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Peer reviewed|Thesis/dissertation
THE NATIONAL ASSOCIATION OF REALTORS®
AND THE FAIR HOUSING MANDATE,
1961-1991

A dissertation submitted in partial satisfaction
of the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

SOCIOLOGY

by

Jennifer L. Burke

June 2016

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Vice Provost and Dean of Students
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ABSTRACT

The National Association of REALTORS®
and the Fair Housing Mandate, 1961-1991

by

Jennifer L. Burke

This dissertation examines how the country’s largest real estate trade group negotiated the mandate for fair housing in the latter half of the twentieth century. I ask, how has the Realtor trade group informed the nation’s fair housing laws and policies since 1961? To answer this question, I chronicle the National Association of Real Estate Boards’ initial opposition to local and federal fair housing laws in the 1960s and then trace how the organization—rebranded as the National Association of REALTORS®—seemingly transformed its position on fair housing in the post-civil rights decades. Inspired by sociological, historical, and urban studies scholarship that has considered real estate boards as powerful social organizations, this dissertation illustrates how Realtors brokered fairness in the post-civil rights housing market. Based upon my archival research on the trade group’s historical records, government documents, and newspaper accounts, I demonstrate how the Realtors steered the size, scope, and efficacy of the nation’s fair housing environment for three decades. This historical case study revises explanations for the weakness of federal fair housing law by emphasizing how Title VIII’s anemia was purposefully maintained by the National
Association of REALTORS® and their political lobby. The Realtors, however, did not completely reject fair housing. I show that while the trade group exhibited a sustained ideological discord with government regulation and oversight of discrimination in the private residential housing market, its contemporary iteration nonetheless popularized the social directive for fair housing in order to rebrand itself as a fair and equitable housing servicer.
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Craig Reinarman taught the first course I ever TAed for and set high expectations for a working relationship with professors. Craig is a devoted scholar and spirited lecturer; he can make a large lecture hall feel intimate with his engaging storytelling. I appreciate your contributions and involvement on my committee. Craig also gave me an opportunity to teach Social Inequality, which opened the door to my nascent teaching career. Thanks, Craig.
I would also like to thank the amazing faculty and fellow grad students that I learned so much from. Although he wasn’t part of this final project, Michael Brown in the Politics Department was a valuable figure in helping draft my field statements. I’m continually inspired by Michael’s analytical framework on race and durable racial inequality and it is ingrained within my sociological imagination forever. I enjoyed so much the analytical work I got to do in Marilyn Westerkamp, Dana Takagi, Herman Gray, Vanita Seth, Carolyn Martin Shaw, and Andy Szasz’s graduate courses. While the intellectual work produced in those courses didn’t necessarily make its way into this last piece of my graduate career, I thoroughly enjoyed thinking about and engaging their course concepts. Thank you for providing such thoughtful and interesting graduate courses; it was evident to me that they were composed with excitement and it showed in every set of readings and class discussion. Pamela Roby and Melanie DuPuis also recommended me for teaching awards, which I didn’t realize the significance of until a future employer remarked on them. Thank you for the recognition. I hope that I can be as approachable and welcoming as Pam and as energetic as Melanie in teaching undergraduates. My Sociology classmates were also instrumental to my success in the program. John Moss, Shannon Williams, Mike King, Steve Nava, and Travis Williams--thank you all so much for your feedback on my field statements and M.A. thesis. I also enjoyed taking classes with Susy Zepeda, Derrick Jones, and Dan Narey and learned a lot from them.

The research provided in this dissertation was compiled with the help of a number of people. I would like to thank the staff at the National Association of
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Donald Deeley provided me with digitized images of the Philadelphia Board of Realtors’ archives from Temple University’s library, without which, Chapter Four of this dissertation would be significantly abridged.

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The research contained within this dissertation was compiled through the assistance from a number of academic librarians and archivists. I had no ideas such helpful and knowledgeable professionals were waiting in the far-reaches of the
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My family deserves their own special recognition. Jeremy Lieb is the best partner a person could hope for. His efforts allowed me the time and energy to complete graduate school with small children. Our family and friends—including Lorrie Burke, Brenda and Bruce Copeland, Cathe and Jim Lieb, and Veronica Sandoval—all helped me finish this project with my kids well fed and cared for. Our beautiful girls—Eleanor and Vivian—were a great inspiration to finish my degree. And while my father, Peter Burke, passed away before I finished graduate school, I know he would be proud of my accomplishment.
INTRODUCTION

All around the nation…
a vicious and unrelenting campaign
is being carried on to provide…
a rule that a man cannot sell or rent his house
to a person or person of his own choice…
Here is perversion of the traditional and constitutional rights
of the American citizen in its most vicious form…
Here are the seeds of the breakdown of a free America…
acting to destroy communities,
miscegenate races, regiment society,
perpetuate poverty and thwart enterprise.
–NAREB President O. G. Powell, 1961

The National Association of REALTORS®
is proud to be a part of the effort
to build a permanent home
for Dr. King on our national mall,
all who stand here today are heirs to his great legacy…
On behalf of the more than 1.3 million REALTORS®…
I am honored to present a check for $1 million to …
the Martin Luther King Jr. National Memorial Project Foundation
-NAR President Pat V. Combs, 2007

How did the National Association of REALTORS® go from such vehement
opposition against fair housing to memorializing one the most notable civil rights
leaders in American history? ¹ In the dissertation that follows, I trace the country’s
largest real estate trade organization’s historical positions on fair housing. To do this,
I consider how the National Association of Real Estate Boards’ (NAREB) public

¹ The organization was known as the National Association of Real Estate Boards (NAREB) until 1974,
when it became the National Association of REALTORS® (NAR). The group’s name is a trademarked
brand, which I adhere to throughout this dissertation when using the organization’s full name regarding
its post-1973 activities, following their preferred design standard for the brand including using all
capital letters and the registered trademark symbol. For more discussion on the trade group’s name, see
Chapter Two.
resistance to open housing during the 1960s transformed in the face of legislative and judicial losses. By examining the trade group’s intra-organizational developments along with its legislative and policy efforts, I demonstrate how the trade group has continued to affect fairness in the residential housing market well after Title VIII of the 1968 Civil Rights Act was enacted. This dissertation builds upon the scholarly lineage of studying the real estate industry’s influence upon the housing law, policy, and ideologies of fairness and equality. Using primarily archival research supplemented with interview data, I construct an organizational history of the national Realtor association’s activities on fair housing from 1961-1991. Based upon this data, my dissertation illustrates how the real estate trade group’s post-civil rights activities engendered legal, political, and ideological regimes fundamentally at odds with the spirit of fair housing.

Since the very beginning of the discipline, sociological analysis has examined the power and influence of real estate organizations. Everett C. Hughes ([1931]1978) pioneered some of the earliest empirical work on the Chicago Real Estate Board institutional power affecting the urban environment. The Chicago Real Estate Board’s power reached well beyond the city’s borders, influencing the formation of the National Association of Real Estate Boards (NAREB). Over the next half century, that organization would establish real estate sales as a professional occupation via a “comprehensive program of standardization, education, and legislation” (Hornstein

2 The term ‘open housing’ was the historical term for fair housing in the 1960s.

**Brokering Real Estate and Race**

From their inception in the early twentieth century, NAREB and their local affiliates took instrumental roles in structuring and perpetuating racial segregation as they formulated and subsequently regulated the residential housing market and institutionalized their organizational policies and practices as real estate professionals (Brown 1972; Glotzer 2015; Gotham 2002; Lands 2008; Massey and Denton 1993; Pearce 1979). Scholars have identified how real estate boards in northern cities like Cleveland, Chicago, and New York in the early twentieth century took active roles in shaping what would become those cities’ intractable color lines, ultimately congealing into racial ghettos (Kusmer 1978; Philpott 1978; Tuttle 1970). For instance, in Cleveland, a prominent black resident complained to the city’s National Association for the Advancement of Colored People (NAACP) that the Cleveland
Real Estate Board would not provide housing to blacks in certain areas (Kusmer 1978:46). And shortly after a 1917 Supreme Court ruling (*Buchanan v. Warely*) that prohibited cities from using public zoning laws to reserve areas for white occupancy, the Chicago Real Estate Board advanced a segregation campaign in response, using the group’s nascent power to restrict real estate sales.

NAREB’s early twentieth century professional development was executed along the color line. According to Philipott ([1978]1991:192), the national association’s general counsel composed the group’s code of ethics in 1924 that prohibited real estate brokers from introducing “members of any race or nationality” that would be detrimental to property values. The same NAREB attorney then went on to draft a model real estate licensing policy that would revoke the licenses of those who violated the code of ethics, which real estate commissions in over thirty states went on to adopt (Philipott [1978]1991). In addition, NAREB authored a real estate textbook in the 1920s that cited how “the purchase of property by certain racial types is very likely to diminish the value of other property” (United State Commission on Civil Rights 1973a:3). NAREB’s pursuit of standardizing the real estate market and codifying its trade members’ professional practices thus coincided with an explicit racialization of space.

The national organization’s internal policies further illustrate an affinity for maintaining residential segregation. In the mid-1920s, NAREB’s Ethics Committee
Chair and Los Angeles Realty Board President Frank Ryan helped draft an updated code of ethics that explicitly deployed segregation (Redford 2014:86). It stated:

A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood (NAREB 1928:7).

The above is an oft-quoted selection of the association’s early regulations, demonstrating how NAREB codified residential segregation within its organizational policies that would remain unchanged for two decades. According to Weiss ([1987] 2002), the NAREB Code of Ethics was highly esteemed and gave the organization a way of defining itself as a profession and its members’ identities as ‘REALTORS®.’ As such, failure to live up to its code resulted in professional sanctions like expulsion from the membership and loss of the access to the proprietary Multiple Listing Service (Plotkin 1999; Weiss 2002:26-27). Thus, the NAREB Code of Ethics was not just a formalized statement contained within the organization’s books; it was a robust professional code with strict enforcement and sanctions. NAREB professional code pioneered a devastating racist logic that conflated racial homogeneity and economic stability—a logic that has endured for over a century. These examples from the NAREB’s early organizational documents functioned to regulate the conduct of its members in ways that re-inscribed the existing racial order.

In order to further control access to the housing market, real estate boards were also formative in the creation and deployment of property deeds known as
restrictive covenants. Restrictive covenants—sometimes called racial covenants—contractually bound homeowners to exclude specific racial, ethnic, or religious groups from either occupying or owning property and were a significant part of racially exclusive property rights in the early to mid-twentieth century housing market (Brown 1972; Cohen 1993; Davis 1990; Hirsch 1983; King 1995; Massey and Denton 1993; Plotkin 1999; Sugrue 1995; Vose 1959; Williams 2003). Harnessing their knowledge and expertise in property deeds as binding legal documents, real estate trade groups were able to produce the sort of social segregation that they believed would insure stable real estate values. As early as its first annual meeting in 1909, NAREB discussed the importance of planned communities and the value of restrictive covenants for that purpose (Stach 1988).

Social historians Plotkin (1999) and Gordon (2008) have written important case studies of the Chicago and St. Louis real estate boards’ development of restrictive covenants. Plotkin (1999) details how after the Chicago Real Estate Board’s (CREB) legal counsel drafted an early model restrictive covenant. The organization toured the covenant around the city, meeting with other neighborhood, religious, and civic associations to lobby on behalf of residential segregation. But the most purposeful of the CREB’s lobbying efforts for restrictive covenants was the board’s support of the “Choose Your Neighbors” campaign (Plotkin 1999). Begun in the late 1920s, the campaign was a movement to enact restrictive covenants throughout the city, and the CREB kept its members abreast of the campaign’s progress in the pages of its journal, Chicago Realtor (Plotkin 1999). Noting the
successive of the campaign, the Realtor declared that “the plan of operation has been presented to over 20,000 property owners on the South Side, with the most gratifying results…citizens interested in preserving a high standard for their neighborhoods have joined the movement” (qtd in Plotkin 1999:49). The CREB’s organizational endeavor to produce a uniform property deed that would standardize the city’s residential housing market entitled white property owners in ways that would last until the mid-century.

Similarly, St. Louis, Missouri’s real estate board took an active role in the implementation of restrictive racial covenants (Gordon 2008). The St. Louis Real Estate Exchange (SLREE) board drafted a template for racially restrictive covenants that was ultimately used in “more than eighty-five percent of the covenants within city limits” (Gonda 2012:37). This was accomplished because the SLREE participated in an extensive campaign that went door to door in the early 1920s to solicit white homeowners to sign restrictive covenants. But the SLREE’s involvement in covenants didn’t end there. The group also inserted themselves into the legal relationship by including themselves as signatory parties on the restrictive covenants. In addition, the SLREE also formed its own committee—a Committee on the Protection of Property—to uphold covenants by way of investigating, holding hearings, and filing charges against covenant violations (Gordon 2008:79). All told, the SLREE lent a great deal of organizational support to enacting and upholding restrictive covenants.
In an important foreshadowing of the organization’s growth in political lobbying, the National Association of Real Estate Boards participated in the legal fight to uphold restrictive covenants by submitting an *amicus curiae* brief to the Supreme Court in *Shelley v. Kraemer* (1948). In the *Shelley* case, the petitioners J.D. and Ethel Lee Shelley, a black couple, bought a property in St. Louis, Missouri whose title contained a restrictive covenant. The day after the Shelleys and their children moved into their home, they were delivered a legal summons regarding the legality of their home purchase (Howard 1999:290). Louis and Fern Kraemer, a white couple who also lived in the neighborhood, sought to enforce the restrictive covenant on the Shelley’s property deed that had originated in 1911 when Fern Kraemer’s parents signed their own to prevent members of the “Negro or Mongolian Race” from owning neighborhood property (Howard 1999:290). While the Circuit Court of St. Louis ruled the deed invalid, the Supreme Court of Missouri reversed the Circuit Court’s ruling. The Shelleys appealed their case to the Supreme Court in 1947.

NAREB’s *amicus* brief in the *Shelley* case made targeted legal arguments against the state’s attempt to invalidate restrictive property deeds. The trade group first justified their opinion based upon their business interests in property:

> Millions of dollars’ worth of real property has changed hands at values computed in reliance upon [covenants]…The National Association of Real Estate Boards is vitally interested in this particular question, as evaluation of future land values, an essential part of the real estate business, entails an estimate of the permanence of constitutional law principles as applied
by this Court to local real property law (NAREB [1947] 1975:546).

Here, NAREB reasons that the legal right to restrictive covenants is integrated within the outstanding value of properties and any potential change to such legal framework will affect the future. Moreover, the group’s *amicus* presented a limited consideration of the Fourteenth Amendment, claiming that its authors and those who would ratify it “contemplated no such extension of its terms to cover all private contracts” (NAREB [1947] 1975:556). For over three decades, nineteen state courts affirmed restrictive covenants use, spurring NAREB to claim that the precedent of upholding restrictive covenants were so frequently recognized by a variety of courts that they constitute “a rule of property” (Yinger 1975:10; NAREB [1947]1975:546). Ultimately, the Supreme Court agreed in part with NAREB, noting that the 14th Amendment does not prohibit racially restrictive private contracts; however, the Court ruled that the 14th Amendment did prohibit the state from upholding such restrictive covenants.

After the Supreme Court declared racial covenants unconstitutional in 1948, NAREB took an additional two years to drop language advocating racial segregation from its code of ethics (Cohen 1993:219; Hornstein 2005:108). Gotham (2002:624) shows in his analysis of property deeds in counties around Kansas City, Missouri reveals that real estate companies and builders implemented restrictive covenants well after the Shelley case—in some instances until 1960s. Such data corroborates Yinger’s (1975:12) speculation that “there is evidence that without the legal support of racial restrictive covenants, the real estate industry felt even more responsibility for
the stability of white neighborhoods.” Contemporary studies like Gonda (2015) further confirm that the elimination of restrictive covenants did not diminish segregation. Their presence and protracted decline nonetheless illustrates how intractable patterns of segregation could ensnare communities and the real estate industry’s contributions to that process.

By mid-century, NAREB continued to enforce the color line though its professional policies and standards. The St. Louis Real Estate Exchange (SLREE) advocated for its members to boycott sales to blacks “under pain of expulsion” as a “form of professional misconduct” (Gordon 2008:84). Data from the 1950s bear this out. According to Gotham’s (2002b) research in Kansas City, Missouri, the local real estate board threatened its agents that their licenses would be revoked if they sold homes in white neighborhoods to blacks during the 1960s. Whether official policy or not, surveys from a number of some of the largest cities in the country—including Los Angeles, New York City, San Francisco, Chicago, Denver, Des Moines, Minneapolis, Seattle, and Pittsburgh—reveal that Realtors systematically refused to show properties to blacks, Asians, and Hispanics (McEntire 1960:239-240). In St. Louis, a professional boycott lasted until 1958 (Gordon 2008). Up until then, the SLREE admonished its members with a stern warning to refrain from selling properties to blacks:

[N]o member of our Board may, directly or indirectly, sell to Negroes, or be a party to a sale to Negroes…This rule is of long standing, and has our interpretation to be directly associated with Article 34
of the Code of Ethics of the National Association of Real Estate Boards (Gordon 2008:86).

Gordon’s (2008) historical research documents other communication between the SLREE and individual real estate brokers that reiterated the organizational boycott. Elsewhere in Baltimore, real estate brokers indicated that they would not sell property in white sections of the city to blacks during the 1950s (Orser 1994:85). And across the country, the Los Angeles Realty Board’s reaction to the elimination of restrictive covenants took a decidedly political aim—the organization sought a constitutional amendment to reverse the Supreme Court ruling and petitioned the national organization NAREB to its cause (McKenzie 1996; Meyer 2000).

NAREB and its network of local real estate boards continued to informally uphold racial segregation throughout the 1950s and 1960s (Brown 1972; Gordon 2008; Helper 1969; McKenzie 1996; Vose 1959). For instance, a decade after the Supreme Court ruling, a Realtor was charged with unethical conduct by the NAREB for disrupting a neighborhood’s racial composition (Brown 1972). And as late as the 1960s, white Realtors habitually practiced racial steering and segregation. In Oakland, California, black Realtors found that the Oakland Real Estate Board’s (OREB) listings cited listings as “Caucasians Only” and that white suburban Realtors drafted private property listings that were not circulated to black Realtors (Brown 1972:70). In addition, when one of the Realtors reported the listings to the OREB secretary, he was informed
that it was incumbent on an office such as ours that is well known for its integrationist philosophy to check with brokers prior to showing a property in an area which might be all-white in character. He stated that *it was our ethical duty to our fellow REALTORS® to inform them of the color of the buyer* (cited in Brown 1972:70 original italics).

Other local boards controlled real estate listings in a different way. The Washington D.C. real estate board used its organizational power to lobby the *Evening Star* newspaper to completely refrain from even listing real estate opportunities for blacks (Vose 1959:77). Additionally, when new housing developments were occurring in Reston, Virginia, Peggy Wireman notes that “local Realtors refused to market” the homes “on an integrated basis” (qtd in Bloom 2001:186).

These studies offer a compelling historical lineage of the real estate trade organization practices—including neighborhood campaigns, trade group policies, and political lobbying—that contributed to the creation and persistence of housing inequality throughout U.S. history, ultimately contributing to a segregated U.S. housing market (Massey and Denton 1993). In contrast to the extensive scholarly attention upon the Realtor organization’s early and mid-twentieth century efforts, there is a paucity of empirical data on the trade group’s activities in the post-civil rights era. In this dissertation, I rectify this omission by tracing how the Realtors first vehemently opposed and then later negotiated the social and legal mandate for fair housing.
I suggest that the real estate board continues to mold the contemporary residential housing market. By attending to the trade group’s internal and external activities, policies, and communications, I build upon the methodological framework that urban studies scholars have used to pursue early 20th century real estate boards’ efforts in order to consider how the contemporary Realtor organization has affected fair housing within the nation’s residential housing market. I depart, however, from their analytical focus on the social production of residential space. Instead, my project considers how the Realtor organization crafted and influenced the political, legal, and cultural milieu of fair housing law and policies in the immediate pre- and post-civil rights eras and what the Realtors’ activities meant for the housing market, fair housing, and the Realtor organization.

**Fair Housing**

Fair housing scholars help to explain why Title VIII of the 1968 Civil Rights Act was unable to markedly improve discrimination and inequality in the housing market. Their analyses consider the law’s parameters, administration, and enforcement in order to account for the inadequate progress in making the country’s housing market fair and equitable. The Fair Housing Act’s statutory limitations require victims to report violations (Galster 1990d) and bear the associated financial costs of litigation (Armstrong 1991; Kushner 1989; Lichtman 1976). Another factor is HUD’s historical lack of enforcement power (Lamb and Wilk 2009). Citing HUD as an overall weak institutional home (Bonastia 2000), the limited resource allocation
for Title VIII administration and enforcement allocation within HUD has further explained the law’s inadequacy (Mulroy 2012). Still other research considers how executive power politicizes HUD and fair housing enforcement programming funding, affecting their ability to adequately monitor and enforce fair housing law (Silverman and Patterson 2011).

I build upon this scholarly lineage and investigate how the legal and regulatory environment of fair housing law was influenced by the National Association of REALTORS® political lobby. Conceptually, this project examines why federal fair housing remained deficient and the role the National Association of REALTORS® played in sustaining that deficit for three decades. The scholarly literature on the post-civil rights era—with George R. Metcalf’s (1988) *Fair Housing Comes of Age* an important exception—has failed to adequately take into account the national Realtor organization’s influence on fair housing’s regulatory environment. In this project, I demonstrate the Realtors’ sustained efforts in opposing fair housing in order to not only better account for why fair housing struggled politically, but also to challenge the organization’s newfound identity as a fair housing advocate and ally.

This dissertation is by no means an exhaustive account of the National Association REALTORS® fair housing activities; however, I examine their joint policies with HUD, their legal efforts in fighting how fair housing law has been adjudicated, their own organizational fair housing policies and practices, and their participation in the legislative process for three key decades in the formation
deployment of the nation’s fair housing laws and policies. Most significantly, because the residential housing market is the Realtors’ largest segment, my analysis purposely omits any consideration of public housing, affordable housing, mortgage or credit markets, and other housing topics that could easily be categorized under the broad concept ‘fair housing.’ By limiting my analysis to how the country’s largest real estate trade group has affected private residential market activity, I offer more granular empirical data regarding how the group conceptualized and deployed concepts of discrimination, racial inequality, and fairness across historical time (1961-1991) with a constant variable (government regulation of the residential housing market’s home selling activities). By sustaining attention to the Realtor organizational apparatus, this project contributes to the fair housing scholarship literatures in that it better accounts for the compelling political factors that challenged the passage, development, and deployment of fair housing law and policy.

**Chapter Outlines**

The first chapter details the methodological parameters of this dissertation. There, I specify how I conceptualize and deploy a multi-method qualitative case study of the national Realtor association and their local boards’ activities on fair housing over the years 1961-1991. I cite where and how I located sources for the archival research and the process by which I selected relevant documents for my study.

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³ Fair housing is operationalized here as those policies and practices that dictate a legal obligation for real estate practitioners to abstain from racial discrimination during housing market participation.

In order to show how a comprehensive understanding of the Realtors’ positions on fair housing, the second and third chapters examine the Realtors’ broad yet concerted effort to stymie government regulation of housing discrimination as part of their campaign against ‘forced housing.’ Using archival accounts of Realtor activities during this time supplemented by historical news accounts, I document how NAREB produced new policies, practices, and ideas to compete with the growing social and legal mandate for civil rights. In competition with an increasingly popular ideology of equality that emerged in the early 1960s, NAREB constructed a campaign that conceptualized equality based on unfettered property rights. I examine how the real estate trade group campaigned against fair housing with an awareness of a broader pro-civil rights social and legal landscape. I further document NAREB’s programming, lobbying, and financial efforts to halt fair housing legislation.

