate for a "color-blind defense of the consumer rights and residential privileges of middle-class white families."⁷ By the late 1960s, massive resistance and explicit endorsement of segregation were less politically palatable. As Matthew Lassiter explains, this shift was due to the declining political power of the rural south. Suburbs were attracting new residents and the preferences of suburban voters increasingly drove politics both north and south. While suburban voters were more moderate than those who represented the "old" south, this did not mean that they were willing to take on segregation in all its forms. Instead, suburban voters were converging upon a defense of the "structural mechanisms of exclusion" which did not "require individual racism ... in order to sustain white class privilege and maintain barriers of disadvantage facing urban

⁶ Arnold R. Hirsch, "'Containment on the Home Front: Race and Federal Housing Policy from the New Deal to the Cold War,'" *Journal of Urban History* 26 (January 2000): pp. 158-189; 159.

⁷ Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, NJ: Princeton University Press, 2006), 227. For more on this coalition at the local level see, Lily Geismer, *Don't Blame Us: Suburban Liberals and the Transformation of the Democratic Party* (Princeton, NJ: Princeton University Press, 2015).

minority communities.”⁸ Segregated schools proved to be one of the most durable components of “structural exclusion.”

Scholars aiming to explain the rise of the “color-blind” approach to civil rights that came to motivate suburban voters have examined the role played by activists at the state and local level. Less frequently explored is the role Congress played in creating this new political idea or how it manifested in the debates over civil rights policy after 1965. In this paper, we argue that the protracted legislative conflict over the busing of students for the purpose of integrating schools allows us to observe the emergence of a majority coalition espousing what is now known as “color-blind conservatism.”⁹

More specifically, we provide a policy history of the congressional debate over federal efforts to integrate America’s primary and secondary schools. In 1954, the Supreme Court declared unconstitutional state laws compelling or allowing racial segregation. Ten years later, Congress wrote provisions into the Civil Rights Act of 1964 that sought to implement the Court’s decision. As we explain below, however, particular aspects of the law engendered deep political conflict almost as soon as administrators tried to enforce it. Provisions related to school integration, in particular, engendered protracted conflict. On one side of this fight was a minority coalition of liberals, bureaucrats, and judges pushing aggressively to achieve integration by busing students to schools outside their neighborhoods. On the other side was a majority of those in Congress, aided by President Nixon, who either disagreed with these plans, or were forced by the electoral imperative to act on behalf of outraged constituents who did not want to see their

⁸ Lassiter, *The Silent Majority*, 4.

⁹ Matthew Lassiter, “The Suburban Origins of ‘Color-Blind’ Conservatism: Middle-Class Consciousness in the Charlotte Busing Crisis,” *Journal of Urban History* 30 (May 2004): 549-582; Thomas J. Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North* (New York: Random House, 2009). Also see, Robert C. Lieberman, *Shifting the Color-Line: Race and the American Welfare State* (Cambridge, MA: Harvard University Press, 2001).

children bused. Through a close look at how Congress dealt with the subject of school integration in the 1964 CRA, as well as the political backlash the law created when it was implemented, we aim to show the rise of a legislative coalition fully committed to “color-blind” conservatism.

By examining congressional proceedings, individual roll-call votes, and eventual policy outcomes associated with federal efforts to integrate American schools, we highlight the erosion of the pro-civil rights coalition and its replacement by “color-blind coalition” that opposed efforts to remedy structural forms of racial hierarchy. This new coalition would come to determine what was possible for civil rights at the federal level for the next two decades. To guide the analysis, we proceed in the following way. Section II briefly recounts the ruling in the “Segregation Cases” of the early 1950s and then explains how Congress sought to implement them in the Civil Rights Act of 1964. Here we focus on the ways in which congressional legal enactments set the stage for conflict over the enforcement of provisions related to school integration. Section III explains how this conflict over enforcement led to a prolonged congressional debate over busing, specifically. Here we pay particular attention to floor debates and roll call votes on busing policy. In so doing, we document the emergence and political significance of the bipartisan, anti-civil rights coalition.

II. The Politics of Desegregation: 1954-1966

Writing for the majority in *Brown v. Board of Education* (1954), Chief Justice Earl Warren declared that “in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”¹⁰ Warren’s assertion was the rationale behind the Court’s decision to declare unconstitutional those laws mandating segregated

¹⁰ 347 U.S. 483 (1954)

schooling. Up to that point, “separate but equal” facilities of all kinds were understood to be wholly legal. Congress explicitly endorsed the principle in the early 1880s during the first (failed) effort to appropriate federal funds to American primary and secondary schools.¹¹ Nearly two decades later, the Supreme Court provided its stamp of approval in *Plessy v. Ferguson* (1896). For more than seven decades, a legal regime built to guarantee racially separate and radically unequal school facilities was, largely without objection from those in positions of power, implemented across the southeast. Now the Court judged segregation under the sanction of law to be harmful to the social and psychological development of those children forced into all-black schools. According to Chief Justice Warren, segregated schools were a violation of the “equal protection of laws guaranteed by the Fourteenth Amendment.” This decision rendered unconstitutional laws compelling segregation in twenty-one states.¹²

Brown is credited with helping to finally bring an end to Jim Crow, and legislative efforts to implement its decision motivated congressional debate for more than two decades after the decision was handed down. It is important, therefore, to be clear about what the Court said. In this case, the Court addressed *de jure* segregation: segregation compelled by the law. This point was further clarified in the companion case to *Brown*, *Bolling v. Sharpe* (1954), when the Court explained that “compulsory racial segregation in the public schools of the District of Columbia” violated the constitutional rights of black children.¹³ In neither *Brown* nor *Bolling* did the Court challenge the constitutionality of *de facto* segregation: “racial imbalance which results when

¹¹ For more on Congress’ decision to embrace “separate but equal” schools see, Jeffery A. Jenkins and Justin Peck, “The Blair Education Bill: A Lost Opportunity in American Public Education,” *Studies in American Political Development* 35 (April 2021): pp. 146-170.

¹² Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago, IL: University of Chicago Press, 1993), p. 42.

¹³ 347 U.S. 497

otherwise fair school districting is superimposed upon privately segregated housing patterns.”¹⁴

The distinction between *de jure* and *de facto* segregation would come to play a central role in congressional debates over how to legislate an end to the system of separate schools. As we will explain below, the bipartisan but primarily northern coalition responsible for enacting the 1964 Civil Rights Act took seriously this distinction because they saw segregation patterns outside the south as *de facto*, not *de jure*. Many northern lawmakers thus believed their communities to be exempt from *Brown* and relevant provisions of the 1964 CRA.

The Court also said nothing in *Brown* about how desegregation was to be implemented or verified. At first, the Court delayed any discussion of implementation because of the “considerable complexity” involved. In *Brown II* (1955), the Court stipulated that,

full implementation ... may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.¹⁵

The Court, in other words, provided no instructions setting out how localities should desegregate, or criteria for determining what counted as “good faith implementation.” These were judgments that would be considered on a case-by-case basis. In response, states throughout the South did very little to implement *Brown*. By 1964, only 1.2 percent of black children in the South attended a public school that also enrolled white students.¹⁶

Congress, meanwhile, passed two new civil rights laws shortly after *Brown*: one in 1957 and another in 1960. Neither law challenged the persistence of legal segregation throughout the south, or worked to ensure that the Court’s decision was implemented. In 1963, due in part to the

¹⁴ John Kaplan, “Segregation Litigation and the Schools, Part II: The General Northern Problem,” *Northwestern University Law Review* 58 (1963-1964): pp. 157-214; 159.

¹⁵ 349 U.S. 294

¹⁶ Rosenberg, *The Hollow Hope*, p. 50.

violent white reaction to civil rights protests, the KKK's bombing of a black church in Birmingham, and the assassination of Medgar Evers, Congress finally began to mobilize. In the House of Representatives, Emmanuel Celler (R-NY)—Chairman of the Judiciary Committee—and William McCulloch (R-OH)—the Committee's Ranking Member—agreed to cooperate on a new civil rights law. Leveraging Subcommittee Number 5 as a vehicle for crafting a new bill, Celler and McCulloch presided over more than three weeks of public hearings exploring what the law should cover.¹⁷ The bill they crafted—H.R. 7152—guaranteed new voting rights protections, prohibited segregation in “public accommodations,” and created a new Equal Employment Opportunities Commission.¹⁸ Two specific provisions of their proposal addressed the country's school system: Title IV outlawed legal segregation in public schools; Title VI allowed federal agencies to cut off financial aid to any school systems refusing to integrate. Conflict over what these provisions required, and how they would be implemented, proved central to the busing debates that began soon after the 1964 CRA was enacted.

School Desegregation: Title IV

While H.R. 7152 was still being crafted in the House, Representatives Celler and McCulloch made a decision about the language of Title IV that would prove highly consequential. Deferring to the preferences of Northern lawmakers, they made clear that the law was only addressing itself to the kind of *de jure* school segregation that existed in the south. Neither wanted the bill to be understood as attempting to correct “racial imbalance” in northern schools.

Schools in the north were of course highly segregated. In February 1958, *The Crisis* published a report by the Chicago branch of the NAACP estimating that “91 percent of the

¹⁷ For more on the substance and procedure of those hearings see, Charles and Barbara Whalen, *The Longest Debate: A Legislative History of the 1964 Civil Rights Act* (Washington, D.C.: Seven Locks Press, 1985).

¹⁸ The bill itself is summarized in Whalen, *The Longest Debate*, p. 59.

Chicago elementary schools were *de facto* segregated in the spring semester of 1957.”¹⁹ By 1960, the NAACP had filed lawsuits against the school systems in different northern cities alleging unconstitutional forms of segregation.²⁰ Approximately one year after Congress passed the CRA, more than a dozen northern communities filed similar complaints with the Department of Health, Education, and Welfare (HEW).²¹ These complaints were mostly ignored because, as both judges and legislators argued, segregation in the north was not compelled by law. Instead, residential segregation was a consequence of “customary” housing patterns, or the private behavior of real estate agents, buyers, and purchasers. The schools serving children who lived in neighborhoods that were segregated in this ostensibly informal way were also, therefore, divided by race. Approximately one year after *Brown*, the NAACP brought a legal challenge against segregation of this kind. In *Bell v. School City of Gary Indiana* (1963), the Seventh District Court of Appeals ruled that the *de facto* segregation present in Gary did not violate the constitutional rights of black children. Those enrolled at the schools they attended were judged by the court to reflect housing patterns for which there was no constitutional remedy.²²

When the Supreme Court chose not to review the decision issued in the *Gary* case, members of Congress understood the Court to be saying that *de facto* segregation did not violate the Constitution. From the perspective of Representatives McCulloch and Celler, law and politics aligned on this point. Neither wanted the CRA be viewed as a direct assault on *de facto* segregation. When the bill moved over to the Senate, it won the endorsement of Everett Dirksen (R-IL) in part because Dirksen was “convinced that it would not apply in the North.”²³ As

¹⁹ “De Facto Segregation in the Chicago Public Schools,” *The Crisis*, February 1958, p. 88.

²⁰ Lassiter, *The Silent Majority*, 14.

²¹ Gary Orfield, *The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act* (New York: Wiley-Interscience, 1969) 151.

²² Ronald D. Cohen, “The Dilemma of School Integration in the North: Gary, Indiana, 1945-1960,” *Indiana Magazine of History* 82 (June 1986): pp. 161-184; p. 182.

²³ Orfield, *Reconstruction of Southern Education*, 174.

Charles and Barbara Whalen point out, the decision to stipulate that segregation in northern cities was exempt from the law represented an “end-justifying-the-means concession to northern members of Congress.”²⁴

The House passed the initial version of H.R. 7152 on February 10, 1964, by an overwhelming vote of 290-130.²⁵ In the Senate, it was also managed by one Democrat and one Republican: Hubert Humphrey (D-MN) and Thomas Kuchel (R-CA). Each senator was very clear about the fact that this bill would not challenge *de facto* segregation. In his comments introducing H.R. 7152, Kuchel explained that its opponents “erroneously implied that Title IV would provide funds to secure racial balance in all school throughout America.” Not so, he countered. “The House specifically ... provided that ‘desegregation’ shall not mean the assignment of students in public schools in order to overcome racial imbalance.”²⁶ Hubert Humphrey made an identical argument. In response to a question from Robert Byrd (D-WV) about the busing of students, Humphrey argued that,

while the Constitution prohibits segregation, it does not require integration. The busing of children to achieve racial balance would be an act to affect the integration of schools. In fact, if the bill were to compel it, it would be a violation, because it would be handling the matter on the basis of race and we would be transporting children because of race. The bill does not attempt to integrate the schools, but it does attempt to eliminate segregation in the school systems.²⁷

The bill’s chief spokesmen in the Senate were now on the record stipulating that H.R. 7152 would only prohibit laws that explicitly and intentionally blocked integrated schooling.²⁸

²⁴ Whalen, *The Longest Debate*, p. 33.

²⁵ *Congressional Record*, 88th Congress, 2nd Session (February 10, 1964): 2804.

²⁶ *Congressional Record*, 88th Congress, 2nd Session (March 30, 1964): 6560.

²⁷ *Congressional Record*, 88th Congress, 2nd Session (June 4, 1964): 12717.

²⁸ In Mississippi, for example, state laws made it illegal for “a black child to enter a white primary, elementary, or secondary school.” In Georgia, it was a felony for any “school official of the state or any municipal or country schools [which] spend tax money for public schools in which the races are mixed.” See, Manning Marable, *Race, Reform, and Rebellion: The Second Reconstruction in Black America, 1945-1990* (Jackson, MS: University Press of Mississippi, 1991), p. 44.

