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ORIGINAL ARTICLE

The Collapse of the Civil Rights Coalition: Congress and the Politics of Antibusing Legislation, 1966–86

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Abstract

The legislative coalition responsible for passing the 1964 Civil Rights Act did not set out to use busing as a means to end school segregation. When it came time to implement relevant portions of the law, however, busing became the primary method for 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 hearings, floor debate, and roll-call votes, we shed light on 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—led by southern Democrats and Republicans but joined by a pivotal group of (ostensibly liberal) northern Democrats—who were opposed to efforts by the Supreme Court and administrative state to end school segregation in the North as well as the South.

During the first half of the twentieth century, laws mandating segregation of Black and white citizens proved so durable throughout the U.S. South because they were upheld by a bipartisan consensus in Washington, D.C. The Republican Party's interest in pursuing legal reforms that would have challenged Jim Crow at the state-level had mostly waned by the 1890s. Democrats, now firmly entrenched at the state and federal levels, were wholly wedded to white supremacy.[1] Black citizens organized and advocated for their rights, but mostly

[1] See Boris Heersink and Jeffery A. Jenkins, *Republican Party Politics and the American South, 1865–1968* (New York: Cambridge University Press, 2020); Jeffery A. Jenkins and Justin Peck, *Congress and the First Civil Rights Era, 1861–1918* (Chicago: University of Chicago Press, 2021).

found themselves without allies in Congress or the White House.[2] This pattern held until the presidency of Franklin Delano Roosevelt when, thanks to bold political organizing and the nation-wide mobilization for World War II, elected officials faced renewed pressure to address the profound injustices faced by African-Americans.[3] Reflecting the changed political environment created by the war, Congress passed new civil rights laws in 1957 and 1960—the first enacted 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 were on the books.

The landmark legal enactments central to America's "Second Reconstruction" could not have passed absent the emergence of a bipartisan, interregional coalition of lawmakers who were willing to upend the white supremacist political order.[4] With southern Democrats voting as a bloc against any legislation that challenged Jim Crow's institutional supports, northern Democrats championing new legal protections for Black citizens could only succeed by winning support from conservative Republicans who represented constituencies across the northern and western portions of the country. The pro-civil rights coalition that emerged in the first half of the 1960s included liberals such as Rep. Emmanuel Celler (D-NY) and Senator Hubert Humphrey (D-MN), as well as conservatives such as Rep. Charles McCulloch (R-OH) and Senator Everett Dirksen (R-IL). The cooperative efforts of lawmakers with very different ideological perspectives helped overcome the southern filibuster in the Senate, the central obstacle faced by those seeking new civil rights laws.

By 1965, tensions internal to the congressional civil rights coalition prevented additional legislative successes. America's Second Reconstruction had, by this point, begun to lose steam.[5] In 1966, President Lyndon Johnson proposed a new civil rights bill which, among other things, would have banned discrimination in the sale or rental of houses across the United States. Lawmakers—both Democrat and Republican—representing voters beyond the Southeast responded with deep opposition. Johnson's supporters in the House muscled it through, only to see it killed by a filibuster in the Senate. Two years later, Congress did pass a new civil rights law aiming to address housing discrimination, but only because its authors wrote the bill so that white sellers could continue to legally discriminate against Black home

[2] For more on Black organizing during the early years of the twentieth century, see Megan Ming Francis, *Civil Rights and the Making of the Modern American State* (New York: Cambridge University Press, 2014); Kimberly Johnson, *Reforming Jim Crow: Southern Politics and State in the Age Before* Brown (New York: Oxford University Press, 2010).

[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: Liveright, 2013); Steven White, *World War II and American Racial Politics* (New York: Cambridge University Press, 2021).

[4] See C. Vann Woodward, *The Strange Career of Jim Crow*, Commemorative Edition (Oxford: Oxford University Press, 2001); Richard M. Valelly, *The Two Reconstructions: The Struggle for Black Enfranchisement* (Chicago: University of Chicago Press, 2004).

[5] Valelly, *The Two Reconstructions*.

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buyers.[6] Such compromises, argued Roy Wilkins, executive director of the National Association for the Advancement of Colored People (NAACP), 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."[7] Modern accounts of housing segregation bear out Wilkins' prediction.[8]

To those who believed that features of the oppressive Jim Crow regime remained in place as long as American suburbs remained segregated, Richard Nixon's victory in 1968 was a worrisome signal. Domestic political momentum was shifting toward those who were skeptical of further legal challenges to institutionalized white supremacy which had the potential to impact life outside of the South: for example, in the buying and selling of homes or in the composition of northern schools. Residential segregation and its primary consequence—*de facto* segregation of elementary and secondary schooling—were two modes of structural racism that proved immune to legal reform because rooting them out would have required new law with nationwide reach. To fully desegregate American schools would mean taking on residential segregation in northern towns and cities where many saw it as informal and, some claimed, "almost 'natural.'"[9]

Defending modes of racial segregation that were harder to attribute to formal legal enactments was a new coalition of legislators who advocated for a "color-blind defense of the consumer rights and residential privileges of middle-class white families."[10] By the late 1960s, massive resistance and explicit racism were less politically palatable, a shift that historian Matthew Lassiter attributes to the declining political power of the rural South. Instead, the growing population of suburbanites in the South began to see their preferences enacted into policy. And suburban voters, North and South, were uncomfortable with *de jure* segregation and explicit forms of racial animus. They were converging instead on a defense of the "structural mechanisms of exclusion" that did not "require individual racism … in order to sustain white class privilege and maintain barriers of disadvantage facing urban minority communities."[11] Segregated schools and the segregated neighborhoods that surrounded them were two of the most durable components of this "structural exclusion."

We examine the protracted legislative battle in Congress over school busing, a policy aiming to facilitate integration through the transportation of children

[6] Jeffery A. Jenkins and Justin Peck, "Foreshadowing the Civil Rights Counter-Revolution: Congress and the Fair Housing Act of 1968," *Du Bois Review* 14 (Fall 2022): 389–56.

[7] Ben A. Franklin, "Wilkins Presses for Open Housing," *New York Times*, July 27, 1966, 1.

[8] E.g., see Charles M. Lamb, *Housing Segregation in Suburban America Since 1960: Presidential and Judicial Politics* (New York: Cambridge University Press, 2005).

[9] 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): 158–89; 159.

[10] 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).

[11] Lassiter, *The Silent Majority*, 4.

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to schools outside their immediate neighborhoods. Decades of residential segregation ensured that even where segregated schooling was not required by law—as it was through the South—many children attended schools that were "de facto" segregated. Segregated neighborhoods meant segregated schools. The only way to avoid this outcome was to send children to different schools "across town." The controversies that grew out of busing politics have been examined by scholars of law and American politics. They have produced excellent, regionally specific analyses highlighting local conflicts between supporters and opponents of this policy.[12] Some have also written about the legal history and implications of court intervention on this issue.[13] Yet Congress' role in setting policy that impacted busing programs in the states has gone largely unexamined.

We add to the scholarship that already exists by analyzing busing policy from the congressional perspective. Doing so allows us to illustrate the power of the legislative coalition espousing what is now known as "color-blind conservatism."[14] Color-blind conservatism, according to Lassiter, captures the politics of "white, middle-class identity" which defines "freedom of choice" and "neighborhood schools" as the "core privileges of homeowner rights and consumer liberties that rejected as 'reverse discrimination' any policy designed to provide collective integration remedies for past and present policies that reinforced systematic inequality of opportunity."[15] Color-blind conservatives, both North and South, rejected congressional attempts to bring the federal government in on the side of state-level busing programs. When the Supreme Court began mandating school desegregation through busing and actors in the administrative state tried to force compliance, these antibusing lawmakers responded by withholding any aid that would have made it easier for school districts to obey. In what follows, we show what happens when the Supreme Court and the administrative state set out to create policy that is opposed, vehemently, by lawmakers in the legislative branch. When it came to busing policy, members of Congress did not fall in line. They struck back with legislation that defied the Court and the bureaucracy.

Important analyses of the 1964 CRA explain how "weaknesses" built into the bill were turned into "strong policies" anyway, thanks to efforts by the courts

[12] E.g., see Lassiter, *The Silent Majority*; Geismer, *Don't Blame Us*; Ronald P. Formisano, *Boston Against Busing: Race, Class, and Ethnicity in the 1960s and 1970s* (Chapel Hill, NC: University of North Carolina Press, 2004).