In the fourth chapter, I detail internal dissent within the Realtor organization’s ranks on the issue of fair housing. I document how Realtors in Pennsylvania opposed the national association’s campaign against forced housing and the efforts of pro-fair housing Realtors in Washington and California. While these groups were ultimately unsuccessful, their stories nonetheless reveal a more complex process of the Realtors’ legislative pursuits against fair housing. They show how the Realtor organization responded to such dissent in ways that fortified its organizational power.

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5 ‘Forced housing’ was the Realtor phrase for legal oversight and regulation of discrimination within the residential housing market during this time. Although I strenuously disagree with the beliefs about housing inequality and property rights that populated the NAREB’s campaign against forced housing, I retain the organization’s phrasing throughout my discussion. I elaborate more on the trade group’s choice and reasoning for their campaign terminology in Chapter Three.
The fifth chapter recounts how NAREB responded to the passage of federal fair housing law. There, I show how the Realtor organization was slow in accepting the fair housing mandate and, later, the trade group’s emphasis on its organizational apparatus as an alternative to legal enforcement. I further detail the organization’s extensive transformation over the course of the 1970s as the group broadened its membership base, organizational makeup and power, and, most symbolically, changed its name to the National Association of REALTORS®.

The sixth chapter examines NAR’s extensive legal battles to limit fair housing law. I show how the Realtor organization amassed a well-financed legal opposition to narrow the parameters of federal fair housing law by contesting legal claims of standing under the law. In addition, this chapter documents NAR’s political lobby against proposed legislation to strengthen the Fair Housing Act. By examining NAR’s Congressional testimony against amending the Fair Housing Act, I reveal how the Realtor organization conceptualized and deployed fairness in the domestic residential housing. This chapter also demonstrates the organization’s opposition to integration maintenance programming by community groups and details how NAR responded to one of its own participating in such a program.

The seventh chapter of this dissertation details the emergence of a federal policy to fund private housing groups to monitor fair housing adherence: the Fair Housing Initiatives Programs (FHIP). I consider how NAR’s growing relationship and influence with HUD by the mid-1980s led to the real estate organization crafting
undue influence over the policy development of the FHIP program. I further identify the lobbying strategies NAR used to delay and eventually conciliate a compromise on the program.

The eighth and last substantive chapter of this dissertation chronicles the legislative fight NAR conducted against potential strengthening of federal fair housing law in the early 1980s. I then show how the new political environment of the mid-1980s induced NAR to compromise over amending Title VIII. Moreover, this chapter also documents how NAR transformed its public persona in the mid- to late-1980s by detailing the trade group’s legislative compromises and celebrations of fair housing month to rebrand its organization as a pro-fair organization by the end of the 1980s.
CHAPTER ONE
METHODOLOGY

In this dissertation, I examine how the national Realtor association negotiated the social and legal mandate for fair housing in the United States. Using a multi-method case study of the organization that would eventually become the National Association of Realtors and their local boards, I offer a qualitative analysis of the trade group’s work in the areas of fair housing from 1961 to 1991. In doing so, I broaden sociological inquiry on social inequality and housing by providing new empirical data on how the real estate industry opposed fair housing in the contemporary period. This dissertation asks, how did the Realtors resist and enhance fair housing in the late twentieth century? Research questions for this study are:

1. How did the National Association of Realtors administer its campaign against fair housing?
2. How did the Realtors influence the national mandate for fair housing and to what effect?
3. What were the organization’s ideological objections to fair housing? (How did those objections negotiate the social, political, and economic climates? And how did the group’s ideas about fairness endure and change over time?)
4. How did the Realtor organization brand itself as a fair housing ally?
A Qualitative Case Study

Sociological research has a long and robust record on inequality in the housing market, and real estate agents’ practices frequently appear within the literature. The fields of racial inequality and urban studies have extensively examined the processes of redlining, blockbusting, and steering by real estate agents and their organizations. Methodologically, scholars have employed historical analysis of real estate industry practices to demonstrate the Realtors’ prominence in constructing a racially inscribed residential housing market (Bouma 1962b; Fine 1997; Glotzer 2015; Gotham 2000, 2002a, 2002b; Helper 1969; Lands 2008; Massey and Denton 1993; Palmer 1955; Radkowski 2006; Schuparra 1995; Sugrue 1995; Weiss 1987; Yinger 1975). These scholars consider the extensive historical textual records found in real estate board publications, trade journals, government documents, and newspaper accounts in order to demonstrate how inequality was built into the social, economic, and physical landscape of the nation’s neighborhoods by the real estate industry. For instance, Massey and Denton (1993) document the Realtors’ organizational regulations and its fair housing programming in order to claim that the organization contributed to segregation in their book American Apartheid. Gotham (2000) studied Realtor publications to identify how the proliferation of restrictive housing covenants racialized the urban space of Kansas City, Missouri. And Gordon (2008) examined historical documents pertaining to the St. Louis Real Estate Exchange to demonstrate that group’s involvement in racial segregation. I examine
historical documents as part of a qualitative research process to understand how the Realtor organization defined fairness within the contemporary housing market.

I model my analysis after Hornstein’s (2005) historical case study of the Realtor organization. He uses textual analysis of historical and archival documents to consider the development and professionalization of the trade and the gendered implications of that process in largely the early and mid-twentieth century. While my research doesn’t share Hornstein’s specific focus on the Realtor organization, it does employ similar methods. I construct an historical case study on the contemporary Realtor organization from 1961 to 1991. I use the word ‘construct’ purposefully because the sociological literature has emphasized how the case study method purposefully generates its object of inquiry—as opposed to natural or objective cases waiting to be discovered and analyzed (Ragin 1992:7).

One parameter of my object of inquiry is the national Realtor organization and its state and local boards, which make up the group I call ‘Realtors’ throughout this dissertation. The case study’s temporal parameters further distinguish it. I selected the time frame of 1961 through 1991 in order to include the Realtors’ campaign against “forced housing” in the 1960s, which provides an important context for the group’s later efforts at the end of the 20th century and begging of the 21st. Moreover, I generate my ‘case’ (the Realtors’ activities over the last half century) from “existing

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6 Realtors are distinct from all real estate agents in that the Realtor designation is a trademarked named for those belonging to professional trade group. The trade group is known as the National Association of Real Estate Boards (NAREB) and their local affiliates until 1973, when it became the National Association of REALTORS® (NAR).
definitions” in the field of sociological research on housing (Ragin 1992:10). Thus, I build upon the scholarly lineage of past case studies of real estate organizations (Bouma 1970; Hornstein 2005; Hughes 1931; Palmer 1955). My research fits the general parameters of a case study in that it includes the three components that Snow and Trom (2002) identify. First, it includes “analysis of an instance or variant of some bounded social phenomenon” (Snow and Trom 2002:147). Second, I “seek to generate a richly detailed and ‘thick’ elaboration of the phenomenon” (Snow and Trom 2002:147). And third, I engage in “triangulation of multiple methods or procedures that include but are not limited to qualitative techniques” (Snow and Trom 2002:147). The case study is a valuable research method that offers specific conceptual benefits, especially suited as a method to explore “how” or “why” research questions (Yin 2003).

Early sociological research on real estate organizations embraced qualitative methods. Perhaps the earliest sociological study is Everett C. Hughes’ (1931) *The Growth of an Institution: The Chicago Real Estate Board*. Hughes employed inductive, qualitative research methods—including extensive textual analysis and interview data—to examine the social processes underlying the organization’s development and growth. Another early study was Palmer’s (1955) examination of real estate agents as “gatekeepers” of residential neighborhoods and the social power their occupation and trade afforded them. Palmer interviewed fifty real estate agents in New Haven, Connecticut who offered explanations for how they perceived their jobs as neighborhood “gatekeepers” to “help people fit into the community”
Later qualitative research attempted to understand real estate agents’ experiences and attitudes with respect to issues of fair housing, discrimination, and integration. Those studies used surveys (Boichel et al. 1969; Schechter 1973), interviews (Schechter 1973), and case studies (Bouma 1970) to better understand the significance of real estate organizations and agents affected by the mandate for fair housing. These methods produce data that show how Realtors and their organizations’ beliefs and practices were at odds with the national mandate for fair housing.

Ultimately, interview and survey methods did not gain traction among social science researchers studying real estate boards and inequality in the residential housing market. Instead, paired testing did. This method measures discriminatory behavior, operationalized as differential treatment of “experimental” and “control” testers. Both kinds of testers follow a standardized script and home-seeking protocol—but they differ in apparent racial/ethnic group membership. For example, an experimental dyad might be made up of a black man and a black woman; their control dyad might consist of white man and a white woman. Paired testing shows that, despite passage of fair housing laws, real estate agents still steer black home seekers and white seekers to different neighborhoods. This method allows researchers to examine the actual environments in which housing searches take place—and to

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According to Palmer’s methods section, these interviews were conducted wearing “business clothes of the kind most real estate agents wear. This was important because many agents dislike the English-cut, tweed clothes of the university campus” (1955:29). I include this description because I too was concerned about my wardrobe while meeting with Realtors and modified my grad-student attire to a more business casual wear at the Realtor convention and while in residence at their library. I also uploaded the most professional-looking picture for my LinkedIn page, where I connected with my interview subjects upon completion of our interviews.
pinpoint the conditions under which steering continues in the residential real estate market (Galster 1990b; Pearce 1979; Roychoudhury and Goodman 1996; Yinger 1991). Real estate behaviors, practices, and beliefs thus constitute important components of understanding how trade-specific practices constitute “American Apartheid” (Galster 1990a, 1990b; Galster and Godfrey 2005; Gotham 2000, 2002a, 2002b; Massey and Denton 1993; Pearce 1979; Roychoudhury and Goodman 1996; Schechter 1973; Yinger 1991). I propose that the National Association of REALTORS’® organizational beliefs and practices deserve similar scrutiny.

To identify particular Realtor policies, practices, and programs regarding fair housing, I analyzed archival and interview data, and engaged in some participant observation of Realtor activities. Historical and archival research, while valuable, nonetheless necessitates critical and thoughtful reflexivity. While previous research has documented examples of Realtors’ power in racially inscribing the residential housing market, they are less specific in demonstrating the organizational processes, tensions, and contradictions from which those practices emerged. The result is often a consonant and monolithic depiction of an otherwise complex and variegated organization. In my reading of the historical documents in my sample, I focused upon—whenever possible—disagreements and differences within the organization on the issue of fair housing. In analyzing organizational self-produced documents, my

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8 To be fair, many of these studies were based on almost century-old, truncated organizational data or second-hand accounts. Identifying internal organizational disagreements within my data was hard enough. Moreover, the relatively late time period of my own research affords me significantly more day-to-day organizational data as well as a larger group to pull source material from. The proliferation of data that the contemporary Realtors produce is, quite simply, vast.
reading skills required a constant dual purpose: to read the documents in their original contexts and to situate them within the broader social contexts of fairness in the residential housing market.

**Data Collection**

*Archival Data.* Archival data from inside and outside the organization are the main empirical data sources for this study. I performed archival research at the NAR’s national headquarters in Chicago. I visited the Realtors’ library in January 2014 and again in September 2014. I contacted the manager of the archive via email, told him of my research interests in the organization, and was invited to visit. My January 2014 visit was limited to pursuing sources on the Realtors’ 1960s activities in opposition to fair housing. What was supposed to be a two day research trip was shortened due to inclement weather in the Chicago area, which came to be known as the “polar vortex.” Despite this setback, I was able to read or visually scan Realtor documents on their anti-fair housing campaign, including pamphlets, brochures, press releases, and memoranda. When I identified documents that seemed of interest, I took digital photographs of the materials. In all, I took 587 digital images with a point-and-shoot camera.

On my second visit, I used the archive’s library catalogue and search engine with key terms (“forced housing,” “fair housing,” and “equal opportunity committee”) to locate sources of interest. These initial searches yielded hundreds of results, which I prioritized by flagging Realtor-produced materials. One of the library’s information specialists compiled dozens of sources and arranged them for
me. From these sources, I took 644 digital photos of source materials with my smartphone. I also accessed digitized copies of NAR’s Board of Directors’ meeting minutes. The minutes were archived by year as large PDF files that I was able to search, extract individual pages of interest, and email to myself as PDF files. I searched the NAR Board of Directors’ digital archive selectively by years that would be relevant to specific campaigns and programs of interest, searched with my key terms (“forced housing,” “fair housing,” “integration maintenance”). From this search method, I obtained 213 files.

Visiting the Realtors’ archive was immensely beneficial for my research goals and their openness with their data was honestly quite surprising. While I had to present my identification in the building’s lobby to the front desk staff, I was able to travel up to the library unescorted and, once I had met the library’s manager, given access to come and go as I pleased. The only limitation I encountered was in copying the digitized Board of Directors’ meeting records (and even then I believe the reason I was instructed to extract individual pages and not copy the excessively large file was due to the computer’s memory, not a limitation for my access). When I offered to help put away some of the materials I had used, my offer was declined. That is, while I wasn’t given blanket access to personally peruse their stacks or copy entire data sets, I was allowed significant and almost completely unobstructed access to the organization’s archival documents. Additionally, the staff at the archive were not

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10 In comparison to other research sites, the Realtors’ archive was significantly more permissive. San Jose State’s special collections department limited the number of folder pages that could be
only helpful, but repeatedly checked on my status, offered further assistance throughout the day, and offered me coffee from the staff room. While I described my research interests broadly ("I am interested in NAR’s activities on fair housing") to request a research visit to the archive, I nevertheless felt conflicted about having such open and gracious hosts—NAR staffers—and having underlying trepidation about the organization’s history and contemporary position on fair housing.

To supplement my data and better understand how local realtor boards participated in fair housing, I searched the Online Archive of California (OAC) and World Cat library systems with the terms “realtor” and “real estate board” to find real estate board archive holdings. I identified those holdings that covered the years 1961-1991; were significant in size and scope; and able to be photocopied, digitized, or geographically near my home. Based on these parameters, I gathered data from a number of academic library archives. (See Table 1.)

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photographed (a cap at ten percent per research folder). Berkeley’s Bancroft Library’s special collections required a ten dollar fee to digitize images, which were required to include flagged documentation noting the source of each image. And Temple University’s special collections capped digital images to twenty percent per research folder.
<table>
<thead>
<tr>
<th>Archive</th>
<th>Collection</th>
<th>Realtor Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Hopkins University Special Collections</td>
<td>Charles Mathias Papers</td>
<td>National Association of Realtors</td>
</tr>
<tr>
<td>National Association of Realtors Library – Chicago, Illinois</td>
<td>Various</td>
<td>National Association of Real Estate Boards and National Association of Realtors</td>
</tr>
<tr>
<td>New York State Library – Manuscripts and Special Collections</td>
<td>Hamilton Fish Collection</td>
<td>National Association of Realtors</td>
</tr>
<tr>
<td>Nixon Presidential Library and Museum</td>
<td>Charles W. Colson Collection</td>
<td>National Association of Realtors</td>
</tr>
<tr>
<td>San Diego State University – Special Collections and University Archives</td>
<td>Robert Carlton (Bob) Wilson Papers</td>
<td>National Association of Real Estate Boards</td>
</tr>
<tr>
<td>San Jose State University</td>
<td>Don Edwards Collection</td>
<td>National Association of Real Estate Boards</td>
</tr>
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<td>Philadelphia Board of Realtors Records, 1922-1976</td>
<td>Philadelphia Board of Realtors</td>
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<td>Mason-McDuffie Co. Records</td>
<td>NAREB, Berkeley Realty Board, California Real Estate Association</td>
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<td>University of California, Los Angeles – Special Collections</td>
<td>Los Angeles Realty Board Records, 1904-1984</td>
<td>Los Angeles Board of Realtors</td>
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<tr>
<td>University of Louisville – Archives and Special Collections</td>
<td>Charles Welch Oral History</td>
<td>Louisville Real Estate Board</td>
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<tr>
<td>University of the Pacific – Holt-Atherton Department of Special Collections</td>
<td>Reed Robbins Collection, 1947-1985</td>
<td>California Real Estate Association</td>
</tr>
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<td>Wisconsin Historical Society</td>
<td>Gerald D. Kleczka Papers, 1969-2004</td>
<td>National Association of Realtors</td>
</tr>
</tbody>
</table>

**Table 1.** Archives consulted
I procured documents on various Realtor organizations and individual Realtor statements through a variety of methods. For local sources, I traveled to some locations (San Jose State; University of the Pacific; University of California, Berkeley). I also obtained digital reproductions from library and archival services from John Hopkins University, the Nixon Presidential Library and Museum, the Wisconsin Historical Society, University of Louisville, San Diego State, and UCLA. I also employed a research assistant to digitize images from Temple University’s holdings. Based upon the research and source citations found in Singer et al.’s (2011) research, I further consulted the Seattle Municipal Archives for audio recordings of the Seattle Board of Realtors opposition to the city’s 1963 fair housing ordinance.

For more contemporary data, I accessed archived documents online from official websites of the National Association of Realtors. Because the Realtors have such a large online presence, I found multiple venues for data. I used the search feature on NAR’s website ([www.realtor.org](http://www.realtor.org)) and its online archive ([www.archive.realtor.org](http://www.archive.realtor.org)). Both have search functions that I employed with the key terms “fair housing,” “affirmative marketing agreement,” and other case-by-case terms (like names of specific court cases, individuals within the organization, or events) when I needed further context or clarification. Both of these sites require a login ID, but not a Realtor ID, to search their content. I created a user ID and got a broad but nevertheless incomplete access to NAR’s website content, including its digital archives. There, I located data on the group’s membership numbers, its
complete Code of Ethics (all 44 versions) and additional Board of Directors’ and Equal Opportunity Committee meeting minutes.  

To supplement my archival research, I visited UC Berkeley’s Northern Regional Library Facility. There I examined the Realtors’ newsletter, *Realtor’s Headlines*, California Real Estate Association’s periodical *California Real Estate Magazine*, and the National Association of REALTORS® magazine *Real Estate Today*. For each of these sources, I read the title of each article, flagged articles on the topic of fair housing, and photocopied or digitized articles of interest. After a handful of visits, I collected a total of 205 pages of data from these sources.

Additionally, I compiled data on the Realtors’ political action committee. I accessed data from the Federal Election Commission (FEC) on RPAC’s financial contributions to congressional candidates (Index D “Committee Index of Candidates Supported Opposed” of the Federal Election Commission’s Campaign Finance Report’s data). Because the FEC only has recent data available online (1993-2015), I had to request the Realtors’ fillings through a formal request for information. I was emailed the digitized files from 1978-1992 in a 262 page report in PDF form. I also filed for copies of 1974-1977, which were microfilmed. The resulting reports from

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11 Meeting minutes were largely from the 1990s onward.
12 Volumes 32-43 of *Realtor’s Headlines*.
13 Shortly after the end of the organization’s unsuccessful campaign against forced housing in 1969, the Realtors founded The Real Estate Political Action Committee (REPAC). REPAC changed its name to the Realtors Political Action Committee (RPAC) in 1975. The Realtors’ political campaign ID number is C00030718.
14 Congress amended the 1971 Federal Elections Campaign Act in 1974 to legalize PACs (Calcagno and Jackson 1998). Prior to 1974, there was no legal way for groups to contribute money to political candidates and therefore I was unable to obtain earlier data.
the earlier years could not be manually sorted for just the data I required. As a result, my request resulted in almost 800 pages of the Realtors’ FEC filings. Because of labor involved in procuring the reports and shipping costs, I paid sixty-seven dollars to procure the relevant reports in full.

Secondary Data

In order to access more qualitative information about the Realtors’ political lobbying, I also made Freedom of Information Act (FOIA) requests from HUD and the U.S. Office of Government Ethics. Although in granting my requests these agencies redacted some of the government’s legislative responses in order to protect the government’s deliberative process privilege and some citations that would involve invasions of personal privacy for non-government individuals (but did name individual Realtor boards), the FOIA requests nevertheless divulged the Realtors’ legislative position on fair housing law and programming. In addition to the lack of transparency regarding the government’s position from these documents, another hurdle in procuring the FOIA data was delay. The FOIA request I made to HUD took almost five months to materialize. In the end, I received 18 pages from HUD FOIA requests on fair housing legislation in 1980.

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15 The fact that government legislative positions on housing policy dating back three decades (which failed to become law) need protection is equal parts confounding and disheartening for an open and fair housing market.
16 These data include an August 20, 1980 Summary of Legislative Responses to NAR Objections to Fair Housing Amendments Act from HUD and a June 24, 1988 letter to HUD Secretary Samuel R. Pierce from the Director of the U.S. Office of Government Ethics, Frank Q. Nebeker, including that office’s report on reviewing HUD’s Inspector General Investigation Report on the National Campaign of Public/Private Partnerships for Fair Housing.
I further supplemented my research with newspaper accounts of Realtor activities on fair housing issues. I used four sources: Proquest’s historical newspaper database, Newsbank’s Access World News, Google’s news archive, and Newspapers.com.\(^{17}\) These data provide national and local print coverage of the Realtors’ efforts. Because scholars have criticized Jeffrey Hornstein’s *A Nation of Realtors* (2005) for a “lack of the everyday experiences of ordinary realtors in local trenches… in [his] institutional account” (Bledstein 2007:246), I took steps to insure that my research include data on everyday Realtor practices and crafted my research design with this in mind. Because newspaper coverage was invaluable for demonstrating Realtors’ activities on fair housing, I relied heavily on these data. However, due to the large amount of some results and my choice of key terms like “real estate board” would lead to advertisements for home sales, at times I excluded the word “sale” in my search results.\(^{18}\) (See Table 2.)

\(^{17}\) I accessed Proquest’s historical newspaper database through the University of California, Santa Cruz’s online library subscription. Within this database, I selected six major newspapers (*Chicago Defender, Chicago Tribune, Los Angeles Times, New York Times, Wall Street Journal*, and *Washington Post*) for my search. I accessed Newsbank’s news archive from the University of California, Santa Cruz’s online library subscription. Within this database, I selected USA/Multiple Publications and then manually limited results to those newspapers available for the years 1980-1991. Google’s news archive is freely available at the website [www.news.google.com/archivesearch](http://www.news.google.com/archivesearch). I accessed Newspapers.com’s proprietary database online through a paid monthly service, which provided access to thousands of digitized local U.S. newspapers sources that covered local accounts on issues I’m interested in. While these sites had nominal costs associated with them, they ultimately provided much more granular-level of detail about how Realtor policies and positions on fair housing were operationalized at the local level, without which, this dissertation would be categorically less robust.

\(^{18}\) I note where this occurs in subsequent footnotes and recognize that this search parameter would omit newspaper articles about real estate boards appearing on the same page as real estate advertisements; however, I feel as though I was able to exclude thousands of irrelevant results. For example, in one search, the results dropped from 1,499 to 133 for a difference of 1,366 extra results.
Table 2. Database and key terms results

<table>
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<th>KEY TERMS</th>
<th>DATES (^{19})</th>
<th>NUMBER OF RESULTS</th>
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<td>Chapters Two and Three</td>
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<td></td>
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<tr>
<td>Proquest historical newspapers</td>
<td>&quot;forced housing&quot;</td>
<td>1961-1968 (^{20})</td>
<td>145</td>
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<tr>
<td>Newspapers.com</td>
<td>&quot;forced housing&quot; and &quot;real estate board&quot;</td>
<td>1961-1968</td>
<td>492</td>
</tr>
<tr>
<td>Proquest historical newspapers</td>
<td>&quot;open occupancy&quot; and &quot;real estate board&quot;</td>
<td>1968-1970</td>
<td>7</td>
</tr>
<tr>
<td>Newspapers.com</td>
<td>&quot;open occupancy&quot; and &quot;real estate board&quot; NOT &quot;sale&quot;</td>
<td>1968-1970 (^{21})</td>
<td>133</td>
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<tr>
<td>Proquest historical newspapers</td>
<td>&quot;affirmative marketing agreement&quot;</td>
<td>1974-1991</td>
<td>35</td>
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<td>Newspapers.com</td>
<td>&quot;affirmative marketing agreement&quot;</td>
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<td>Proquest historical newspapers</td>
<td>&quot;fair housing law&quot; and &quot;realtors&quot;</td>
<td>1975-1991</td>
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<td>&quot;fair housing month&quot; and &quot;realtor&quot;</td>
<td>1980-1991</td>
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<td>&quot;fair housing month&quot; and &quot;realtor&quot;</td>
<td>1980-1991</td>
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<tr>
<td>Google News Archive</td>
<td>&quot;fair housing month&quot; and &quot;realtor&quot;</td>
<td>1980-1991</td>
<td>21</td>
</tr>
</tbody>
</table>

\(^{19}\) All date ranges were for January 1 (beginning year) to December 31 (ending year) with exceptions noted in each individual database search.