Even this was not enough to accommodate those who worried about “forced integration.” Rather than simply voting on the version of H.R. 7152 passed by the House, the Senate also took additional steps to calm the nerves of those lawmakers who feared that the bill might apply to northern communities. An amended version of the bill, referred to as the “Mansfield-Dirksen Substitute,” included the following language in Title IV:

[N]othing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance.²⁹

Senator Jacob Javits (R-NY), an outspoken supporter of the bill, insisted that this new language merely reaffirmed the view that none of the bill’s supporters intended to “bring in under this statute cases where there is a racial imbalance in a school even though there is no constitutional denial of admission to that or any other school on racial grounds.”³⁰ To make the point even more explicit, Javits added into the *Congressional Record* an analysis of the bill produced by HEW. “De facto school segregation brought about by residential patterns and bona fide zoning on the neighborhood school principle,” explains this memo, “does not violate the constitutional rights of Negro students.”³¹

Southern members were clear about the fact that, as they saw it, the bill was written with the goal of exempting northern cities from Title IV. Just prior to the Senate vote to invoke cloture on H.R. 7152, Richard Russell (D-GA) proclaimed his belief that “the bill has been drafted in such a way that its greatest impact will be on states of the old Confederacy.” “But make no mistake about it,” he warned, “if this bill is enacted into law, next year we will be confronted with new demands for ... further legislation ... such as laws requiring open housing

²⁹ *Congressional Record*, 88th Congress, 2nd Session (June 4, 1964): 12682.

³⁰ *Congressional Record*, 88th Congress, 2nd Session (June 4, 1964): 12683.

³¹ *Congressional Record*, 88th Congress, 2nd Session (June 4, 1964): 12720.

and the ‘busing’ of students.”³² Strom Thurmond offered a similar critique, claiming that H.R. 7152 contained “safeguards” that kept it from challenging the “de facto type of segregation practiced in northern cities.” Thurmond also warned that after enactment, “voices from other parts of the country will make themselves heard about the dangers from the backlash ... and delayed fallout, which is bound to occur outside the southern target area.”³³ These arch segregationists accurately predicted what was to come.

What the arguments from supporters and opponents alike suggest is that in 1964, at the height of the Second Civil Rights Era, northern members of Congress worried about challenging segregation as it existed where they lived. To declare that “racially imbalanced” public schools were unconstitutional would amount to an attack on the “neighborhood schools” that served deeply segregated northern communities.³⁴ By making clear that they did not intend for the 1964 CRA to legislate “racial balance,” the pro-civil rights majority in Congress took a position that would have significant political ramifications from this point forward. Recognizing the unwillingness of their northern colleagues to challenge *de facto* segregation, southern members correctly assumed that any discussion of mandated integration in the north would lead to a backlash against the broader civil rights agenda. They also previewed a strategy that they would adopt when it came time to implement the 1964 CRA: remove formal prohibitions on the enrollment of black children in previously white schools and then claim that all remaining segregation was *de facto*. Challenging this approach would generate deep opposition from northern white “moderates” when busing legislation was the subject at hand.

School Desegregation: Title VI

³² *Congressional Record*, 88th Congress, 2nd Session (June 10, 1964): 13309.

³³ *Congressional Record*, 88th Congress, 2nd Session (June 18, 1964): 14311

³⁴ For more on northern segregation see, Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton, NJ: Princeton University Press, 2005)

Title VI of the 1964 CRA empowered federal agencies “administering a financial assistance program” to withhold money from school districts that refused to stop discriminating against black children.³⁵ This provision directed agencies overseeing the distribution of federal aid to develop and publicize a “rule, regulation, or order of general applicability” that would serve to guide desegregation efforts throughout the south. This rule would communicate to aid recipients how they were supposed to implement desegregation orders and how their efforts would be evaluated. Rather than mandating congressional approval of the rule, Title VI also made clear that it would go into effect after being approved by the president.³⁶ Once approved, the Attorney General was authorized to sue individual school districts on behalf of black children who were forced to attend schools deemed to be legally segregated. While this provision did not only apply to schools, aid cutoffs to enforce *Brown* came up repeatedly during the debate.

Title VI of the CRA was written to end all federal support for institutions still enforcing “separate but equal” rules. Here again, however, Congress made concessions that would contribute to the rise of “color-blind” conservatism. By making agencies responsible for determining the meaning and measure of discrimination, Congress failed to set a clear and straightforward standard for deciding when a school district was discriminating in ways that violated the law. Senator Albert Gore (D-TN) used this choice as a reason to oppose the CRA. “An analysis of language [of the bill],” he explained, “reveals ... that there is no definition of the word ‘discrimination’. What is ‘discrimination’ ... as used in the bill? There is no definition of that word anywhere.” Without a clearly articulated standard, Gore asserted, Congress would be

³⁵ For a summary of Title VI see, *Congressional Record*, 88th Congress, 2nd Session (March 30, 1964): 6543-6547.

³⁶ *Congressional Record*, 88th Congress, 2nd Session (March 30, 1964): 6544.

“leaving to those who administer Title VI the authority to prescribe the acts that would be prohibited.”³⁷

Gore’s assessment was correct. Congress had delegated the authority to determine the meaning of “discrimination” and “segregation” to HEW’s Office of Education. Yet those working in the Office of Education when the 1964 CRA was passed did not have a “clear idea of the standards to be used in evaluating the desegregation plans school districts would submit to remain eligible for federal funds.”³⁸ HEW’s General Counsel was himself worried about Congress’s choice, telling Gary Orfield that without a clearly defined standard, legislators were forcing “the department into extremely sensitive areas of regulation.”³⁹ Without a clearly articulated definition of discrimination or desegregation, those working in the Office of Education came to rely on court decisions as a guide for policymaking.⁴⁰

The nature of Gore’s objection is important because the standards used to determine when school districts were abiding by the law evolved through the latter half of the 1960s. The first guidance provided by HEW in 1964 explained that school districts would be meeting their obligations if they implemented so-called “freedom of choice plans.” This meant that as long as black children were offered a “fair” opportunity to enroll in what had previously been an all-white school, desegregation would have been initiated.⁴¹ In a 1965 article published in the *Saturday Review*, for example, G.W. Foster—then working in the Office of Education—explained that “freedom of choice is unobjectionable” as long as “administrative practices within the school system make” do not “make the exercise of choice a burden.” In the same article,

³⁷ *Congressional Record*, 88th Congress, 2nd Session (April 25, 1964): 9083-9084

³⁸ Orfield, *Reconstruction of Southern Education*, p. 60.

³⁹ Orfield, *Reconstruction of Southern Education*, p. 59.

⁴⁰ Orfield, *Reconstruction of Southern Education*, p. 81.

⁴¹ “General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools,” *Guidelines for School Desegregation: Hearings*, 89th Congress, 2nd Session, December 14-16, 1966: p. A22.

Foster also concedes that “it is difficult to advise with certainty concerning the rate at which desegregation must be completed.”⁴² A year after the CRA was enacted, in other words, administrators responsible for enforcing it still did not exist a clear standard for determining how to judge the success of desegregation efforts.

“Freedom of choice” plans, submitted by localities to HEW for approval, soon became the basis for “one-way integration of individual black students into white schools.” As Lassiter explains, white citizens both north and south believed that integration carried out this way was “race neutral” even though it largely preserved the racial composition of “neighborhood schools” which were themselves a reflection of residential segregation.⁴³ Once HEW had sanctioned “freedom of choice” as an acceptable way to meet the requirements of the CRA, potential opponents of school integration fell into line. Moreover, as Orfield explains, “citizens and the political leadership in the South” came to believe that “freedom of choice was all that the Civil Rights Act required.”⁴⁴

By 1966, however, HEW recognized that freedom of choice plans were not ending school segregation. In updated guidelines, HEW now stipulated that making a freedom of choice plan available to black children was not itself sufficient to demonstrate good faith implementation of the law. Instead, administrators would judge a given locality based on whether the plan adopted by local officials was contributing to the “orderly achievement of desegregation.” “The single most substantial indication as to whether a free choice plan is actually working to eliminate the dual school structure,” the new guidelines went on to say “is the extent to which Negro or other

⁴² G.W. Foster, Jr., “Title VI: Southern Education Faces the Facts,” *Saturday Review*, March 20, 1965: pp. 60-61; 76-79.

⁴³ Lassiter, *The Silent Majority*, pp. 45-46

⁴⁴ Orfield, *Reconstruction of Southern Education*, p. 81

minority group students have in fact transferred from segregated schools.”⁴⁵ HEW’s more stringent guidelines were then endorsed by the Supreme Court in *Green v. County School Board of New Kent County* (1968). In this case, the Court held that desegregation by freedom of choice plans were not a valid means for ending the dual school system.

The 1964 CRA prohibited school segregation and worked to render null and void the doctrine of separate but equal. Legislators did not, however, legislate a process for desegregating or a standard for judging when desegregation had been achieved. Instead, they turned decisions about how the law was to be implemented over to unelected judges and unelected bureaucrats. Once the Courts and HEW made clear that compliance with the 1964 CRA required meaningful progress toward school integration, busing became the only option. In 1966, as Congress debated a new civil rights bill, an anti-busing coalition began to take shape.

III. The Politics of Busing: 1966-1986

Busing Fights During the Johnson Era

The fight over federal busing policy began in the spring of 1966, as Congress debated the Johnson administration’s latest civil rights proposal. On May 9, Senator Sam Ervin (D-NC) took the floor to complain that “important Health, Education, and Welfare programs are being placed in jeopardy by an effort on the part of certain federal officials to correct so-called racial imbalance in the states.” According to Ervin, officials within HEW’s Office of Education—those responsible for developing and implementing desegregation policy—were acting in ways that departed from the “language ... [and] legislative history of Title VI [of the 1964 CRA].” Citing Hubert Humphrey’s statement in 1964 disclaiming any intent on the part of those

⁴⁵ “General Statement of Policies Under Title VI,” pp. A32-33. “The focus of enforcement changed from the surface equity of the process to the nature of the result.” Orfield, *Reconstruction of Southern Education*, p. 82.

supporting the CRA to pursue full integration of the nation's schools, Ervin introduced an amendment to the bill that would gut HEW's new guidelines. The Ervin amendment aimed to defend "freedom of choice" programs by stipulating that discrimination could be only said to exist in a school system if a complainant could demonstrate "substantial evidence" of an "intent to exclude."⁴⁶ If passed, this amendment would allow states to continue receiving federal aid until a time consuming and expensive legal process could prove that officials intended to discriminate.

A Senate filibuster brought down the 1966 CRA, but an amendment similar to Ervin's did receive a vote in the House of Representatives. In August 1966, Rep. Basil Whitener (D-NC) introduced an amendment to the House version of the bill which was an almost word-for-word copy of Ervin's proposal. Whitener also adopted Ervin's rhetorical approach: he invoked *Humphrey on integration v. desegregation*, proclaimed HEW's guidelines to be a violation of Congress' intent when it passed the CRA two years earlier, and presented his amendment as simply an effort to shore up "free choice" programs.⁴⁷ Whitener was supported on the floor by Rep. Jamie Whitten (D-MS), who explained that the amendment was necessary as a protection against "forced integration."⁴⁸ Representative William Dorn (R-SC) also appealed to the freedom of choice plans that had been previously validated by HEW. "No child is turned away from any school in the area of South Carolina where my children will be attending," he claimed. "We have complied with the law."⁴⁹ Despite minimal pushback from opponents of Whitener's amendment, it failed on a teller vote (without a roll call record), by just 9 votes, 127-136.⁵⁰

⁴⁶ *Congressional Record*, 89th Congress, 2nd Session (May 9, 1966): 10061-10062.

⁴⁷ *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18701-18702.

⁴⁸ *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18703.

⁴⁹ *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966) p. 18704.

⁵⁰ *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18715.

Whitener was undeterred by this failure. That same day he introduced a new amendment obligating any family with a child they believed to be the victim of discrimination to file a written complaint with the Department of Justice. Here Whitener aimed to make it more difficult for the Attorney General to take legal action against school districts refusing to enforce HEW's desegregation guidelines. As Rep. Byron Rodgers (D-CO) pointed out when discussing Whitener's proposal, individuals who filed formal complaints were often "subjected to intimidation and harassment."⁵¹ Whitener was forcing black residents to choose between segregated schools and the threats that would come should any resident out themselves as a potential plaintiff in a lawsuit against the state or locality.

Fully aware of the pressure Whitener's amendment would put on black citizens, members voted to pass it, 214-201.⁵² As Table 1 makes clear, the Whitener amendment won support from 31 non-southern Democrats and 101 of 137 voting Republicans. The coalition that had helped to push the Civil Rights act through the House only two years earlier was eroding as the specific provisions of the bill were implemented. Indeed, the clear momentum building against the new Office of Education guidelines led Senate Majority Leader Mike Mansfield to tell the *New York Times* in September that HEW was moving "too fast" in its effort to integrate.⁵³

The support Whitener's amendment received from Republicans and non-southern Democrats was a warning that the pro-civil rights coalition in the House was now under pressure. By the end of 1967, a similar trend emerged in the Senate. In December, Everett Dirksen (R-IL) took the floor to remind that Senate that in Section IV of the 1964 CRA, "we made it plain ... that no official of the United States or court of the United States is empowered to issue any order

⁵¹ *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18722.

⁵² *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18738.