[13] Bernard Schwartz, *Swann's Way: The School Busing Case and the Supreme Court* (New York: Oxford University Press, 1986); Joyce A. Baugh, *The Detroit School Busing Case:* Miliken v. Bradley *and the Controversy Over Desegregation* (Lawrence, KS: University of Kansas Press, 2011); Matthew F. Delmont, *Why Busing Failed: Race, Media, and the National Resistance to School Desegregation* (Berkeley, CA: University of California, 2016).

[14] Matthew Lassiter, "The Suburban Origins of 'Color-Blind' Conservatism: Middle-Class Consciousness in the Charlotte Busing Crisis," *Journal of Urban History* 30 (May 2004): 549–82; 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).

[15] Lassiter, "The Suburban Origins of 'Color-Blind' Conservatism," 550.

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and political action outside of Congress.[16] We show that in the case of busing, the weak state produced weak policy. The CRA did end "de jure" segregation, but this legal pronouncement did not produce integrated schools in the South, nor did it tackle the problem of "de facto" segregation in the North and West. Instead, it shifted important policy-making decisions related to school integration onto the administrative state and the court. Once judges and bureaucrats began working to integrate the nation's schools, political support from the elected branches of government largely collapsed. By this time, the more local, "grass-roots rebellion against liberalism" identified by Thomas J. Sugrue had made its way to Washington, D.C.[17] With few tools at their disposal to act on favorable court decisions, and motivated opposition from those who did not want to bring the federal government in on the side of local busing programs, liberal lawmakers, supportive judges, and committed bureaucrats could not overcome the opposition mounted by the color-blind coalition.

By focusing on Congress' role in busing politics, we shed light on the failure of the federal government to reverse decades of segregated schooling nationwide. We explain this failure by documenting the breakdown of the coalition responsible for passing landmark civil rights laws, and its replacement by an interregional coalition of lawmakers who worked together to stymie any federal efforts to advance the cause of Black civil rights. From 1966 until the early 1990s, lawmakers operating from this perspective would determine the boundaries of new civil rights proposals.

We proceed in the following way. The "The Politics of Desegregation: 1954–66" section briefly recounts the ruling in the "Segregation Cases" of the early 1950s and then explains how Congress sought to implement them in the CRA 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. The "The Politics of Busing: 1966–86" section 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.

The Politics of Desegregation: 1954–66

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

[16] E.g., see Paul Frymer, "Acting When Elected Officials Won't: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions, 1935–1985," *American Political Science Review* 97 (August 2003): 483–99; Nicholas Pedriana and Robin Stryker, "The Strength of a Weak Agency: Enforcement of Title VII of the 1964 Civil Rights Act and the Expansion of State Capacity, 1965–1971," *American Journal of Sociology* 110 (November 2004): 709–60; Robert C. Lieberman, *Shaping Race Policy: The United States in Comparative Perspective* (Princeton, NJ: Princeton University Press, 2005); Sean Farhang, "The Political Development of Job Discrimination Legislation, 1963–1976," *Studies in American Political Development* 23 (April 2009): 23–60.

[17] Thomas J. Sugrue, "Crabgrass-Roots Politics: Race, Rights, and the Reaction Against Liberalism in the Urban North, 1940–1964," *The Journal of American History* 82 (September 1995): 551–78.

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but equal' has no place. Separate educational facilities are inherently unequal."[18] Warren's assertion explains why the court declared unconstitutional those laws mandating segregated schooling. Up to that point, "separate but equal" facilities of all kinds were understood to be wholly constitutional. Congress explicitly endorsed the principle in the early 1880s, during the first (failed) effort to appropriate federal funds to American primary and secondary schools.[19] 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 implemented across the Southeast. Now the Court judged segregation under the sanction of law (*de jure* segregation) to be harmful to the social and psychological development of those children forced into all-Black schools. Segregated schools therefore violated the "equal protection of laws guaranteed by the Fourteenth Amendment." Laws compelling segregation in twenty-one states were immediately invalidated.[20]

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 *Brown*, the court disqualified only *de jure* segregation: segregation compelled by the law. This point was further clarified in the companion case to *Brown*, *Bolling v. Sharpe* (1954). Here the court decided that "*compulsory* racial segregation in the public schools of the District of Columbia" violated the constitutional rights of Black children.[21] In neither *Brown* nor *Bolling* did the court challenge the constitutionality of *de facto* segregation: "racial imbalance which results when otherwise fair school districting is superimposed upon privately segregated housing patterns."[22]

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 later, the bipartisan but primarily northern coalition responsible for enacting the 1964 CRA 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 schools would be desegregated or how their efforts to desegregate would be verified. At first, the court delayed any discussion of implementation because of the "considerable complexity" involved. In *Brown II* (1955), the Court stipulated that,

[18] 347 U.S. 483 (1954).

[19] 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): 146–70.

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

[21] 347 U.S. 497 (emphasis ours).

[22] John Kaplan, "Segregation Litigation and the Schools, Part II: The General Northern Problem," *Northwestern University Law Review* 58 (1963–1964): 157–214; 159.

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> 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.[23]

Neither decision set out a plan to guide local school administrators or criteria for determining what counted as "good faith implementation." These were judgments that would be considered on a case-by-case basis. States subject to the Court's ruling responded by doing very little to heed *Brown*. By 1964, only 1.2% of Black children in the South attended a public school that also enrolled white students.[24]

Congress provided no guidance either. Lawmakers passed two new civil rights laws shortly after *Brown*: one in 1957 and another in 1960. Neither challenged the persistence of legal segregation throughout the South, or worked to implement *Brown*. In 1963, due in part to the violent white reaction to civil rights protests, the Ku Klux Klan's bombing of a Black church in Birmingham, and the assassination of Medgar Evers, Congress finally began to mobilize. Reps. Emmanuel Celler (R-NY)—Chairman of the House 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 convened more than 3 weeks of public hearings exploring what the law should cover.[25] The bill they eventually crafted—H.R. 7152—guaranteed new voting rights protections, prohibited segregation in "public accommodations," and created a new Equal Employment Opportunities Commission.[26] Two specific provisions of their proposal addressed the country's school system: Title IV outlawed legal segregation in public schools and 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

Although H.R. 7152 was still being designed, Reps. Celler and McCulloch made a decision that proved highly consequential to the coming debate over busing. Deferring to the preferences of northern lawmakers, they crafted the bill to address only *de jure* school segregation in the South and not seek to reverse "racial imbalances" in northern schools even though they were also highly segregated. Indeed, in February 1958, *The Crisis* published a report by the Chicago

[23] 349 U.S. 294.

[24] Rosenberg, *The Hollow Hope*, 50.

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

[26] The bill itself is summarized in Whalen and Whalen, *The Longest Debate*, 59.

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branch of the NAACP estimating that "91 percent of the Chicago elementary schools were *de facto* segregated in the spring semester of 1957."[27] By 1960, the NAACP had filed lawsuits against the school systems in different northern cities alleging unconstitutional forms of segregation.[28] 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).[29] These complaints were mostly ignored because, as both judges and legislators argued, segregation in the North was not compelled by law. Residential segregation was treated as just one consequence of "customary" housing choices made by free citizens. Because it followed from the private behavior of real estate agents, buyers, and purchasers, rather than the state, it could not be reversed by law. 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 filed a lawsuit challenging *de facto* segregation. 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.[30] 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 segregation of this kind did not violate the Constitution. From the perspective of Reps. McCulloch and Celler, law and politics aligned on this point. When H.R. 7152 moved over to the Senate, it was endorsed by Everett Dirksen (R-IL) in part because he was "convinced that it would not apply in the North."[31] As 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."[32] The House passed the initial version of H.R. 7152 on February 10, 1964, by an overwhelming vote of 290-130.[33]

In the Senate, H.R. 7152 was also managed by one Democrat and one Republican: Hubert Humphrey (D-MN) and Thomas Kuchel (R-CA). Similar to their House counterparts, Humphrey and Kuchel made clear 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

[27] "De Facto Segregation in the Chicago Public Schools," *The Crisis*, February 1958, 88.

[28] Lassiter, *The Silent Majority*, 14.

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

[30] Ronald D. Cohen, "The Dilemma of School Integration in the North: Gary, Indiana, 1945–1960," *Indiana Magazine of History* 82 (June 1986): 161–84; 182.

[31] Orfield, *The Reconstruction of Southern Education*, 174.

[32] Whalen and Whalen, *The Longest Debate*, 33.