\(^{20}\) The end date was April 10, 1968.

\(^{21}\) The start date was April 10, 1968.
Newspaper accounts and organizational documents further led me to legal fair housing cases. Based upon references from NAR’s meeting minutes, I used the Westlaw database to search for fair housing cases where the National Association of Realtors, local Realtor boards, or real estate agents were legal parties or submitted amicus curiae briefs in Supreme Court cases on fair housing. This resulted in six documents.22

*Interview Data*

I also interviewed a small number of NAR members (n=4). After my preliminary review of the Post-civil rights committee’s minutes, I emailed one of the former chairs of the committee and requested an interview. That informant gave me the name of two of her colleagues, one of whom agreed to an interview. These sources were knowledgeable participants in NAR’s activities and provided important historical and contextual details about their experiences with the organization’s projects.23 I also contacted two members who participated in opposing some of NAR’s fair housing efforts. I googled their names, found email addresses, and requested interviews with them via email.

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23 For instance, one of my interviewees is now on NAR’s board of directors. These members’ information, unfortunately, is outside the purview of the current project; I anticipate using their data in future projects.
The integrity of my interview data was ensured with audio recordings. This was easy to obtain because Realtors use the phone constantly in their professional work. Additionally, because some of my interviewees were geographically distant from my location in Northern California, it also was the only feasible way to have a conversation with them. In keeping with social scientific parameters to accurately collect and record one’s data (Maxwell 1996), I conducted my interviews over the telephone and used a proprietary service (Cogi) to digitally record and transcribe them (Maxwell 1996). I conducted two interviews in 2013 and two more in 2015. Before starting an interview, I asked each informant if I had permission to record our conversation and if they would permit me to use their real names in my work. I was granted permission from all of my interviewees. The interviews lasted between forty-five minutes and more than an hour. I had an individual interview schedule for each interviewee—specific to their activities—and I asked additional and follow-up questions as needed. This semi-structured quality allowed me to better understand what was happening at NAR during the time and the role each informant played. I found interviewing helpful for capturing the tone of the time of the archival records I was reading; however, because the interviews were conducted so far after the events in question, I could not treat them as more than supplemental sources.²⁴ These

²⁴ For instance, one interviewee could not recall the name of the Senator who invited her to speak before Congress. In her defense, the event occurred over thirty years prior. However, as social scientific research, the data from interviews helped me to describe events in a general sense rather than provide key data about the historical episodes in question.
methods produced the necessary analytical space for examining the Realtors’ fair housing activities. 25

DATA ANALYSIS

I analyzed my data in several circuitous stages. I began by reading NAR’s contemporary publications on its webpage. Noting the organization’s attention to diversity and increasing the rates of homeownership among people of color, my curiosity was piqued: the scholarly literature depicted them as partially responsible for keeping people of color out of the home buying market. Quite simply, I thought of Realtors as the embodiment of both de jure and de facto racism. Because I couldn’t understand how they had become so (seemingly) inclusive and concerned about people of color’s homeownership rates, this contradiction ultimately led me to my first research question—how did the Realtors go from actively opposing fair and open housing to their contemporary iteration?

From that question, I used an inductive approach to identify themes within my data on the Realtors’ activities over the last half century. My qualitative analysis employed the theoretical frameworks of scholarship on inequality and housing and I

25 I also had a number of unsuccessful attempts to collect data. Early in my research, I submitted two Freedom of Information Act requests that were denied. After narrowing my research focus to just the National Association of Realtors®, I contacted a former lobbyist of the organization (who gave public interviews with National Public Radio (NPR) about his lobbying work for NAR) and requested an interview. He declined. I also was in contact with a NAR staffer who worked on the organization’s Equal Opportunity Committee. We had agreed to meet me in person at the annual convention in San Francisco in November 2013, but the staffer failed to meet at our pre-arranged time and never again answered my requests for information. I include this information because I think the work of data gathering can be heavily reliant upon the good will and availability of others, who are outside researchers’ control. Further, when reading other researchers’ accounts of their (successful) data collection, I feel as though I don’t get an accurate picture of the often failure-laden research process.
looked for themes that were relevant to those fields. When I identified a recurring idea or theme within my data, I made an empirical assertion and then reviewed my data for evidence to confirm or deny the claim. This process was on-going throughout the dissertation and resulted in the substantive sub-sections for each chapter. I found numerous themes within the data, but focused upon those that were relevant to the social framework of equality, discrimination, and race. The dynamic nature of this process was extensive. Analyzing my data confirmed Charles Ragin’s (1992:6) claim that

> researchers probably will not know what their cases are until the research, until the task of writing up the results, is virtually completed. What it is a case of will coalesce gradually…and the final realization of the case’s nature may be the most important part of the interaction between ideas and evidence.
CHAPTER TWO

The National Association of Real Estate Boards’ Campaign Against Forced Housing

At the dawn of the 1960s, explicit, legal, and rampant housing segregation scarred American communities. The inequalities of the country’s residential housing market were ubiquitous and ingrained across disparate yet inter-connected social systems. These systems included the labor and housing market, the real estate industry, government financing of the mortgage market, municipal zoning laws, urban housing policies, organized homeowner associations, and violence. As a result, when millions of blacks migrated away from the rural south and into the urban north and western parts of the country during the mid-twentieth century, their housing options were not markedly improved. According to Douglas S. Massey (2001), while starting in the 1950s blacks were increasingly living outside of the confines of the southern states, they nonetheless were severely constrained by racial segregation at the neighborhood level constituting an impenetrable color line in the residential housing market.

Racial segregation was a growing concern among community and government entities and groups across the country were investigating the country’s housing problems. According to a report by the Commission on Race and Housing, twenty-seven million Americans were vulnerable to housing discrimination in the early
1960s. A separate study of twelve large U.S. cities\(^\text{26}\) cited a pattern within “all cities studied is a principal area of non-white concentration near the business center of the city. This area consists of a ‘segregated’ core surrounded by successive zones of ‘concentrated,’ ‘mixed,’ and ‘dispersion tracts’” (McEntire 1960:34). Moreover, McEntire determined that in six of the twelve cities he examined “more than half of the dwellings in the segregated areas were dilapidated or otherwise substandard” (McEntire 1960:38). In September 1961, the California Assembly’s Interim Committee on Governmental Efficiency and Economy held hearings on the state’s housing segregation issues (“L.A. Segregation Worse Than South, Group Told” 1961). The committee heard fifty witnesses over the course of two days and according to the executive secretary of the County Commission on Human Rights’ testimony, the black population of Los Angeles rose over ninety-five percent between 1950 and 1960 and that almost ninety-four percent of all blacks lived in a limited area of L.A.’s central district (“L.A. Segregation Worse Than South, Group Told” 1961:B7). That same year on the other side of the country, the New York State Advisory Committee on Civil Rights released a report surveying eighteen communities throughout its state and found that urban renewal programs were “geared to perpetuating the evils of discrimination and segregation in housing” (“State Unit Finds Cities’ Renewal Retains ‘Evils of Segregation’” 1961:66). And in October 1961 at a fair housing conference in Illinois, conference chairman and Evanston attorney Donald S. Frey said that “residential segregation is increasing

\(^{26}\) The cities of McEntire’s study were New York, Philadelphia, Washington, Chicago, Detroit, St. Louis, Atlanta, Birmingham, New Orleans, Houston, San Francisco, and Los Angeles.
rather than decreasing” (“Ill. Housing Segregation Theme of Group’s Assembly 1961:10). These patterns confirm what the Council for Civic Unity of San Francisco surmised just a few years earlier: “The very segregation which we decry in the south exists in our own northern cities” (Council for Civic Unity of San Francisco 1958:6). These examples from across the nation show how residential segregation’s ubiquity and the nascent community and government response to the problem.

Housing inequality, however, was not going completely unchecked by government regulators. A handful of states and a few large cities enacted fair housing ordinances in the late 1950s. These laws were the country’s first moves at regulating discrimination the residential housing market. These early laws marked municipalities gaining traction in regulating the residential housing market and particularly its real estate servicers. (See Table 3.)
Table 3. Early Fair Housing Laws. Referenced from McEntire (1960).

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Enacted</th>
<th>Housing Covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York City</td>
<td>April 1, 1958</td>
<td>All private dwellings containing three or more units and new one- and two-families homes in developments containing ten or more homes.</td>
</tr>
<tr>
<td>Pittsburgh</td>
<td>June 1, 1959</td>
<td>Applied to realtors, mortgage bankers, and builders in the sale or rentals of any dwelling owned by someone holding five or more residences. Additionally, it also covered any owner of fewer than five dwellings when handled by a real estate agent. Exempted the sale or rental of single houses or one</td>
</tr>
<tr>
<td>Colorado</td>
<td>May 1, 1959</td>
<td>All housing transactions except owner-occupied.</td>
</tr>
<tr>
<td>Connecticut</td>
<td>October 1959</td>
<td>All persons who own or control five or more contiguous housing units and real estate operators.</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>July 21, 1959</td>
<td>Rental or sale of apartments in dwellings of three or more units and the home sales in developments of ten or more.</td>
</tr>
<tr>
<td>Oregon</td>
<td>August 5, 1959</td>
<td>Bars discrimination on the part of any person selling or leasing property.</td>
</tr>
</tbody>
</table>
Such a shifting state regulatory setting compounded with other national moves against discrimination. President John Kennedy’s successful 1960 presidential campaign denounced racial and religious discrimination in federally-backed financed and insured housing. And despite strong objections by Southern Democrats in 1961, Congress extended the Commission on Civil Rights for another term. Shortly after its renewal, the Commission released a report recommending participation in federally financed mortgage programs—including the Federal Housing Administration (FHA), Veterans Administration (VA), and the Federal National Mortgage Association—requiring nondiscrimination by real estate brokers (Braestrup 1961:55). By the end of 1961, President Kennedy considered enacting an executive order on the issue, but postponed due to opposition from Southern Democrats critical for the 1962 Congressional session (Cowan 1961:A4).

I. NAREB’s Organizational Policies in their Campaign Against Forced Housing

Against this backdrop, the National Association of Real Estate Boards (NAREB) was feeling the growing pressure to expand government regulation into the residential housing market in hopes of ending racial and religious discrimination. In this chapter, I trace how the Realtors and their local boards deployed their campaign against “forced housing” during the 1960s.27 I outline and analyze the material and

27 “Forced housing” was NAREB’s phrase used to challenge the positions of “open occupancy” at the time.
ideological strategies the Realtors used to oppose fair housing to both internal and external stakeholders. I first examine the emergent Realtor policies that codified the organization’s opposition to fair housing. I then consider the materials and ideas that constituted NAREB’s campaign against forced housing.

The Property Owners’ Bill of Rights (1963)

In mid-February of 1963, California Assemblyman Byron Rumford introduced A.B.1240—which sought to ban housing discrimination in private residences—to the state Assembly (Eley and Casstevens 1968). As a response to these developments, the president of the California Real Estate Association (CREA) L.H. Wilson authored a statement entitled the “Property Owners’ Bill of Rights, consisting of a preamble and ten ‘rights.’” The statement’s preamble recounts the country’s founding and legal history, historicizing the Bill of Rights and 14th Amendment as entitling an absolute right to private property: “The Bill of Rights, essentially, tells the government what it cannot do…[granting] the precious right to live as free men with equal opportunity for all” (NAREB 1963b:NP). Despite the fact that the Bill of Rights did not restrict the freedom to own other human beings, the Property Owners’ Bill of Rights nonetheless idealizes its legacy. Such a tendency to truncate the early U.S.’s political history illuminates a specific configuration of political subject of the “free men.” It locates early American political lineages as

28 Shortly after the CREA adopted the statement, they made a minor amendment to part of the preamble on June 4, 1963. The amended text replaced two sentences with one much more concise statement and since is far more widely circulated that the original, it is version I reference here.
universally protective to the ownership of private property, but can only do so by presupposing the white, property-owning men as political subjects.

Those items specified by the Property Owners’ Bill of Rights included

1. The right of privacy.
2. The right to choose his own friends.
3. The right to own and enjoy property according to his own dictates.
4. The right to occupy and dispose of property without governmental interference in accordance with the dictates of his conscience.

... 10. The right to enjoy the freedom to accept, reject, negotiate, or not negotiate with others (NAREB 1963b:NP).

By defining rights and freedoms upon the “dictates of one’s conscience” and personal preferences, the Realtors deploy broad and almost limitless conceptual space for individual private property rights. However, such a conceptualization omits how the housing market and society writ large were organized by a debilitating racist logic. In this way, the Property Owners’ Bill of Rights puts forth a platform of bolstering the racially and religiously discriminatory status quo, while hiding behind seemingly abstract concepts of ‘rights’ and ‘freedoms.’ Compounded upon the historical processes that have allowed for discriminatory access to property, the Realtors’ policy statement amplifies unequal access to housing by crafting a seemingly democratic, constitutional, and American discourse of property rights.

The country’s largest state organization—California’s state association—unanimously endorsed the Property Owners’ Bill of Rights in February 1963 (“CREA
Head Raps Rising State Taxes” 1963:37F). Spurred by that success, Wilson canvassed the state to publicize the statement (Anthony 1963:R-1). Along the way, he called it a proclamation on “the importance of renewing the rights which originally were given to the citizens of this country by the first Congress of the United States” (“CREA Head Raps Rising State Taxes” 1963:37F). Wilson would go on to make similar claims across the country, conjuring early American political history as a progenitor of the Realtors’ defense of private property rights.

For instance, in May 1963, Wilson touted the Property Owners’ Bill of Rights political lineage in front of over one hundred and fifty Realtors in Orange County, California (“Wilson Urges Property Owners’ Bill of Rights” 1963:B1). There, he decried A.B. 1240—California’s fair housing law that had since been taken under consideration by a state Senate committee. Claiming that such a law would be “as bad as the Stamp Act was in colonial days,” Wilson framed the campaign against forced housing as comparable to the early American colonial revolt against the British monarchy (“Wilson Urges Property Owners’ Bill of Rights” 1963:B1). He further championed his interest in upholding property owners’ freedom alongside his personal biography, telling his Realtor audience: “All of my life…I have been aware of the importance of freedom. My mother was an immigrant. One of my great-great grandfathers, James Wilson, signed the Declaration of Independence” (“Wilson Urges Property Owners’ Bill of Rights” 1963:B1). Wilson thus endorsed his ancestral connections as credentials to speak on behalf of “the importance of freedom.” By crafting his personal genealogy as demonstrative of national ideals of freedom and
rejecting potential tyranny of the state, Wilson implied that fair housing legislation—and thus the state regulating racial and religious discrimination in the residential housing market—is the antithesis of “freedom.”

The Property Owners’ Bill of Rights was quickly endorsed in the early months of 1963 by many California real estate boards. In late February 1963, it was recognized by the Long Beach, Garden Grove, and Bellflower Realtor boards (Anthony 1963:R-1). And in March, the San Mateo-Burlingame Board of Realtors also endorsed it (“Property Owners’ Bill of Rights Keynotes Realtor Week Here” 1963:18). Two other boards—the Santa Cruz Board of Realtors in March and the Fresno Realty Board in May—quickly followed suit and publicized their endorsements with the following political advertisements in local newspapers. Like Wilson, these boards’ advertisements took extensive measures to construct the Property Owners’ Bill of Rights’ political pedigree. (See Figures 1 and 2.)
Figure 1. “Property Owners Bill of Rights” political advertisement. Santa Cruz Board of Realtors. *Santa Cruz Sentinel*. March 31, 1963.

![Bill of Rights Ad](image)
Figure 2. “Property Owners’ Bill of Rights” political advertisement. The Fresno Realty Board. *The Fresno Bee*. May 12, 1963.
Searching for symbols to advance their campaign against forced housing, the Realtors looked backward to America’s colonial history. In addition to calling the statement a new “Bill of Rights,” the Realtors used symbolic cultural Americana—including liberty bells, flags, eagles, stars, and white colonial men—to establish it within a legacy of American political and legal history. By invoking nationalist images and themes, local Realtor boards put forth the Property Owners’ Bill of Rights that provided existing white property owners an ideological framework in which to challenge encroaching fair housing legislation.

NAREB approved the Property Owners’ Bill of Rights unanimously at the organization’s board of director’s meeting on June 4, 1963 (“National Realty Board Okeh’s ‘Bill of Rights’” 1963:26-F). By endorsing the statement, NAREB bolstered its influence and circulation. Shortly after its endorsement, NAREB’s director of governmental relations corresponded with members of Congress, lobbying the statement. One such letter was sent to Congressman Robert Wilson of California. The letter included a copy of the Property Owners’ Bill of Rights, detailed NAREB’s adopted of the statement, and requested that Congressman Wilson consider acting on the side of property owners. Within a week of receiving the Realtors’ letter, Congressman Wilson responded, thanking NAREB for the statement and informing them that he had already submitted the Property Owners’ Bill of Rights into the congressional record.
In addition to being authorized by the national Realtor association and even working its way into the national political register, the Property Owners’ Bill of Rights also gave local Realtor boards a platform to fight advancing fair housing legislation. In New Jersey—the first state in the union to ratify the original Bill of Rights in 1789—the state Realtor association publicized the Property Owners’ Bill of Rights over the July 4th holiday weekend in 1963. Board President John A. Rogge outlined the statement and then encouraged the public to contact their state senator (“Realtors Suggest Bill of Rights to Protect Owners” 1963). And in Rhode Island, a month after its Equal Housing Opportunities Law passed in 1965, two fair housing opponents in the state assembly introduced a measure entitled a “Property Owners’ Bill of Rights” to repeal fair housing in the state (“‘Rights’ Bill in Assembly” 1965:3). Even though newspaper accounts at the time noted that there was no floor discussion of the bill and it was unlikely to come out of committee, the Realtors’ policy nonetheless provided fair housing opponents a language and model in which to put forward their own opposition to state regulation of housing market discrimination, however unsuccessful (“‘Rights’ Bill in Assembly” 1965:3).

Following the national organization’s endorsement of the Property Owners’ Bill of Rights, Realtor associations across the country considered the resolution throughout 1963. In addition to NAREB and CREA, the following state associations all approved the Property Owners’ Bill of Rights: Texas, Nebraska, New Jersey,
Iowa, Michigan, and Wisconsin.29 When the Nebraska Real Estate Association unanimously adopted the Property Owners’ Bill of Rights at its 46th annual convention in September 1963, the group’s public announcement set off a contentious public debate in area newspapers. Upon the resolution’s acceptance, President John E. Hoyt asserted that it was

not an infringement upon Negro rights…We are just not interested in having the government tell us how to run our business…We want the right to do what we want with our property. It should not be construed to mean that we will deny minority groups their rights (Parry 1963:6).

Despite Hoyt’s repeated proclamations that allowing white homeowners to discriminate against blacks was not about denying people of color property rights, other Nebraskans did not agree. In a letter to the editor two days later, Edgar A. Pearlstein responded, describing the Property Owners’ Bill of Rights as “an attempt to justify continuance of segregation in housing, even though it uses words like ‘freedom,’ ‘liberty,’ and ‘conscience’” (1963:4). And the President of the Lincoln chapter of the NAACP—Leola J. Bullock—also wrote a few days later, calling the Nebraska Real Estate Association’s adoption of the Property Owners’ Bill of Rights “regrettable” and only serving “to propagate the conditions that have existed for generations” (Bullock 1963:4). But Bullock ultimately remained hopeful, stating that she “would hope this action by the Nebraska Real Estate Assn. will awaken the

people of good will in our state, for we believe even the realtors will eventually reflect the will of the people” (Bullock 1963:4).

Other local Realtor boards endorsed, discussed, and purchased the statement. For example, Realtors in Collin County Texas were apprised of the Property Owners’ Bill of Rights and encouraged to obtain copies (“State Realty Head Speaks in McKinney” 1963). In December, the Bloomington-Normal Board of Realtors had also endorsed the resolution (“Bill of Rights’ Not Answer to Letter” 1963). And to illustrate just how unremarkable the Property Owners’ Bill of Rights was integrated into local Realtor board activities, when the Clinton County Board of Realtors in Ohio directed its secretary to purchase two thousand copies to distribute within the community, they did so at the same time as arranging for the acquisition of two steers and a grand champion hog from the 4-H club’s livestock sale (“Realtor Board Takes in Members” 1963). Throughout 1963 then, the Realtors’ campaign to promote absolute private property rights without government regulation transpired among routine civic events as local boards enveloped the Property Owners’ Bill of Rights within their organizations, their members, and the public.
Figure 3. Alamagordo Daily News. Alamagorodo, NM. July 7, 1966.

P.O.D. CAMPAIGN PLANNED—Looking over a copy of the "Property Owners’ Bill of Rights" as they completed plans for an explanatory session late this afternoon at the Holiday Inn are Alister H. Mactavish, president of the local realtors’ association and Otero county chairman of the new Property Owners Division sponsored by the New Mexico Realtors Assn., and Mrs. Lois Jones, who will serve as membership campaign chairman for the division here. Local realtors and their salesmen were to be briefed on the organization at this afternoon’s meeting by NMRA President Walter Keesing.

(Staff Photo)
The Property Owners’ Bill of Rights and Fair Housing in Michigan

The Property Owners’ Bill of Rights was also taken up by neighborhood association groups and used to lobby for homeowners’ rights. (See Figure 3.) In Michigan, where the state legislature had denied an open housing law earlier in the year, fair housing advocates advanced an ordinance before the city council to ban racial discrimination within Detroit’s real estate market in early July 1963 (Meyer 2001:175). As a response, the Greater Detroit Homeowners’ Council (GDHC) an all-white private homeowner group led by attorney Thomas L. Poindexter drafted a Homeowners’ Ordinance. The proposed ordinance echoed the language of the Realtors’ Property Owners’ Bill of Rights, declaring that “[e]ach Detroit…residential property owner shall enjoy the following rights”:

a) The right of privacy, the right to choose his own friends and associates, and to own, occupy and enjoy his property in any lawful fashion according to his own dictates...

d) The right to freedom of choice of persons with whom he will negotiate or contract with reference to such property, and to accept or reject any prospective buyer or tenant for his own reasons (Kenny 1964:1).

Defending these rights, the GDHC’s ordinance carried with it punitive measures for infringing upon homeowners’ rights including a five hundred dollar fine or imprisonment not to exceed ninety days (“Racially Pointed Housing Issue Reaches the Voters” 1963:7). Supporters of the homeowners’ rights ordinance filed over forty-four thousand signatures with the city clerk’s office (“Detroit Homeowners Seek Rights Vote” 1963). The city council was divided but ultimately denied both the fair
housing and GDHC’s ordinances (Meyer 2001:176). But because local regulations required any law not passed by the council to go before the public referendum, the GDHC’s ordinance was slotted to appear on the city’s primary ballot in September 1964 (Kenny 1964:1; Meyer 2001:176).