⁵³ "Mansfield Asks Slowdown on School Desegregation," *New York Times*, September 28, 1966: p. 1.

seeking to achieve a racial balance in any school by requiring the transportation of ... students from one school to another.” Dirksen spoke during a debate over legislation to amend to the Elementary and Secondary Education Act, which had passed two years prior. His comments served to as preamble to an amendment he would offer prohibiting money appropriated by the bill to pay “any costs of the assignment or transportation of students ... to achieve racial balance.”⁵⁴ In his effort to keep federal money from being spent on busing, Dirksen was joined on the floor by fellow Republicans Peter Dominick (R-CO) and Roman Hruska (R-NE), both of whom also voted for the 1964 CRA. Now they were echoing Dirksen’s argument, claiming that the bill was being put to ends never intended by those who were integral to its enactment.⁵⁵

Dirksen’s amendment met opposition from senators who, at this point, were still willing to defend busing to achieve racial integration. Jacob Javits (R-NY), for example, attributed his opposition to Dirksen’s proposal to the fact that a blanket prohibition would deprive those families who wanted their children bused an opportunity to attend integrated schools.⁵⁶ Clifford Case (R-NJ) took this perspective as well. Passing Dirksen’s amendment, he claimed, would amount to “limiting the discretion and impairing the ability of local school boards, the states, and the courts” to receive federal aid if they chose to implement busing programs.⁵⁷

Putting this critique into legislative language, Robert Griffin (R-MI) proposed to revise Dirksen’s amendment to say that money appropriated by the bill (H.R. 7819) could be spent on busing as long as a busing program was “freely adopted” by a state or locality.⁵⁸ Making federal expenditures contingent in this way proved, however, to be an insufficient remedy. The Senate

⁵⁴ *Congressional Record*, 90th Congress, 1st Session (December 4, 1967): 34964

⁵⁵ *Congressional Record*, 90th Congress, 1st Session (December 4, 1967): 34965-34966

⁵⁶ *Congressional Record*, 90th Congress, 1st Session (December 4, 1967): 34968.

⁵⁷ *Congressional Record*, 90th Congress, 1st Session (December 4, 1967): 34969. He was echoed by Senator Kennedy (D-MA). See, *Congressional Record*, 90th Congress, 1st Session (December 4, 1967): 34974-75.

⁵⁸ *Congressional Record*, 90th Congress, 1st Session, December 4, 1967: 34975.

deadlocked, 38-38, when Griffin's amendment came up for a vote. As a consequence, the amendment failed. Table 2 explains how members voted. In this case, 19 of 32 voting Republicans sided with Dirksen's effort to ban federal appropriations for busing. They were aided by 19 southern Democrats and 6 non-southern Democrats from Oklahoma, Ohio, Arizona, Nevada (2), and New Mexico.

As the 1968 election approached, political trends were moving against those who supported HEW's effort to compel integration. In Congress, a bi-partisan coalition was forming to prevent the federal government from endorsing school busing. On the campaign trail, Richard Nixon spoke to the growing popular movement against a more forceful attack on structural forms of racial hierarchy. During a press conference in Anaheim, California, Nixon endorsed the *Brown* decision and made clear his view that freedom of choice plans acting as a "subterfuge for segregation" cannot be tolerated. But he did not stop there. "When the Office of Education goes beyond the mandate of Congress and attempts to use federal funds ... for the purpose of integration ... with that I disagree," he continued.⁵⁹ Nixon repeated this position in an October 27 interview on "Face the Nation" when he made clear that he opposed "compulsory integration."⁶⁰ In this way, candidate Nixon followed the lead of those in Congress who were cultivating a new "color-blind" approach to civil rights: condemning the most explicit forms of racial discrimination while also condemning "forceful government action to address residential segregation in the suburbs and combat racial inequality in the cities."⁶¹ In November, Nixon carried 32 states while the GOP picked up 5 seats in the House and 5 seats in the Senate. The

⁵⁹ "Nixon Against Busing," *Oakland Post*, October 9, 1968: p. 1.

⁶⁰ "Face the Nation," October 27, 1968.

⁶¹ Lassiter, *The Silent Majority*, p. 237.

Democrats retained majorities in both houses of Congress, but the GOP now held 42 seats in the Senate—the most since 1956.⁶²

Busing Fights During the Nixon Era

At the end of the 1960s, popular majorities were moving toward Nixon's position but the Supreme Court was not. In 1968 and 1969, two important decisions would put busing back on the congressional agenda. In the first, *Green v. County School Board of New Kent County* (1968), a unanimous majority ruled that "school systems which had been segregated by official action were obligated to accomplish actual integration."⁶³ The freedom of choice plans favored by the emergent "color-blind" coalition in Congress were now judged inadequate to reverse *de jure* segregation. One year later, in *Alexander v. Holmes County Board of Education* (1969), a unanimous court called for an immediate end to the system of separate schools that continued to exist throughout the south. Writing for the majority, Chief Justice Warren Burger—himself a Nixon appointee—declared, "there is no longer the slightest excuse, reason, or justification for further postponement of the time when every school system in the United States will be a unitary one, receiving and teaching students without discrimination on the basis of race or color."⁶⁴ By early 1970, court-ordered busing was a reality.

Members of Congress who had already begun staking out anti-busing positions did not simply give up their opposition after these rulings. Instead, they revived their efforts to prevent school integration through busing. In the Senate, John Stennis (D-MS) made the first move. During a debate over legislation to extend the Elementary and Secondary Education Act, Stennis

⁶² "Republicans Gain 5 New Seats in U.S. Senate," *CQ Almanac* (1968). Article available here: <https://library.cqpress.com/cqalmanac/document.php?id=cqal68-1282566>

⁶³ Gary Orfield, "Congress, the President, and Anti-Busing Legislation, 1966-1974," *Journal of Law-Education* 4 (January 1975): pp. 81-139; p. 92.

⁶⁴ 396 U.S. 19

introduced an amendment that would end the legal distinction between *de jure* and *de facto* segregation, thereby forcing northern communities to follow the same integration rules that governed in the South.⁶⁵ According to Stennis, “equitable” application of the 1964 Civil Rights Act’s anti-discrimination provisions would allow citizens outside the south to “find out whether they want this system of integration.”⁶⁶ Here Stennis argued that northern citizens would turn against busing if it was imposed upon their communities.

Complicating matters further, the Stennis amendment was co-sponsored by Abe Ribicoff (D-CT), a northern liberal. Ribicoff saw the Stennis proposal as a vehicle to “push Senate liberals toward more dramatic action” to confront racial discrimination.⁶⁷ In a floor speech defending his work with Stennis, Ribicoff accused northerners of “monumental hypocrisy in their treatment of the black man.” “Without question,” he went on, “northern communities have been as systematic and consistent as southern communities in denying the black man and his children the opportunities that exist for white people.”⁶⁸ He was working with Stennis because he, argued, the federal government also needed to end northern forms of segregation. Ribicoff was not the only person to hold this view. In testimony before the Senate only months before the debate over Stennis’ amendment, Leon Panetta—then running HEW—testified that Congress had “let the North off the hook.” The *Washington Post* reported that during the hearing, Panetta went so far as to say that “Northern segregation is probably just as much due to official policy as the Southern variety is.”⁶⁹

⁶⁵ A copy of the Stennis amendment is available here: *Congressional Record*, 91st Congress, 2nd Session (February 16, 1970): 3437.

⁶⁶ *Congressional Record*, 91st Congress, 2nd Session (February 17, 1970): 3582.

⁶⁷ Joseph Crespino, “The Best Defense is a Good Offense: The Stennis Amendment and the Fracturing of Liberal School Desegregation Policy, 1964-1972,” *Journal of Policy History* 18 (July 2006): pp. 304-325; p. 313.

⁶⁸ *Congressional Record*, 91st Congress, 2nd Session (February 9, 1970): 2892.

⁶⁹ “Racial Isolation Assailed,” *Washington Post*, November 25, 1969: p. A1.

It was clear to legislators and contemporaneous observers that Stennis was not pursuing a good-faith effort to integrate the nation's schools, but his amendment still put supporters of civil rights in an awkward spot. Most understood that northern communities would not tolerate what the amendment aimed to accomplish. To vote against his amendment, however, would mean taking a stand against a proposed remedy to segregation in the north. Liberal opponents of the Stennis amendment were thus forced to condemn it for, in the words of Walter Mondale (D-MN), "imped[ing] efforts to eliminate segregation in the south where they have dual school systems."⁷⁰

Senator Hugh Scott followed this line by introducing a substitute amendment to remove the equivalence Stennis attempted to draw between *de jure* and *de facto* segregation. When it was time to vote, Scott's amendment was rejected, 46-48.⁷¹ As Table 3 illustrates, it failed because 7 northern Democrats and 21 Republicans voted with southerners. After it failed, Senator Jacob Javits (R-NY) adopted Scott's approach by trying to change the wording of the Stennis amendment to protect the legal distinction between northern and southern segregation. His amendment failed by a larger margin than the Scott substitute).⁷² Finally, the Senate voted on the Stennis amendment itself and it passed, 56-36.⁷³ As Table 3 makes clear, Stennis' proposal won support from 9 northern Democrats and 27 Republicans. The coalition of 36 who opposed it illustrate the reticence of many northern legislators to back legislative efforts challenging the kind of segregation present in their communities. For now, they were saved by changes made to the bill in conference. As Crespino explains, conferees added provisions to the final version of the ESEA reauthorization that served to negate the policy implications of the Stennis

⁷⁰ *Congressional Record*, 91st Congress, 2nd Session (February 17, 1970): 3582.

⁷¹ *Congressional Record*, 91st Congress, 2nd Session (February 16, 1970): 3788.

⁷² *Congressional Record*, 91st Congress, 2nd Session (February 16, 1970): 3788-3789; 3797.

⁷³ *Congressional Record*, 91st Congress, 2nd Session (February 16, 1970): 3800.

amendment.⁷⁴ Yet the Stennis fight made clear to all that a significant number of northern legislators feared the consequences of an attack on *de facto* school segregation.

The legal distinction between “official” and “unofficial” segregation came up again at the end of February as the Senate debated a bill to fund HEW. In this case, by a vote of 42-32, the Senate removed language in the House-passed version of the bill prohibiting any money from being spent on busing programs in the south).⁷⁵ In Table 4, we show that on this vote, the civil rights coalition held together: 25 northern Democrats and 16 of 31 voting Republicans defeated a conservative coalition of 16 southern Democrats, 15 Republicans, and 1 non-southern Democrat. In June 1970, a similar coalition emerged to remove similar language that the House had written into a bill funding HEW’s Office of Education (see Table 5).⁷⁶

The next period of intense debate over busing occurred in late-1971, and was one again motivated by the court. In *Swann v. Charlotte-Mecklenburg Board of Education*, a unanimous majority upheld a lower-court ruling which imposed a busing program on school children in Charlotte. By upholding this decision, the Supreme Court made clear that busing would follow any showing of *de jure* segregation in a school district. As Orfield explains, however, what made this case so important was that “the busing remedy would now become available in the north, too, once lawyers proved *de jure* violations in a given community.”⁷⁷ The implications of *Swann* were felt almost immediately. In September 1971, Stephen J. Roth, a district court judge in Detroit, found that public institutions throughout the city enforced a system of segregated schooling. “Governmental actions and in action at all levels ... have combined with those of private organizations ... to establish and maintain the pattern of residential segregation through

⁷⁴ Crespino, “The Best Defense is a Good Offense,” p. 318.

⁷⁵ *Congressional Record*, 91st Congress, 2nd Session (February 20, 1970): 5413.

⁷⁶ *Congressional Record*, 91st Congress, 2nd Session (June 24, 1970): 21218; 21228.

⁷⁷ Orfield, “Congress, the President, and Anti-Busing Legislation,” p. 101.

the Detroit metropolitan region,” he wrote.⁷⁸ Roth went on to require a metropolitan busing program for the purpose of ending school segregation in the city.

The congressional response to Roth’s order was quick and fierce. In early November 1971, the House was considering legislation to extend the Higher Education Act (H.R. 7248). During debate, Rep. William Broomfield (R-MI) introduced an amendment that would “postpone the effectiveness of any U.S. District Court order requiring the forced busing of children to achieve racial balance until all appeals to that order have been exhausted.”⁷⁹ As a member of Michigan’s delegation, it was clear that Broomfield’s goal was to prevent the busing program mandated by Roth’s opinion. Broomfield’s amendment was co-sponsored by five Democrats from the Michigan delegation—William D. Ford, Martha Griffiths, James O’Hara, Lucien Nedzi, and John Dingell—and Gerald Ford (R-MI) also spoke for it.⁸⁰ These supporters backed Broomfield’s move even though it was “drafted so broadly” that it would have also prevented the implementation of busing programs in circumstances where it was clear that a school system was intentionally segregating students.⁸¹

Despite the support Broomfield’s amendment received from ostensible civil rights liberals in the Michigan delegation, it also drew opposition from members who recognized the double-standard that would be written into law should this amendment be enacted. Rep. Shirley Chisholm (R-NY) condemned those members supporting it for being fine with busing “black and Spanish-speaking children” but expressing outrage as soon as “a certain segment that have been the beneficiaries of the status quo in America” were affected.⁸² Rep. Charlie Rangel (D-NY)

⁷⁸ Roth quoted in Lassiter, *The Silent Majority*, p. 304.

⁷⁹ *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39302.

⁸⁰ *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39304.

⁸¹ Orfield, “Congress, the President, and Anti-Busing Legislation,” p. 105.

⁸² *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39310.

raised concerns about what would happen if members of Congress who disagreed with a particular court order simply “legislated a new one.”⁸³ Regardless of these concerns, it passed overwhelmingly.⁸⁴ As Table 6 makes clear, Republicans and southern Democrats backed the amendment by huge margins. Most importantly, however, almost 40 percent of voting non-southern Democrats also supported Broomfield’s proposal.