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

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to overcome racial imbalance."[34] In response to a question from Robert Byrd (D-WV) about the busing of students, Humphrey argued,

> 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.[35]

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.[36]

Statements from the bill's bipartisan cosponsors were unable to put at ease those who feared "forced integration." Rather than simply voting on the version of H.R. 7152 passed by the House, the Senate 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.[37]

Senator Jacob Javits (R-NY), an outspoken supporter of H.R. 7152, insisted that this new language merely reaffirmed that the bill would not apply to "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."[38] Going further, Javits added into the *Congressional Record* an analysis of the bill produced by HEW in which those who would be responsible for administering the law stipulated that "De facto school segregation brought about by residential patterns and bona fide zoning on the neighborhood school principle does not violate the constitutional rights of Negro students."[39]

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

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

[36] In Mississippi, e.g., 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), 44.

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

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

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

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Southern members were clear that, as they saw it, H.R. 7152 was written to exempt 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." He then warned: "But make no mistake about it, 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 and the 'busing' of students."[40] Strom Thurmond (R-SC) 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."[41] These were accurate predictions.

In 1964, at the height of the Second Civil Rights Era, northern members of Congress worried about challenging segregation in their own communities. To declare that "racially imbalanced" public schools were unconstitutional would amount to an attack on "neighborhood schools" that were divided by race even in the absence of laws mandating separation.[42] Recognizing the unwillingness of their northern colleagues to challenge *de facto* segregation, southern members correctly assessed that any discussion of mandated integration in the North would engender 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

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.[43] This provision of the law 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

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

[41] *Congressional Record*, 88th Congress, 2nd Session (June 18, 1964): 14311.

[42] 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).

[43] For a summary of Title VI, see *Congressional Record*, 88th Congress, 2nd Session (March 30, 1964): 6543–47.

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after being approved by the president.[44] 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. Although 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 inserted loopholes that would prove self-defeating to the bill's stated aims. By making agencies responsible for defining and measuring segregation, Congress chose not to set out a clear standard for deciding when a school district was discriminating in ways that violated the law. Senator Albert Gore (D-TN) used this feature of the bill as one justification for his opposition to 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 "leaving to those who administer Title VI the authority to prescribe the acts that would be prohibited."[45] Gore's assessment was correct. Congress had delegated the authority to determine the meaning of "discrimination" and "segregation" to HEW's Office of Education.

Those working in the Office of Education when the 1964 CRA was passed did not, however, 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."[46] HEW's General Counsel was himself worried about Congress' decision to delegate on this subject, telling Gary Orfield that legislators were forcing "the department into extremely sensitive areas of regulation."[47] By saying nothing, Congress forced unelected bureaucrats working in the Office of Education to either improvise their own standard or rely on one crated by unelected judges.[48] What "desegregation" meant in practice shifted multiple times throughout 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, that district could be said to have desegregated.[49] In a 1965 article published in the *Saturday Review*, for example, G.W. Foster—an administrator 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." Foster also concedes that "it is difficult to advise

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

[45] *Congressional Record*, 88th Congress, 2nd Session (April 25, 1964): 9083–84.

[46] Orfield, *The Reconstruction of Southern Education*, 60.

[47] Orfield, *The Reconstruction of Southern Education*, 59.

[48] Orfield, *The Reconstruction of Southern Education*, 81.

[49] "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, A22.

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with certainty concerning the rate at which desegregation must be completed."[50] A year after the CRA was enacted, in other words, administrators responsible for implementing it still had not developed a clear standard for determining how to judge the pace or quality of desegregation.

"Freedom of choice" plans, submitted to HEW for approval by local school districts, soon became the basis for "one-way integration of individual black students into white schools." White citizens both North and South believed that integration carried out this way was "race neutral" because the policy allowed Black children to attend white schools. As Lassiter explains though, freedom of choice largely preserved the racial composition of "neighborhood schools" which were themselves a reflection of residential segregation.[51] 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. According to Orfield, "citizens and the political leadership in the South" came to believe that "freedom of choice was all that the Civil Rights Act required."[52]

By 1966, however, HEW came to doubt the efficacy of freedom of choice plans. Administrators revised the guidelines to say that allowing Black children the option to enroll in a white school was not itself sufficient to demonstrate good faith implementation of the 1964 CRA. Instead, HEW would assess individual school districts 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 explained, "is the extent to which Negro or other minority group students have in fact transferred from segregated schools."[53] HEW's more stringent guidelines were subsequently endorsed by the Supreme Court in *Green v. County School Board of New Kent County* (1968), when the Court held that desegregation by freedom of choice plans was not a valid means for ending the dual school system. Once the courts and HEW made clear that compliance with the 1964 CRA required demonstrable progress toward school integration, busing became the only option. For only by busing students could lawmakers integrate schools while leaving untouched the segregation that characterized so many of the fastest growing areas of the country.

The Politics of Busing: 1966–86

Busing fights during the Johnson era

The congressional fight over federal busing policy began in earnest in the spring of 1966. On May 9, during consideration of a new CRA, Senator Sam

[50] G. W. Foster, Jr., "Title VI: Southern Education Faces the Facts," *Saturday Review*, March 20, 1965: 60–61; 76–79.

[51] Lassiter, *The Silent Majority*, 45–46.

[52] Orfield, *The Reconstruction of Southern Education*, 81.

[53] "General Statement of Policies Under Title VI," A32–33. "The focus of enforcement changed from the surface equity of the process to the nature of the result." Orfield, *The Reconstruction of Southern Education*, 82.

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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 contrary to 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 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."[54] If passed, this amendment would have allowed states to continue receiving federal aid while a time-consuming and expensive legal process seeking to demonstrate discriminatory intent could play itself out.

A Senate filibuster brought down the 1966 CRA before the Senate could vote on Ervin's amendment. But in August 1966, Rep. Basil Whitener (D-NC) introduced an amendment to the House version of the bill that was an almost word-for-word copy of Ervin's proposal. Whitener also adopted Ervin's rationale by invoking Hubert Humphrey's defense of *de facto* segregation, when he proclaimed HEW's new guidelines to violate Congress' intent when it passed the CRA. Whitener presented his amendment as simply an effort to shore up "free choice" programs.[55] He was supported on the floor by Rep. Jamie Whitten (D-MS), who described it as defense against "forced integration."[56] Rep. 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."[57] Despite minimal pushback from opponents of Whitener's amendment, it failed narrowly on a teller vote, 127-136.[58]

Having lost by such a small margin, Whitener then 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. In this case, Whitener sought 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."[59] Whitener was forcing Black residents to choose between segregated schools and the threats that

[54] *Congressional Record*, 89th Congress, 2nd Session (May 9, 1966): 10061–62.
[55] *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18701–2.
[56] *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18703.
[57] *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18704.
[58] *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18715.
[59] *Congressional Record*, 89th Congress, 2nd Session (August 9, 1966): 18722.

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would come should any resident out themselves as a potential plaintiff in a lawsuit against the state or locality.

The House passed Whitener's amendment 214-201.[60] As Table 1 makes clear, it won support from twenty-nine nonsouthern Democrats and 102 of 137 voting Republicans.[61] Momentum was building in opposition to the new Office of Education guidelines, leading Senate Majority Leader Mike Mansfield (D-MT) to tell the *New York Times* in September that HEW was moving "too fast" in its effort to integrate.[62] The support Whitener's amendment received from Republicans and nonsouthern Democrats was a warning that the pro-civil rights coalition in the House was now under pressure.

By the end of 1967, a similar dynamic emerged in the Senate. In December, Everett Dirksen (R-IL) reminded fellow senators 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 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 (ESEA), which had passed two years prior. His comments served as preamble to an amendment he introduced prohibiting money appropriated by the bill to pay "any costs of the assignment or transportation of students ... to achieve racial balance."[63] In his effort to keep federal money from being spent on busing, Dirksen was joined 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 they supported was being used to achieve ends they had explicitly disclaimed.[64]

Dirksen's amendment met opposition from senators who, at this point, were still willing to defend busing as the best way to actually desegregate. 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.[65] Clifford

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

[61] Who were these twenty-nine nonsouthern Democrats? We can use NOMINATE scores, which represent a measure of ideology (or "central tendencies") for members of Congress that is now ubiquitous in the political science literature. See Keith T. Poole and Howard Rosenthal, *Congress: A Political-Economic History of Roll Call Voting* (New York: Oxford University Press, 1997). For a useful introduction to NOMINATE, see Phil Everson, Rick Valelly, Arjun Vishwanath, and Jim Wiseman, "NOMINATE and American Political Development: A Primer," *Studies in American Political Development* 30 (2016): 97–115. A roll-call analysis (logistic regression) of nonsouthern Democrat votes finds that the first (positive) and second (positive) NOMINATE dimensions are statistically significant, with nonsouthern Democratic members nearest to the Republicans on the first dimension and nearest to the southern Democrats on the second dimension being more likely to support the Whitener amendment. Stated differently, these were the nonsouthern Democrats who were more conservative on each NOMINATE dimension.