Before that could occur, a number of civil rights group sued to keep the city from holding the referendum on GDHC’s ordinance, citing it as unconstitutional (Meyer 2001:177). The suit arrived in Michigan circuit court in November and in February 1964, Judge Joseph Moynihan Jr. called the GDHC’s ordinance “patently unconstitutional” adding that the “real intention of the proposed ordinance is to advance the cause of racial bigotry in the field of housing,” granting an injunction that would prevent the ordinance from coming to a vote (Kenny 1964:1). The GDHC appealed and in May, in a five to three ruling, the Michigan’s Supreme Court revoked the lower court’s ruling and allowed the ordinance to appear on the ballot. The court, however, stated that it wasn’t ruling on the constitutionality of the ordinance, only denying the judiciary the injunctive power to overrule the state initiative process (“Court Lifts Referendum Block” 1964:1).

On September 1, 1964 the homeowners’ rights ordinance appeared before Detroit voters. Despite opposition from Detroit Mayor Jerome P. Cavanagh and Governor George Romney, the ordinance passed by a margin of twenty-five thousand votes (137,671 to 114,743) (“‘Rights’ Bill Wins Despite Romney, Cavanagh Opposition” 1964:9). Following the vote, Michigan’s State Civil Rights Commission
publicly announced its plan to invalidate the law (“Suit Blasts State Rights Commission” 1964). In response, the GDHC filed suit against the Commission and crafted a separate memo charging that the Commission was fraudulent (“Suit Blasts State Rights Commission” 1964). Stating that since “white Christians” made up over eighty-eight percent of Michigan’s population, the memo accused the “Commission as presently constituted” was illegal because its

members were selected and appointed on account of their race, color or religion and membership in minority racial and religious groups, thereby according disproportionately excessive representation to such minorities (“Suit Blasts State Rights Commission” 1964:13).

The GDHC not only publicly challenged the Commission’s declaration to defeat the homeowners’ rights ordinance, but also openly questioned its legitimacy. In mid-October, the GDHC’s suit was thrown out by the Michigan Supreme Court (“Homeowner Suit Halted” 1964). Eventually, the referendum was successfully challenged by an attorney of the Detroit branch of the National Association for the Advancement of Colored People along with notable white residents including attorneys, members of the clergy, and members of the Detroit Board of Education in 1966 (“Detroit Ordinance Overruled” 1966:16). While Detroit’s homeowners’ rights ordinance was never enacted, the plebiscite nevertheless ushered in Poindexter—GDHC’s head and author of the homeowner ordinance—to the Detroit common council (“Negro Loses Race for Detroit Council” 1964). The influence of the Realtors’ Property Owners’ Bill of Rights thus had real political consequences in the state of Michigan.
Circulating throughout the country as part of the Realtors’ campaign against forced housing, the Property Owners’ Bill of Rights claimed that Americans’ private property rights were sacrosanct—a legal right inherited through the long history of Anglo-Saxon law and upheld repeatedly throughout U.S. legal history. Unlike its historical predecessor however, the Property Owners’ Bill of Rights never became legally binding. The statement’s dissemination among Realtors and the public nonetheless diffused its message of absolute rights of private property, fairness, and state regulation of the private housing market that worked to uphold the residential housing market’s racist status quo.

A “Property in Our Tradition”

The Property Owners’ Bill of Rights inspired NAREB to compose a new organizational policy statement. Described as “patterned…after” the Property Owners’ Bill of Rights, NAREB’s new organizational policy denounced the federal government’s ability to abridge property rights (Cameron 1963:B13). Entitled “Property in Our Tradition,” it was adopted by the full membership at NAREB’s annual convention in November 1963. It declared, in part:

We hold steadfastly to the principle that the right to own, rent and dispose of real property, and the right to use it freely within the limits of necessary measures to protect the public health and safety, are traditional, constitutionally guaranteed to each citizen, and indispensable to the maintenance of a free society of free men.

Government should not deny, limit or abridge these fundamental rights (NAREB 1964f:NP).
Invoking phrasing from both the Declaration of Independence (“we hold…”) and the 14th Amendment (“should not deny, limit, or abridge”), NAREB put forth a national Realtor platform against fair housing reminiscent of the nation’s founding legal documents. While the organization’s policy statement symbolized NAREB fighting to uphold individual freedom and limit government overreach, it also had material implications for the organization. In codifying its stance, NAREB signaled to its members and the country at large that the nation’s largest real estate trade organization opposed fair housing in spirit and practice.

The association’s new policy language was taken up by local boards. Emerging in print less than a month after NAREB’s convention, a local Ohio newspaper featured a Realtor-sponsored political advertisement that included the opening paragraph of NAREB’s new statement of policy, warned readers of how ignorant the general public was regarding the erosion of private property rights, and cautioned the public of the intent to “force open home doors to minority groups” (Wyman Associate Inc. Realtors 1963:29). The following year, as the city’s Human Relation Commission proposed a fair housing ordinance, the Real Estate Board of Davenport, Iowa released a new policy statement also containing language identical to the national board’s (“Realtors Rake ‘Fair Housing’” 1964:22). And in 1965, the Utah Association of Real Estate Boards employed the policy to lobby their state legislature against fair housing legislation. Using the exact language of the national association’s statement of policy, the Utah Realtors mailed form letters authored by the association’s secretary to members of the state legislature (“All-Out Campaign
Against ‘Fair Housing’ Promised by Realtors” 1965:3B). Despite a Democratic-controlled legislature that passed laws on public accommodations and fair employment, the Utah legislature did not enact any fair housing law as part of its civil rights legislative package in 1965 (“Capsule Summary of Utah Legislative Action” 1965). And two years later in 1967, when Pennsylvania legislators were considering imposing harsher penalties for Realtors who discriminated in housing—including revoking their state license to sell real estate—NAREB included the opening sentence of its new policy statement in media accounts.30 These instances illustrate how the Realtors’ new policy was taken up by local boards and promulgated Realtor opposition to fair housing.

While NAREB’s new organizational policy didn’t lend itself to the stylistic campaign that surrounded the Property Owners’ Bill of Rights, its succinct and official language was utilized by Realtors across the country. In this way, NAREB’s statement of policy played a visible but ultimately rather small role in the group’s campaign against forced housing. But by providing its leadership and local boards with a unified, formal organizational tenet against government regulation of private property rights, NAREB’s statement of policy legitimated the organization’s politic position of its campaign.

30 See, for example, Ecenbarger 1967.
1963 NAREB “Policy on Minority Housing”

At the same board of directors meeting that endorsed the Property Owners’ Bill of Rights, the National Association of Real Estate Boards crafted a policy on “minority housing” to clarify the “rights and duties of members in real estate transactions—particularly those pertaining to the housing of racial, creedal, and ethnic groups” (NAREB 1963a:NP). The ten-point policy prohibited blockbusting (“Realtors should continue to condemn any attempt by persons…to solicit or procure the sale…of real estate in residential areas by conduct intended to implant fears in property owners based upon…any racial, religious, or ethnic group”) and clarified organization’s policy on working with “minorities” (“each Realtor should feel completely free to enter into a broker-client relationship with any race, creed, or ethnic group” and “No Realtor should assume to determine the suitability or eligibility on racial, creedal, or ethnic grounds of any prospective mortgagor, tenant, or purchaser”) (NAREB 1963a:NP). Despite the Realtor organization’s prohibition of adjudicative practices like blockbusting or judging clients’ financial eligibility, the “Policy on Minority Housing” encouraged Realtors to arbitrate the home purchase process in other ways.

Other components of NAREB’s “Policy on Minority Housing” emphasized the trade’s intermediary position, but did so by articulating industry practices that could help uphold racial segregation. For instance,

3. A Realtor should be free to communicate his client all factual data which the Realtor believes to be germane to the
formulation of an informed decision by his client (NAREB 1963a:NP, original emphasis).

The fact that NAREB’s policy endorsed its members’ role in conveying “all factual data” to produce an “informed decision” to the nationwide segregated housing market of 1963 is a carte blanche legitimization of making race, ethnicity, and religion relevant to the real estate transaction and justifying Realtors’ role in providing those data. While the Realtors envisioned their trade members as mediators—and not adjudicators—for their clientele, by granting them the powers to bring “all factual” information to their customers, NAREB endows its members with broad capabilities that consign them well beyond simple intermediaries. Considering that housing discrimination often includes editorializing comments about suitability of racial and ethnic areas, the historical appearance of the organization authorizing such practices is significant.31

In addition to justifying racial disclosures as relevant to the home buying process and their trade’s role in providing that information, the Realtors’ “Policy on Minority Housing” also demarcated the sales contract as retaining the right to discriminate and their trade’s ability to uphold those social exclusions:

4. The property owner whom the Realtor represents should have the right to specify in the contract of agency the terms and conditions thereof, and correspondingly, the Realtor should have the right and duty to represent such owner faithfully observing the terms and conditions of such agency

31 Editorializing is defined by “agent commentary, both positive and negative, on home locations” (Reade 2003:13). Editorializing is considered and measured in contemporary housing discrimination studies as a form of steering (Galster and Godfrey 2005; Reade 2003).
By codifying property owners with the right to set the terms and conditions within the sales contract and authorizing Realtors to uphold said contract without fear of civil penalty, NAREB’s “Policy on Minority Housing” formulates the home sales contract as inviolable. Moreover, in demonstrating that the power follows the property owner and that Realtors have an occupational duty to uphold their clients’ desires, NAREB’s “Policy on Minority Housing” suggests that its trade duties to existing property owners are its primary consideration. In this way, those seeking to purchase homes—like the large percentages of people of color who have been historically excluded from full enjoyment of private property rights—are at the mercy of those already holding property. By entitling existing (white) property owners of the early 1960s with expansive legal rights afforded through property contracts, NAREB’s “Policy on Minority Housing” in both theory and practice worked to sustain housing discrimination.

II. NAREB’s Campaign Materials

In addition to formal policies, the National Association of Real Estate Boards also developed campaign materials to explicitly promote its opposition to government regulation of the residential housing market. Disseminated via new and existing organizational structures, the Realtors’ campaign materials were designed to inform, persuade, and motivate their trade members and, by extension, the public to oppose
fair housing legislation and the growing ideology of civil rights. In the section that follows, I examine two of the group’s organizational structures; their ideologies about fairness, race, and property ownership; and document how the components functioned in aiding the Realtors to fight the growing fair housing movement.

The Forced Housing Kit

In the fall of 1963, NAREB’s state associations committee petitioned the group’s board of directors to support the creation and dissemination of a publicity dossier on the issue of fair housing (NAREB 1963d:22). The group requested an unspecified sum that would cover travel expenses for five executive officers to Chicago to develop the kit’s contents as well as fifteen hundred dollars to publish and distribute the kit (NAREB 1963d:22; NAREB 1965:2). The motion passed and by February 1964, NAREB’s state associations committee disseminated the “Forced Housing Kit” to each state board (NAREB 1963d:22). The contents of NAREB’s kit were designed to guide local realtor boards into a public campaign against government regulation of housing market discrimination. The kit’s introductory letter proposed it would aid local boards “in opposing the type of legislation detrimental to our real estate profession as well as to the human right of property ownership” (NAREB 1964e:NP). The kit was expansive and its contents included an introductory letter, a model publicity program, press releases, brochures, essays, suggested speeches, and newspaper reprints of anti-fair housing editorials and letters to the editor—many of which were published just a few months’ prior to the kit’s release.

32 The fifteen hundred dollars in 1963 is the equivalent of over eleven thousand dollars in 2015.
Because the organization had a centralized authority with the ability to mobilize considerable resources, NAREB’s forced housing kit contained numerous, timely, and relevant pieces to the national debate over fair housing. The kit was so popular that it underwent a second printing in May 1964 (NAREB 1964b:2).
Figure 4. National Association of Real Estate Boards’ “Forced Housing Kit.” Image taken by author.
The forced housing kit opens with an “Action Plan” detailing a three-part campaign outline to evaluate legislation (or potential legislation), educate local boards, and put the plan into effect. Using existing organizational power and resources, the “Action Plan” instructed local Realtor boards to educate their members by implementing a special informational meeting, drafting a statement of policy, releasing the statement to local media as part of a public campaign, and assembling special subcommittees to coordinate campaigns against fair housing legislation.

Coaching its membership on how to successfully campaign against fair housing, NAREB’s forced housing kit instructed Realtors to adopt uniform language. The most prominent ideological claim NAREB put forth in its campaign against forced housing was an absolute right of property owners to discriminate in the sale, transfer, or lease of property, an idea that was frequently espoused as upholding benevolent freedoms and rights: “freedom of contract,” “right of voluntary contract,” “property owners’ rights,” and even “right to discriminate.” But the forced housing kit attempted to synchronize the campaign’s language. It urged Realtors to “use the phrase ‘forced housing’ at every opportunity and avoid ‘anti-bias laws’ or ‘fair housing laws’ which are the ‘loaded’ terms of the opposition” (NAREB 1964g:3). The prominence of the forced housing phrase in the NAREB’s campaign, however, emphasized fair housing laws as antithetical to the right to voluntarily contract. The Realtors’ vehement rejection of fair housing regulations was based upon the belief that it codified government restriction of individual property owners’ freedom of contract. Or, as a publicity program published in the forced housing kit declared, it
“forces one party to enter into the contract irrespective of his desire to do so, thus violating the well-established principle that a contract is the voluntary agreement of two parties” (NAREB 1964g:2, original underlining).

_Moderate Image_

Perhaps because the Realtors so vehemently opposed government oversight of private property, their forced housing kit touted a moderate image for their trade. According to NAREB, the way to appear moderate was to admit that inequality existed in the housing market:

Presented herewith is a collection of material designed to help real estate boards and state associations when they are confronted with the problem of “forced housing”—proposed or existing. Its one main emphasis is “moderation”, recognition that there are genuine problems, and determination to find just methods of reaching solutions while branding coercion as unjust… The watchwords are “firmness” but also “moderation”—admitting that there are civil rights problems, some of which can probably be solved promptly by laws, such as in voting or use of public or governmental facilities, but that housing, being the most complex of all, requires an entirely different approval…that will assure the civil rights of all the individuals involved (NAREB 1964g:NP, original underlining).

Here, the moderation NAREB proposes is to acknowledge “genuine problems” but to oppose any government authority (“coercion”) as “unjust.” The kit further directed Realtors to appear moderate by acknowledging “a middle-of-the-road conciliatory attitude, admitting that injustices do exist for minorities” (NAREB 1964g:NP). The Realtors’ forced housing kit thus crafted an image of moderation by “admitting” to
racial inequality in the residential housing market. In this way, the logic of the campaign admits to “problems” but merely disagrees with the solutions that would entitle the state to oversee discrimination in the residential housing market. By conceding the inequality (albeit in a way that trivializes the “problems” of residential segregation) in the housing market, the Realtors’ campaign puts forth a moderate appearance, legitimizing its otherwise extreme claim that property rights lie outside the jurisdiction of state regulation. In addition, by acknowledging the usefulness of civil rights in the area of voting and public accommodations, the Realtors again craft a reasonable persona. The fact that they are in full support of the civil right laws already on the books in 1964 gives the Realtors’ campaign an easy concession and furthers their moderate stance that they aren’t opposed to civil rights in general, just in the area of residential housing sales.

*Denying Racial Inequality*

Despite calls for moderation, Realtors denied housing discrimination within the same forced housing kit. Two documents in the kit deny housing discrimination altogether. The first was an advertisement by the Madison (Wisconsin) Board of Realtors in December 1963. Asking for property owners to “take action” by “speak[ing] up” at the upcoming public meeting, the Madison Board listed large bullet points for why a meeting on forced occupancy was necessary. After the first and largest bullet point on the page stated that property owners should oppose the
housing ordinance because it constitutes “Forced Occupancy” legislation, the second and most lengthy bullet point claimed the city was free of housing discrimination:

- **BECAUSE** No specific need has been shown or proven. Our Board of Realtors has to date, one request for aid in finding housing as a result of our open invitation which appeared in both local newspapers. Furthermore, with minority groups, including colored, in basically every city ward, we believe anyone can find housing in every area of the city, commensurate with their ability to obtain financing (NAREB 1964g:np).

Reasoning that a paltry response to a public call for housing help and general beliefs held by Realtors meant little to no housing discrimination in the city, the Madison Board of Realtors’ advertisement claimed that fair housing legislation is unwarranted. Citing anecdotal experiences about the people of color’s housing by Realtors was a common strategy to denigrate the need for fair housing.

The second example from the forced housing kit that denied the racial inequality in housing was an editorial from the *Wichita World* newspaper:

We…are…impressed…at the general appearance of most of the Negro homes [in Wichita]. Having lived some three years in the South, 10 in Kansas, and the rest in a metropolitan area of the North, we could not help but comment on the relatively high standard of living of the Wichita Negro…

If, as a mass, they are deeply disturbed about their living conditions here, or their treatment in Wichita, we must confess that we are puzzled---because it excels anything we have seen in more than just a few years of observing. (NAREB 1964G:III-C-1).
I quote the above editorial at length because it illuminates a tendency within the Realtor campaign to reject fair housing based upon anecdotal evidence by whites living outside the problem. In the example above, the text’s language describes blacks as a group living apart from the writers. The pronoun references clearly equates “we” with white observers of black housing conditions (“We…are…impressed…at the general appearance of most Negro homes.”). The editorial cites multiple observations of black housing in the North, South, and throughout the state of Kansas through “years of observing.” While the editorial details these extensive observations of black housing conditions in order to refute the need for fair housing regulation, such details reveal the writers are speaking as outsiders to the community in question.

Moreover, comparing the appearance of “Negro homes” in other areas of the country to their appearance in Kansas as the basis for claiming a “relatively high standard of living for the Wichita Negro” is based upon anecdotal evidence—even if said evidence comes from “years of observing.” In contrast to claims of a relative high standard of living for blacks and ease of available homes in the area as of 1963, census data from 1960 show a vastly different picture. For example, despite the claim that blacks have significant numbers of homes available to them throughout Wichita, census data show that people of color owned houses in relatively limited areas of the city and had much higher rates of dilapidation. According to the data, 35.1% of the total occupied and vacant units in the census tracts were dilapidated. This figure is almost thirty percent higher than other census tracts. The inconsistent position on housing inequality belies the Realtors’ claim of moderation. But the significance of
these data are not just that the Realtors’ observations are incorrect or intentionally false; their significance is due to the NAREB’s organizational power to compose an editorial and circulate the trade group’s ideas about racial inequality as a professional Realtor organization.

Moral, Not Political, Development

In addition to denying the presence of racial inequality in the residential housing market, the forced housing kit’s contents also identified moral improvements that would elevate the blacks’ social status. One of the documents in the Realtors’ forced housing kit maintained that moral development was required for both whites and blacks. A suggested twelve minute speech expanded the Realtors’ moral argument on shared responsibility:

Social acceptance for Negroes or any other minority group…comes through education in the homes, the schools, the churches—education for the white majority in tolerance, understanding, and brotherhood—and education for the Negro minority in responsibility, ambition, and moral standards (NAREB 1964g:IV-F-2-b).

By delineating responsibilities for both the “white majority” and “Negroes,” NAREB positions responsibility for racial prejudice as a joint effort, with each racial group declared lacking in and responsible for certain moral qualities. Such a position conceptualizes the problem of “social acceptance for Negroes” as a moral, not legal, dilemma. The focus on education and moral development construes racial discrimination in housing as apolitical. Further, in identifying educational needs in “responsibility, ambition, and moral standards,” the Realtors assign the current status
quo in the racially segregated residential housing market as a result of perceived moral deficiencies of a group of people who have been legally and habitually excluded from full participation in the domestic housing market. In doing so, the Realtors proffer socialization and education—not via government oversight over discrimination occurring in the residential housing market—as the appropriate method for change.

*The Forced Housing Kit in Circulation*

The Realtors’ forced housing kit translated into actionable campaigns by local boards. In Illinois, state Realtor boards quickly merged their opposition to fair housing regulation with NAREB’s forced housing campaign. Over two hundred members of the Northwest Suburban Board of Realtors heard a panel on “Forced Housing and the Realtor” at the Rolling Green Country Club in Illinois (Swinford 1964). In Indiana, Realtor Ralph Mitchell read a forced housing speech “prepared by the National Association of Real Estate Boards” to members of the Kokomo Exchange Club in June 1964 (“Forced Housing is Topic for Exchange Club” 1964:3). And the Ohio Association of Real Estate Boards adopted a resolution opposing forced housing just a few months after receiving its forced housing kit (“Forced Housing Law Opposed By Realtors Group” 1964). In an interview with CBS News correspondent Mike Wallace, the president of the New Jersey Association of Real Estate Boards defended the Realtors’ position against “forced housing laws” on the televised program (Garland 1964:13).
In addition to informing its members, the Realtors’ forced housing kit’s contents even circulated among the general public. For example, its suggested news releases were duplicated by two Illinois board of Realtors in area newspapers in early 1964 as the Illinois state Legislature was considering an open occupancy law (“Supports State Referendum on Open Occupancy Laws” 1964:NP; “Realtors Endorse Housing Referendum” 1964:2). Citing NAREB’s “Forced Housing” pamphlet, Richard C. Dunham, director of Chicago’s Freedom of Residence Committee, wrote a letter to the editor in Chicago’s Daily Defender, criticizing the Illinois Association of Real Estate Boards. Dunham charged the Realtors’ publication with distortion and “try[ing] to arouse prejudice” (Dunham 1963:10). Dunham’s comments illustrate how the national organization’s campaign material was taken up by the states and used to lobby against state regulation of the housing market. Moreover, this example illustrates how local fair housing advocates in Illinois were fighting the deep pockets of the national Realtor association, whose members were able to deploy their forced housing kit and its contents across the country.

Despite cohesive and successful publicity campaigns however, some Realtors called upon the national association to deploy more organizational resources for the group’s campaign than just the forced housing kit. At a NAREB meeting in February 1964, the state associations committee reported to the executive committee that although the preparation of forced housing kit was progressing well and on time thanks to a generous budget and use of NAREB facilities, a larger need remained. The state associations’ committee chair recommended “that a Department or other
structure of NAREB be immediately created, adequately staffed and financed to
guide, coordinate and implement a nationwide defense against, and positive
alternatives to, forced housing” (NAREB 1964a:15). While such a department never
materialized within NAREB, this record indicates that some within the membership
desired an even larger and more strategically dedicated formal organizational
mechanism to conduct the group’s forced housing campaign.

The Realtors’ forced housing kit was a thorough yet hastily assembled
informational collection meant to instruct its trade members on the group’s
ideological opposition to fair housing. It espoused a moderate position for its
membership as a tactical strategy to ingratiate the campaign with the American
public’s existing position on racial inequality. NAREB’s moderate position wasn’t its
own substantive position on racial inequality—it was a public persona adopted for
campaign purposes. Further, the group’s denial of housing inequality in other parts of
the kit belied a moderate position that acknowledged the extent and gravity of
housing inequality in the country in early 1964. Moreover, by situating housing
discrimination within a moral—as opposed to a political—framework, the Realtors
attempted to build upon their “moderate” position that didn’t deny the need for
ameliorating prejudice and discrimination in the housing market. The Realtors further
offer a compelling alternative to government intervention: voluntary social
educational programs—deployed by themselves and other private, non-governmental
organizations—as better choices for addressing social problems in housing and served
to compound their moderate image. However, any claim of moderation by the
Realtors is suspect when their forced housing kit documents characterize the housing problem as a result of moral deficiencies among groups of people victimized by housing discrimination.