Such strong support for anti-busing language from lawmakers whose support was absolutely essential for any civil rights legislation to pass also held when the House next considered an even more far reaching proposal. The so-called Ashbrook amendment, offered by Ohio Republican John Ashbook, simply blocked any federal funds from being used for the purpose of busing.⁸⁵ States and cities could continue busing if they chose, but they would need to pay all of the costs associated with carrying out school desegregation. Fellow Republican Marvin Esch (R-MI) tried to limit the impact of Ashbrook’s proposal by revising it to stipulate that the prohibition would not apply in places where “a local educational agency” was “carrying out a plan of racial desegregation ... pursuant to the order of a court of competent jurisdiction” (i.e. in the south).⁸⁶ Esch’s revision failed in a lopsided, 146-216 vote (See Table 6). Rep. Edith Green (D-OR) then expanded the Ashbrook amendment by adding language that would prevent the federal government from requiring states to implement desegregation orders, pursuant to the 1964 CRA. Even though it undermined a central goal of the CRA, Green’s amendment passed, 231-126 (See Table 6).⁸⁷ Soon thereafter, the House voted to support the now-expanded Ashbrook amendment by an almost identical margin, 234-124 (See Table 6).⁸⁸ By the end of

⁸³ *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39305.

⁸⁴ *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39312.

⁸⁵ *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39313.

⁸⁶ *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39318.

⁸⁷ *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39317.

⁸⁸ *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39318.

1971, a bi-partisan, inter-regional alliance had emerged in the House to stand in the way of all federal support for busing.

This growing popular backlash against “forced busing,” reflected now by the overwhelming support for Ashbook’s amendment, made it an appealing campaign issue for Richard Nixon’s 1972 reelection. Senator Stennis (D-MS) telegraphed the strategy opponents of busing would continue to pursue in a floor speech on February 24. “We now hear much less often the term ‘*de jure*’ because it increasingly appears that most segregation in northern schools is, as it was formerly in southern schools ... created by state action.”⁸⁹ The plan, once again, would be to simultaneously oppose busing and insist that northern cities face the same rules as those governing in the south. Doing so, Stennis understood, would motivate deep public anger among many northern white voters who did not want their children bused.

Nixon himself endorsed this approach in a March 17 address, during which he called on the legislative branch to “establish uniform national criteria” for determining when schools could be judged segregated. In the same address he also called for a moratorium on all busing orders until the legislative branch could decide on uniform guidelines.⁹⁰ The Nixon administration appeared to be following the lead of the House by forcing members to either implement a policy that would be imposed on north and south alike, or to vote down busing altogether. Like the House, he also played for time by challenging members to deny the court’s power to impose busing in places where judges determined that school segregation required an immediate remedy.

Even before Nixon gave this speech, the Senate was struggling through a debate over the Higher Education bill that the House had passed, which included the Ashbook-Green amendment. Senators Mike Mansfield (D-MT) and Hugh Scott (R-PA) opposed the House

⁸⁹ *Congressional Record*, 92nd Congress, 2nd Session (February 24, 1972): 5377.

⁹⁰ “Presidential Statement to Congress: Nixon on School Busing, 1972,” *CQ Almanac*.

version and were pushing their own. Their substitute did not include the Ashbook-Green amendment because, as Senator Scott warned, it would “have the practical effect of repealing Title VI of the Civil Rights Act of 1964.” Instead, he and Mansfield proposed new language that would “solidify the constitutional standard suggested by the *Swann* case ... that the Constitution cannot be read to require transportation to achieve desegregation ‘when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process.’”⁹¹

After a prolonged debate over the merits of the Mansfield-Scott substitute, during which members rehashed old arguments about forms of residential segregation north versus south, voting commenced on a series of proposed revisions to this new version of the Higher Education Act.⁹² First, in an overwhelming 79-9 vote, the Senate endorsed the spirit of the Broomfield amendment by delaying, for 16 months, implementation of all court-ordered busing plans (See Table 7).⁹³ Five days later, the Senate voted to gut an amendment authored by James Allen (D-AL) formally opposing any federal effort to assign students to schools for the purpose of achieving racial balance (Table 7).⁹⁴ The Senate also voted down an effort to extend the moratorium on court-ordered busing plans until the Supreme Court could rule on them one-by-one (Table 7).⁹⁵ On these votes, the pro-civil rights coalition held. Finally, on March 1, the Senate passed and returned to the House an amended version of the Higher Education Act by a vote of 88-6.⁹⁶

⁹¹ *Congressional Record*, 92nd Congress, 2nd Session (February 24, 1972): 5454.

⁹² *Congressional Record*, 92nd Congress, 2nd Session (February 24, 1972): 5476-5490.

⁹³ *Congressional Record*, 92nd Congress, 2nd Session (February 24, 1972): 5490.

⁹⁴ *Congressional Record*, 92nd Congress, 2nd Session (February 29, 1972): 5982.

⁹⁵ *Congressional Record*, 92nd Congress, 2nd Session (February 29, 1972): 6006.

⁹⁶ *Congressional Record*, 92nd Congress, 2nd Session (March 1, 1972): 6277.

The House and Senate now stood some distance apart. When the Senate-passed version returned to the lower chamber, members immediately condemned its “weakened” anti-busing language. Representative Broomfield, in particular, took issue with the changes made to his amendment in the Mansfield-Scott substitute. “The Senate ... has adopted a version of our amendment which is both inadequate in scope and grossly inequitable in application,” he claimed. According to Broomfield, the moratorium language written into the Senate bill would only apply in those “limited situations in which a court might order transfers across school district lines.” Furthermore, the Senate bill “introduce[s] a host of inequities” by how it handles busing orders within a given school district. “They [Senators] are attempting to evade the clear intent and purpose of the overwhelming majority of the House,” Broomfield concluded.⁹⁷

Accordingly, Broomfield and other members of the House insisted on a motion to instruct members of the conference committee to insist that the specific anti-busing language included in their version also appear in the final draft.⁹⁸ When the House voted on the motion to instruct, it passed 272-140.⁹⁹ In May, as the conference committee was nearing completion, the House once again tried to insist on its own version. In a 275-125 vote, a decisive majority once again endorsed the blanket prohibitions on federal support for busing mandated by the Ashbrook-Green amendment.¹⁰⁰ Table 8 describes the vote coalitions for both motions to instruct. On these votes, between 36 percent and 42 percent of voting non-southern Democrats took an anti-busing position. Among Republicans, between 76 percent and 82 percent of those voting took an anti-busing position.

⁹⁷ *Congressional Record*, 92nd Congress, 2nd Session (March 8, 1972): 7555.

⁹⁸ *Congressional Record*, 92nd Congress, 2nd Session (March 8, 1972): 7540-7562.

⁹⁹ *Congressional Record*, 92nd Congress, 2nd Session (March 8, 1972): 7562.

¹⁰⁰ *Congressional Record*, 92nd Congress, 2nd Session (May 11, 1972): 16842.

In the end, as Senator Peter Dominick (R-CO) explained to the Senate during consideration of the compromise measure, the best that could be worked out was a “modified Broomfield amendment. The new language would “sta[y] the effectiveness of busing orders until all appeals are exhausted or the time for appeals has run, effective to January 1, 1974.”¹⁰¹ The Ashbrook-Green amendment was also not included in the new bill, but this version did stipulate that local officials who sought federal aid for busing programs would need to formally request money. Finally, the bill barred the federal government from “pressuring” local school boards into implementing busing programs.¹⁰² These changes motivated opposition from a few liberals, like Ted Kennedy, who expressed opposition to any version of the Broomfield language. Also opposed were conservatives like Senator Robert Griffin (R-MI), who sought language closer to what the House had passed. On May 23, Griffin forced to Senate to vote on a motion to recede from the modified Broomfield language. His motion failed, 44-26 (Table 17).¹⁰³ Then, on May 24, the Senate passed the Mansfield-Scott substitute, 63-15.¹⁰⁴ Despite howls of protest from aggrieved members of the House, the new version of the Higher Education Act passed in that body by a vote of 218-180 on June 8.¹⁰⁵

The last busing fight to consume Congress before the November election concerned legislation proposed by Nixon in his March address on busing. The “Equal Education Opportunities Act” (HR13915), according to Nixon, would reaffirm the unconstitutionality *de jure* segregation; “establish criteria for what constitutes a denial of equal opportunity;” “establish priorities of remedies for schools that are required to desegregate with busing to be required only

¹⁰¹ *Congressional Record*, 92nd Congress, 2nd Session (May 24, 1972): 18855.

¹⁰² “Congressional Anti-Busing Sentiment Mounts in 1972,” *CQ Almanac*.

¹⁰³ *Congressional Record*, 92nd Congress, 2nd Session (May 23, 1972): 18449

¹⁰⁴ *Congressional Record*, 92nd Congress, 2nd Session (May 24, 1972): 18862.

¹⁰⁵ *Congressional Record*, 92nd Congress, 2nd Session (May 24, 1972): 20340.

as a last resort, and then under strict limitations;” and to “provide for concentration of federal school-aid funds specifically on the areas of greatest educational need.”¹⁰⁶ This was, in short, an effort to avoid substantial desegregation. To soften that blow, Nixon proposed more aid to schools serving non-white students.

The House acted on Nixon’s proposal by writing its own bill stipulating that the failure of a given school to “attain a balance, on the basis of race, color, sex, or national origin of students ... shall not constitute a denial of opportunity.” Any student assigned to an “imbalanced” neighborhood school would not be categorized as having been denied equal educational opportunities unless it could be proven that such assignment was “for the purpose of segregating students.”¹⁰⁷ Finally, the bill made clear that students in the sixth grade or below were prohibited from being bused beyond “the school closest or next closest to his or her place of residence. Students older than that were eligible for busing beyond the “next closest” school only after demonstrating “clear and convincing evidence that no other method will provide an adequate remedy.”¹⁰⁸ According to Rep. Quie (R-MN), the busing language included in this bill made it “about as controversial” as any legislation “this body has considered.”¹⁰⁹ Rep. McCulloch (R-OH)—co-author of the 1964 CRA—called it “repugnant to the Constitution.”¹¹⁰

Despite the already-strong anti-busing language written into H.R. 13915, some members of the House remained unsatisfied. In particular, once again, Representatives Ashbrook and Green. To further clarify his deep opposition to busing for the purposes of integration, Representative Ashbrook offered an amendment making the “neighborhood school,” as he

¹⁰⁶ “Presidential Statement to Congress: Nixon on School Busing, 1972,” *CQ Almanac*.

¹⁰⁷ *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28883-28884.

¹⁰⁸ *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28836.

¹⁰⁹ *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28838.

¹¹⁰ *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28850.

described it, “the normal and appropriate place to assign a student.”¹¹¹ Language like this, Rep. Rangel (D-NY) noted, would “restrict” public school assignments so as to preserve segregation. In so doing, he claimed, Ashbrook’s amendment would undermine the aim and purpose of busing.¹¹² Despite its extremely restrictive language, Ashbrook’s amendment passed, 254-131.¹¹³ Rep. Green moved next to delete the provision stipulating differential treatment for students above and below the sixth grade, thereby preventing busing as a remedy for all school age children.¹¹⁴ Then, in a 245-141 vote, the House adopted another Green amendment to prevent the Attorney General from re-opening past desegregation cases to ensure that the school districts in question remained compliant with existing anti-segregation laws (Table 9).¹¹⁵ When the House voted, 283-102 to pass H.R. 13915, it went on record supporting the “strongest” anti-busing language “ever passed.”¹¹⁶

By this time, the Senate had already acted on multiple occasions to rein in anti-busing bills passed by the House. Members were therefore never going to vote this bill into law. In this case, however, the upper chamber went further than usual as civil rights liberals mounted a successful filibuster of H.R. 13915. Prior to the cloture vote, supportive southern Democrats explained that all they wanted was a “uniform standard” to guide desegregation policy. At the same time, however, they condemned “this useless busing in order to achieve racial balance.” Senate opponents of the bill, led by Jacob Javits (R-NY), argued instead that the bill would “undo everything” that had been accomplished since the 1964 CRA was passed. “Racial imbalance is nothing which the United States can redress,” Javits conceded. “The only thing we

¹¹¹ *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28871.

¹¹² *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28871.

¹¹³ *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28873.

¹¹⁴ *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28907.

¹¹⁵ *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28907.

¹¹⁶ “Congressional Anti-Busing Sentiment Mounts in 1972,” *CQ Almanac*.

are debating is the illegality of segregation.”¹¹⁷ Enough of the Senate accepted the view that the House bill served as a cover for protecting segregated schools that three separate cloture votes failed to win the required support to end debate. The same coalition that had effectively defanged House anti-busing language now came together to kill Nixon’s “Equal Opportunities bill.”¹¹⁸

For a brief time, after the election of 1972, busing became less of a national issue. As Gary Orfield notes: “Although the President promised to give the matter ‘highest priority’ in 1973, antibusing legislation may well have been one of the many casualties of Watergate.”¹¹⁹ The only meaningful role antibusing played in Congress during the first half of the 93rd Congress (1973-74) was via amendments. All occurred late in 1973, after the Arab oil embargo had taken hold, and used fuel economy as a pretext to push antibusing. Sen. Jesse Helms (R-NC) twice attempted to add amendments to promote the conservation of gasoline through the reduction in school busing, and both times he failed.¹²⁰ On the House side, John Dingell, Jr. (D-MI) offered a similar amendment, which would ban the allocation of petroleum for the busing of students farther than the school nearest to their home. A number of liberal House members criticized Dingell, with Rep. Bella Abzug (D-NY) calling it “scandalous demagoguery.” But the amendment passed, 221-191, with enough Northern Democrats joining with large majorities of Southern Democrats and Republicans to generate a majority.¹²¹ While the National Energy

¹¹⁷ *Congressional Record*, 92nd Congress, 2nd Session (October 6, 1972): 34265-34268.