[62] John Herbers, "Mansfield Asks Slowdown on School Desegregation," *New York Times*, September 28, 1966, 1.

[63] *Congressional Record*, 90th Congress, 1st Session (December 4, 1967): 34964.

[64] *Congressional Record*, 90th Congress, 1st Session (December 4, 1967): 34965–66.

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

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Table 1. Desegregation and the CRA of 1966

	Whitener Amendment	
Party	Yea	Nay
Northern Democrat	29	155
Southern Democrat	83	11
Republican	102	35
Total	214	201

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

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.[66] 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.[67]

Making federal expenditures contingent in this way failed to help Griffin's amendment win a majority in the Senate. When it came up for a vote, the Senate deadlocked, 38-38. As a result, the amendment failed. Table 2 breaks the vote down. In this case, nineteen of thirty-one voting Republicans sided with Dirksen's effort to ban federal appropriations for busing. They were aided by thirteen southern Democrats and six Democrats from West Virginia, Ohio, Arizona, Nevada (two), and New Mexico.[68] As the 1968 election approached, political trends were moving against those who supported HEW's effort to end segregation. In Congress, a bipartisan coalition was forming to prevent the federal government from endorsing school busing.

On the presidential 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 that he would not tolerate freedom of choice plans acting as a "subterfuge for segregation." 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.[69] Nixon repeated this position in an October 27 interview on "Face

[66] *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.

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

[68] Based on NOMINATE scores, these six—Robert Byrd (WV), Frank Lausche (OH), Carl Hayden (AZ), Howard Cannon (NV), Alan Bible (NV), and Clinton Anderson (NM)—were the most conservative nonsouthern Democratic members of the 90th House on both the first dimension (closest to the Republicans) and the second dimension (closest to the southern Democrats).

[69] "Nixon Against Busing," *Oakland Post*, October 9, 1968, 1.

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Table 2. Desegregation and the CRA of 1968

	Griffin Amendment to ESEA (1967)	
Party	Yea	Nay
Northern Democrat	24	6
Southern Democrat	2	13
Republican	12	19
Total	38	38

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

the Nation" when he attacked "compulsory integration."[70] 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 the methods adopted for desegregating schools.[71]

Busing fights during the Nixon era

At the end of the 1960s, popular majorities in Congress may have been moving toward Nixon's position, but the Supreme Court was not. In 1968 and 1969, two important decisions forced busing back on the congressional agenda. In the first, *Green v. County School Board of New Kent County* (1968), a unanimous Court held that "school systems which had been segregated by official action were obligated to accomplish actual integration."[72] The freedom of choice plans favored by the emergent "color-blind" coalition in Congress were now judged by the Court to be an inadequate response to *de jure* segregation. One year later, in *Alexander v. Holmes County Board of Education* (1969), another unanimous ruling called for an immediate end to the system of separate schools existing across the South. Writing for the majority, Chief Justice Warren Berger—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."[73] By early 1970, court-ordered busing was a reality.

In the aftermath of these rulings, members of Congress who had already taken an antibusing position did not simply give up their opposition. Instead, the Court motivated them to double-down on their prior efforts. Senator John Stennis (D-MS) made the first move during a debate over

[70] "Face the Nation," October 27, 1968.

[71] Lassiter, *The Silent Majority*, 237.

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

[73] 396 U.S. 19.

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legislation to extend the ESEA when he introduced an amendment that would end the legal distinction between *de jure* and *de facto* segregation. If enacted, this amendment would have required northern school districts to follow the same integration rules that governed in the South.[74] According to Stennis, "equitable" application of the 1964 CRA's antidiscrimination provisions would allow citizens outside the South to "find out whether they want this system of integration."[75] Stennis believed—rightly—that northern citizens would turn against busing if it was imposed upon their children.

Complicating matters further, the Stennis amendment was cosponsored by Abe Ribicoff (D-CT), a northern liberal. Ribicoff saw the Stennis proposal as a way to "push Senate liberals toward more dramatic action."[76] 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 explained, "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."[77] Ribicoff believed that the federal government must step in to end *de facto* segregation in the North, and he 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."[78]

The Stennis amendment put supporters of civil rights in an awkward political position. Most understood that northern communities would not tolerate what the amendment aimed to accomplish. To vote against the amendment, however, would mean taking a stand against a legal effort to desegregate obviously segregated northern schools. 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."[79] Senator Hugh Scott (R-PA) followed this line by introducing a substitute amendment that would 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.[80] As Table 3 illustrates, it failed because eight northern Democrats and twenty-two Republicans voted with southerners. Senator Jacob Javits (R-NY) then adopted a similar approach in an amendment that would change the wording of the

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

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

[76] 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): 304–25; 313.

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

[78] Peter Milius, "Racial Isolation Assailed," *Washington Post*, November 25, 1969, A1.

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

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

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Table 3. Stennis Amendment

	Scott Amendment to Stennis Amendment		Javits Amendment to Stennis Amendment		Stennis Amendment	
Party	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	27	8	27	6	11	23
Southern Democrat	1	18	1	18	18	1
Republican	18	22	13	26	27	12
Total	46	48	41	50	56	36

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

Stennis amendment to protect the legal distinction between northern and southern segregation. Javits' amendment failed by a larger margin (41-50) than the Scott substitute.[81]

Finally, the Senate voted on the Stennis amendment itself. It passed, 56-36, winning support from eleven northern Democrats and twenty-seven Republicans.[82] The coalition of thirty-six who opposed it showed that many northern legislators refused to support action that would take on the kind of segregation present in their communities. For now, they were saved by changes made to the bill in conference. As Joseph Crespino explains, conferees added provisions to the final version of the ESEA reauthorization which voided the policy implications of the Stennis amendment.[83] 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 that would have prohibited any money from being spent on busing programs in the South.[84] In Table 4 (column 1), we show that on this vote, the civil rights coalition held together: twenty-five northern Democrats and sixteen of thirty-one voting Republicans defeated a conservative coalition of fifteen southern Democrats, fifteen Republicans, and two nonsouthern Democrats. In June 1970, a larger coalition emerged to remove similar language that the House had written into a bill funding HEW's Office of Education—as more Republicans signed on (see Table 4,

[81] *Congressional Record*, 91st Congress, 2nd Session (February 16, 1970): 3788–89; 3797. The eight northern Democrats were Anderson (NM), Bible (NV), Byrd (WV), Cannon (NV), Dodd (CT), Mansfield (MT), Randolph (WV), and Ribicoff (CT).

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

[83] Crespino, "The Best Defense is a Good Offense," 318.

[84] *Congressional Record*, 91st Congress, 2nd Session (February 28, 1970): 5413.

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Table 4. HEW Funding

	To Remove House-passed Funding Prohibition (Forced Busing)		To Remove House-passed Funding Prohibition (No Choice of Public School)		To Remove House-passed Funding Prohibition (Forced Busing)	
Party	Yea	Yea	Yea	Nay	Yea	Nay
Northern Democrat	25	25	25	2	25	4
Southern Democrat	1	1	1	15	1	14
Republican	16	16	27	10	21	15
Total	42	42	53	27	47	33

Source: *Congressional Record*, 91st Congress, 2nd Session (February 28, 1970): 5413; (June 24, 1970): 21218; 21228.

columns 2 and 3).[85] What these voting results show, overall, is that the pro-civil rights coalition eroded more quickly in the House than the Senate.

The next period of intense debate over busing occurred in late-1971, motivated once again by the Supreme Court. In *Swann v. Charlotte-Mecklenburg Board of Education*—another unanimous decision—the justices upheld a lower-court ruling which imposed a busing program on school children in Charlotte. In so doing, they made clear that busing would follow any showing of *de jure* segregation in a school district. As Gary Orfield explains, 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."[86]

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 the Detroit metropolitan region," he wrote.[87] 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, during House debate over legislation to extend the Higher Education Act (H.R. 7248), 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."[88] As a representative from Michigan, Broomfield sought to prevent the busing program mandated

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

[86] Orfield, "Congress, the President, and Anti-Busing Legislation," 101.

[87] Roth quoted in Lassiter, *The Silent Majority*, 304.