Realtor’s Headlines

Just months after NAREB forged what would become its permanent presence in Washington, D.C. in 1942, the Association also initiated a weekly publication to communicate with its members (Davies 1958). In May 1942, NAREB began printing its weekly newsletter, which would eventually become known as Realtor’s Headlines. Because Headlines was an existing part of the organization’s structure, published weekly, and mailed to every Realtor, it served a valuable communication system for the group’s forced housing campaign. In 1965, the newsletter published a nine-part editorial series, spanning three months of coverage, on the issue of forced housing. Authored by the newsletter’s editor, Eugene P. Conser, the series served as part educational and part political campaign. Substantively, the editorials traced the history of federal law on housing and race relations, cited how NAREB’s own regulations on housing evolved, and speculated on the threat of the fair housing movement. The series also remarked on the importance of a knowledgeable and educated membership:

It would be well for Realtors to be familiar with the background of their own actions, as a policy-making group through the years, in relation to the changing public policy in

33 After its appearance in Headlines, the Realtors published the series as a separate pamphlet entitled “Historical Background of the Realtor’s® Position in Race Relations.”
the field of race relations...It is important that Realtors understand—and relate publicly—just what is taking place, and understand events that have led up to an historical decision that is in the making (Conser1965a:NP).

The excerpt above points to the dual purpose of the NAREB educational campaign: to inform its members of its position on the issue of forced housing and provide them with the knowledge necessary to publicly campaign against forced housing. NAREB thus positioned its rank and file members as an important component to its self-proclaimed battle against forced housing. In doing so, NAREB provided a broad and uniform narrative on the issue of forced housing, disseminated said narrative to its members, and solicited its membership to lobby public opinion against fair housing.

Origin Stories

The newsletter’s series crafted two important origin stories—one on private property rights and one on the fair housing movement—to provide a cohesive and explanatory narrative for its trade member audience as part of its forced housing campaign. The historical narrative put forth in the Realtor’s Headlines series declared that “the right of private contract” has “always...existed” and that such “a right [has been] historically present in Anglo-Saxon common law” (Conser 1965b:NP). One of the legal precursors cited was U.S. Supreme Court Justice William O. Douglas’s quoting William Pitt:

*The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter—but the King of England cannot enter; all of his force dares not cross the threshold...*
Since the colonists brought this concept of an unassailable human right to our shores, it has been a noble incentive to our people, a strong factor in family cohesion and stability, and a civilizing force.

Now it is proposed that Congress forget this lofty heritage and decide that the Attorney General may definitely enter any time a home owner is alleged to have practiced racial or religious discrimination in the sale or rental of his property (Conser 1966:NP, original italics).

Here, the story of *a man’s home is his castle* is reproduced in order to emphasize the American democratic ideal of independence from unreasonable government intrusion into one’s private property. The Realtor organization positioned “unassailable” property rights as originating in the struggle over the British monarchy during a fight for colonial independence. The Realtors’ forced housing campaign usefully contrasted the emergence of “our people,” “family cohesion and stability,” and even a “civilizing force” with the threat of government intrusion to upset the legacy of civilization in private property rights. According to such a chronicle, this foundational time forged an American identity based upon the independence of property ownership.

The *Realtor’s Headlines* editorial series also composed an origin story on the fair housing movement. The narrative put forth by the trade group in its official newsletter depicted the fair housing movement as communist and foreign to American ideals of sacrosanct private property rights. After the 1950s—a decade synonymous with policing socialist and communist activities both at home and abroad—the 1960s maintained significant concerns over communism, too. In 1962,
conservative economist Milton Friedman published *Capitalism and Freedom*, espousing remarkably similar conceptualizations of the importance of private property rights as essential to freedom and democracy that appeared in NAREB’s forced housing campaign. Communism therefore remained a viable boogeyman in the 1960s and one that the Realtor organization deployed to defame the fair housing movement:

The idea and the phrase ‘fair housing,’…was born in the communist press. Its proposal, however, was for a law that would carry jail terms and state confiscation of property violators. As the proposal passed through the propaganda channels of the communist party it was picked up and modified into a more acceptable form by non-communist sympathizers whose objectives were less the weakening of property ownership than the more idealistic purpose of overcoming racial prejudice. Now the communist press is gloating over its success in having created a movement to ‘curb the property-owning class’ that is sweeping the country under the sponsorship of respectable civil rights and church organizations—with the party out of the picture (Conser 1965f:NP).

Labeling the origins of fair housing as communist, *Headlines* editor-in-chief Eugene P. Conser portrays a threatening image. By construing fair housing’s origins as communist and hidden from otherwise “respectable” organizations, NAREB was able to not only depict a dangerous and hidden attack on American axiom of private property rights but they did so while also carefully avoiding criticism of “respectable” organizations which were unwittingly advancing a communist agenda in the land of the free. *Realtor’s Headlines* charged the fair housing movement was that the
interests of a national enemy meant to do nothing less than dismantle the American way of life.

The Genealogy of Forced Housing Law

Conser’s editorial series in NAREB’s newsletter also detailed a political and legal genealogy to support the organization’s forced housing position. Proactively, the series cites the 14th Amendment as an historical legal precursor to its fight against forced housing for its focus upon governing “state action.” According to one of the editorials in Realtor’s Headlines, the ability to enter into contracting property is a private action outside of the oversight of “state action.” Thus, they contend “that the 14th Amendment governs only ‘state action’ and not actions of private individuals,” implying that the 14th Amendment to the U.S. Constitution grants constitutionality to private discrimination in the residential housing market (Conser 1965b). Realtor interest in the 14th Amendment was not based upon an inherent support for one of the most significant revisions to legal rights of personhood. 34

Another historical legal precedent to the right of contract that NAREB cites in the Realtor’s Headlines editorial series on forced housing is Shelley v. Kraemer

34 Additional Realtor publications referenced the 14th Amendment’s provision of equal protection under the law as a legislative bulwark against fair housing laws. For instance, the California Real Estate Association (CREA) published a pamphlet in 1964 in support of its Proposition 14 to repeal the state’s fair housing law that cited the 14th Amendment as a basis for its position. The CREA claimed that California’s fair housing law “by granting one group of citizens’ rights for reason of race, color, religion, or national origin or ancestry, necessarily takes equivalent rights away from the rest of the citizenry. This is denying equal protection under the laws” (CREA 1964:NP). This logic suggests that rights are a zero-sum game and that if home owners can’t discriminate in private housing contracts, they have fewer rights. Thus, the Realtors references to the 14th Amendment were made within a context completely antithetical to the spirit of equal protection.
(1948). In the *Shelley* case, the U.S. Supreme Court unanimously ruled that asking the government to uphold a racially restrictive covenant violated the equal protection clause (Peretti 2010). Despite the fact that the NAREB submitted an *amicus* brief in support of government action to uphold restrictive racial covenants in the *Shelley* case (Pietila 2010:107), twenty years later the organization seemingly revised its position on the ruling. Calling it a “landmark decision,” the editorial noted that “the right of individuals to enter into private contracts—i.e., restrictive covenants, without restraint—was upheld” (Conser1965c:NP). That is, NAREB emphasized that in *Shelley* the Supreme Court did not declare racially restrictive covenants unconstitutional, merely any state action used to enforce them (Darden 1995). The Realtors pointed to the *Shelley* ruling in order to claim that the highest court of the land denied the state’s right to discriminate but sanctioned individual property owners’ right to do so.

The Realtors’ newsletter further illustrated how the state was bound to a covenant of equal treatment because of its specificity as a public entity. For example, it referenced President John F. Kennedy’s 1962 Executive Order outlawing racial discrimination in federally assisted housing, including public housing, FHA, and VA loans. NABEB’s editor-in-chief reasoned that “the government could not do otherwise than to assure equal treatment of all citizens where it was substantially involved in providing financing, insurance, or guarantee” (Conser1965e:NP). The logical extension of NAREB’s position is that where the government is not
substantially involved in the financing of property, the individual right to discriminate is sacrosanct:

It should be noted that the President demonstrated his wisdom in limiting the executive order to apply only to ‘federally assisted’ housing. Although urged by many of the civil rights groups to apply the order to all housing, he cautiously avoiding applying it to private contracts in which the federal government was not involved, thus avoiding an almost certain Constitutional clash (Conser 1965e:NP).

According to NAREB’s reasoning just above, the federal government’s presence of insuring equal treatment in property transactions is intrusive unless the government is providing a categorical financial backing. The logical conclusion to such a position is that individuals who can financially abstain from accepting government subsidy can also avoid federal regulation and, consequently, reserve the freedom to discriminate.

Denying Racial Inequality

Like other publications of the Realtors’ forced housing campaign, Realtor’s Headlines also published skeptical perspectives on the existence of racial inequality in housing. In a 1966 Realtor’s Headlines editorial, Conser speculates on the likelihood of housing inequality:

They tell us the evidence is irrefutable that some citizens, irrespective of their ability, education, wealth, and social graces, cannot buy or rent a residence—solely because of their color…This is a situation they tell us, which no public institution, no political party, no civic leader can justify or long endure. They tell us not to be misled into believing that agitation for equal opportunity in housing will subside (Conser1966:NP).
Repeating the phrase “they tell us” displays a highly skeptical view of racial inequality in housing. Further, by pointing to and emphasizing the unsubstantiated claims by some un-named group—whoever “they” are—Conser builds up a strong rhetorical device to cast doubt on the claims of fair housing advocates. In another example of skepticism about housing inequality, Conser states:

[1]hat some people do refuse to sell a house solely on racial grounds is not in question, and perhaps they are wrong-headed. On the other hand, plenty of homeowners evidently don’t take that consideration into account (1966:NP).

Writing in the Realtors’ official newsletter as the publication’s editor-in-chief, Conser’s editorials openly question the frequency and effect of housing discrimination. And in the sentence that follows, he justifies his cynicism by pointing to the fact that “plenty” of people don’t discriminate. With such a prominent figure of NAREB voicing doubt of the extent and injury of housing discrimination, it is perhaps not surprising that NAREB’s campaign against forced housing contained more examples of the same.

But the Realtors didn’t just rely on anecdotal suppositions to support their claims against forced housing. They used quantitative data, too. Realtor’s Headlines reported on the California Real Estate Association’s (CREA) 1965 survey on housing discrimination. The CREA sent a survey to fifty of the organization’s eighty member boards throughout the state. According to this self-reported survey data, only one half of one percent of home sales stipulated racial or religious restrictions (NAREB1965b:NP). Based upon these results, CREA president David N. Robinson
declared racial discrimination in California’s housing market “practically nonexistent” (NAREB 1965b:NP). The California Realtors thus polled themselves, found little explicit discrimination in their listings, and proceeded to promote themselves as non-discriminatory. Like the editorials in NAREB’s forced housing kit, the CREA’s data were limited in what discrimination they could capture. By focusing on only documented exclusions explicitly stated within housing listings, the CREA erroneously extrapolates from this one figure to declare discrimination as “practically nonexistent.”

Another example of Realtors denying the existence of housing discrimination through the use of quantifiable data took place in Wisconsin. In 1966, Realtor’s Headlines cited the small number of complaints that came after the state passed a fair housing ordinance. The article quoted Wisconsin Realtors Association president G. R. Viele, who reported that despite a “vigorous program of solicitation” for housing discrimination complaints, only six were filed (NAREB 1966d:NP). Of the six, Viele noted that “five had been dismissed for a lack of evidence” (NAREB 1966d:NP). Such few substantiated complaints, Viele reasoned, “suggests that there is a less than overwhelming need for such laws” (NAREB 1966d:NP). Realtors also responded to Wisconsin’s mandate to support fair housing by directing committees in Milwaukee and Madison to “help a member of any minority group find housing” (NAREB 1966d:NP). According to the Realtor’s Headlines article, “there have been no applicants” in Madison and “there were 12 or 14—all of them white, all with large families” in Milwaukee (NAREB 1966d:NP). These examples suggest that the
Wisconsin Realtors believed housing discrimination was the exception, not the rule in the state’s housing market. By pointing to only one substantiated claim of housing discrimination, a handful of unsubstantiated claims, and their own data showing no “minority” need for housing assistance, Wisconsin Realtors presented an image of unnecessary government regulation of an otherwise fair and open housing market in the state. Thus beginning as early as the mid-1960s, Realtors sought to reject government intrusion into regulating their trade regarding racial inequality and, instead, proffered self-examination as a more appropriate response to questions of racial discrimination.

_Realtor’s Headlines_ attention to states and municipalities showing few cases of housing discrimination complaints was a selective interpretation of housing discrimination. For instance, the state of New York City’s ordinance—the oldest in the country—resulted in nearly seven hundred cases of housing discrimination in just three years’ time (1958-1961). According to one of the city’s reports, blacks made eight-five percent of complaints, those of Puerto Rican ancestry made nine percent of complaints, Jews made three percent of complaints, “foreign natives” made up three percent of complaints, and a small number of whites also made complaints with the Commission (New York City Commission on Human Rights 1962:5). The New York City Commission’s data was well-publicized. In addition to the state report, its authors not only presented its findings at the Eastern Sociological Society in New York City in 1961, but it was also published by the academic journal _Social Problems_ in the spring of 1962. And in Pittsburgh, Pennsylvania, blacks filed twenty-five
complaints of housing discrimination with that city’s human relations commission in 1959 and by the mid-1960s, that number had significantly increased (Trotter and Day 2010:81).

Despite such public records of housing discrimination from state agencies, the Realtors used their trade publication to inform its membership that fair housing legislation was unnecessary. In this way, Realtor’s Headlines functioned as an alternative knowledge source about the relevance of fair housing laws. The multiple and varying instances of denying racial discrimination within the residential housing market among the pages of NAREB’s weekly trade newsletter apropos a national battle to implement broader state and federal power to regulate the housing market renders Realtor’s Headlines as little more than an organizational propaganda platform. Meant to promote its anti-regulatory message, the Headlines’ articles challenged the impetus necessary to abet racial and religious discrimination in the residential housing market. Because the newsletter’s content severely downplayed the ubiquity of racial discrimination in the 1960s’ housing market, the Realtor rank and file were not well served by NAREB about the actual conditions affecting their professional market. Instead of an accurate market assessment of market conditions to its Realtor servicers, the organization prioritized a political agenda to maintain a weak regulatory environment concerning racial discrimination.
Publicizing Fair Housing’s Defeat

Another dimension of NAREB’s forced housing campaign included publicizing the defeat of fair housing legislation and *Realtor’s Headlines* regularly circulated such content. Dozens of front-page articles on forced housing appeared in NAREB’s newsletter throughout the 1960s. In 1965 alone, it featured five front page articles on state-level defeat of fair housing regulation: “Judge Rules Proposition 14 Constitutional” (February 8), “Realtors Battle Forced Housing in New Mexico” (March 29), “Realtors in Maryland Fight Off Proposed Forced Housing Law” (April 5), “Illinois Legislature Refuses All of Gamut of Forced Housing Bills” (July 5), and “Majority of Realtor’s Amendments Are Included in Ohio Forced Housing Law” (August 9). Many of the articles not only celebrated the failure of fair housing bills but also proclaimed Realtors responsible for their defeat:

Realtors in New Mexico have been instrumental in the defeat of a forced housing proposal in their state, the fourth victory over this type of legislation since 1961 (NAREB 1965d:NP).

Realtors in Maryland successfully fought off enactment of a forced housing law in the 1965 session of the state general assembly (NAREB 1965e:NP).

Just above, as late as 1965—just three years before the passage of national fair housing law—NAREB was still celebrating state-level failures in implementing fair housing legislation. Citing their members’ roles in prohibiting state fair housing legislation, the organization used competitive language (“defeat of a forced housing,” “the fourth victory,” “successfully fought off”) that emphasizes Realtors as a unified team fighting along a forced housing front.
Realtor’s Headlines thus helped develop a professional identity as a national Realtor organization whose members worked together to oppose fair housing and delivered the message that the Realtors officially opposed fair housing as a foreign and dangerous concept to the foundation of American private property rights home to its membership on a weekly basis. The amount and frequency of articles and editorials within the publication devoted to publicizing NAREB’s anti-fair housing stance shows how essential the newsletter was to the organization to campaign against forced housing to its membership. Realtor’s Headlines was also well-financed, constituting almost eleven percent of NAREB’s expenditures in 1966 and 1967 alone (NAREB 1967a; NAREB 1968a). While some of the newsletter’s expense was associated with mail costs to deliver a publication weekly to its entire membership, Headlines was nevertheless consider valuable for its strategic interest in publicizing forced housing content and ideas to the organization’s rank and file.

III. The Ideological Campaign Against Forced Housing

In addition to the initiation of new policies and supporting campaign material, ideas about property rights, fairness, and race also comprised the Realtors’ forced housing campaign. I identify four elements of NAREB’s ideological campaign against forced housing. These elements—sanctifying existing property rights as 35

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35 Broadly, ideologies consist of systems of logic, beliefs, and attitudes that frame how we understand who we are and how we make sense of the world around us (Althusser 1977; Eagleton 1991; Fields 1982; Hall 1986, 1991). As structures of meaning, ideologies provide on-going cognitive resources that can be invoked to help us understand our interactions with the world. Ideologies explain and justify our
‘human rights,’ rejecting state authority in lieu of moral institutions, opposing civil rights as special rights, and equating fair housing with communism—constitute the brick and mortar of the Realtors’ ideological campaign against forced housing. They share some analytical overlap; however, my analysis focuses on the distinctive qualities and the meaning they brought to the Realtors’ campaign.

Property Rights as Human Rights

In order to galvanize the lack of government oversight of discrimination in the residential housing market, the Realtors’ forced housing campaign configured existing property rights as an inherent basis of human rights. Such a claim rendered existing property rights as essential to the human condition, securing such rights as sacrosanct to property owners’ ability to live as fully propertied subjects. Moreover, by elevating existing property rights as requisite for full political and social subjectivity, the Realtors campaign against forced housing crafted a compelling reason to oppose government regulation. In problematizing the loss of one’s human rights of property ownership, the campaign could combat government regulation of the residential housing market from a defensive posture defending the status quo where nothing short of full human rights were at stake. For instance, Charles Castleberry, president of the Brazoria County Board of Realtors in Texas depicted social realities, or, as Louis Althusser (1977:155) asserts, ideologies consist of “the imaginary relationship of individuals to their real conditions of existence.” Ideologies are not neutral, but, instead, have intentional understandings about perceived social differences: they “are not simple reflections of ‘reality’” (Mayhew 2001:243).
public opinion as so decidedly against fair housing legislation because of their interest in upholding essential human rights: “The citizens feel strongly about this human right of real property ownership, and in every instance where they have had an opportunity to express their views at the polls they have decisively exhibited their attitude” (Castleberry qtd in “County Board of Realtors Urge Defeat of Federal Housing” 1966:3). Referencing the passage of state-level referendums in California and Illinois and cities like Seattle that opposed fair housing, Castleberry declares these victories as evidence of property owners voting for their self-interested human rights. Labelling these stakeholders “citizens” and their electoral participation to affirm their “human right of real property ownership,” the Realtor president emphasizes the democratic quality of existing property owners to defend their rights.

Elevating existing property rights as human rights gave their campaign a justification to denounce fair housing laws as harmful and threatening in an otherwise newly post-civil rights political landscape. One of the editorials the Realtors reproduced in their forced housing kit suggested that imposing laws that would force property owners to sell or rent against their conscience constitutes “coercion” and “is a dangerous withdrawal of human rights, without which the freedom of the individual is in the deepest jeopardy” (“Fair Housing Ordinance-But is it Fair To All?” qtd in NAREB 1964g:NP). Additional references to fair housing laws harm were present throughout the forced housing kit’s suggested speeches:

Basically, these laws…destroy one of the main tenets of our tradition human right of property ownership—the right to
use, rent, or sell real property as the owner sees fit (NAREB 1964g:IV-F-1).

I hope that these few comments will at least point up the complexity of the civil rights situation as it pertains to housing and make it clear that forced housing laws will not solve the problem as it adherents claim, but will serve only to destroy one of our basic human rights (NAREB 1964g:IV-F-2-c).

Property rights are human rights and must be protected just as fervently as any other rights. If they are not so protected, all other rights will be lost. (NAREB 1964g:IV-F-3-e).

These statements illustrate the Realtors’ unified message of how fair housing threatened existing property owners’ full human rights.

Still other references to the destructive quality of fair housing laws populated the Realtors’ forced housing campaign. At a six-state Realtor conference in Seattle, Washington early in the Realtors’ forced housing campaign, the group denounced “forced housing laws, which destroy the human right of property ownership” (“Real Estate Board Head Attacks Housing Laws” 1963:9). And when a federal fair housing bill was under consideration by Congress, a Realtor-sponsored political advertisement circulated in Missouri addressing existing property owners’ human rights: “We protest this attack on the human right of freedom of choice in disposing of private property” (Metropolitan Realtors Council 1966:23A).

_Moral, Not Legal, Authority_

The Realtor campaign acknowledged that the country’s housing inequality was occurring because a “lack of social acceptance on the part of the great mass of
white homeowners” (NAREB 1963d:2). Ruling the country’s housing inequality was an inherently moral problem, the Realtors’ forced housing campaign constructed solutions outside of a legal framework. Locating the problem in white property owners’ attitudes, the Realtor campaign offered up possible aids in providing the required moral reform. In 1963, NAREB President Daniel F. Sheehan spoke before the Maryland Association of Real Estate Boards and claimed that moral education is a more direct approach to the problem of racial discrimination: “Speedier progress in this direction can be made only when the basic problem is brought out openly into the light and dealt with directly—and that problem is the attitude of the people about whom they want as neighbors” (“Realtor Assails ‘Forced Housing”’ 1963:12B). What the Realtors configure then is a fundamentally moral social problem.

The campaign developed a clear answer to the problem of unaddressed racial prejudice—moral and social education.

Moreover, NAREB advocated for non-governmental groups to stymie racial discrimination in American hearts and minds. It is most fortunate that the church is proposing to take a position of leadership to assist in the solution of problems in the field of human rights rather than to propose that the problems can be solved only by turning to government…the church can be most effective in obtaining understanding among people that will lead to the elimination of discriminatory practices which are detrimental to society (Sheehan 1965:6).

Carefully framing the problem outside of the purview of government regulations and locating the origin and cause of housing discrimination in property owners’ hearts and minds, the group’s campaign advocated that governmental and legal solutions were
not merely dangerous to property right but were also inherently misplaced. Here, the Realtor organization attributed racial inequalities in housing to white homeowners’ racial prejudice and rendered legal modification ineffective against such moral holdouts. Moreover, in pointing to the availability and eagerness of religious organizations to address the problem of racial prejudice among the country’s white public, the Realtor campaign conceptualizes racial discrimination as ultimately a problem of social bias that can be transformed under the moral guidance of dedicated religious organizations. Their presumed expertise in morality is promoted as a more direct and relevant way of addressing the fundamental problem—racial prejudice in the white public’s “hearts and minds”—in order to ameliorate housing inequality.

Not only did the Realtors campaign against forced housing suggest that moral education could reverse housing discrimination, it also acknowledged that such moral advancement would not happen quickly:

Social acceptance for Negroes or any other minority group….comes through education in homes, the schools, the churches—education for the white majority in tolerance, understanding, and brotherhood—and education for the Negro minority in responsibility, ambition, and moral standards. And this will not happen overnight. It will take time (NAREB 1964g:IV-F-2-b).

Such a project will not only be an involved and time consuming endeavor, it will also require great effort on part of both whites and people of color. While such attention to the moral dimension of racial prejudice and a realistic understanding of the pace at which social change can occur is laudable, the Realtors’ campaign nonetheless
includes a moral standard for those who have been victimized by housing discrimination ("and education for the Negro minority in responsibility, ambition, and moral standards"). Other statements by the group reinforce this point. For instance, California Real Estate Association president Art S. Leitch speculated about what “all sides” could do to improve the problem—the problem of the threat of forced housing:

It seems to me...that all discerning men of good will, will recognize the fact that the hearts of men are only hardened by attempted coercion to take away a long-established human right...Only a spirit of willingness and acceptance on all sides is necessary. Wouldn’t it make a lot more sense to channel the energy and fervor being displayed in many areas in an attempt to get passage of a forced housing law into sincere efforts to foster understanding, tolerance, and acceptance? ("Dramatic Turn" 1964:20).