¹¹⁸ The third and final cloture vote can be found here: *Congressional Record*, 92nd Congress, 2nd Session (October 12, 1972): 35330.

¹¹⁹ Orfield, *Must We Bus?*, 255.

¹²⁰ The first bill was an attempt to amend the Social Security Act. The Helms amendment was successfully tabled, 48-40. The breakdown was Northern Democrats 31-4, Southern Democrats 1-14, Republicans 16-20, and Independents 0-1. *Congressional Record*, 93rd Congress, 1st Session (November 29, 1973): 38653. The second bill was the National Fuels and Energy Conservation Act. The Helms amendment was successfully tabled, 46-45. The breakdown was Northern Democrats 31-6, Southern Democrats 0-11, Republicans 15-26, and Independents 0-1. *Congressional Record*, 93rd Congress, 1st Session (December 10, 1973): 40433.

¹²¹ The vote on the Dingell amendment was Northern Democrats 35-113, Southern Democrats 68-14, Republicans 117-64, and Independents 1-0. *Congressional Record*, 93rd Congress, 1st Session (December 13 1973): 41280-81. The following day, Rep. Bob Eckhardt (D-TX) sought to reduce the effects of the Dingell amendment by proposing an amendment that would allow for the allocation of petroleum for school busing where a busing plan

Emergency Act (H.R. 11450), with the Dingell amendment attachment, would go on to pass in the House, it was ultimately set aside in favor of the (conference-amended) Senate version (S. 2589; National Emergency Petroleum Act) – which did not include a Dingell-like provision.

Busing would become prominent on the congressional agenda again in 1974, thanks to the need to reauthorize elements of the Elementary and Secondary Education Act. While there were many issues in play, not the least of which was resolving funding allocations across rural, urban, and suburban coalitions, busing would become a significant cleavage issue. This worked to the benefit of President Nixon, who was being battered by the Watergate scandal and sought ways to shore up his conservative support and prevent the growing momentum for impeachment.¹²² On March 26, 1974, Rep. Marvin Esch (R-MI) began the anti-busing push by offering an amendment to the House Education and Labor Committee bill (H.R. 69) that would strike out a section and replace it with the text from The Equal Educational Opportunities Act (H.R. 13915) that the House passed on August 17, 1972. The effect of the Esch amendment would be to prohibit busing for the purpose of achieving racial balance – a distinctly conservative position. After a lengthy discussion, and a failed attempt by three moderates – Reps. John Anderson (R-IL), Lunsford Preyer (D-NC), and Morris Udall (D-AZ) to find a middle-ground solution,¹²³ the Esch amendment passed, 293-117.¹²⁴ The following day, Rep. John Ashbrook (R-OH) followed up on Esch’s efforts by offering an amendment to prohibit the use of any federal funds to implement busing plans – even when there was an express written

was ordered by the appropriate school board. Eckhardt’s amendment failed, 185-202. The breakdown was Northern Democrats 111-22, Southern Democrats 17-62, Republicans 57-117, and Independents 0-1. *Congressional Record*, 93rd Congress, 1st Session (December 14, 1973): 41703.

¹²² Orfield, *Must We Bus?*, 259.

¹²³ *Congressional Record*, 93rd Congress, 2nd Session (March 26, 1974): 8274-81. The moderates’ policy solution was to consider other school desegregation remedies before busing could be ordered. Their amendment – formally offered by Rep. Anderson – failed without a recorded roll call.

¹²⁴ *Congressional Record*, 93rd Congress, 2nd Session (March 26, 1974): 8281-82.

request by the appropriate school board. This too passed, 239-168.¹²⁵ As the top portion of Table 1 indicates, both cases were classic “conservative coalition” votes: large majorities of Southern Democrats and Republicans opposed a majority of Northern Democrats. With the two anti-busing amendments attached, the overall bill (H.R. 69 as amended) passed easily, 380-26.¹²⁶

Busing also emerged as an issue in the Senate proceedings on the amendments to the Elementary and Secondary Education Act (S. 1539). The anti-busing position would be anchored by Sen. Edward Gurney (R-FL), who offered an amendment to mirror that of Esch’s in the House. Gurney’s amendment would, among other things, prohibit the forced busing of students beyond the school next nearest to their home. An impassioned debate took place on May 15, 1974, with Sen. Edward Brooke (R-MA) anchoring the pro-busing position and pushing back strongly at Gurney’s proposed amendment pushed back strongly.¹²⁷ Among other things Brooke stated: “The separate but equal doctrine of Plessy against Ferguson that divided America for 60 years must never return. Yet the measures before us contain the prescription for abandoning equal educational opportunities and for returning to separate but equal facilities.”¹²⁸ Finally, Sen. Jacob Javits moved to lay Gurney’s amendment on the table, which passed 47-46.¹²⁹ The Senate then adopted an amendment by Sen. Birch Bayh (D-IN), which would require a U.S. court to find alternative remedies inadequate before implementing school busing plans to remedy *de jure* segregation. Bay’s amendment – which left the final say on desegregation controversies to the courts – was moderate in orientation and passed by a sizable majority, 56-36.¹³⁰ The details of the votes appear in the bottom portion of Table 10. While the tabling vote broke down in typical

¹²⁵ *Congressional Record*, 93rd Congress, 2nd Session (March 27, 1974): 8507-08.

¹²⁶ *Congressional Record*, 93rd Congress, 2nd Session (March 27, 1974): 8535-36.

¹²⁷ For various remarks, see *Congressional Record*, 93rd Congress, 2nd Session (May 15, 1974): 14812-14925.

¹²⁸ *Congressional Record*, 93rd Congress, 2nd Session (May 15, 1974): 14853.

¹²⁹ *Congressional Record*, 93rd Congress, 2nd Session (May 15, 1974): 14925.

¹³⁰ *Congressional Record*, 93rd Congress, 2nd Session (May 15, 1974): 14926.

conservative-coalition fashion, the vote to adopt the Bayh amendment received majority support from all three blocs. The following day, some additional amendments succeeded (moderate in nature) while others failed (conservative in nature), before the overall bill (S. 1539 as amendment) passed, 81-5.¹³¹

With two different chamber bills passed, a conference committee was named to iron out the differences.¹³² While the House members on three separate occasions instructed their conferees to insist on the House bill's provisions, the House conferees mostly went along with the Senate version: while the "next nearest" busing provisions of the Gurney amendment were adopted, the conference committee also included the language of the Bayh amendment along with provisions to maintain the court's ultimate constitutional authority to ignore busing bans in order to protect children's rights.¹³³ The conference bill passed easily in each chamber,¹³⁴ and President Gerald Ford signed it into law.¹³⁵

House conservatives were livid. Rep. Ashbrook captured their thinking: "On a scale of one to 100 we gave up 95 points and they gave up five."¹³⁶ Conservative anger was somewhat muted, however, as external factors conspired to take the sting out of the perceived defeat. An entry from *CQ Almanac* describes this:

¹³¹ *Congressional Record*, 93rd Congress, 2nd Session (May 20, 1974): 15444.

¹³² *Congressional Record*, 93rd Congress, 2nd Session (June 5, 1974): 17881-82. The committee consisted of Perkins, Meeds, Ford, Hawkins, Mink, Chisholm, Lehman, Brademas, Quie, Bell, Ashbrook, Forsythe, and Steiger (WI).

¹³³ For example, section 203(b) stated: "The provisions of this title are not intended to modify or diminish the authority of the courts of the United States to fully enforce the fifth and fourteenth amendments to the Constitution of the United States."

¹³⁴ The House vote was 323-80, with Northern Democrats voting 136-9, Southern Democrats 50-26, Republicans 137-47, and Independents 0-1. *Congressional Record*, 93rd Congress, 2nd Session (July 31, 1974): 26128. The Senate vote was 81-15, with Northern Democrats voting 42-0, Southern Democrats 11-3, Republicans 28-10, Conservatives 0-1, and Independents 0-1. *Congressional Record*, 93rd Congress, 2nd Session (July 24, 1974): 24925-26.

¹³⁵ Signed on August 21, 1974. Public Law 93-380: An Act to Extend and Amend the Elementary and Secondary Education Act of 1965, and For Other Purposes. *Congressional Record*, 93rd Congress, 2nd Session (September 19, 1974): 31726.

¹³⁶ See Mary Russell Washington, "House Votes Anti-Busing School Bill," *Washington Post*, August 1, 1974, A1.

One of the key factors in dissipating House opposition to the conference agreement on busing was a July 25 Supreme Court decision [*Milliken v. Bradley*] striking down a lower court order calling for cross county busing between Detroit, Mich., and 53 surrounding communities. The Court, in a 5–4 decision, declared that boundary lines could be ignored only where each school district had been found to practice racial discrimination or where the boundaries had been deliberately drawn to promote racial segregation.

The decision was a major disappointment to civil rights advocates who argued that in urban areas successful school desegregation could be achieved only by merging the predominantly black school population of the inner city with the heavily white population of the suburbs.¹³⁷

The *Milliken v. Bradley* (1974) ruling effectively allowed segregation if it was not an explicit policy of each school district, and thus clarified the distinction between *de jure* and *de facto* segregation. Thus, school systems were not responsible for desegregation across district lines unless there was clear evidence that they each had deliberately engaged in a policy of segregation. This meant that the issue of busing between cities and suburbs was settled – with anti-busing advocates in suburbs coming out on top – and left future conflict over busing to be within-city only. Vice President Gerald Ford – who would ascend to the top job in a few short weeks – said in July 1974 that the Milliken decision was a “victory for reason” and “a great step forward to finding another answer to quality education.”¹³⁸

Busing Battles After Nixon

Much of the first half of the 94th Congress (1975-76) passed without any additional conflict over busing. The issue emerged on the national stage again in September 1975, when President Ford

¹³⁷ “Education and Science 1974: Overview.” In *CQ Almanac 1974*, 30th ed., 437-40 (Washington, DC: Congressional Quarterly, 1975). <http://library.cqpress.com/cqalmanac/cqal74-1220843>. A *Washington Post* story makes the same point regarding the July 31 House vote: “Opposition by members who wanted even stronger anti-busing language was almost totally defused after last week’s 5-to-4 Supreme Court decision in the Detroit case which barred busing between cities and suburbs. The decision played a large role in the overwhelming 323-to-83 vote. ‘I think it had an important psychological impact,’ Rep. John Brademas (D-Ind.) said of the Supreme Court ruling.” Washington, “House Votes Anti-Busing School Bill.”

¹³⁸ Quoted in Matthew F. Delmont, *Why Busing Failed: Race, Media, and the National Resistance to School Desegregation* (Berkeley: University of California Press, 2016), 141.

raised the issue. He noted the law he signed in August 1974, and complained that the courts were not following its guidelines, as they were too focused on requiring busing and not seriously considering other remedies.¹³⁹ Ford's statement presaged fireworks that would occur later that month in the Senate, as two amendments – offered by Sens. Joe Biden (D-DE) and Robert Byrd (D-WV) – would make national headlines again. Accompanying these amendments was a shift in the Senate – the moderating chamber on busing to that point now shifted in a conservative direction.

During the debate on the Departments of Labor and Health, Education, and Welfare Appropriation Act, Sen. Biden – who had been under fire in his home state for his liberal positions on busing¹⁴⁰ – offered an amendment that no funds shall be used to require any school, as a condition for receiving federal funds, to assign teachers or students to schools for reasons of race. He characterized this an anti-busing amendment, as it would prevent HEW from mandating busing.¹⁴¹ (Biden was also clear that his amendment would not impinge on the federal courts.) Despite senators being confused about the language and opposition by Sens. Brooke, Hubert Humphrey (D-MN), and other liberals, the Biden amendment passed, 50-43.¹⁴² A week later, Sen. Byrd offered a simple amendment that would prohibit funds from being used to require, directly or indirectly, the transportation of any student to a school other than that which is nearest to his or her home and which offers the courses necessary to remain in compliance with Title IV

¹³⁹ Austin Scott, "Ford: Courts Ignore Busing Alternatives," *Washington Post*, September 17, 1975, A1; Henry L. Trewhitt, "Busing Attached by Ford," *Baltimore Sun*, September 17, 1975, A1.

¹⁴⁰ Orfield, *Must We Bus?*, 272-73. For more background on Biden and busing, see Eric Wentworth, "Biden: A Liberal Breaks Ranks," *Washington Post*, September 28, 1975, 30.

¹⁴¹ As to the language of his amendment, Biden said that he wanted "to narrow the focus so that we talk about busing... [and] did not want to confuse the issue and also end up cutting our bilingual programs or programs for the disadvantaged or any other program that does not directly deal with the question of busing." *Congressional Record*, 94th Congress, 1st Session (September 17, 1975): 29113.