[88] *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39302. Originally passed in 1965 as part of Johnson's Great Society program, the Higher Education Act provided federal funds to

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by Judge Roth. Broomfield's amendment was cosponsored by five Democrats from the Michigan delegation—William D. Ford, Martha Griffiths, James O'Hara, Lucien Nedzi, and John Dingell. Gerald Ford (R-MI) also spoke for it.[89] These supporters backed Broomfield even though the language of his amendment was "drafted so broadly" that it would have also prevented the implementation of busing programs where it was clear that a school system was intentionally segregating students.[90]

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. Two Black House members took the lead. Rep. Shirley Chisholm (D-NY) condemned supporters 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.[91] Rep. Charlie Rangel (D-NY) warned about what could happen if members of Congress who disagreed with a particular court order simply "legislated a new one."[92] Regardless of these concerns, Broomfield's amendment passed overwhelmingly.[93] As Table 5 (column 1) makes clear, Republicans and southern Democrats backed the amendment by huge margins. Most importantly, however, almost 40% of those nonsouthern Democrats who voted also supported Broomfield's proposal.

Opposition to busing from members of the pro-civil rights coalition reemerged during a debate over an amendment offered by Rep. John Ashbrook (R-OH). His proposal blocked federal funds from being used for the purpose of busing.[94] States and cities could continue busing if they chose, but they would need to pay all of the costs associated with it. Fellow Republican Marvin Esch (R-MI) tried to limit the impact of Ashbrook's proposal by stipulating 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).[95] Esch's revision failed in a lopsided vote, 146-216 (Table 5, column 2). Rep. Edith Green (D-OR) then expanded the Ashbrook amendment by adding language preventing the federal government from requiring states to implement desegregation orders pursuant to the 1964 CRA. Even though it undermined a

colleges and universities, as well as some financial assistance to students who might not otherwise have been able to afford college.

[89] *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39304. Only months later, segregationist governor George Wallace (AL) would win the Democratic Primary in Michigan. Wallace received 51% of the vote, beating McGovern and Humphrey—the Democratic Party's two leading contenders for the nomination—by a substantial margin. The Michigan delegation's behavior here suggests that they understood the racial backlash brewing in their state.

[90] Orfield, "Congress, the President, and Anti-Busing Legislation," 105.

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

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

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

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

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

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Table 5. Higher Education Act (House)

	Broomfield Amendment		Esch Revision to Ashbrook Amendment		Green Amendment		Ashbrook Amendment	
Party	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	56	90	94	54	55	90	51	94
Southern Democrat	50	18	13	55	59	8	58	10
Republican	129	17	39	107	117	28	125	20
Total	235	125	146	216	231	126	234	124

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

central goal of the CRA, Green's amendment passed, 231-126 (Table 5, column 3).[96] Soon thereafter, the House voted to support the now-expanded Ashbrook amendment by an almost identical margin, 234-124 (Table 5, column 4).[97] All of these votes were "conservative coalition" votes: majorities of both southern Democrats and Republicans opposed a majority of northern Democrats. More broadly, by the end of 1971, a bipartisan, interregional alliance had emerged in the House to stand in the way of all federal support for busing.

The growing popular backlash against "forced busing" made it an appealing campaign issue for Richard Nixon's 1972 reelection. Senator Stennis (D-MS) telegraphed the strategy opponents would pursue in a floor speech on February 24, 1972: "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."[98] 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 endorsed this strategy in a March 17 address, during which he called on the legislative branch to "establish uniform national criteria" for determining when a school was practicing racial segregation. In the same address he also called for a moratorium on all busing orders until the legislative branch handed down specific guidelines.[99] The Nixon administration appeared to be following the House's lead by forcing members to either implement a policy

[96] *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39317.
[97] *Congressional Record*, 92nd Congress, 1st Session (November 4, 1971): 39318.
[98] *Congressional Record*, 92nd Congress, 2nd Session (February 24, 1972): 5377.
[99] "Presidential Statement to Congress: Nixon on School Busing, 1972," *CQ Almanac 1972*, 28th ed., 50–56 (Washington, DC: Congressional Quarterly, 1973), https://library.cqpress.com/cqalmanac/document.php?id=cqal72-868-26690-1251868.

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that would be imposed on North and South alike, or to vote down busing altogether. 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, passed by the House, which included the Ashbrook–Green amendment. Senators Mike Mansfield (D-MT) and Hugh Scott (R-PA), who opposed the House bill, were pushing their own version. Their substitute did not include the Ashbrook–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.'"[100]

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.[101] 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 6, column 1).[102] Next, 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 6, column 2).[103] The Senate also voted down—by a small margin—an effort to extend the moratorium on court-ordered busing plans until the Supreme Court could rule on them one-by-one (Table 6, column 3).[104] Here, Republicans were almost evenly split, but northern Democrats provided enough opposition to defeat the amendment. Overall, 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.[105]

The House and Senate now stood some distance apart. When the Senate-passed version returned to the lower chamber, members immediately condemned its "weakened" antibusing language. Rep. Broomfield, in particular, took issue with the changes made to his amendment, claiming that "The Senate ... has adopted a version of our amendment which is both inadequate in scope and grossly inequitable in application." According to Broomfield, the moratorium language written into the Senate bill would only apply in those "limited

[100] *Congressional Record*, 92nd Congress, 2nd Session (February 24, 1972): 5454.
[101] *Congressional Record*, 92nd Congress, 2nd Session (February 24, 1972): 5476–90.
[102] *Congressional Record*, 92nd Congress, 2nd Session (February 24, 1972): 5490.
[103] *Congressional Record*, 92nd Congress, 2nd Session (February 29, 1972): 5982.
[104] *Congressional Record*, 92nd Congress, 2nd Session (February 29, 1972): 6006.
[105] *Congressional Record*, 92nd Congress, 2nd Session (March 1, 1972): 6277.

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Table 6. Higher Education Act (Senate)

	Modified Broomfield Amendment		Modified Allen Amendment		Amendment to Delay Implementation	
Party	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	27	3	33	1	6	27
Southern Democrat	11	5	2	15	14	2
Republican	39	1	30	12	21	20
Conservative	1	0	1	0	1	0
Independent	1	0	0	1	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.

situations in which a court might order transfers across school district lines." Furthermore, he held that the Senate bill introduced "a host of inequities" in how it handled 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.[106]

Accordingly, Broomfield and other House members 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 bill.[107] The House passed his motion to instruct by a 272-140 vote.[108] In May, as the conference committee was nearing completion, the House once again tried to insist on its own version. By a vote of 275-125 vote, a decisive majority once again endorsed the blanket prohibitions on federal support for busing mandated by the Ashbrook–Green amendment.[109] Table 7 illustrates the vote coalitions for both motions to instruct. These were once again conservative coalition votes: large majorities of both southern Democrats and Republicans opposed majorities of northern Democrats. And although northern Democrats, as a whole, continued to support busing, between 36 and 42% of them took an antibusing position.[110]

[106] *Congressional Record*, 92nd Congress, 2nd Session (March 8, 1972): 7555.
[107] *Congressional Record*, 92nd Congress, 2nd Session (March 8, 1972): 7540–62.
[108] *Congressional Record*, 92nd Congress, 2nd Session (March 8, 1972): 7562.
[109] *Congressional Record*, 92nd Congress, 2nd Session (May 11, 1972): 16842.
[110] A roll-call analysis (logistic regression) of nonsouthern Democrat votes finds that the first (positive) and second (positive) NOMINATE dimensions are statistically significant, with nonsouthern Democratic members nearest to the Republicans on the first dimension and nearest to the southern Democrats on the second dimension being more likely to support the Whitener amendment. Stated differently, these were the nonsouthern Democrats who were more conservative on each NOMINATE dimension.

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Table 7. Higher Education Act (House Motions to Instruct and Final Passage)

	Motion to Instruct (March 8)		Motion to Instruct (May 11)		Final Passage	
Party	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	57	101	65	88	108	44
Southern Democrat	72	9	70	7	20	60
Republican	143	30	140	30	90	76
Total	272	140	275	125	218	180

Source: *Congressional Record*, 92nd Congress, 2nd Session (March 8, 1972): 7562; (May 11, 1972): 16842; (June 6, 1972).

In the end, as Senator Peter Dominick (R-CO) explained on the Senate floor 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."[111] Although the Ashbrook–Green amendment was not included in the compromise measure drafted in the Senate, the bill 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.[112]

These changes drew opposition from a few liberals, such as Senator Ted Kennedy (D-MA), who expressed opposition to any version of the Broomfield language. Also opposed were conservatives such as Senator Robert Griffin (R-MI), who sought language closer to what the House had passed. On May 23, Griffin forced the Senate to vote on a motion to recede from the modified Broomfield language. His motion failed, 44-26.[113] Then, on May 24, the Senate passed the Mansfield–Scott substitute, 63-15.[114] 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.[115] Here, majorities of northern Democrats and Republicans opposed a majority of southern Democrats.