Leitch emphasized the moral work required by “all sides”—presumably, including those who are subject to housing discrimination. But Leitch further suggests that the impulse to legislate equality is itself evidence of moral shortcomings. In such a formulation, the moral ideal—“men of good will,” “willingness and acceptance,” and “understanding, tolerance, and acceptance”—is incompatible with the pursuit of civil rights legislation. By positioning a moral ideal for those suffering from housing discrimination and who are thus pursuing civil rights legislation, Leitch’s comments offer an alternative of shared moral responsibility for “all sides.”

Focusing on moral deficiencies of both whites and blacks, the Realtors’ campaign emphasized how superfluous the laws were to the social problem of racial discrimination in housing:
I think it might be wise at this point to emphasize an obvious fact...the property buyer does not need a law to enable him to sell his house to a member of a minority group, nor does a Negro need a law to purchase a home in a previously all-white neighborhood provided he finds a willing seller. In other words, social acceptance—not legal barriers—appears to be the real problem in achieving so-called open occupancy (NAREB 1964g:IV-F-2-c).

The Realtors’ campaign thus rules the law an irrelevant authority to deal with the problem at hand. In such a characterization, the only barrier to open housing is a change of heart. Elsewhere, the Realtors’ editorial series detailed a logical progression of such moral development that would result in the housing market’s decline of racial discrimination:

As homeowners conclude that they will sell their property without restriction, Realtors increasingly will take listings on that basis. As discussion of moral and ethical aspects of racial discrimination proceeds among neighbors, additional families will sell on an open basis...(Conser 1965f: NP).

Positioning homeowners as the arbiters of social norms (“as homeowners conclude”), the above passage renders the social—and thus political—power to absolve racial discrimination in the residential housing market within the dictates of civil society. Once again, the Realtors’ campaign locates existing property owners as the source to ameliorate and affect social change. What the Realtors’ forced housing campaign offers, then, is a socially determined moral problem that once improved will organically spread across the country’s neighborhoods—and Realtors will be there to serve both.
Further contesting the civil rights platform, the Realtors’ forced housing campaign challenged the fairness of the fair housing legislation by equating it to ‘special rights.’ Throughout the group’s campaign, the language of special rights and privileges were common rhetorical devices deployed to characterize fair housing legislation. Seeking to repeal the state’s fair housing law, many California Realtors pointed to the concept of government regulation of the private housing market for discrimination as an issue of special rights during the Proposition 14 campaign. George Coffin III, chairman of the Pasadena’s Board of Realtors coordinating committee on Prop 14, proclaimed that “[a]s realtors…we must resist with all our power class legislation, special privilege legislation and special rights laws” (“Petitions Circulate” 1963:3). And appearing later in front of the Senate in 1966, Realtor representatives lobbied against federal fair housing legislation by claiming the law would be extraordinary. Vice-chairman of the Legislative Committee of the Texas Real Estate Association, John M. Stemmons, testified: “Among the other freedoms [I urge] the Congress to preserve…the right of all equally to enjoy property without interference by laws giving special privilege to any group” (NAREB 1966e:NP).

In their varied use of the phrase, the Realtors employed the rhetorical device as a catch-phrase that united and defined the group’s anti-fair housing position. Perhaps the most essential aspect to the Realtors use of the phrase was that it
construed the fair housing movement as exceptional and unprecedented—special. This focus on the potential treatment of racial and religious minorities in exceptional ways emphasizes that only some groups stood to benefit from fair housing laws:

However, in his fight for ‘equal opportunity’ the American Negro is petitioning his Government to create a right which no member of American society, white or black, has ever enjoyed before; that being a governmentally conferred right not to be rejected by his fellow men. Specifically, he claims a guaranty by Government that the fulfillment of his right to persuade other people to serve him, to sell to him, to rent to him, or to employ him shall be unimpeded by his racial status (Trebilcock 1963:6-7).36

Here, the derisive quality of “special rights” becomes apparent. The passage above openly questions the accuracy and sincerity of those in search of “equal opportunity” when they seek rights “no member of American society…has ever enjoyed before.” In such a formulation, a governmental guarantee of ensuring racially-equal treatment in the private housing market—and thus access to a basic human need—is considered as an unprecedented claim for political and social power. Trebilcock’s criticism confounds the housing realities for “the American Negro” and, instead, chooses to emphasize the extraordinary legal request at stake for those who might have “serve him.”

In light of the successful civil rights legislation in 1964, the Realtors underscored how obtaining fair housing was distinct from attaining recent civil rights victories. They did so by framing racial and religious minority rights in the housing

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36 This same text appeared in a Report to The Governor’s Commission on Civil Rights on behalf of the Home Builders Association of Rhode Island and the Rhode Island Realtors Association, dated Monday, December 9, 1963. NAR Archive, Chicago, IL.
market as only to be gained through the loss of others’ property rights. Included in the group’s forced housing kit, a newspaper editorial depicted fair housing laws as new forms of discrimination:

Caught in the great social revolution sweeping the country, legislators must not lose sight of the fact that individuals have the right to buy, own, enjoy and dispose of their possessions, and this also includes property. Legislation granting special privileges would only create a new group being discriminated against. It would solve nothing. It would be like robbing Peter to pay Paul. A statewide open occupancy law would strip land owners of their rights for the benefit of others (NAREB 1964g:NP).

The above excerpt tries to temper the exceptional political context of the passage of the Civil Rights Act of 1964. According to the Realtor-endorsed editorial, such success shouldn’t prompt a runaway excursion of “granting special privileges” that would forever alter existing property rights. The editorial depicts a zero-sum game that would take from existing property owners in order to entitle some racial and religious minorities (“create a new group being discriminated against,” “robbing Peter to pay Paul,” and “strip land owners of their rights for the benefit of others”). Prefaced on an explicit denial of the inequality of the 1964 residential housing market, the editorial’s comments instead point to the potential for inequality to emerge by pursuing civil rights via fair housing laws. Taking the successful civil rights framework as a model for their own platform, the Realtors’ editorial usurps the language of discrimination to defend the status quo in housing. The editorial crafts a competition on fairness and implicitly proffers an alternative slogan—fair housing is discriminatory.
As the Realtors’ forced housing campaign began, the cold war ideology of communist economic systems as a global threat still loomed large in the American consciousness. Following the manufacturing of public anxiety and fear surrounding socialist and communist threats both at home and abroad in the 1950s, the early 1960s retained a communist specter. Concerns about the Cold War were present during the 1960 presidential election, the 1961 Berlin Crisis, and in late 1962 the Cuban Missile Crisis occurred, highlighting military discord between the U.S. and the Soviet Union. A 1964 Gallup Poll found that forty-six percent of Americans polled agreed with the statement that “most of the organizations pushing for civil rights have been infiltrated by the communists and are now dominated by communist troublemakers” (White 1998:PAGE). These political tensions sustained a communist threat as a political tool to deploy, which the Realtors undertook as part of their strategy to reject the growing fair housing movement.

Before tying communism to the fair housing movement, Realtors were engaging in educational activism against a perceived communist threat. For example, a number Southern Californian real estate boards sponsored information sessions on the topic in the early 1960s. In March 1961, the San Gabriel Valley Board of Realtors hosted a luncheon entitled “Wake Up, America!” The luncheon featured former vice president of the California Real Estate Association and then current state chairman of professional conduct and ethics committee Ed Shaheen. Shaheen addressed
“international communism’s plan of ‘Protracted Conflict’” (“Realtors To Hold” 1961:A19). A few months later, the Glendale Board of Realtors also hosted an anti-communist luncheon speaker, whose speech included “defin[ing] differences between the free-enterprise and communist concepts of economics” (“Glendale Unit 1961:I5). And in June 1961, the Inglewood Board of Realtors hosted actor Ronald Reagan to speak at the board’s luncheon. Reagan was sought out by the Inglewood board’s American Freedom’s Committee because of his record on “tenaciously [fighting] communism” (“Group Slates Talk” 1961:O15). The following year, newly appointed president of the state board—the CREA—Charles H. Brown spoke out against the communist threat in his inauguration speech. Brown declared that he had “faith in the fact that we in America are not going to lose to the Communists by default or by Communistic control from within or outside the United States” (Clark 1962:3). And the Santa Ana-Orange-Tustin Board of Realtors sponsored a program for Flag Day in June 1963, where Dr. Fred Schwarz, president of a group called the Christian Anti-Communism Crusade, gave a talk on “The Communist Conspiracy” (“Realtors to Hear” 1963:F20). These instances show how the Realtors’ programming was already predisposed to denounce communism as antithetical to American ideals.

Some of the communist-baiting tendencies by Realtors amounted to little more than name calling. For instance in Illinois in 1964, local real estate boards campaigned to have a public referendum on fair housing. Rich Port—president of the Illinois Association of Real Estate Boards—characterized fair housing proponents as “misguided idealists, do-gooders and Communist sympathizers” and claimed that
forced housing was an issue due to “Socialist vote-seeking politicians listen[ing] to the squeaking of minorities” (“Speaker Lays Down Attack” 1964:2).

But Realtor interest in combating communism took on even more formal mechanisms. At the 1961 national Realtor conference in Miami, Florida, a local realtor board sponsored an anti-communist course (Fowler 1961:31). While the course was not an officially sponsored by the national Realtor organization, it was “conducted with its full knowledge” (Fowler 1961:31). The course included two anti-Communist films, discussions, and literature meant to “persuade the realty men to initiate anti-Communist educational activities in their communities” (Fowler 1961:31). Among the dozens of attendees, many took home literature and “some said they would carry the [course’s] message home with them” (Fowler 1961:31).

As the Realtors’ forced housing campaign began in earnest, other Realtor organizations explicitly associated fair housing with the communism. For example, the Rhode Island Realtors Association speculated that fair housing laws were part of a broader “communist conspiracy in this country,” which would initiate a “successive destruction of private property rights” (Rhode Island Realtors Association, Inc. 1963:NP). The destruction would begin with an assignment of ‘quotas’ to maintain socially acceptable standards of integration, then application to a governmental authority for permission to sell or rent, and finally, assignment to allocated quarters. This successive destruction of private property rights is the objective of the Communist conspiracy in this country. It is receiving a most effective
Invoking an outside authority ("maintain[ing], socially acceptable standards of integration"), the Rhode Island Realtors speculate that fair housing will bring socialized requirements to the private home transaction. Here, an expanded government authority acts in the interest of a socialized mandate in unfamiliar ways. The hypothetical scenario is meant to appear foreign to every facet of the existing housing market; however, the Rhode Island Realtors in some ways inadvertently demonstrate the reality of the U.S. housing market for people of color, who experience acceptable levels of integration via segregated neighborhoods determined by economic policies, real estate practices, and government authority not as a possible outcome, but as the status quo of the racially segregated housing market in the 1960s: public housing quotas are real and members of racial and religious minorities must campaign the government to authorize their full property rights. The Rhode Island Realtors attribute their lurid scenario of conscripted living arrangements to a communist dystopia, even as the capitalist political economy that dictated people of color’s segregated and dilapidated housing realities in 1963 was a stark reality.

References to communism occurred well beyond campaign brochures and speeches. In an *amicus curiae* brief accompanying a legal challenge to Colorado’s fair housing law, attorneys for the Colorado Association of Real Estate Boards also implied that communist countries suffered from such expansion of government control of property that it ultimately created authoritarianism:
The rule of law is essential to a civilization of ordered liberty, but laws as a means of command may become instruments of authoritarianism. That this is so is a lesson that our generation has relearned from its own experience, just as prior generations knew it from theirs. It is a lesson that has been learned dramatically in Russia, in China and in Cuba and even—although more quietly—in our own country. Because of the presence in our own time of much authoritarian misuse of law, we must avoid taking an enhanced and distorted perspective of the role played by governmental command (Colorado Anti-Discrimination Commission v. Case 1962:NP).

The argument just above presumes that fair housing legislation allows the government broadened power to begin a cascade of federal overreach upon the housing market. And by conflating the power of the state to outlaw discrimination within the private housing market with authoritarianism, the Realtors’ legal argument relies on anti-communist ideology and the public’s perception of “Russia..China…and…Cuba.”

In California, perhaps the most formal organizational mechanism was the creation and work of CREA’s Realtors for America committee, whose stated purpose was to fight communism. By 1962, the Realtors for America committee had participation from all of the state’s one hundred and seventy one boards (“Realty Picture Bright” 1962:11). In March of that same year, the Arcadia Board of Realtors held an eight week study course on communism entitled, “Freedom vs. Communism—the Economics of Survival” (“Realtors Hold Communism” 1962:3). The course, designed by the U.S. Chamber of Commerce and brought to twenty Arcadia Realtors by California’s Real Estate Association’s steering committee the
Realtors for America, provided “individuals in local groups to learn more about the Communist challenge and what they can do about it” (“Realtors Hold Communism” 1962:3). The infiltration of anti-communist programming within local Realtor boards of the most populous Realtor organization—the CREA—meant that the organization had integrated a logic of individualism and existing (read, exclusionary) private property rights within its platform. Additionally, in the fall of 1962, the CREA backed Proposition 24—a proposition designed to account for communist activities within the state by outlawing the Communist Party, The ballot initiative ultimately failed, but the impetus of the country’s largest state real estate board to not merely denounce but criminalize communism was clear (McGirr 2002:80).

When the California Real Estate Association sought to overturn the state’s fair housing law just months after the regulation went into effect, it also employed the communist specter in its recall campaign. 37 One of the CREA’s Proposition 14 pamphlets implied that allowing the state to outlaw discrimination within the exchange of private property amounted to communism:

> The state is saying, in effect, that the owner may keep his freedom of choice so long as his choice agrees with that of the state. If the state does not agree, it will take away the property owner’s freedom by dictating what that choice must be.

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37 Proposition 14 was sponsored by the California Real Estate Association and was a successful ballot initiative in 1964 that repealed the state’s Rumford Fair Housing law. The proposition was ruled unconstitutional and overturned by the California Supreme Court in 1967 (Reitman v. Mulkey).
Such control of private property by the State is what distinguishes the Communist form of government from our own system. The Communist approach assumes that public welfare always takes precedence over individual desires (CREA 1964:NP, original italics).

Here, the campaign depicts an encroaching state government threatening homeowners’ private property rights. The communist threat, the CREA reasons, would provide the state with the power to regulate the private housing market in unprecedented—and undemocratic—ways. The logic in the excerpt above equates the right to discriminate in the sale or rental of housing on the basis of race and religion—those protected categories of the Rumford Fair Housing Act—as “freedom of choice.” The “individual desire” to discriminate in those ways rightly subsumes, according to the Realtors’ argument, “public welfare” in the residential housing market. Although the CREA stipulates that this “freedom of choice” is “what distinguishes the communist form of government from our own,” they were wrong in two respects. First, like much of the Realtors’ forced housing campaign, the CREA mistakenly associates communism with the total elimination of private property rights. Communism, however, in both theory and political practice, abolished “bourgeois property”—that is, privatized ownership of the means of production. And two, despite their proclamations otherwise, granting the state the power to regulate discrimination in the residential housing market has not resulted in Communist rule in the U.S.

These examples illustrate how the Realtor organizations sanctioned anti-communist political advocacy and incorporated anti-communist ideologies into their
campaign against forced housing. Relying on existing fears of the foreign political economic system, Realtor campaigns espoused outlandish predictions concerning fair housing laws and what they would mean for the U.S. housing market. Emphasizing the primacy of existing individual private property rights, the Realtors’ campaign depicted government power to insure a housing market free of racial or religious discrimination as a slippery slope into communist control and authority. Analyzing the Realtors’ substantive complaints, however, reveals a dystopic housing landscape that shared more in common with those groups of people marginalized within the realities of the capitalist political economy that buttressed a white supremacist housing market.

The Realtors campaign against forced housing fortified the organization and its members to the public in the battle over fair housing. But the Realtors’ organization also entailed a vigorous and costly legal battle to oppose the growing tide of support for extending civil rights into the nation’s private housing market. I examine the Realtors’ legal petition against federal fair housing in the next chapter.
CHAPTER THREE

The Realtors’ Lobby Against Federal Fair Housing Law, 1966-1968

The Realtors’ forced housing campaign included much more than internal policies and public education campaigns; it also consisted of a vast and well-funded political lobby. Mobilized through the organization’s new and existing infrastructure, NAREB inserted itself into and, at times, directed national debates over fair housing, presenting itself as the authority on the nation’s housing market. At the national level, the group maintained a permanent team in place to lobby Congress against government regulation of the residential housing market—the Realtors’ Washington Committee. The employees in Washington were paid by the national association to research, lobby, draft, and provide statements on relevant legislation to the public, Congress, and local Realtor boards. Because of the maturity of the national association at this time and the professionalization of the trade group, NAREB was able to staff the Realtors’ Washington Committee’s executive committee with veteran Realtors along with attorneys and other clerical staff. The Committee also published a multi-page newsletter, the *National Legislative Bulletin*, periodically to inform its membership about pressing political issues affecting Realtors.

In addition to the national association’s political machine, each state association incorporated political lobbying within their group through entities called Political Affairs Committees. These committees were the state-level work horses that brokered the political needs of the trade group to the local boards and members. State
associations recognized their duty to “influence the attitude of government toward a more favorable recognition of the rights, problems, and contributions of our clients, the property owners” (CREA 1965:4). In fact, the emergence of Realtor organization’s Political Affairs Committees coincided with their forced housing campaign. For instance, California—home of the largest state association in the country—established its Political Affairs Committee in September 1963 (CREA 1965). In its handbook, the California Political Affairs Committee cited its objective to “become more than a ‘consumer’ in politics” in order to

education and encourage members to seek and elect candidates for public office—regardless of political party—who will reaffirm American principles of individual freedom, and property rights, and will uphold the free private and competitive enterprise system (CREA 1965:7).

Taking on an active role in shaping politics, the CREA’s Political Affairs Committee offered a formal structure to the state association that would facilitate politicizing the Realtor rank and file. The ideological concepts at stake in such a politics—“American principles of individual freedom,” “property rights,” and “the free private and competitive enterprise system”—complemented the group’s forced housing campaign. The Realtors’ forced housing campaign thus provided the motivation, financial resources, and infrastructure that politicized the organization on a fundamentally new level.

The purpose of this chapter is examine how the Realtors organization lobbied fair housing legislation in the mid-to late-1960s. In order to answer this question, I
document and analyze the organizational and political activities of NAREB in the mid- to late-1960s. In the first section of this chapter, I detail the history of NAREB’s political lobbying against 1966 federal fair housing legislation. I examine the organization’s activities, financing, and testimony provided against Title IV of H.R. 14765, the Civil Rights Act of 1966. In the second section, I consider the group’s efforts on S. 1358, the Fair Housing Act of 1967. And in the third and final section of this chapter, I consider the Realtors’ activity surrounding what would eventually become the Civil Rights Act of 1968.

I. “The most vicious pieces of legislation ever devised”:
The Civil Rights Act of 1966

In January 1966, President Lyndon Johnson made an unprecedented call for a federal open housing law in his State of the Union address:

I recommend that you take additional steps to insure equal justice to all of our people by effectively enforcing nondiscrimination in Federal and State jury selection, by making it a serious Federal crime to obstruct public and private efforts to secure civil rights, and by outlawing discrimination in the sale and rental of housing (Johnson 1966:NP).

Later that spring, President Johnson sent to Congress an omnibus eight-part civil rights bill, named the Civil Rights Act of 1966. The bill included provisions to outlaw discrimination in federal and state jury selection; authorized injunctive relief for anyone who was deprived of constitutional rights because of their race, color,
religion, or national origin; and barred intimidation that prevented the full use and
enjoyment of public accommodations. But the bill’s most contentious content was its
fair housing provision. Referred to by its numerical heading, Title IV sought to
outlaw discrimination by race, religion, and national origin in private housing rentals
and sales. Although scores of states and cities across the country already adopted
some form of fair housing regulation, most excluded owner-occupied dwellings or
limited coverage to multi-unit buildings. President Johnson’s proposed Title IV
contained no such exclusions. As a result, Title IV sought to vastly expand the
regulation of housing discrimination in the realm of single-family and owner-
occupied dwellings.

Because of the prospect of categorically new government regulation of the
Realtors’ market, their reaction to Title IV was expeditious, vast, and enormously
well-funded. Just two weeks after the President’s bill reached the House on May 4,
1966, the Realtors’ leadership petitioned fifteen hundred local boards across the
country to speak out against the Title IV through various publicity campaigns
(Herbers 1966:29). The same day, the Realtors’ Washington Committee published a
four page issue of their National Legislative Bulletin detailing the expansive coverage
of the bill and potential liability Realtors would face, calling Title IV “more drastic
than any of the existing state-enacted forced housing laws” (NAREB 1966f). The
Bulletin summarized the bill’s contents, reported on its status, and listed each member
of Congress assigned to the House and Senate Judiciary Committees (NAREB
In planning their next steps, the Realtors proposed that if Title IV were to be deleted by the House,

then a Federal forced housing law is dead for this Congress and subsequent Congresses as well. That is why the National Association of Real Estate Boards through its Realtors’ Washington Committee is launching this nationwide effort to convince the members of the House Judiciary Committee that the injection of the element of force and legal coercion to deny to any person the right of freedom of contract is inherently evil and would sound the death knell of the right of private property ownership (NAREB 1966f:2).

The Bulletin called upon local board members and the public to contact not only their members of Congress but also the leadership on the House and Senate Judiciary Committees to try to prevent Title IV from even coming to a vote.

Also in May, the Realtors’ board of directors gathered in Chicago for their regularly scheduled quarterly meeting. However, because of the legislative pressure before them, the Realtors’ meeting was atypical. Solidifying a clear organizational mandate, NAREB’s government relations department authorized fifty thousand dollars\(^{38}\) to fight the proposed federal legislation (NAREB 1966a:7). NAREB President Jack Justice commented that “a Federal forced housing bill requires our complete attention in the weeks immediately ahead” in response to tabling other agenda items for a later date (NAREB 1966b:25). At the meeting, Justice also established a special committee to raise money for the organization’s forced housing campaign. The result was an intra-organizational committee—the Committee to Defend Civil Liberties in Housing, which would become the fundraising arm of the

\(^{38}\) Or, three hundred and sixty-five thousand dollars in 2014.
Realtors’ forced housing campaign. The fifty-one member committee included a five person executive committee and members from almost every state in the nation.

NAREB’s Public Relations Committee joined with the Washington Committee in early June to solicit local board presidents to take part in a publicity campaign against Title IV. The memo requested that local boards duplicate a press release and deliver it to news media in the area. In addition to the press release, NAREB included an advertisement against Title IV meant to be sent to area news media and duplicated in print. NAREB suggested when and how to deliver the advertisement including preferable days of the week (Tuesdays, followed by Mondays, so as to not compete with retail advertising more popular at the end of the week), directions on its handling (avoiding folding or bending the ad due to printing methods), and ad placement (early in the paper on the right-hand side, not adjacent to any retail advertising) (NAREB 1966j:NP). Local Realtor boards took up the job. Within two weeks, three local boards published their own version of the NAREB press release. But the real success was the advertisement opposing Title IV. Forty advertisements appeared in twenty-five different states over the course of early June.

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39 The three articles were “Realtors Board Hits Proposed Civil Rights Law” (1966); “Rights Bill Study Urged” (1966); “Realtors Condemn Rights Forced Sale Requirement” (1966).
through early August. Nineteen of them appeared on a Monday or a Tuesday, and forty-eight percent of the ads followed NAREB’s preferred publication dates.