¹⁴² *Congressional Record*, 94th Congress, 1st Session (September 17, 1975): 29123.

of the Civil Rights Act of 1964. Like the Biden amendment, Byrd's amendment would restrict HEW but not the courts. After some sharp debate, it passed 51-43.¹⁴³

The following day, Sen. Biden gained the floor and noted that "there is a good deal of confusion in the Chamber at this point, and I suspect that I am in large part responsible for some of that confusion." He went on to say that numerous senators criticized the language in his September 17 amendment and believed "in addition to preventing HEW from directly or indirectly being able to bus children, I may also have precluded HEW from being able to assign teachers, from being able to redress racial imbalances within classrooms." He thus offered another amendment to clarify his intent, which was that "HEW will not be able, directly or indirectly, to put a child on a school bus to redress any kind of imbalance, to redress any kind of alleged violation of title VI of the Civil Rights Act."¹⁴⁴ After a failed tabling motion, offered by Sen. James Allen (D-AL), the second Biden amendment passed 44-34.¹⁴⁵ As the top of Table 11 indicates, all three amendment votes were conservative coalition votes; however, the second Biden vote was a retrenchment – as the first Biden amendment went too far in inhibiting desegregation generally – and thus the yea-nay coalitions shifted.

¹⁴³ *Congressional Record*, 94th Congress, 1st Session (September 24, 1975): 30045. A *Washington Post* story noted the limited scope of these amendments: "Most of the controversial busing plans presently in effect have been ordered by federal courts and therefore would not be affected by either the Byrd amendment or even broader language approved last week in an amendment by Joe Biden, Jr." Spencer Rich, "Senate Votes 2d Busing Curb," *Washington Post*, September 25, 1974, A1.

¹⁴⁴ Quotes from *Congressional Record*, 94th Congress, 1st Session (September 25, 1975): 30357-58. See also Stephen Wermiel, "Senate Votes to Bar HEW from Ordering School Busing," *Boston Globe*, September 26, 1975, 7.

¹⁴⁵ *Congressional Record*, 94th Congress, 1st Session (September 25, 1975): 30365. The vote on the tabling motion was 35-46, with Northern Democrats voting 4-30, Southern Democrats 12-1, Republicans 17-15, Conservatives 1-0, and Independents 1-0. *Congressional Record*, 94th Congress, 1st Session (September 25, 1975): 30363.

The appropriations act, as amended, passed 60-18.¹⁴⁶ It went to conference, where the two Biden amendments were dropped.¹⁴⁷ The Byrd amendment, however, was kept in. This led to an attempt by Rep. Daniel Flood (D-PA) in the House to alter the language of Byrd's transportation prohibition – to effectively move it back to the law established in the prior Congress, that is, schools other than those “nearest or next nearest” to a child's home. It failed, 133-259.¹⁴⁸ The House then concurred with the Byrd amendment, 260-146.¹⁴⁹ The bottom of Table 11 reports the breakdowns; both were conservative coalition votes, with small majorities of Northern Democrats opposing large majorities of both Republicans and Southern Democrats. The House then voted 321-91 to agree to the conference report.¹⁵⁰ The Senate followed by approving via voice vote.¹⁵¹

Liberals tried to put the best spin on things. Rep. Flood noted (correctly): “None of this is binding on the courts.” And Rep. Silvio Counte (R-MA) added: “To change busing, you'll have to change the Constitution.”¹⁵² Counte's statement would portend near-future congressional action.

The second half of the 94th Congress was considerably quieter on the busing front. The major initiative occurred not in Congress, but via the executive branch. President Ford had been considering a statement on busing for some time, and in November 1975, he had directed the Justice Department and HEW to identify ways to minimize court-ordered business. After eight

¹⁴⁶ *Congressional Record*, 94th Congress, 1st Session (September 26, 1975): 30544. The appropriations bill was earlier passed by the House on a 368-39 vote. *Congressional Record*, 94th Congress, 1st Session (June 25, 1975): 20864.

¹⁴⁷ Richard Lyons, “House Accepts School Busing Curb,” *Washington Post*, December 5, 1975, B14; “Bus Curb Passes in House,” *Atlanta Constitution*, December 5, 1975, 2F.

¹⁴⁸ *Congressional Record*, 94th Congress, 1st Session (December 4, 1975): 38718.

¹⁴⁹ *Congressional Record*, 94th Congress, 1st Session (December 4, 1975): 38718-19.

¹⁵⁰ *Congressional Record*, 94th Congress, 1st Session (December 4, 1975): 38712-13.

¹⁵¹ *Congressional Record*, 94th Congress, 1st Session (December 8, 1975): 39029.

¹⁵² Lyons, “House Accepts School Busing Curb.”

months, the Justice Department drafted legislation -- The School Desegregation Standards and Assistance Act of 1976 – which President Ford sent to Congress on June 24, 1976.¹⁵³ As the *CQ Almanac* described: “The legislation would set guidelines and time limits for busing orders and establish a national advisory committee to assist school systems in desegregating voluntarily.”¹⁵⁴ Unlike the legislation proposed by President Nixon, which produced serious squabbling in Congress and was blocked in the end only by a Senate filibuster, Ford’s legislation was sent to committee in both the House and Senate – where it died a quiet death.¹⁵⁵ Beyond the president’s legislative initiative, Congress produced nothing new on busing in 1976. Various anti-busing amendments were offered in the Senate – by William Roth (R-DE), Bob Dole (R-KS), Jesse Helms (R-NC), and Strom Thurmond (R-SC) – but all were defeated.

The 95th Congress would see the Democrats achieve unified party government again, thanks to the election of President Jimmy Carter, but busing would continue to be an issue. Carter himself took no position on the issue, and would not offer legislation like Nixon and Ford before him. In June 1977, Congress would push back against a HEW announcement that communities would need to use techniques like “pairing” of schools – where mostly black and mostly white schools near each other would combine student bodies – to comply with civil rights laws.¹⁵⁶ Anti-busing legislators referred to these consolidation techniques as a “loophole” that HEW had found to get around the provisions of the Byrd amendment from the previous Congress. In response, Rep. Ronald Mottl (D-OH) offered an amendment to the Departments of Labor and Health, Education, and Welfare Appropriations Act to prohibit the withholding of

¹⁵³ See Philip Schabecoff, “Curbs on Busing Specified by Ford,” *New York Times*, June 25, 1976, 1; Martin Nolan, “Ford Submits Bill to Limit Busing,” *Boston Globe*, June 25, 1976, 1.

¹⁵⁴ “Ford Busing Legislation.” In *CQ Almanac 1976*, 32nd ed., 594 (Washington, DC: Congressional Quarterly, 1977). <http://library.cqpress.com/cqalmanac/cqal76-1187415>.

¹⁵⁵ Orfield, *Must We Bus?*, 276.

¹⁵⁶ Stephen E. Nordlinger, “School Aid Cut-Off Defeated,” *Baltimore Sun*, June 17, 1977, A1.

funds from school districts that refused to merge or consolidate black and white schools to facilitate desegregation if the plan required that pupils be bused to a new school. It passed, 225-157.¹⁵⁷ Liberals, smarting from the defeat, downplayed the anti-busing effort as little more than a protest against HEW's procedures. For example, Rep. David Obey (D-WI) said: "This amendment has nothing to do with court-ordered busing. It ain't going to stop one bus."¹⁵⁸

In the Senate, Edward Brooke (R-MA) sought to eliminate the busing elements from the appropriations legislation. He first offered an amendment to strike all anti-busing language in the bill. This failed, 42-51.¹⁵⁹ He then narrowed his goal, by offering an amendment that would restore the use of busing only for the pairing (and a similar technique, clustering) of schools. Thomas Eagleton (D-MO) moved to table this second Brooke amendment, which succeeded, 47-43.¹⁶⁰ As Table 12 indicates, the roll calls on the Mottl and two Brooke amendments were once again conservative coalition votes, as majorities of Southern Democrats and Republicans joined against a majority of Northern Democrats to restrict busing. Finally, the appropriations act, after much ado,¹⁶¹ was adopted in December 1977, with the language from the Mottl amendment included. Congress had effectively closed the loophole that HEW had uncovered.

The remainder of the 95th Congress maintained the status quo. A potential, landmark bill was reported out of the Senate Judiciary Committee on September 21, 1977, on an 11-6 vote.¹⁶² Sponsored by Sens. William Roth (R-DE) and Joe Biden (D-DE), the bill (S. 1651) would seek to restrict the federal courts' authority to order busing. The Delaware senators were thus acting upon the reality of the time: attacking HEW might provide some useful position-taking benefits,

¹⁵⁷ *Congressional Record*, 95th Congress, 1st Session (June 16, 1977): 19409.

¹⁵⁸ "House Votes to Curb U.S. Funds," *Chicago Tribune*, June 17, 1977, 2.

¹⁵⁹ *Congressional Record*, 95th Congress, 1st Session (June 28, 1977): 21260.

¹⁶⁰ *Congressional Record*, 95th Congress, 1st Session (June 28, 1977): 21263-64.

¹⁶¹ The issue of abortion would affect deliberations and provisions of the appropriations act.

¹⁶² *Congressional Record*, 95th Congress, 1st Session (September 21, 1977): 30202.

but to truly affect busing, Congress would have to take on the courts. Per the *CQ Almanac*, the bill would :

would bar any court from ordering busing for desegregation purposes without first determining that “a discriminatory purpose in education was a principal motivating factor” for the violation the busing was designed to correct. T

The bill also specified that the court could not order more extensive busing than “reasonably necessary” to restore the racial composition of “particular schools” to what it would have been if there had been no discrimination. Before ordering busing the court would have to make specific written findings of “discriminatory purpose” and of how the racial composition of the affected schools varied from what it would have been without the discrimination.

The bill would apply to cities in which busing orders had been handed down but could still be appealed and to cities where all appeals had been exhausted but where buses had not actually started rolling.¹⁶³

President Carter and Attorney General Griffin Bell opposed the legislation. But the committee believed that, if enacted, “[the legislation] would develop once and for all a comprehensive understandable nationwide federal policy for the use of busing in school desegregation.”¹⁶⁴ However, no further action was taken on the Roth-Biden bill in 1977.

The following year, Sens. Roth and Biden converted their legislation to an amendment, which they sought to attach to a bill to extend the Elementary and Secondary Education Act of 1965. If adopted, it would establish guidelines by which the courts could order the busing of students on the basis of race, color, or national origin, with effect being that the use of busing would be limited as a remedy in school desegregation cases. The *Washington Post* reported that “both [pro- and anti-busing legislators] called the amendment the most far-reaching antibusing measure to receive serious consideration in the Senate.”¹⁶⁵ Sen. Claibourne Pell (D-RI) moved to

¹⁶³ “Busing Limits.” In *CQ Almanac 1977*, 33rd ed., 510-11 (Washington, DC: Congressional Quarterly, 1978). <http://library.cqpress.com/cqalmanac/cqal77-1203394>.

¹⁶⁴ “Busing Limits.”

¹⁶⁵ Bill Peterson, “Impact School Aid Program Target of Assault in Senate,” *Washington Post*, August 24, 1978, A6.

table the Roth-Biden amendment – which succeeded narrowly, 49-47.¹⁶⁶ With the Roth-Biden initiative settled – even as Biden said “I really believe the significance of the vote is that the time is getting close” for an end to busing¹⁶⁷ – little additional busing drama occurred in Congress in 1978.¹⁶⁸

In the 96th Congress, busing would reemerge on the congressional agenda, in keeping with a belief raised during the ultimate defeat of the Roth-Biden amendment. That is, many senators believed that Roth-Biden was unconstitutional, as the courts had based their decisions not on congressional statutes but on provisions in the Constitution. Thus, a constitutional amendment – not a statute – would be necessary to eliminate the federal courts from making busing decrees. A constitutional amendment on busing had been lightly considered in Congress going back to the early 1970s, with the House and Senate Judiciary Committees holding hearings on a constitutional amendment multiple times – but never reporting legislation out. In 1979, a significant leap forward was made, as anti-busing House members would force action on constitutional amendment through a discharge petition.

Discharging a House committee – which required a majority (218) of signatures – was rare: it had occurred only 25 times since the discharge rule was adopted in 1910. The leaders of the discharge petition would be Reps. Ronald Mottl and Skip Bafalis (R-FL). Mottl had some experience here, as he tried to discharge the House Judiciary Committee in the previous Congress, but his efforts were stymied by the House leadership when he reached 190 signers.¹⁶⁹

¹⁶⁶ *Congressional Record*, 95th Congress, 2nd Session (August 23, 1978): 27358. The vote breakdown was Northern Democrats 34-8, Southern Democrats 3-12, and Republicans 12-26.

¹⁶⁷ Peterson, “Impact School Aid Program Target of Assault in Senate,”

¹⁶⁸ Sen. Brooke did try once again to eliminate the anti-busing language from the annual appropriation for the Department of Labor and Health, Education, and Welfare. But his amendment failed, 35-54. *Congressional Record*, 95th Congress, 2nd Session (September 27, 1978): 31893. The vote breakdown was Northern Democrats 23-14, Southern Democrats 1-15, and Republicans 11-24.

¹⁶⁹ Mary Russell Washington, “House Forces Busing Amendment Vote,” *Washington Post*, June 28, 1979, A1.

This time, Mottl and Bafalis reached 200 and managed to get all the way to 218. They did this “by pulling off a dramatic midnight coup. Late on June 27, with no advance warning, they got the final 18 members to march down the aisle of the House together to sign the petition.”¹⁷⁰ The House leadership was taken by surprise and could not act in time to stop things. The signers included 132 Republicans and 86 Democrats (with 43 coming from the South). Several signers got cold feet after the petition was successful, but the deed was done.