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," 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

[111] *Congressional Record*, 92nd Congress, 2nd Session (May 24, 1972): 18855.
[112] "Congressional Anti-Busing Sentiment Mounts in 1972."
[113] *Congressional Record*, 92nd Congress, 2nd Session (May 23, 1972): 18449.
[114] *Congressional Record*, 92nd Congress, 2nd Session (May 24, 1972): 18862.
[115] *Congressional Record*, 92nd Congress, 2nd Session (June 8, 1972): 20340.

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schools that are required to desegregate with busing to be required only as a last resort, and then under strict limitations"; and "provide for concentration of federal school-aid funds specifically on the areas of greatest educational need."[116] This was, in short, an effort to avoid substantial desegregation. To soften that blow, Nixon proposed more aid to schools serving nonwhite students.

The House acted on Nixon's proposal by writing a bill (H.R. 13915) stipulating that any school's failure to "attain a balance, on the basis of race, color, sex, or national origin of students ... shall not constitute a denial of opportunity." Students 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."[117] 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."[118] According to Rep. Paul Quie (R-MN), the busing language in the bill made it "about as controversial" as any legislation "this body has considered."[119] Rep. William McCulloch (R-OH)—coauthor of the 1964 CRA—called it "repugnant to the Constitution."[120]

Despite the already-strong antibusing language written into H.R. 13915, some House members remained unsatisfied—in particular, once again, Reps. Ashbrook and Green. To further clarify his deep opposition to busing for the purposes of integration, Rep. Ashbrook offered an amendment making the "neighborhood school," as he described it, "the normal and appropriate place to assign a student."[121] 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.[122] Despite its extremely restrictive language, Ashbrook's amendment passed, 254-131.[123] As Table 8 (column 1) indicates, this was a conservative coalition vote: large majorities of both southern Democrats and Republicans opposed a majority of northern Democrats. 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.[124]

Then, in a 245-141 vote, the House adopted another Green amendment to prevent the Attorney General from reopening past desegregation cases to

[116] "Presidential Statement to Congress: Nixon on School Busing, 1972," *CQ Almanac*.
[117] *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28883–84.
[118] *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28836.
[119] *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28838.
[120] *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28850.
[121] *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28871.
[122] *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28871.
[123] *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28873.
[124] *Congressional Record*, 92nd Congress, 2nd Session (August 17, 1972): 28907.

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Table 8. Equal Education Opportunities Act

	Ashbrook Amendment		Green Amendment	
Party	Yea	Nay	Yea	Nay
Northern Democrat	54	99	44	107
Southern Democrat	68	5	71	4
Republican	132	27	130	30
Total	254	131	245	141

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

ensure that the school districts in question remained complaint with existing antisegregation laws (Table 8, column 2).[125] This, again, was a conservative coalition vote: large majorities of southern Democrats and Republicans opposed a (larger) majority of northern Democrats. When the House voted, 283-102 to pass H.R. 13915, it went on record supporting the "strongest" antibusing language "ever passed."[126]

By this time, the Senate had already acted on multiple occasions to rein in antibusing 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 are debating is the illegality of segregation."[127]

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. Each time, a majority of the Senate voted in support of cloture—but as the data in Table 9 indicate, it fell well short of the 2/3 necessary, as a large majority of northern Democrats voted in opposition.[128] In sum, the same coalition that had effectively defanged House antibusing language now came together to kill Nixon's "Equal Opportunities bill."

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

[126] "Congressional Anti-Busing Sentiment Mounts in 1972," *CQ Almanac 1972*, 28th ed., 119–20 (Washington, DC: Congressional Quarterly, 1973), http://library.cqpress.com/cqalmanac/cqal72-1250143.

[127] *Congressional Record*, 92nd Congress, 2nd Session (October 6, 1972): 34265–68.

[128] *Congressional Record*, 92nd Congress, 2nd Session (October 10, 1972): 34504; (October 11, 1972): 34788; (October 12, 1972): 35330. Who were the seven northern Democrats who voted in support of cloture? They were Henry "Scoop" Jackson (WA), William Proxmire (WI), Jennings Randolph (WV), Robert Byrd (WV), Clinton Anderson (NM), Howard Cannon (NV), and Alan Bible (NV). These were

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Table 9. Cloture Votes on Equal Education Opportunities Act

	Cloture Vote 1		Cloture Vote 2		Cloture Vote 3	
Party	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	6	22	7	24	7	25
Southern Democrat	13	3	15	2	15	1
Republican	24	12	25	13	25	12
Conservative	1	0	1	0	1	0
Independent	1	0	1	0	1	0
Total	45	37	49	39	49	38

Source: *Congressional Record*, 92nd Congress, 2nd Session (October 10, 1972): 34504; (October 11, 1972): 34788; (October 12, 1972): 35330.

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."[129] The only meaningful role antibusing played in Congress during the first half of the 93rd Congress (1973–74) was through amendments introduced in 1973, after the Arab oil embargo had taken hold. Busing opponents used fuel scarcity as a pretext to undermine school integration. For example, Sen. Jesse Helms (R-NC) twice attempted to add amendments to promote the conservation of gasoline through the reduction in school busing. He failed each time.[130]

On the House side, John Dingell, Jr. (D-MI) offered a similar amendment, proposing to 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.[131] The National Energy Emergency Act

among the most conservative of the northern Democrats, based on NOMINATE scores (closest to the Republicans on the first dimension and to the southern Democrats on the second dimension).

[129] Gary Orfield, *Must We Bus?*, 255.

[130] 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.

[131] 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

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(H.R. 11450), with the Dingell amendment attached, would go on to pass in the House. Ultimately, however, it was 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 ESEA. Although 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.[132] On March 26, 1974, Rep. Marvin Esch (R-MI) began the antibusing 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. 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,[133] the Esch amendment passed, 293-117.[134] The following day, Rep. John Ashbrook (R-OH) followed up on Esch's efforts by (once again) offering an amendment to prohibit the use of any federal funds to implement busing plans—even when there was an express written request by the appropriate school board. This too passed, 239-168.[135] As the top portion of Table 10 indicates, both cases were classic conservative coalition votes: large majorities of southern Democrats and Republicans opposed a majority of northern Democrats. With the two antibusing amendments attached, the overall bill (H.R. 69 as amended) passed easily, 380-26.[136]

Busing also emerged as an issue in the Senate proceedings on the amendments to the ESEA (S. 1539). The antibusing position would be anchored by Sen. Edward Gurney (R-FL), who offered an amendment similar to 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)—the first Black senator since Blanche Bruce (R-MS) during the

allocation of petroleum for school busing where a busing plan 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.

[132] Orfield, *Must We Bus?*, 259.

[133] *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.

[134] *Congressional Record*, 93rd Congress, 2nd Session (March 26, 1974): 8281–82.

[135] *Congressional Record*, 93rd Congress, 2nd Session (March 27, 1974): 8507–8.

[136] *Congressional Record*, 93rd Congress, 2nd Session (March 27, 1974): 8535–36.

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

House

	To Adopt the Esch Amendment		To Adopt the Ashbrook Amendment	
Party	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): 8505–6.

Table 10a.

Senate

	To Table the Gurley Amendment		To Adopt the Bayh Amendment	
Party	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.

Reconstruction era—leading those members willing to defend the program.[137] 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."[138] Finally, Sen. Jacob Javits moved to lay Gurney's amendment on the table, which passed 47-46.[139]

[137] For various remarks, see *Congressional Record*, 93rd Congress, 2nd Session (May 15, 1974): 14812–925.

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

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

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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. Bayh'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.[140] The details of the votes appear in the bottom portion of Table 10. Although the tabling vote broke down in typical 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.[141]

With two different chamber bills passed, a conference committee was appointed to iron out the differences.[142] Although 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. Although 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.[143] The conference bill passed easily in each chamber,[144] and President Gerald Ford signed it into law.[145]

House conservatives were not pleased. Rep. Ashbrook captured their thinking: "On a scale of one to 100 we gave up 95 points and they gave up five."[146] 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:

> 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

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

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

[142] *Congressional Record*, 93rd Congress, 2nd Session (June 5, 1974): 17881–82.

[143] E.g., 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."

[144] 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.

[145] 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.