**Filling the Campaign Coffers**

In August, the Realtors were still building their campaign against forced housing war chest. Internal memos and correspondence show that while Realtors raised large amounts of money, they were compelled through peer pressure and implicit quotas. For instance, one New Jersey Realtor wrote to a past NAREB president inquiring why New Jersey, Pennsylvania, and New York had not reported any contributions to the campaign fund (Nutter 1966a). The same Realtor went on to suggest that since Philadelphia was home to the Realtors’ Washington Committee’s chair Alan L. Emlen, the Philadelphia Board of Realtors should be stepping up their contributions (Nutter 1966b). Other Realtors agreed (Helsel 1966; Philadelphia Board of Realtors 1966). In the end, it was poor reporting of contributions that accounted for those state’s initial figures; however, the correspondence shows that state associations were holding one another accountable to the financial success of the Realtors’ forced housing campaign. And other data point to an informal quota system in place. NAREB’s President Jack Justice sent personal thank you notes to the chairs of the

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40 I used Proquest’s historical newspaper database and selected *The New York Times*, *The Los Angeles Times*, *The Washington Post*, and *the Chicago Tribune*. The proprietary news archives I used were Google’s news archive, Newspapers.com, and Genealogy Bank. My search parameters were the phrase “to every home owner” in the year 1966. The articles I located were published in the states of Arkansas (1), California (4), Washington D.C. (1), Georgia (1), Idaho (3), Indiana (2), Kansas (1), Louisiana (1), Maryland (2), Michigan (1), Missouri (1), North Carolina (1), New Mexico (2), Nevada (1), Ohio (6), Pennsylvania (2), South Carolina (1), Texas (3), Utah (2), Wisconsin (2), and West Virginia (2). Interestingly, the earliest ad appeared in *The Los Angeles Times* a day prior to NAREB’s memo and an ad appeared in Cumberland Maryland the day of NAREB’s memo, sponsored by the Los Angeles Board of Realtors.
Michigan, Wyoming, and Delaware’s Committee to Defend Civil Rights in Housing for reaching ninety to one hundred percent of the fund’s “suggested quota” (NAREB 1966h:NP).

The Executive Committee also unanimously passed the recommendation and thus instituted an organizational structure to not only raise money for their forced housing campaign, but also explicitly publicize individual contributors. Chairman of the Committee to Defend Civil Liberties, Morgan L. Fitch, informed the Realtors’ Executive Committee that one hundred and thirty people had contributed notable sums of between one hundred and two hundred and fifty dollars, granting them the special designation of “Centurions of ‘66” (NAREB 1966c:6). In order to publicize these fundraising successes, Fitch requested approval to draft a report on the fundraising figures to distribute widely. His request was unanimously carried.

Financial support from the Realtors’ local arteries fed into one large treasury throughout the summer months of 1966. By August, the Committee to Defend Civil Liberties in Housing informed NAREB’s Executive Committee that the fund contained over one hundred thousand dollars (NAREB 1966c:6). And one month later, the chair of the committee, Morgan L. Fitch, reported that it had raised one hundred and twenty thousand dollars (NAREB 1966i). In announcing the large sum, Fitch announced that he was “immensely pleased not so much by the money raised as by the thrilling exultation arising from the proof that it can be raised when the need is proved and our business is threatened” (NAREB 1966i:NP0. Thus, in just four

41 This figure would be approximately three-quarters of a million dollars in 2014.
months, the Realtors raised enormous financial reserves to propagate their fight against Title IV. Such monies were in addition to NAREB’s regularly assigned fiscal support to the Realtors Washington Committee,\footnote{The Realtors’ Washington Committee was forged in early 1942 as a response to W. W. II. At the time, the committee included one member of every board in the country to insure “a direct line of communication was built between Realtors at home and the men who talked for them in Washington” (Davies 1958:191-192).} which constituted four percent of NAREB’s annual budgets in 1966 and 1967 (NAREB 1967a; NAREB 1968a).

The Local Campaign

Local Realtor boards also helped take up arms against Title IV in the spring and summer of 1966. In Texas, H. W. Bahnman, president of the Texas Real Estate Association criticized the proposed law before a Dallas audience (Stephenson 1966). Citing the organization’s “Property Owners Bill of Rights” policy as precedent for articulating the intractability of private property rights, Bahnman asked all Texans to contact their members of Congress to uphold property rights (Stephenson 1966). At the same talk, the immediate past president of the Texas Real Estate Association and Dallas Real Estate Board described Title IV as “one of the most vicious pieces of legislation ever devised” (Stephenson 1966:G1). And in July, the Texas Real Estate Association provided copies of its article on Title IV in The Dallas Realtor at a real estate institute conference. (See Figure 5.)
Other local boards also moved against the proposed legislation throughout the month of June. At a joint meeting of two Realtor boards in Massachusetts, NAREB vice president spoke out against the proposed law and encouraged the audience of eighty Realtors to lobby homeowners to lobby their members of congress to oppose the bill (“Realtors Urged to Oppose Rights Measure” 1966). The Cleveland Real Estate Board deployed a “flood of leaflets” to protest Title IV (Gleisser 1966). In North Carolina, the Greensboro Board of Realtors asked the public to carefully study Title IV (“Careful Housing Bill Study Sought Here” 1966). And the Cobb County Real Estate board of Georgia “launched a campaign, through newspaper ads and personal communication, to get Cobb County homeowners to study carefully Title IV” (“Rights Bill Study Urged” 1966:7A). The board felt certain that once “all home and property owners, regardless of their personal feelings on other aspects of civil
rights, will make known their opposition to their representatives and senators immediately” (“Rights Bill Study Urged” 1966:7A). In Philadelphia, the Philadelphia Board of Realtors’ archive shows that multiple local Realtors wrote their members of Congress to oppose Title IV (e.g., Johnson 1966; Sork 1966). Then in August, O. C. Hubert, chair of the Marietta-Cobb Country Real Estate Board’s governmental affairs committee told reporters, “It behooves every person who owns property to write to his congressman to eliminate Title IV from the bill” (“Hubert Says Filibuster Will Kill Rights Bill” 1966:18A).

A number of Realtor boards also took to the local newspapers to campaign against H.R. 14765. In late May in Holland, Michigan, the executive secretary for the Holland Board of Realtors wrote a letter to the editor denouncing the bill. Using the Realtors distinction between the goal of civil rights and the means to get there, the letter includes common Realtor themes and language:

While the objective of open occupancy is praiseworthy, this proposed means of accomplishing it is 100 per cent wrong, since true and lasting acceptance of neighbors by neighbors can be accomplished only by understanding and education fostered voluntarily by churches, schools, and all men of good will. It cannot be achieved by the federal government with its vast power wiping out freedom of choice and contract for all citizens under the guise of providing a new right for minority groups (Kamphuis 1966:4).

The “To Every Home Owner” ad consisted of a letter-like message to homeowners informing them about federal fair housing legislation. Frequently, the ads featured large, symbolic eagles atop of them, but some just contained copy. A search on the
proprietary newspaper archive\textsuperscript{43} resulted in forty-four instances of the “To Every Home Owner” political advertisement over a six week period in 1966 (May-July). The ads appeared in twenty states across the country, appearing mostly in southern, Midwestern, and western states. (See Figure 6 and Table 4.) Local Realtor boards thus propelled publicity campaigns to educate local property owners about Title IV as anti-private property rights and directed their opposition to the proposed legislation to their representatives in Congress.

\textsuperscript{43} \url{www.newspapers.com}
To Every Home Owner:

A drastic Federal forced housing law now being considered by the Congress would destroy your basic rights—unless you act now!

Here’s what it is:

“Title IV” of the so-called Civil Rights Bill—H.R. 14765 and S. 2298—is the forced, not fair, housing proposal that threatens to deprive you, as a home owner, of basic freedoms.

Here’s what it would do:

1. Deny you freedom to contract with a person of your choice in the sale or rental of your home, or a room in your own home.
2. Deny you the right even to mention a preference for or against a person of your own religion in advertising for a room or a tenant.
3. Subject you to suit by the U.S. Attorney General to force you to sell or rent to a person other than the person of your choice.
4. Delay indefensibly a rental or sale, pending final court disposition of allegations against you.
5. Subject you to payment of unlimited damages if you insist on exercising preference in a sale or rental.
6. Encourage sale of your home because the prospective buyer could not be assured of taking title until the deed is actually recorded.

Because we are concerned about the human rights of all Americans...

- We protest a law that gives one person the right to force another to enter into a contract against his will.
- We protest this attack on the human right of freedom of choice in disposing of private property.
- We believe progress in race relations will be retarded, not advanced, by this bill.
- Equal opportunity in housing is making progress under the influence of voluntary efforts of church, school and people of good will.

How can you make your protest heard?

The Congress will reject the forced housing features of this bill if you and other home and property owners write your Members of Congress and make it clear that you oppose this legislation because it would destroy rights of all Americans.

Write or wire today—and tell your Members of the Congress what you think.

Jack Bonds
George Marks
Walter Rogers
House Office Building
Washington, D.C. 20515

John Tower
Ralph Yarborough
Senate Office Building
Washington, D.C. 20510

CANYON BOARD OF REALTORS

Write to your Members of Congress today!
<table>
<thead>
<tr>
<th>Newspaper and location</th>
<th>Date of publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valley News. Van Nuys, California</td>
<td>May 31, 1966</td>
</tr>
<tr>
<td><em>The Morning Herald</em>. Hagerstown, Maryland</td>
<td>May 31, 1966</td>
</tr>
<tr>
<td>Cumberland Evening Times. Cumberland, Maryland</td>
<td>June 3, 1966</td>
</tr>
<tr>
<td>The Canyon News. Canyon, Texas</td>
<td>June 9, 1966</td>
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<tr>
<td>The Daily Standard. Sikeston, Missouri</td>
<td>June 10, 1966</td>
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<tr>
<td>The Daily Herald. Provo, Utah</td>
<td>June 12, 1966</td>
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<tr>
<td>The Oil City Derrick. Oil City, Pennsylvania</td>
<td>June 13, 1966</td>
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<tr>
<td>Xenia Daily Gazette. Xenia, Ohio</td>
<td>June 14, 1966</td>
</tr>
<tr>
<td><em>The Charleston Daily Mail</em>. Charleston, West Virginia</td>
<td>June 14, 1966</td>
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<tr>
<td>Santa Cruz Sentinel. Santa Cruz, California</td>
<td>June 14, 1966</td>
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<tr>
<td>Alamogordo Daily News. Alamogordo, New Mexico</td>
<td>June 14, 1966</td>
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<tr>
<td>News-Journal. Mansfield, Ohio</td>
<td>June 14, 1966</td>
</tr>
<tr>
<td>The Ogden Standard-Examiner. Ogden, Utah</td>
<td>June 16 and 27 1966</td>
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<tr>
<td>The Daily Herald. Chicago, Illinois</td>
<td>June 16 and 30 1966</td>
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<tr>
<td>Albuquerque Journal. Albuquerque, New Mexico</td>
<td>June 19, 1966</td>
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<tr>
<td>The News. Frederick, Maryland</td>
<td>June 20, 1966</td>
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<tr>
<td>The Corpus Christi Caller Times. Corpus Christi, Texas</td>
<td>June 21, 1966</td>
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<tr>
<td>Pottstown Mercury. Pottstown, Pennsylvania</td>
<td>June 21, 1966</td>
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<tr>
<td>Medina County Gazette. Medina, Ohio</td>
<td>June 28, 1966</td>
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<td>The Monroe News-Star. Monroe, Louisiana</td>
<td>June 28, 1966</td>
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<tr>
<td>Idaho State Journal. Pocatello, Idaho</td>
<td>June 29 and July 10,1966</td>
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<tr>
<td>The Sandusky Register. Sandusky, Ohio</td>
<td>June 29 and July 1,1966</td>
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<tr>
<td>The Weirton Daily Times. Weirton, West Virginia</td>
<td>June 30, 1966</td>
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<tr>
<td>Lebanon Daily News. Lebanon, Pennsylvania</td>
<td>July 2, 1966</td>
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<tr>
<td>The Daily Reporter. Dover, Ohio</td>
<td>July 6, 1966</td>
</tr>
<tr>
<td>The Index-Journal. Greenwood, South Carolina</td>
<td>July 11 and 16 1966</td>
</tr>
</tbody>
</table>

Table 4. “To Every Home Owner” political advertisement appearances.
In Louisiana, the Real Estate Board of New Orleans joined with the Board of Realtors of Greater Jefferson Parish to create a joint committee to oppose Title IV (“N.O., Jeff Realty Groups Fight Open Housing Move” 1966). The group publicly identified the only member of Congress in Louisiana who voted in favor of advancing the bill in the House as Representative Thomas Boggs, who the Realtors claimed was “not representing the wishes of the people of his district, and is voting to take rights away from the property owners” (“N.O., Jeff Realty Groups Fight Open Housing Move” 1966:2). After the article appeared in late July in The Times-Picayune, on August 9th, Representative Boggs voted to delete Title IV from H.R. 14765 and, when that measure failed, voted against H.R. 14765.44

NAREB’s Congressional Lobby

The Realtors’ organizational apparatus—including its financial resources—insured a heavy lobby against the bill in both houses of the Senate. Title IV was part of H.R. 14765, which was heard before the eleven-member House Judiciary Subcommittee in the spring of 1966. Chaired by Emanuel Celler, Democrat from New York’s 10th District, the House subcommittee conducted hearings on the bill starting in May 1966. The hearings’ order—those in favor of Title IV appeared first—allowed the Realtors time to gain momentum in opposing the bill. While the House subcommittee was hearing testimony in support of the legislation, the Realtors’ publicity campaign was soliciting its trade members to draft correspondence to

44 Boggs would go on, however, vote in favor of the 1968 Civil Rights Act and was the only Representative from Louisiana to do so.
Congress in opposition to the bill. The Congressional record illustrates the commitment and execution of a strong political campaign by the Realtors. Out of one hundred and ninety-four public statements submitted to the House of Representatives concerning the legislation, seventy-five (~39%) were from individual Realtors or real estate boards. In addition to these written statements, four members of the Realtors’ leadership provided oral testimony at the House’s subcommittee’s hearings, financed by the organization’s forced housing campaign war chest. The Senate’s Judiciary Subcommittee on Constitutional Rights held hearings on the bill in June 1966. 45 A number of Realtors witnesses testified, who were well supported by the subcommittee’s chair Sam J. Ervin, Jr. Sixteen of the seventy witnesses at the Senate hearings were Realtors (~23%).

The Realtors faced a categorically different political environment in the summer of 1966. Unlike the simmering violence and angst that propelled the passage of the 1964 Civil Rights Act—which, among other things, prohibited discrimination in public accommodations—because of the unrest in 1966 there was less concern over getting some sort of civil rights platform accomplished. Moreover, criticizing a civil rights platform required greater care in that the Realtors couldn’t uniformly reject calls for eliminating discrimination in the housing market. The Realtors thus had to acknowledge the pro-civil rights legal and moral sentiment in the county while at the same time portraying fair housing regulation as unjust. Further compounding the Realtors’ difficulties was that by 1966, sixteen states had fair housing laws on the

45 The bill’s title in the Senate was S. 3296.
books (U.S. House 1966:1591). However, most of these state regulations did not cover individual property owners looking to sell or rent a single family residence.\textsuperscript{46} Title IV’s expansive reach was aggressively taken up by the Realtors’ lobby, who labelled it an unprecedented expansion of government to power in the residential housing market. The \textit{sui generis} quality of Title IV’s open housing provision thus gave the Realtors a compelling argumentative opening to oppose the legislation. The Realtors’ resistance, however, didn’t end there.

\textit{Defining the Issue}

The Realtors’ lobby to Congress against Title IV rejected fair housing legislation as an issue of equal access to housing; instead, it defined the issue as ultimately a question of governmental regulation. For instance, the Alabama Real Estate Association included the following passage in their submitted statement:

\begin{quote}
This issue is not open occupancy or equal opportunity to obtain housing for all people regardless of race, color, religion or national origin. The issue is whether government should be permitted to introduce an element of compulsion in the dealings of a property owner with the person who seeks to buy or rent his property (U.S. House 1966:1711).
\end{quote}

The Fort Lauderdale Board of Realtors echoed the sentiment:

\begin{quote}
The issue is not open occupancy. The issue is whether the government should be permitted to introduce an element of compulsion to deprive a property owner of his right to make a contract with the person or persons of his choice (U.S. House 1966:1718).
\end{quote}

\textsuperscript{46} As of the House’s 1966 hearings, only one state (Alaska) had fair housing laws covering owner-occupied residences.
Above, two state Realtor associations declare that the potential loss of the right to
discriminate in private property transactions via state regulation is the real issue at
stake within the 1966 Civil Rights Act. Attempting to shift the argument away from
discrimination in the residential housing market, the trade group instead pursued a
campaign against government regulatory power. The Realtors’ lobby focused on
debating the state’s power, scope, and authority within the nation’s private housing
market.

Implicit in such a formulation, however, is that the “issue” of intrusive
government regulation of housing discrimination is far more severe than the “issue”
of “open occupancy or equal opportunity.” By suggesting that the bill’s move to enact
excessive state regulatory power needs to be curtailed, the Realtors offer an
alternative framework for interpreting and ultimately rejecting fair housing
legislation. Ranking people of color’s rights to a fair and open housing market (“open
occupancy”) as less significant than the threat of government power emboldened to
insure such fairness, the Realtors’ campaign defended the racially unequal status quo
in the nation’s housing market. In effect, the Realtors campaigned against extending
government protection to race, color, and religion in private home-seeking because
granting that authority to the state would be worse than any potential benefit for racial
and religious minorities.

The Realtors’ Senate testimony openly defended the right to discriminate.
However, NAREB emphasized that it was not advocating for Realtors’ right to
discriminate; it was advocating for *property owners’* right to discriminate. Speaking before the Senate subcommittee on June 15, 1966, J.D. Sawyer—chair of the Realtors’ Ohio legislative and governmental affairs committee—outlined this distinction in an exchange with Senator Jacob K. Javits:

Senator Javits: But you also testified that if the owner of a piece of property tells you to discriminate, you will.

Mr. Sawyer: If you consider that discrimination, sir, the answer is yes, but we do not. We consider it a legal responsibility of our agency agreement.

Senator Javits: I understand. But if the owner says, ‘Don’t sell this property to a Negro, don’t bring me a Negro offer, don’t bring me any Negro to look at it,’ you don’t.

Mr. Sawyer: We would either do one of two things. Not become a party to the agency or we would then abide by the direction of the contract.

Senator Javits: But your code of ethics doesn’t say that you should reject any such agencies.

Mr. Sawyer: No, sir. Neither does it say that we must go out and carry the burden for the moral responsibility for the whole community (U.S. Senate 1966:537).

According to Sawyer, following a client’s discriminatory directive fails to constitute discrimination. Implicit in such a conceptualization is the primacy of the real estate agency agreement, which in Sawyer’s formulation inoculates real estate agents from being held responsible for the discriminatory requests made by their clients. By downplaying the role of the real estate agent as the mediator for housing discrimination and foregrounding the real estate agreement, NAREB’s forced housing campaign rejected government intervention in the transactions of the private
residential housing market and maintained a trade position of housing intermediary (Helper 1969). Competition between real estate contracts and the potential government regulation of said contracts illustrates the competing legal interests at stake in the fair housing debate. By focusing on the initial client request, professional duty, and contractual obligation, the Realtors’ lobby against federal fair housing legislation in 1966 hid behind occupational obligations that justified the status quo in housing. In doing so, they defended a so-called “free” capitalist market built on a foundation of racial discrimination.

The Realtors’ defense of property owners’ right to discriminate was unremarkable in their campaign against forced housing. The following is an exchange between Arthur F. Mohl, President of the Illinois Association of Real Estate Boards and the House of Representative subcommittee chair, Representative Emanuel Celler:

The Chairman: Mr. Mohl, the title of the bill you are appearing against says there can be no discrimination in connection with sale or leasing, and so forth, of property based on discrimination as to race, religion, or national origin. Now, I take it that under your contention not only could you refuse to sell the property to a Mormon or a Catholic or a Jew; is that correct?

Mr. Mohl: Or a man who has been in jail or a man with too many children or a whole lot of other things.

The Chairman: That has nothing to do with the bill (U.S. House 1966:1632).

The exchange is a rather inflammatory admission. Mohl—who appears before the subcommittee as “spokesman for the Illinois Association of Real Estate Boards”—instead of denying that discrimination occurs or attempting to downplay its
prominence, here implicitly acknowledges Celler’s charge that property owners enjoy the right to discriminate under the federal law. Moreover, in naming other groups who he could also discriminate against—including convicted criminals who had served jail time—Mohl illustrates the Realtors’ recognition of property owner discrimination as an habitual practice within the residential housing market. In doing so, Mohl’s testimony associates specific racial and religious groups (Mormons, Catholics, and Jews) with undesirable groups of people (like criminals). For the Realtors, then, the question at stake was not whether property owners should be able to discriminate; for them, the question at stake was whether or not the government should be able to limit property owners’ ability to discriminate and force them to sell or rent their property to the worst groups of people one could possibly imagine.

*Harming Realtors’ Rights*

The Realtors’ lobby against Title IV was also deployed as a professional defense against harmful government regulation. Consider the following exchange between chair of the Senate subcommittee, Sam J. Ervin, Jr., and chair of the Realtors’ Washington committee, Alan L. Emlen:

Senator Ervin: [U]nder both the Senate bill and House bill, there is a provision that real estate brokers who have not contributed one thing through the facilities of a multiple listing system can demand, if they are a member of a minority race or a minority religion or a minority national origin, that they be allowed to take the benefit of the member brokers’ investment of time and money, can they not?

Mr. Emlen: That is right, sir. (U.S. Senate 1966:1104).
According to Emlen, Title IV threatened to insert government regulation and oversight of the organization’s exclusionary trade practices. By the mid-1960s, the Realtor organization was still highly segregated with few members of color within its ranks. In 1966, for instance, the Los Angeles Board of Realtors was under investigation by the Department of Justice concerning the possibility of “conspiring or agreeing, in restraint of trade, to refuse to admit qualified Negroes to Membership” (Los Angeles Realty Board 1967:NP). According to the Los Angeles Boards’ records, their 1966 membership figures reached over two thousand members, only sixty-two of whom were black (Los Angeles Realty Board 1968). While the Justice Department’s inquiry was eventually dropped after Title IV was initiated, the lack of people of color on the Board is telling of the systemic segregation within professional occupations like real estate.

Emlen’s testimony above demonstrates what scholars of inequality term *opportunity hoarding*. Opportunity hoarding is the social practice of limiting access to resources and opportunities within educational or occupational spheres. Thus groups with early entry and access to valuable occupational and educational spheres have benefitted from setting up the rules of the game that will affect those who later seek entry. Taking up Charles Tilly’s (1999) use of the concept, Michael K. Brown et al. (2003) demonstrate how opportunity hoarding is accomplished by affecting later access to occupational opportunities:

Whites are advantaged in labor markets when they are able to rig the rules of the game and control access to jobs and
promotions by defining required credentials, limiting access to training or education, or otherwise closing off access to blacks or other groups (Brown et al. 2003:191).

When the Realtors testified to Congress that their trade members would no longer be able to deny black real estate brokers full access to their trade’s network technology, they demonstrated an attempt to hoard opportunities and show how racial segregation was aided by the Realtors’ occupational practices. Despite the fact that the Realtors’ on-going exclusions of blacks and other people of color from their trade allowed them to hoard professional opportunities in the labor market, Emlen’s testimony above pointed to the potential harm that would befall his tradespeople if Title IV were to ban discrimination within access to home listings.

E. G. Stassens, president of the Oregon Association of Realtors testimony claimed that Realtors were “harassed” by fair housing legislation:

Since 1959, the State of Oregon has had a fair housing law. During that time all charges as to discrimination were heard and found to be invalid, except for one case where one of the principals involved died and the case was never heard, or it may have been discovered that it also had no basis for its complaint. Under this law people are now harassed from time to time, costing a great deal of time and money for the hearings, and it is our opinion that should this proposal be enacted into law, harassment of the innocent would become the new style of entertainment and amusement for any crackpot that might think he had a claim (U.S. Senate 1966:440).