The proposed amendment (H.J. Res. 74) read:

No student shall be compelled to attend a public school other than the public school nearest to the residence of such student which is located within the school district in which such student resides and which provides the course of study pursued by such a student. The Congress shall have the power to enforce this article by appropriate legislation and to insure equal educational opportunities for all students.¹⁷¹

Few believed that the discharge backers would be able to reach the necessary 2/3 vote for a constitutional amendment.¹⁷² But they cleared the first hurdle on July 24, 1979, when the House voted 227-183 to discharge the committee (thus satisfying a requirement of the discharge rule that a majority of the chamber affirm the signers’ decision).¹⁷³ The discharge backers then succeeded in getting a substitute amendment adopted – offered by Rep. Marjorie Holt (R-MD) and passed by voice vote – as many believed the amendment written by Mottl was too vague and could be “used to prohibit busing to prevent overcrowding or to transfer students going to special schools.”¹⁷⁴

¹⁷⁰ Quotes from “House Rejects Anti-Busing Amendment.” In *CQ Almanac 1979*, 35th ed., 482-84. Washington, DC: Congressional Quarterly, 1980. <http://library.cqpress.com/cqalmanac/cqal79-1185770>.

¹⁷¹ David Hoffman, “House to Vote on Proposal to Ban Busing,” *Boston Globe*, June 29, 1979, 3.

¹⁷² Mary Russell Washington, “Defeat of Busing Ban Likely in Vote on House Floor Today,” *Washington Post*, July 24, 1979, A3.

¹⁷³ *Congressional Record*, 96th Congress, 1st Session (July 24, 1979): 20362. The breakdown of the vote was Northern Democrats 54-125, Southern Democrats 49-35, and Republicans 124-23.

¹⁷⁴ Thomas B. Edsall, “Anti-Busing Amendment Defeated by Surprising Margin in House,” *Baltimore Sun*, July 25, 1979, A1. See also Steven V. Roberts, “Amendment to Ban Pupil Busing is Defeated by House, 216 to 209.” *New York Times*, July 25, 1979, A1.

The Holt substitute amendment read:

SECTION 1. No student shall be compelled, on account of race, color or national origin, to attend a public school other than the public school nearest to the residence of such student which is located within the school district in which such student resides and which provides the course of study pursued by such student.
SECTION. 2. The Congress shall have power to enforce this article by appropriate legislation.¹⁷⁵

But the benefit of clarity did little good. After several hours of debate, the Holt substitute failed on a 209-216 vote.¹⁷⁶ Not only did the constitutional amendment forces fail to achieve a 2/3 majority – falling 75 votes short – they could not even win a simple majority. And like most busing votes during this era, it was a standard conservative coalition vote, as a large majority of Northern Democrats opposed – and defeated – a small majority of Southern Democrats and a large majority of Republicans.¹⁷⁷

Table 13 compares the voting on the discharge petition on passage of H.R. Res. 74 (as amended by the Holt substitute). Eighteen yea votes were lost across the two roll calls, with 10 of those being Republicans. And going one step back: of those who voted against the constitutional amendment, 31 had signed the discharge petition (14 Democrats and 17 Republicans), 11 of whom were from the South.¹⁷⁸ Rep. Mottl responded to the defeat by saying: “It’s not only a personal disappointment, but a disappointment for the American people who don’t approve of court-ordered busing.”¹⁷⁹

Defeat of the anti-busing constitutional amendment was attributed to three principal factors. First, many members were squeamish about tinkering with the Constitution – which, for

¹⁷⁵ *Congressional Record*, 96th Congress, 1st Session (July 24, 1979): 20385.

¹⁷⁶ *Congressional Record*, 96th Congress, 1st Session (July 24, 1979): 20412-13.

¹⁷⁷ The vote breakdown was Northern Democrats 49-137, Southern Democrats 45-39, and Republicans 114-40.

¹⁷⁸ “House Rejects Anti-Busing Amendment.”

¹⁷⁹ Quoted in Mary Russell Washington, “Busing Amendment Loses in House Vote,” *Washington Post*, July 25, 1979, A12.

all intents and purposes, would result in a permanent change to the law – especially as the subject lacked the proper consideration (only 2 hours was allotted for the debate). Second, the garbled wording of the original Mottl amendment turned many members off, and the Holt substitute seemed to make the issue too explicitly racial. Third, a large and intense lobbying effort was made against the amendment by civil rights, labor, and religious groups, which made various members question the benefit – and consider the cost – of a vote in support.¹⁸⁰

The remainder of the 96th Congress was quiet on the topic of busing, until the lame-duck session (after the November 1980 election).¹⁸¹ Here, the anti-busing forces in the Senate finally broke through. On November 13, after attempting (but failing) to attach anti-busing amendments to various bills in the first session, Sen. Jesse Helms (R-NC) finally succeeded when he attached a rider to the Departments of Commerce, Justice, and State appropriations bill (H.R. 7584) to prevent the Justice Department from bringing lawsuits that could lead to court-ordered school busing for desegregation. The rider passed 42-38, with majorities of Southern Democrats and Republicans opposing a majority of Northern Democrats.¹⁸²

Helms stated that the election less than 10 days before – where Republican Ronald Reagan was elected president along with a Republican Senate – indicated to him that “the American people spoke pretty clearly ... and said, in effect, ‘Enough was enough,’ and part of it

¹⁸⁰ “House Rejects Anti-Busing Amendment.” See also Roberts, “Amendment to Ban Pupil Busing is Defeated by House”; “Busing Vote Key: The Constitution,” *Austin American Statesman*, July 26, 1979, A14; “They Got Mottl Off His Throttle: NAACP Keeps Buses Rolling!,” *New Journal and Guide*, July 27, 1979, 1.

¹⁸¹ The first part of the 96th Congress also saw the House approve two amendments: (1) to prohibit the Secretary of Education (during the creation of the Department of Education) from requiring the busing of students or teachers to carry out desegregation as a condition of eligibility for federal assistance and (2) to prohibit the Justice Department (in the annual authorization legislation) from using funds to bring legal action that would promote the busing of school children, except for those requiring special education resulting from physical or mental handicaps. The votes on each were 227-135 and 209-190, with majorities of Southern Democrats and Republicans opposing a majority of Northern Democrats. Both times, a conference committee stripped out the anti-busing provisions from the final bill.

¹⁸² *Congressional Record*, 96th Congress, 2nd Session (November 13, 1980): 29481-82. The vote breakdown was Northern Democrats 7-23, Southern Democrats 13-3, Republicans 21-12 and Independents 1-0.

was with respect to school busing.”¹⁸³ The vote marked the first time the Senate had restricted the Justice Department’s authority to seek school busing. Rep. James M. Collins (R-TX) sponsored a similar amendment in the House, which was adopted in July by voice vote.¹⁸⁴ The conference committee left the anti-busing provision in the bill, and the report on H.R. 7854 was adopted overwhelmingly in both chambers.¹⁸⁵ However, the anti-busing momentum was stopped by President Carter, who in his last months of office vetoed the legislation. His veto message stated:

I have often stated my belief that busing should only be used as a last resort in school desegregation cases. But busing even as a last resort is not the real issue here. The real issue is whether it is proper for the Congress to prevent the President from carrying out his constitutional responsibility under Article II to enforce the Constitution and other laws of the United States. The precedent that would be established if this legislation became law is dangerous. It would effectively allow the Congress to tell a President that there are certain constitutionally-mandated remedies for the invasion of constitutional rights that he cannot ask the courts to apply. If a President can be barred from going to the courts on this issue, a future Congress could by similar reasoning prevent a President from asking the courts to rule on the constitutionality of other laws and the constitutional necessity of other remedies upon which the President and the Congress disagree. That would be a most undesirable interference with the constitutional separation of powers.¹⁸⁶

Rather than attempt to override the president’s veto, Helms and his conservative colleagues in the Senate chose to allow the anti-busing to be stripped from a continuing resolution.¹⁸⁷ Helms and Collins stated that they would simply bring up the legislation again in the next Congress, when the partisan situation would be more favorable. President-elect Ronald Reagan was on

¹⁸³ *Congressional Record*, 96th Congress, 2nd Session (November 13, 1980): 29474.

¹⁸⁴ *Congressional Record*, 96th Congress, 2nd Session (July 23, 1980): 19316.

¹⁸⁵ The House adopted the conference report on a 240-59 vote, while the Senate adopted it by voice vote. *Congressional Record*, 96th Congress, 2nd Session (November 11, 1980): 30510; (December 3, 1980): 31681.

¹⁸⁶ *Congressional Record*, 96th Congress, 2nd Session (December 13, 1980): 34098. See also “Carter Vetoes Funding Bill with Antibusing Rider,” *Washington Post*, December 14, 1980, A12.

¹⁸⁷ Helen Dewar, “Congress Fund Government, Adjourns,” *Washington Post*, December 17, 1980, A1.

record as supportive of the language used in the anti-busing law, and that he would sign such a bill into law.¹⁸⁸

The 97th Congress would see the bitterest fighting on busing yet. The anti-busing forces, led by Sens. Helms and J. Bennett Johnston (D-LA), sought to pass an anti-busing measure – as an amendment to the fiscal 1982 authorization bill for the Justice Department (S. 951) – that was more stringent than any approved to that point in either chamber. The *CQ Almanac* summarized its provisions:

It barred the Justice Department from bringing any legal action that could lead, directly or indirectly, to court-ordered busing; prohibited federal courts from ordering busing except in narrowly defined circumstances, and allowed the attorney general to file suit on behalf of students who believed they had been bused in violation of the standards. The last provision opened the way for overturning existing busing orders.

But opponents – led by Sen. Lowell Weicker, Jr. (R-CT) – many of whom believed the amendment as written was unconstitutional, sought to actively resist and pursued a filibuster to prevent voting for occurring.¹⁸⁹ After three months of failure to shut off debate, the anti-busing forces finally broke through in September on their fifth cloture vote.¹⁹⁰ As Table 14 indicates, the anti-busing forces got within three votes of the 60 necessary to invoke cloture twice, before securing 61 votes on September 16, 1981. The Senate then passed the Helms-Johnston

¹⁸⁸ “Anti-Busing Rider Draws Veto of Justice Bill.” In *CQ Almanac 1980*, 36th ed., 210-17 (Washington, DC: Congressional Quarterly, 1981). <http://library.cqpress.com/cqalmanac/cqal80-1175823>. See also “President Vetoes Bill Containing Antibusing Rider,” *Baltimore Sun*, December 14, 1980, A1.

¹⁸⁹ Weicker, for example, believed the amendment represented an “outright incursion” on legislative power in areas reserved for the judicial and executive branches. “Senate Votes to Halt 3-month Filibuster, Moving Nearer Passage of Anti-Busing Plan,” *Baltimore Sun*, September 17, 1981, A1. Arlen Specter (R-PA) articulated the same point, stating that the amendment “posts a most serious threat to the authority, power, and jurisdiction of the Supreme Court.” Bill Peterson, “Senate Breaks 3-Month Busing Filibuster, Delays Final Action,” *Washington Post*, September 17, 1981, A7.

¹⁹⁰ Steven V. Roberts, “Senate, 61-36, Ends Filibuster on Busing Issues,” *New York Times*, September 17, 1981, A1. The last two votes on the majority side were cast by Sens. Bob Dole (R-KS) and Mack Mattingly (R-GA) when time on the roll call was running out. Benjamin Taylor, “US Senate Approves Antibusing Measure,” *Boston Globe*, September 17, 1981, 1.

amendment, 60-39. Weicker was thoughtful in defeat: “I can’t win. But I win every day that I delay this malodorous meadow muffin from becoming law.”¹⁹¹

A problem with the way the initial Helms-Johnston amendment was put together meant that the anti-busing forces would need to invoke cloture once again in order to adopt a new anti-busing amendment.¹⁹² And this they did on December 10, 1981, on a 63-33 vote. Weicker continued to try to delay after this, but the new Helms-Johnston was finally voted on – and adopted – on February 4, 1982, on a 58-38 vote. And on March 2, S. 951, with the Helms-Johnson amendment attached, was passed, 57-37. While anti-busing senators cheered the result, they also worried about getting the measure through the House. Sen. Johnston, for example, said he was “thrilled to death,” but he worried that the bill could be sabotaged “by some raw exercise of raw, unbridled power” in the House, after busing had achieved such notoriety – and perhaps infamy – in the last year of Senate debate.¹⁹³ Sen. Weicker agreed: “This legislation will not be enacted into law in this session of Congress.”¹⁹⁴

After the bill was sent to the House, Speaker “Tip” O’Neal (D-MA) kept it at the speaker’s desk for a time before referring it to the Judiciary Committee.¹⁹⁵ Chaired by Peter Rodino, Jr. (D-NJ), who was on record saying the legislation was unconstitutional,¹⁹⁶ the Judiciary Committee sat on the legislation for months with no hearing scheduled.¹⁹⁷ Rep. Mottl,

¹⁹¹ Quoted in Peterson, “Senate Breaks 3-Month Busing Filibuster, Delays Final Action,”

¹⁹² See “Senate Passes Anti-Busing Rider to Justice Bill.” In *CQ Almanac 1982*, 38th ed., 385-86 (Washington, DC: Congressional Quarterly, 1983). <http://library.cqpress.com/cqalmanac/cqal82-1164676>.

¹⁹³ For quotes, see Benjamin Taylor, “US Senate Approves Antibusing Measure,” *Boston Globe*, March 3, 1982, 1; Carol Giacomo, “Senate Curbs Use of Busing in Desegregation,” *Hartford Courant*, March 3, 1982, A1A. See also “Senate Approves Anti-Busing Bill; Delay Expected in House,” *Atlanta Constitution*, March 3, 1982, 1A.

¹⁹⁴ Steven V. Roberts, “Antibusing Moves Passed By Senate After Long Fight,” *New York Times*, March 3, 1982, A1.

¹⁹⁵ David Rogers, “House Panel to Get Busing Bill,” *Boston Globe*, March 20, 1982, 7.