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

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> 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.[147]

The *Milliken v. Bradley* (1974) ruling effectively allowed segregation if it was not an explicit policy of each school district, thereby endorsing the supposed distinction between *de jure* and *de facto* segregation. 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 antibusing 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."[148]

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 complained that the courts were not following the law he signed in August 1974.[149] 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. The Biden–Byrd amendments indicate that the Senate was now coming to mirror the House's more conservative position on busing.

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 busing,[150] 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

[147] "Education and Science 1974: Overview." *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-IN) said of the Supreme Court ruling." Washington, "House Votes Anti-Busing School Bill."

[148] Quoted in Delmont, *Why Busing Failed*, 141.

[149] 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.

[150] 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.

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characterized this an antibusing amendment because it would prevent HEW from mandating busing.[151] (Biden was also clear that his amendment would not impinge on the federal courts.) Despite senators being confused about the language, and despite opposition from Sens. Brooke, Hubert Humphrey (D-MN), and other liberals, the Biden amendment passed, 50-43.[152] 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 of the CRA of 1964. Similar to the Biden amendment, Byrd's amendment would restrict HEW but not the courts. After some sharp debate, it passed 51-45.[153]

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 then 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."[154] After a failed tabling motion, offered by Sen. James Allen (D-AL), the second Biden amendment passed 44-34.[155] As the top portion 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.

The appropriations act passed 60-18, but when it went to conference both Biden amendments were dropped.[156] The Byrd amendment was not. In

[151] 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.

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

[153] *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.

[154] 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.

[155] *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.

[156] *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,

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Table 11. Antibusing Amendments, 1975

Senate

	To Adopt the First Biden Amendment		To Adopt the Byrd Amendment		To Adopt the Second Biden Amendment	
Party	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.

Table 11a.

House

	To Adopt the Flood Amendment		To Concur with Byrd Amendment	
Party	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.

response, Rep. Daniel Flood (D-PA) tried to replace Byrd's amendment with language accepted during the previous Congress: schools other than those "nearest or next nearest" to a child's home. It failed, 133-259.[157] The House then concurred with the Byrd amendment, 260-146.[158] The bottom portion of Table 11 reports the breakdowns; both were conservative coalition votes,

1st Session (June 25, 1975): 20864; Richard Lyons, "House Accepts School Busing Curb," *Washington Post*, December 5, 1975, B14; "Bus Curb Passes in House," *Atlanta Constitution*, December 5, 1975, 2F.

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

[158] *Congressional Record*, 94th Congress, 1st Session (December 4, 1975): 38718–19.

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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.[159] The Senate followed by approving via voice vote.[160] 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."[161] 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 busing. After 8 months, the Justice Department drafted legislation that came to be called "The School Desegregation Standards and Assistance Act of 1976." President Ford sent this proposal to Congress on June 24, 1976.[162] According to *CQ Almanac*, "The legislation would set guidelines and time limits for busing orders and establish a national advisory committee to assist school systems in desegregating voluntarily."[163] 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. There it died a quiet death.[164] Beyond the president's legislative initiative, Congress produced nothing new on busing in 1976. Various antibusing 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 saw the Democrats achieve unified party government again, thanks to the election of President Jimmy Carter, but busing continued to be an issue. Carter himself took no position on the issue, and offered no legislation unlike Nixon and Ford before him. But in June 1977, Congress would push back against a HEW announcement that communities would need to use techniques such as "pairing" of schools—where mostly Black and mostly white schools near each other would combine student bodies—to comply with civil rights laws.[165] Antibusing 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 funds from school districts that refused to merge or consolidate Black and white schools to facilitate desegregation if the plan required that pupils be

[159] *Congressional Record*, 94th Congress, 1st Session (December 4, 1975): 38712–13.

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

[161] Lyons, "House Accepts School Busing Curb."

[162] 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.

[163] "Ford Busing Legislation." *CQ Almanac 1976*, 32nd ed., 594 (Washington, DC: Congressional Quarterly, 1977), http://library.cqpress.com/cqalmanac/cqal76-1187415.

[164] Orfield, *Must We Bus?*, 276.

[165] Stephen E. Nordlinger, "School Aid Cut-Off Defeated," *Baltimore Sun*, June 17, 1977, A1.

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bused to a new school. It passed 225-157.[166] Liberals, smarting from the defeat, downplayed the antibusing 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."[167]

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 antibusing language in the bill. This failed, 42-51.[168] 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.[169] 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. In each case, though, 30–37% of northern Democrats voted with the conservatives—which proved pivotal for the outcome on each roll call.[170] Finally, the appropriations act was adopted in December 1977 with the language from the Mottl amendment included.[171] 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.[172] 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, 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.
>
> 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

[166] *Congressional Record*, 95th Congress, 1st Session (June 16, 1977): 19409.
[167] "House Votes to Curb U.S. Funds," *Chicago Tribune*, June 17, 1977, 2.
[168] *Congressional Record*, 95th Congress, 1st Session (June 28, 1977): 21260.
[169] *Congressional Record*, 95th Congress, 1st Session (June 28, 1977): 21263–64.
[170] On each of the three votes, a roll-call analysis (logistic regression) of nonsouthern Democrat votes finds that the first (positive) and second (positive) NOMINATE dimensions are statistically significant, with nonsouthern Democratic members nearest to the Republicans on the first dimension and nearest to the southern Democrats on the second dimension being more likely to support the conservative position.
[171] The issue of abortion would affect deliberations and provisions of the appropriations act.
[172] *Congressional Record*, 95th Congress, 1st Session (September 21, 1977): 30202.

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Table 12. Antibusing Votes, 1977

	House		Senate		Senate	
	To Adopt the Mottl Amendment		To Adopt the First Brooke Amendment		To Table the Second Brooke Amendment	
Party	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.

> 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.[173]

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."[174] 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 ESEA 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."[175] Sen. Claibourne Pell (D-RI) moved to table the Roth–Biden amendment, which succeeded narrowly, 49-47.[176] With the

[173] "Busing Limits." *CQ Almanac 1977*, 33rd ed., 510–11 (Washington, DC: Congressional Quarterly, 1978), http://library.cqpress.com/cqalmanac/cqal77-1203394.

[174] "Busing Limits."

[175] Bill Peterson, "Impact School Aid Program Target of Assault in Senate," *Washington Post*, August 24, 1978, A6.

[176] *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.

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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 busing—little additional busing drama occurred in Congress in 1978.[177]

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 was 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 twenty-five 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.[178] This time, Mottl and Bafalis won 218 signatures. 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."[179] 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 forty-three 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.[180]

[177] Sen. Brooke tried once again to eliminate the antibusing 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; Peterson, "Impact School Aid Program Target of Assault in Senate."

[178] Mary Russell Washington, "House Forces Busing Amendment Vote," *Washington Post*, June 28, 1979, A1.

[179] Quotes from "House Rejects Anti-Busing Amendment." *CQ Almanac 1979*, 35th ed., 482–84. Washington, DC: Congressional Quarterly, 1980, http://library.cqpress.com/cqalmanac/cqal79-1185770.

[180] David Hoffman, "House to Vote on Proposal to Ban Busing," *Boston Globe*, June 29, 1979, 3.

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Few believed that the discharge backers would be able to reach the necessary 2/3 vote for a constitutional amendment.[181] 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).[182] 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."[183]

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.[184]

But the benefit of clarity did little good. After several hours of debate, the Holt substitute failed on a 209-216 vote.[185] Not only did the constitutional amendment forces fail to achieve a 2/3 majority, falling seventy-five votes short, they could not even win a simple majority. And similar to 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.[186]

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 ten of those being Republicans. And going one step back: of those who voted against the constitutional amendment, thirty-one had signed the discharge petition (fourteen Democrats and seventeen Republicans), eleven of whom were from the South.[187] Rep. Mottl responded to the defeat by saying: "It's not only a personal disappointment, but a

[181] Mary Russell Washington, "Defeat of Busing Ban Likely in Vote on House Floor Today," *Washington Post*, July 24, 1979, A3.

[182] *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.

[183] 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.

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

[185] *Congressional Record*, 96th Congress, 1st Session (July 24, 1979): 20412–13.

[186] The vote breakdown was northern Democrats 49-137, southern Democrats 45-39, and Republicans 114-40.

[187] "House Rejects Anti-Busing Amendment."

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Table 13. Antibusing Constitutional Amendment Votes in the House, 1979

	To Discharge the Judiciary Committee		To Pass H.J. Res. 74 (Holt Substitute)	
Party	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.

disappointment for the American people who don't approve of court-ordered busing."[188]

Defeat of the antibusing constitutional amendment was attributed to three principal factors. First, many members were squeamish about tinkering with the Constitution—which, for 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.[189]

The remainder of the 96th Congress was quiet on the topic of busing, until the lame-duck session following the 1980 presidential election.[190] Here, the antibusing forces in the Senate finally broke through. On November 13, after attempting (but failing) to attach antibusing 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

[188] Quoted in Mary Russell Washington, "Busing Amendment Loses in House Vote," *Washington Post*, July 25, 1979, A12.

[189] "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.

[190] The first part of the 96th Congress also saw the House approves 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 antibusing provisions from the final bill.

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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.[191]

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 was with respect to school busing."[192] 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.[193] The conference committee left the antibusing provision in the bill, and the report on H.R. 7854 was adopted overwhelmingly in both chambers.[194] But the antibusing 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.[195]

[191] *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. Who were the seven nonsouthern Democrats who voted for the Helms rider? They were Joe Biden (DE), Robert Byrd (WV), William Proxmire (WI), Jennings Randolph (WV), Howard Cannon (NV), J. James Exon (NE), and Edward Zorinsky (NE). Six of these senators were among the most conservative of the northern Democrats, based on NOMINATE scores (closest to the Republicans on the first dimension and to the southern Democrats on the second dimension). Biden was the outlier—located nearer to the center of the northern Democratic senators on each dimension.

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

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

[194] 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.

[195] *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.

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Rather than attempt to override the president's veto, Helms and his conservative colleagues in the Senate chose to allow the antibusing provision to be stripped from a continuing resolution.[196] 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 record as supportive of the language used in the antibusing law, and that he would sign such a bill into law.[197]

The 97th Congress saw the fighting on busing escalate. The antibusing forces, led by Sens. Helms and J. Bennett Johnston (D-LA), sought to pass an antibusing measure—as an amendment to the fiscal 1982 authorization bill for the Department of Justice (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), believed the amendment as written was unconstitutional. They pursued a filibuster to prevent voting for occurring.[198] After three months of failure to shut off debate, the antibusing forces finally broke through in September on their fifth cloture vote.[199] As Table 14 indicates, the antibusing forces got within three votes of the sixty necessary to invoke cloture twice, before securing sixty-one votes on September 16, 1981.[200] The Senate then passed the Helms–Johnston amendment, 60-39.[201] Weicker was thoughtful in defeat: "I can't win. But I win every day that I delay this malodorous meadow muffin from becoming law."[202]

A problem with the way the initial Helms–Johnston amendment was put together meant that the antibusing forces would need to invoke cloture once

[196] Helen Dewar, "Congress Fund Government, Adjourns," *Washington Post*, December 17, 1980, A1.

[197] "Anti-Busing Rider Draws Veto of Justice Bill." *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.

[198] Weicker, e.g., 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.

[199] 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.

[200] Note that the cloture threshold was reduced from 2/3 to 60 votes in 1975.

[201] *Congressional Record*, 97th Congress, 1st Session (September 16, 1981): 20795.

[202] Quoted in Peterson, "Senate Breaks 3-Month Busing Filibuster, Delays Final Action."

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Table 14. Cloture Votes on Helms–Johnston Antibusing Amendment, 1981

	Cloture Vote 1		Cloture Vote 2		Cloture Vote 3		Cloture Vote 4		Cloture Vote 5	
Party	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): 15399; (July 13, 1981): 15487; (July 29, 1981): 17986; (September 10, 1981): 20175; (September 16, 1981): 20787.

again in order to adopt a new antibusing amendment.[203] And this they did on December 10, 1981, on a 64-35 vote.[204] Weicker continued to try to delay after this, but the new Helms–Johnston amendment finally received a vote on February 4, 1982. It passed, 58-38.[205] As illustrated in Table 15, these were once again conservative-coalition voters, with majorities of both southern Democrats and Republicans opposing a majority of northern Democrats. And, finally, on March 2, the fiscal 1982 authorization bill for the Department of Justice (S. 951), with the Helms–Johnston amendment attached, passed, 57-37.[206] Although antibusing 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 in the last year of Senate debate.[207] Sen. Weicker agreed: "This legislation will not be enacted into law in this session of Congress."[208]

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.[209] Chaired by Peter Rodino, Jr. (D-NJ), who was on record saying the legislation was unconstitutional,[210] the Judiciary Committee sat on the legislation for months with no hearing scheduled.[211] Rep. Mottl, 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.[212] But that majority threshold was never reached, as Mottl lost his primary election in July and the discharge momentum ran out of steam.[213] S. 951 would die in committee in the House,[214] and

[203] See "Senate Passes Anti-Busing Rider to Justice Bill." *CQ Almanac 1982*, 38th ed., 385–86 (Washington, DC: Congressional Quarterly, 1983), http://library.cqpress.com/cqalmanac/cqal82-1164676.

[204] *Congressional Record*, 97th Congress, 1st Session (December 10, 1981): 30408–9.

[205] *Congressional Record*, 97th Congress, 2nd Session (February 4, 1982): 886.

[206] *Congressional Record*, 97th Congress, 2nd Session (March 2, 1982): 2793.

[207] 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.

[208] Steven V. Roberts, "Antibusing Moves Passed By Senate After Long Fight," *New York Times*, March 3, 1982, A1.

[209] David Rogers, "House Panel to Get Busing Bill," *Boston Globe*, March 20, 1982, 7.

[210] Bill Person, "Antibusing Bill Passed By Senate: 57–37," *Washington Post*, March 3, 1982, A1.

[211] Mary Thornton, "House Judiciary Panel Bottles Up Conservatives' Social Agenda," *Washington Post*, May 17, 1982, A2.

[212] "Busing, Voting Act Attacked from Right," *Chicago Tribune*, May 26, 1982, 3.

[213] David S. Broder and Jay Mathews, "Reagan Moderates, Liberal Democrats Won Tuesday's Primaries," *Washington Post*, June 10, 1982, A6.

[214] 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." *CQ Almanac 1983*, 39th ed., 472–79 (Washington, DC: Congressional Quarterly, 1984), http://library.cqpress.com/cqalmanac/cqal83-1199708.

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Table 15. Voting on Helms–Johnston Antibusing Amendment, 1981

	To Adopt Helms–Johnston Amendment		Cloture Vote 6		To Adopt Helms–Johnston Amendment	
Party	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	9	23	12	20	9	22
Southern Democrat	12	2	13	1	12	2
Republican	38	14	38	14	36	14
Independent	1	0	1	0	1	0
Total	60	39	64	35	58	38

Source: *Congressional Record*, 97th Congress, 1st Session (September 16, 1981): 20795; (December 10, 1981): 30408–9; 2nd Session (February 4, 1982): 886.

with it any hope for antibusing 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 antibusing 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 intracity 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.[215] Changing public dynamics combined with a Republican administration that had no interest in a probusing agenda resulted in the issue largely melting 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 in the 98th Congress to prevent passage of a civil rights bill[216]—or if an individual senator sought to use the issue to communicate his positions (and those of other legislators) to constituents—as Jesse Helms did in the 99th Congress. In the latter case, Helms sought to attach an antibusing rider to a bill that would reauthorize and revise the Higher Education Act of 1984.[217] An attempt to table his amendment, with Helms himself offering the tabling motion, failed, 45-50.[218] Sen. Weiker was livid: "This is a vacuous exercise, never meant to become law, but to put the

[215] Delmont, *Why Busing Failed*, 210.

[216] Paul Houston, "Senate Votes to Curb Debate on Civil Rights Bill," *Los Angeles Times*, September 30, 1984, A5.

[217] 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.

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

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screws to people on a very passionate issue."[219] 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."[220] 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.[221]

Conclusion

The bipartisan coalition responsible for enacting the CRA 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 Cellar 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 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 1964 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 discovered 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 demonstrated here that one consequence of this political struggle was the collapse of the coalition responsible for passing the 1964 CRA. In its place arose a new, bipartisan, and inter-regional bloc of legislators committed to opposing any civil rights reforms that sought to erode structural features of racial hierarchy, such as segregated suburbs and the segregated schools they produced. Majorities of southern Democrats and Republicans led this new coalition, but—importantly—a pivotal group of (ostensibly liberal) northern Democrats, who were pressured by their white constituents, joined them.

[219] *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.

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

[221] 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]).

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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.[222] 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 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: important initial gains in the mid-1960s when the South was the focus followed by resistance and ultimately failure in the 1970s when nationwide coverage was sought. This reframing of the battle over busing legislation, we believe, suitably portrays it as far more transformative than previous scholarship may have appreciated.

[222] Jenkins and Peck, *Congress and the First Civil Rights Era*.

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