¹⁹⁶ Bill Person, “Antibusing Bill Passed By Senate: 57-37,” *Washington Post*, March 3, 1982, A1.

¹⁹⁷ Mary Thornton, “House Judiciary Panel Bottles Up Conservatives’ Social Agenda,” *Washington Post*, May 17, 1982, A2.

with his colleagues Reps. W. Henson Moore (R-LA), Skip Bafalis (R-FL), and Robert Young (D-MO) announced they would attempt to discharge the legislation from the committee. In late May, Mottl declared that their discharge petition was only nine signatures short of the necessary 218.¹⁹⁸ But that majority threshold was never reached, as Mottl lost his primary election in July and the discharge momentum ran out of steam.¹⁹⁹ S. 951 would die in committee in the House,²⁰⁰ and with it any hope for anti-busing legislation in the 97th Congress. Sen. Weicker's prediction in early March 1982 proved prescient.

The Senate push in the 97th Congress was the last serious attempt to enact an anti-busing bill. By the early 1980s, busing was no longer a vital national issue. The *Milliken v. Bradley* (1974) decision had eliminated a number of thorny urban-suburban issues, and once the suburbs no longer had to worry about busing across district lines then busing became almost exclusively an intra-city one. And only three cities – Indianapolis, St. Louis, and Wilmington, DE – were required in the post-*Milliken* world to create metropolitan school desegregation plans after findings of discrimination.²⁰¹ Combine these changing public dynamics with a Republican administration that had no interest in a pro-busing agenda, and the issue largely melted away. The only times that busing surfaced in Congress was when a coalition wanted to tack on a controversial amendment to a bill in order to derail it – as Sen. Orrin Hatch (R-UT) and colleagues did this in the 98th Congress to prevent passage of a civil rights bill²⁰² – or if an individual senator sought to use the issue to communicate his positions (and those of other

¹⁹⁸ “Busing, Voting Act Attacked from Right,” *Chicago Tribune*, May 26, 1982, 3.

¹⁹⁹ David S. Broder and Jay Mathews, “Reagan Moderates, Liberal Democrats Won Tuesday’s Primaries,” *Washington Post*, June 10, 1982, A6.

²⁰⁰ A regular Department of Justice authorization would not be made until 1984, as busing and school-prayer riders led to gridlock and a series of continuing appropriations resolutions. See “Commerce, Justice, State Funding Cleared.” In *CQ Almanac 1983*, 39th ed., 472-79 (Washington, DC: Congressional Quarterly, 1984). <http://library.cqpress.com/cqalmanac/cqal83-1199708>.

²⁰¹ Delmont, *Why Busing Failed*, 210

²⁰² Paul Houston, “Senate Votes to Curb Debate on Civil Rights Bill,” *Los Angeles Times*, September 30, 1984, A5.

legislators) to constituents – as Jesse Helms did in the 99th Congress. In the latter case, Helms sought to attach an anti-busing rider to a bill that would reauthorize and revise the Higher Education Act of 1984.²⁰³ An attempt to table his amendment – with Helms himself offering the tabling motion – failed, 45-50.²⁰⁴ Sen. Weiker was livid: “This is a vacuous exercise, never meant to become law, but to put the screws to people on a very passionate issue.”²⁰⁵ Helms then withdrew the amendment, and acknowledged that his goal was simply “to get a vote so that it could be there for all to see how the Senate feels about forced busing.”²⁰⁶ Helms’ actions indicated that while busing was no longer an issue that would grab national attention, *positions on busing* – like positions on many other social issues of the time – would still matter for some members of Congress because they would still matter for their constituents.²⁰⁷

IV. Conclusion

The bi-partisan coalition responsible for enacting the Civil Rights Act of 1964 did not intend to pursue integration through a nation-wide busing program. As we have described, Senator Hubert Humphrey—one of the CRA’s liberal managers in the Senate—explicitly denied that the bill would attempt to create “racial balance” in schools north or south. The bill’s primary authors in the House—Emmanuel Celler and Charles McCulloch—wrote the bill in such a way so as to make clear that it would address only the formal, legal segregation that served as the foundation for the south’s “dual” education system. They did not want anybody to believe that the bill

²⁰³ Helms’ amendment was based on a portion of the Helms-Johnston amendment from years before, and would have banned federal courts from ordering the busing of schoolchildren more than 10 miles (or a 30-minute ride) round trip.

²⁰⁴ *Congressional Record*, 99th Congress, 1st Session (June 3, 1986): 12204.

²⁰⁵ *Congressional Record*, 99th Congress, 1st Session (June 3, 1986): 12193. Leslie Maitland Werner, “Senate Extends Law Providing Student Loans,” *New York Times*, June 4, 1986, A1. See also Adam Pertman, “Senate OK’s Tighter Rules for Aid to Students, Increase in Loan Funds,” *Boston Globe*, June 4, 1986, 1.

²⁰⁶ *Congressional Record*, 99th Congress, 1st Session (June 3, 1986): 12204.

²⁰⁷ This, of course, is a classic example of the “electoral connection.” See David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 2004 [1974]).

would apply to the kind of “de facto” segregation rampant throughout the north. Yet Congress did not include in the law any clear plan for acting on provisions central to its stated goal of ending so-called “separate but equal” schools. Legislators instead relied on HEW’s Office of Education, as well as the federal courts, to make critical decisions about how desegregation would be pursued and its success determined.

As soon as unelected bureaucrats and judges began trying to implement Titles IV and VI of the CRA it became clear that busing students to non-neighborhood schools was the only way to successfully desegregate. They imposed these decisions on elected officials who soon found that busing was deeply unpopular with their constituents. The conflict between judges and bureaucrats, and the political desires of elected lawmakers, served as the motivation for a nearly two-decade long battle over the meaning of one law central to the Second Civil Rights Era. We have tried to demonstrate here that one consequence of this political struggle was the collapse of the coalition responsible for passing the CRA. In its place arose a new, bipartisan and interregional bloc of legislators committed to opposing any civil rights reforms that aimed to erode structural features of racial hierarchy, like segregated suburbs and the segregated schools they produced.

In other work, we demonstrate that at the height of the First Civil Rights Era, those years following the end of the Civil War, legislators were able to push through Congress legislation aimed at reforming social, political, and economic systems in the ex-Confederacy.²⁰⁸ Black citizens, for the first time in American history, were to be guaranteed all of the rights and liberties available to their southern white counterparts. At the same time, the most committed advocates for black civil rights found themselves stymied when the laws they wrote extended to

²⁰⁸ Jenkins and Peck, *Congress and the First Civil Rights Era*.

life in the north. Through a detailed analysis of the fight over busing, we have identified a nearly identical pattern when black civil rights once again were on the congressional agenda.

Table 1: Desegregation & The Civil Rights Act of 1966

Party	Whitener Amendment	
	Yea	Nay
Northern Democrat	31	155
Southern Democrat	82	10
Republican	101	36
Total	214	201

Source: *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18738.

Table 2: Desegregation & The Civil Rights Act of 1966

Party	Griffin Amendment to ESEA (1967)	
	Yea	Nay
Northern Democrat	24	6
Southern Democrat	1	13
Republican	13	19
Total	38	38

Source: *Congressional Record*, 90th Congress, 1st Session (December 4, 1967): 34975.

Table 3: The Stennis Amendment

Party	Scott Amendment to Stennis Amendment		Javits Amendment to Stennis Amendment		Stennis Amendment	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	29	7	28	5	9	24
Southern Democrat	0	20	0	20	20	0
Republican	17	21	13	25	27	12
Total	46	48	41	50	56	36

Source: *Congressional Record*, 91st Congress, 2nd Session (February 16, 1970): 3788; 3797; 3800.

Table 4: HEW Funding

Party	To remove House-passed funding prohibition	
	Yea	Nay
Northern Democrat	25	1
Southern Democrat	1	16
Republican	16	15
Total	42	32

Source: *Congressional Record*, 91st Congress, 2nd Session (February 20, 1970): 5413.

Table 5: Office of Education Funding

	To remove House-passed funding prohibition		To remove House-passed funding prohibition	
	Yea	Nay	Yea	Nay
Party				
Northern Democrat	27	2	26	2
Southern Democrat	0	15	0	16
Republican	26	10	21	15
Total	53	27	47	33

Source: *Congressional Record*, 91st Congress, 2nd Session (June 24, 1970): 21218; 21228.

Table 6: Higher Education Act (House)

	Broomfield Amendment		Esch Revision to Ashbook Amendment		Green Amendment		Ashbrook Amendment	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Party								
Northern Democrat	56	90	98	54	57	91	53	95
Southern Democrat	50	18	9	53	57	7	5	9
Republican	129	17	39	109	117	28	124	20
Total	235	125	146	216	231	126	234	124

Source: *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39312; 39318; 39317; 39318.

Table 7: Higher Education Act (Senate)

Party	Modified Broomfield Amendment		Modified Allen Amendment		Amendment to Delay Implementation	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	27	4	32	1	5	28
Southern Democrat	38	4	2	16	16	1
Republican	13	1	31	12	21	20
Conservative	1	0	1	0	1	0
Total	79	9	66	29	43	49

Source: *Congressional Record*, 92nd Congress, 2nd Session (February 24, 1972): 5490; (February 29, 1972): 5982; 6006.

Table 8: Higher Education Act (House Motions to Instruct)

Party	Motion to Instruct (March 8)		Motion to Instruct (May 11)	
	Yea	Nay	Yea	Nay
Northern Democrat	56	99	64	87
Southern Democrat	76	9	70	8
Republican	140	42	141	30
Total	272	140	275	125

Source: *Congressional Record*, 92nd Congress, 2nd Session (March 8, 1972): 7562; (May 11, 1972): 16842.

Table 9: Equal Education Opportunities Act

Party	Ashbrook Amendment		Green Amendment	
	Yea	Nay	Yea	Nay
Northern Democrat	55	97	43	104
Southern Democrat	67	7	72	5
Republican	132	27	130	32
Total	254	131	245	141

Source: *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28873; 28907.

Table 10. Busing and the Education and Secondary Education Act Amendments, 1974

House

Party	To Adopt the Esch Amendment		To Adopt the Ashbrook Amendment	
	Yea	Nay	Yea	Nay
Northern Democrat	72	79	47	102
Southern Democrat	72	8	56	21
Republican	148	30	135	45
Independent	1	0	1	0
Total	293	117	239	168

Source: *Congressional Record*, 93rd Congress, 2nd Session (March 26, 1974): 8281-82; (March 27, 1974): 8505-06.

Senate

Party	To Table the Gurley Amendment		To Adopt the Bayh Amendment	
	Yea	Nay	Yea	Nay
Northern Democrat	33	5	19	18
Southern Democrat	0	14	12	2
Republican	14	25	23	16
Conservative	0	1	1	0
Independent	0	1	1	0
Total	47	46	56	36

Source: *Congressional Record*, 93rd Congress, 2nd Session (May 15, 1974): 14925; 14926.

Table 11. Anti-Busing Amendments, 1975

Senate

Party	To Adopt the First Biden Amendment		To Adopt the Byrd Amendment		To Adopt the Second Biden Amendment	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	14	26	11	30	29	3
Southern Democrat	15	2	17	0	0	13
Republican	20	15	21	15	15	17
Conservative	0	0	1	0	0	0
Independent	1	0	1	0	0	1
Total	50	43	51	45	44	34

Source: *Congressional Record*, 94th Congress, 1st Session (September 17, 1975): 29123; (September 24, 1974): 30045; (September 25, 1975): 30365.

House

Party	To Adopt the Flood Amendment		To Concur with Byrd Amendment	
	Yea	Nay	Yea	Nay
Northern Democrat	92	78	75	109
Southern Democrat	15	71	74	13
Republican	26	110	111	24
Total	133	259	260	146

Source: *Congressional Record*, 94th Congress, 1st Session (December 4, 1975): 38718; 38718-19.

Table 12. Anti-Busing Votes, 1977

Party	<u>House</u> To Adopt the Mottl Amendment		<u>Senate</u> To Adopt the First Brooke Amendment		<u>Senate</u> To Table the Second Brooke Amendment	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	65	109	27	14	12	28
Southern Democrat	56	26	1	15	13	1
Republican	104	22	14	21	21	14
Independent	-	-	0	1	1	0
Total	225	157	42	51	47	43

Source: *Congressional Record*, 95th Congress, 1st Session (June 16, 1977): 19409; (June 28, 1977): 21260; 21263-64.

Table 13. Anti-Busing Constitutional Amendment Votes in the House, 1979

Party	To Discharge the Judiciary Committee		To pass H.J. Res. 74 (Holt substitute)	
	Yea	Nay	Yea	Nay
Northern Democrat	54	125	49	137
Southern Democrat	49	35	45	39
Republican	124	23	114	40
Total	227	183	209	216

Source: *Congressional Record*, 96th Congress, 1st Session (July 24, 1979): 20362; 20412-13.

Table 14. Cloture Votes on Anti-Busing Amendment, 1981

Party	Cloture Vote 1		Cloture Vote 2		Cloture Vote 3		Cloture Vote 4		Cloture Vote 5	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	2	24	9	16	10	19	10	17	11	19
Southern Democrat	2	10	13	1	13	1	11	1	13	1
Republican	34	14	32	15	35	17	35	15	36	16
Independent	0	0	0	0	1	0	1	0	1	0
Total	38	48	54	32	59	37	57	33	61	36

Source: *Congressional Record*, 97th Congress, 1st Session (July 10, 1981): xxxx; (July 13, 1981): xxxx; (July 29, 1981): xxxx; (September 10, 1981): xxxx; (September 16, 1981): xxxx