According to Stassens, fair housing legislation is superfluous for society and dangerous for Realtors. By suggesting that no cases of discrimination have ever been determined in Oregon, the Realtor extrapolates Oregon’s experience to the rest of the country, questioning the need for fair housing legislation. Moreover, he reasons that
despite the lack of discriminatory behavior on the part of Realtors, they nonetheless “harassed from time to time” because the law exists and allows “any crackpot” to file claims of housing discrimination.

A few days after Stassens’ testimony, an article in the *Oregonian* newspaper disputed his claims. Ira Blalock, the chair of the Greater Portland Fair Housing Council, corresponded with the Senate subcommittee to contest Stassens’ claims. His statement clarified some of Stassens’ facts about fair housing in Oregon:

There are 100 cases on record in the Civil Rights Division in the State Department of Labor, where discrimination was found. These cases were settled by conference, conciliation, and persuasion. This is hardly harassing. In approximately 18 cases, brokers were found guilty of discrimination. Mr. Stassens could have had this information, if indeed he lacked it, by calling or visiting the Civil Rights Division of the State Department of Labor (“Realtor’s Attack on Oregon Law Disputed By Fair Housing Official” 1966:35).

Questioning the accuracy of Stassens’ testimony, Blalock’s telegram reports the prevalence of housing discrimination claims in Oregon and the process through which they’re adjudicated. The statement not only challenges the number of discrimination rulings Stassens references, but it also questions why he was intentionally reporting inaccurate figures of housing discrimination to the Senate subcommittee. Blalock’s statement shifts the perspective of viewing Realtors as potential victims of fair housing regulation and presents them as willfully dishonest about the current problems of racial discrimination within the Oregon housing market.
The Realtors’ lobby didn’t just outline how their industry and agents would suffer at the hands of government regulation, however. They also offered a compelling claim about Title IV’s implications for all property owners—including current and future property owners of color. The Realtors’ opposition reasoned that taking away property owners’ right to discriminate in housing would mean that any property right gains for people of color would be substandard because Title IV would diminish all property rights. In his testimony before the House, George A. McCanse, Chairman of the Realtors’ Legislation Committee and member of the Texas Real Estate Association, spoke to the potential harm that H.R. 14765 would mean for “minority groups.” After conceding that the goal for fair and open housing rights was laudable, McCanse nonetheless warned that

minority groups would be the losers if in achieving them they lose the freedoms that all property owners now enjoy. Erosion of property rights contained in Title IV will adversely affect all property owners—not just those of the majority because if these provisions should be enacted, persons who own or acquire property after that time will have a measurably smaller ‘bundle of rights’ than they now have (U.S. House 1966:1640).

McCanse’s account of outlawing discrimination in the domestic housing market means that if “minority groups” are going to gain property rights in this way, they will ultimately gain inferior rights. Such a configuration positions a predicament for “minority groups”—they can take the substandard deal before them or they can accept the status quo of housing discrimination. By situating “minority groups” as
potential losers if H.R. 14765 became law, McCanse signals a concern for their rights, stays on message that the trade group’s opposition to the civil rights bill is based on concern for property rights, and challenges any possible perception that Realtors are racist.

The narrative of harming minority groups’ property rights was also present in Senate testimony by Realtor leaders. E.G. Stassens, the President of the Oregon Association of Realtors, also warned that Title IV would harm minority groups’ property rights:

[A]fter carefully scrutinizing Title IV of this bill, the so-called minority groups are going to be harmed by this legislation as much as anyone else. I am sure the so-called minority groups in this Nation of ours want the right to rent, lease, sell or buy to or from whomsoever they so desire. I am sure that in the so-called minority groups there are people who would not want to rent, sell, or lease their duplex to derelicts and people of questionable character and morals, yet under this proposed legislation a citizen would not have his freedom of choice without possibly subjecting himself to a discrimination charge (U.S. Senate 1966:441).

Just above, Strassens implores that “minority groups” desire fully entitled property rights, operationalized as the “right to rent, lease, sell or buy to or from whomsoever they so desire,” without which they would be as harmed by Title IV as “anyone else” (read, whites). After Strassens shows the similarity between the property rights interests for “minority groups” and “anyone else,” he also suggests that “minority groups” would have similar hesitation to rent, sell, or lease their property to “people of questionable character and morals” and that in doing so they would face similar
vulnerability to “a discrimination charge” as “anyone else.” According to this Realtor’s testimony, Title IV threatens “minority groups” because it not only prevents them from enjoying the full franchise of property rights, but would potentially ensnare them with the risk of legal oversight.

Other Realtors’ Congressional testimony sustained the claim that minority groups’ property rights would be harmed by the Civil Rights Act of 1966. Kemp C. Clendenin, Jr., president of the North Carolina Association of Realtors, questioned the discrepancy between what he knows of “minority groups” and their support for Title IV:

The minority groups are extremely conscious of their rights or lack of them. This leads me to believe that they have not looked at this bill objectively. If they had, they would have recognized that their right in this area is in the same jeopardy of the majority’s (U.S. Senate 1966:1060).

Clendenin reasons that “minority groups” have not looked at Title IV “objectively” because if they had, they would not be in favor of accepting rights that would outlaw racial, ethnic, and religious discrimination in the housing market. The paternalism displayed in Clendenin’s remarks is dependent upon the presumption that “minority groups”—who are otherwise “extremely conscious of their rights”—are being impartial to Title IV.

Extending their opposition to Title IV to include the possible harm for “minority groups,” the Realtors’ lobby thus strategically incorporated a performed concern for people of color’s property rights. That is, they offered their own
attentiveness to the groups the legislation was presumably meant to help. Such an extension of concern would depict Realtors as interested in helping not just their customers and trade members, but also people of color—groups of people they presumably have been historically at odds with. However, the Realtors’ reasoning was ultimately unsound, since social relations of segregation—racist practices that were the target of the proposed legislation under consideration—proved to be far greater barriers to accessing housing. By arguing that the governmental regulatory arm that would adjudicate such an extensive social exclusion was flawed, the Realtors ignored some of the most pressing and relevant reasons for housing inequality. At best, the Realtors’ testimony that invoked this argumentative line appeared to speak on behalf of people of color and their needs; at worst, it became paternalistic and insinuated that the civil rights era had made “minority groups” overzealous and spurred their too eager acceptance for any legislation without considered thought and care.

A Legal Alternative

Throughout the Realtors’ efforts to oppose Title IV, they moderated their opposition by conceding one of the civil rights platform’s ultimate goals: a desire to rid the housing market of discrimination. In crafting such a goal, the Realtors were able to articulate their resistance to Title IV as a quarrel with only the means of achieving equality in housing and not its ends. Consider the similarities among the
following statements made by various Realtor representatives before Congressional subcommittees. First, the Georgia Association of Real Estate Boards:

Whereas we further insist that the solution to the problem of biracial living will come ultimately from the temporizing influence of the church and school and men of good will and not through the exercise of the police system (U.S. Senate 1966:1719).

Next, the Greater Pittsburgh Board of Realtors:

Under the influence of church, school, and men of good will, the objectives of the struggle to obtain equal opportunity in housing are being achieved. Voluntary efforts to this end should be given every encouragement. A forced housing law that tramples on a fundamental right will not advance this important cause (U.S. Senate 1966:1720).

And, the Moreno Valley Board of Realtors:

The solution to the problem of biracial living will come ultimately from the temporizing influences of the church, school, men of good will, and similar extra-legal sources, and not through the exercise of the police system (U.S. Senate 1966:1725).

These passages’ identical language (“influences of the church, school and men of good will”) illustrates the Realtors’ forced housing campaign’s uniformity. NAREB was able to direct political lobbying by providing template phrasing for geographically disparate real estate boards to deliver a unified stance against Title IV. Conceptually, the passages presume that racial progress in housing is “already underway,” that the regulation proposed by Title IV would set back such progress, and that social institutions and individuals of “good will” are responsible for advances in civil rights and housing equality. By emphasizing moral, voluntary, and
incremental means to ameliorate housing inequality, the Realtors proffer their alternative methods for improving racial and religious discrimination in housing. Complementing its broader forced housing campaign, the Realtors argumentative strategy before Congress was to denounce Title IV’s “police system” and in its place offer up an organic wellspring of public goodwill as the appropriate means for whites to accept “minority groups.” Such a platform depoliticizes racial inequality in housing and, instead, renders it a moral issue. By citing groups and individuals for improving the hearts and minds of white Americans who still discriminate in housing sales, the Realtors lobby offers an alternate to the political intervention to Title IV.

The Ultimate Fate of the Civil Rights Act of 1966

As early as June, House members were conceding that the bill’s broad parameters covering all residential housing were unworkable. By the end of the month, a compromise amendment drafted by Representative Charles Mathias Jr. of Maryland and William McCulloch of Ohio emerged with the approval of the Justice Department. Known as the Mathias amendment, it proposed weakening Title IV by exempting owner-occupied housing of up to four dwelling units. The amendment flip flopped over the course of a month, failing and passing a number of times before ultimately successfully amending Title IV (C.Q. Almanac 1966). Then in late July, Title IV and the rest of H.R. 14765 came before the full House. During the floor debates, House members questioned how real estate agents would be subject to the law. In order to clarify the trade’s standing under the law, an amendment was made that would
permit a real estate broker or his agent to discriminate in the sale of dwellings...or rental of dwellings if he has express written instruction to do so from the owner who is otherwise exempt from the provisions of the housing title, so long as the owner’s instruction was not ‘encouraged, solicited, or induced’ by the broker or his agent or their representative (C.Q. Almanac 1966:Need page #).

The Realtors’ concern over the implications of Title IV on their trade and potential liability made its way into legal protection for real estate agents. With this pro-Realtor amendment, the House passed H.R. 14765 on August 9, 1966.

The Senate’s treatment of Title IV was much more pointed. There, majority leader Mike Mansfield (D-MT) strategized to have the bill put on the Senate calendar, avoiding a Judiciary Committee assignment. Such an assignment would have been overseen by James O. Eastland (D-MS), whom Mansfield called inflexible on civil rights (C.Q. Almanac 1966). By forgoing a committee assignment, civil rights supporters in the Senate attempted to force the bill to a floor vote. The first attempt occurred on the Senate’s first day back from the Labor Day holiday weekend in early September, when the bill’s floor manager Senator Philip A. Hart (D-MI) proposed unanimous consent to consider the bill. Civil rights opponents were primed to act on their own operational tactics to defeat the bill from its motion to consider by failing to reach quorum and filibustering. Among them, Senator Eastland described the bill as providing an “opiate of a socialistic state where property and its privileges are controlled by the state bureaucracy…This socialism or communism…has taken us from the pursuit of happiness and placed us in the pursuit of pleasure” (“Listless Filibuster” 1966:4). With President Johnson’s support, the Senate held two votes of
cloture on the motion to consider, failing each time. In the end and in contrast to the
House’s treatment of the bill, the Senate was never able to take up the contents of
H.R. 14765, much less debate or amend its contents.

While scholars have identified the Realtor organization as the most prominent
opponent of the 1966 Civil Rights bill (CITE), none has suggested that the industry
was ultimately responsible for its failure. Instead, they agree that a lack of pressure
upon Congress to pass fair housing was the biggest obstacle in the 1966 legislation—
coalitions that resulted in the passage of past and future civil rights bills never came
together for H.R. 14765 in the Senate in 1966 (CITE). The Realtors’ efforts and ideas
to protest the federal fair housing bill reveals how the organization conceptualized the
role of the government in the housing market and orchestrated its resources to
promoting its regulatory goals. Nonetheless, in an end-of-the-year memorandum,
Alan L. Emlen wrote to all local board and state associations presidents and
secretaries, the entire Realtors’ Washington Committee, and the NAREB board of
directors thanking them for their effort in making the “victory possible” (NAREB
1966g:NP).

II. The Realtors Lobby the Fair Housing Act of 1967

In late March 1967, President Johnson tried a different strategy to pass his
civil rights mandate. Instead of putting forth one comprehensive bill, the President
directed a three part civil rights regulation, one of which was S. 1358—the Fair
Housing Act of 1967. Senator Walter F. Mondale introduced the bills to the Senate where they were referred to that house’s Banking Committee. S. 1358 sought to prohibit discrimination in the sale or rental of housing, the financing of housing, and the provision of real estate brokerage services. The bill covered all single family and owner-occupied dwellings, but would do so in a graduated plan. The first stage would cover only federally owned housing in 1967. Starting on January 1, 1968, the second stage would expand the bill’s coverage to non-owner occupied or dwellings occupied by five or more families. The third stage of the bill would go into effect on January 1, 1969 and cover all dwellings except certain religiously owned properties.

As early as May 1967, NAREB’s political lobby was planning their response to prospective federal legislation. The Realtors’ executive committee recommended to administrative staff to establish a central clearinghouse on pending fair housing legislation (NAREB 1967b:8). Silas F. Albert, chair of the Realtors’ Washington Committee, reported to the board of directors that because of the failure of a similar bill the prior year and a “voting lineup in the Congress this year…[that is] certainly more favorable to our position” passage of a federal fair housing bill was “very remote” (NAREB 1967b:11). As a result, Albert informed the NAREB’s board of directors that due to “the unfavorable climate against the enactment of the bill, we are waging a low-key fight against it” (NAREB 1967b:11). According to the Realtors’ meeting minutes, Senate Bill 1358 wouldn’t garner further assets from the organization in order to “be able to husband our resources accumulated…in order to have them available when we face a crisis on this issue—perhaps after the 1968
elections” (NAREB 1967b:11). The Realtors’ lobby was thus able to measure the political climate on the proposed fair housing bill and strategically conserve its campaign resources for a later date.

The Senate’s Committee on Banking and Currency’s Subcommittee on Housing and Urban Affairs held hearings on S. 1358 in late August 1967. Chairing the committee was William Proxmire (D-WI). Like the group’s Washington Committee predicted, the Realtors’ testimony on S. 1358 was subdued. In comparison to the twenty Realtors who appeared before Congress over multiple days for the prior year’s fair housing bill, only two Realtors spoke in August 1967 on behalf of NAREB’s official position on the bill. NAREB’s speakers were all local Realtor lobbyists—Alan L. Emlen, chair of the Realtors’ Washington Committee’s subcommittee on civil rights legislation, and Realtor legal counsel John C. Williamson, both of whom had appeared the year prior before Congress to testify against H.R. 14765. Such experienced local lobbyists required no organization funding for transportation into Washington, D.C. to testify, thus ensuring that even when weak legislation was presented, the organization would have representatives on hand to communicate NAREB’s regulatory stance. Emlen began the Realtors’ testimony, first reading a lengthy prepared statement and then answering questions from Senators Proxmire, Walter Mondale, and Wallace Bennett, with Williamson fielding most of the Senators’ more legal-based questions.

47 At the same time the U.S. Senate was holding hearings on S. 1385, its Judiciary Committee’s Subcommittee on Constitutional Rights was also holding hearings on a proposed civil rights act. H.R. 2516 was the fair housing bill under consideration. NAREB did not attend the August 1967 hearings and, instead, sent a statement almost identical to the one they presented at the hearings on S. 1385.
The Realtors Construct the Constitution

The Realtors presented two main objections to the fair housing bill. The first and most strenuous objection was that it was unconstitutional. In order to demonstrate their claim, the Realtors refuted the constitutional clauses granting Congress regulative authority—the 14th amendment and the commerce clause. Putting forth a narrow interpretation of the 14th amendment, the Realtors’ representatives proposed that only denials of rights coming from state authorities—and not individuals like property owners—could trigger a constitutional violation. In his testimony, Emlen described the virtue of the 14th amendment as composed by Supreme Court Justice John Marshall Harlan in a partial dissent in *Peterson v. Greenville* (1963), a case ruling that the city of Greenville’s segregation ordinances were unconstitutional because the city relied on the state to authorize discriminatory treatment based on race:

> Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations are things all entitled to a large measure of protection from governmental interference. This liberty would be overridden, in the name of equality, if the strictures of the Amendment were applied to governmental and private action without distinction (U.S. Senate 1967:340).

The Realtors’ lobby thus cites a recent Supreme Court Judge’s opinion as direction for narrowly interpreting the 14th amendment. In Justice Harlan’s opinion, individual activity not authorized or supported by the state is constitutionally allowed to be discriminatory. Codifying the right to discriminate privately as the retention of
individual liberty, Justice Harlan’s comments demarcate that a public interest in equality cannot encroach upon “private action” wishing to discriminate. The Realtors thus reasoned that S. 1358 was unconstitutional because private individual homeowners renting and selling their homes should be able to avoid government oversight and be granted the full recognition of their liberty.

The Realtors also rejected Congress’s authority to regulate the private residential housing market through the commerce clause. Challenging the broad interpretation of the clause put forth by the Senate, the Realtors’ legal counsel emphasized the lack of explicit government involvement within the housing practices Congress sought to regulate: “[W]e are talking now about transaction in which the State is in no way involved” (U.S. Senate 1967: 346). In response, Senator Mondale considered the commerce clause’s applicability to the regulation of the residential housing market and engaged the Realtors’ top attorney in the following exchange:

In 1965 it was shown that housing contributed more than $27 billion of new investment to the economy. A large portion of this was shipped in interstate commerce; 41 million tons of lumber and finished wood were shipped in the United States; 43 percent of this material was shipped 500 miles or more. Millions of tons of brick, millwork, wood products, furniture, glass, and other housing materials are shipped in commerce. Much of the financing of housing crosses State lines. In 1960, 2.4 million out of a total of 14.5 million one-family, occupant-owned dwellings were mortgaged on a basis of financing crossing State lines. Almost 40 percent of all the nonfarm mortgages on property located in California were secured by loans derived out of State. Each year one family out of 30 in the population moves its place of residence to a different State. Can there be any doubt at all that with this kind of interstate character of the authority of the Congress to reach and deal with this matter?...
Mr. Williamson: Senator…I don’t see how you can interpret
the commerce clause so as to give it such a broad reach (U.S.

Here, Senator Mondale reasoned that the housing market touches multiple levels of
interstate commerce and extensively details their various sites. While the Realtors
initially refute Mondale’s point by claiming that their industry merely engages the
finished product of these commercial exchanges (“It is a question whether we are
trying to regulate the construction of housing or trying to regulate transactions
between individuals involving the finished product when all of these have been put to
rest”), they ultimately reject in whole Congress’s authority to regulate discrimination
within the housing market. Like their testimony a year prior, the Realtors’ efforts in
1967 focused on questioning Congress’s right to regulate discrimination in the
housing market—thus attempting to ultimately render fair housing as an issue of
government regulation.

Helping the Urban Poor

The second reason the Realtors gave for their opposition to S. 1358 was that it
would penalize the urban poor. The argument they put forth against the Fair Housing
Act of 1967 questioned if integration attempts were the most effective solution for the
nation’s housing ills. To do so, the Realtors’ testimony conceded that the country’s
housing problems should be better addressed. Citing research from such unlikely
sources as the Congress of Racial Equality (CORE) and Columbia professors Richard
Cloward and Frances Piven, NAREB testified that integration attempts were drawing
much needed attention and resources away from the plight of the urban poor and low
income housing. Suggesting that “[n]o greater injustice could be perpetrated on the ill housed in our urban ghettos than the national preoccupation” with integration, the Realtors’ lobby purportedly endorsed government housing policies for the poor (U.S. Senate 1967:343). For example, Emlen cited a Senate subcommittee report on the “Federal Role in Urban Affairs” that found while only three percent of Harlem survey respondents cited integration as the most pressing issue affecting their housing needs, fifty-eight percent of those same survey respondents named dilapidation, sanitation, and availability as their greatest concerns about housing (U.S. Senate 1967:343). The Realtors’ congressional testimony thus questioned the wisdom of promoting open and fair housing over the specific housing needs of the urban poor.

However, NAREB’s claims to support the housing needs of the urban poor seem insincere in face of the group’s vigorous opposition to things like rent control and public housing. The group’s hostility to public housing was so ubiquitous that references to it date back to the late 1940s, when the Realtors Washington Committee’s member Laura Hale Gorton described it as “socialistic” (Hornstein 2005:157). During an unsuccessful campaign to block the 1949 Omnibus Housing Act and its potential for more than eight hundred thousand units of public housing, the group depicted public housing as damaging to families and the ideal of the private family home (Hornstein 2005:187). And just a year prior to their Senate testimony, NAREB’s August 1, 1966 issue of Realtor’s Headlines included a short article warning that “there has been no let-up in efforts to lure tiny hamlets…into building socialized housing” (NAREB 1966k:NP). And in the following week’s issue, another
article bemoaned that despite “the present period of tight money…the Department of Housing and Urban Development continues its program of gigantic loans for socialized housing” (NAREB 1966l:NP). The Realtors’ concern in front of Congress about the plight of the urban poor rings hollow considering their disparagement over such housing programming over the course of two decades.

The Realtors’ supposed concern for the urban poor is even more suspect when the group puts forth contradictory claims about the role of the government to supposedly help minorities. Even though NAREB based their opposition on fair housing regulation because of the brutal conditions of the nation’s urban poor, such a perspective did not induce the group to advocate for hasty improvements or even governmental-led aid. Instead of governmental attempts to broker fairness in the nation’s housing market, the Realtors’ lobby proposed an optimistic wait-and-see attitude:

We have faith that ultimately the problems of human relations which beset our society will be solved by the people themselves. While this may be decried as ‘gradualism’ in the face of centuries of injustice, let us not obscure the truth that no legislative body can legislate solutions to the problems of human relations (U.S. Senate 1967:343).

Contradicting their earlier stance in support of government programming for the urban poor, the Realtors’ statement implies that governmental help is inappropriate to more natural and effective practices of “human relations,” a nebulous concept acknowledging the sheer human misery of the nation’s substandard housing (“centuries of injustice”). But the Realtors’ primary interest seemed to be in
discounting the government’s ability to address such a vast social problem than actually acknowledging the “centuries of injustice” and what that means for the urban poor. The Realtors’ concern for the urban poor was an inaccurate and argumentative attempt to moderate its image in order to complain against the civil rights bill in front of them—not a sincere display of concern for the housing needs of millions of Americans.

**Legal Harm**

Although their testimony didn’t explicitly name the difficulty of defending oneself legally from discrimination charges, Realtor spokespeople made frequent claims concerning the difficulties real estate brokers would suffer under the proposed fair housing legislation. The Realtors’ official statement that Emlen read at the opening of the group’s testimony acknowledges that “[d]ue process dictates that he who alleges a fact has the burden of proving the fact” (U.S. Senate 1967:344). However, the next sentence immediately questions the likelihood of upholding due process of government officials:

One would be most naïve to believe that the Secretary or one of the thousands of employees who would be visited upon the public to enforce this law would accept as less than conclusive the mere denial of sale or rental as a fact of discrimination (U.S. Senate 1967:344).

Not only does the Realtors’ statement depict government enforcement of federal law as overzealous and overwhelming it also implies that those accused of federal infractions should be taken at their word and only their word. According to the
Realtors’ statement, believing that a simple refutation of wrongdoing is adequate to absolve oneself before government authorities is “naïve.”

Elsewhere in the group’s testimony, Emlen again suggests that Realtors would be harmed by unfair legal prosecution. In an exchange with Senator Bennett, he implies that common trade hiccups could cause potentially liability for Realtors:

Senator Bennett: I would think a very common experience would be a man who called you up and said, ‘I’d like to sell my house if you can find me another one.’

Mr. Emlen: That is right.

Senator Bennett: So you take him out and show him a variety of houses. And the more houses he looks at the better his own house looks to him.

Mr. Emlen: That’s right. So they change their mind…[I suppose it happens to me 10 or 12 times a year…]

Senator Bennett: So they say, ‘No, I don’t want to sell my house.’ Meantime you have had the listing for 4 or 5 days and maybe created a situation.

Mr. Emlen: Yes.

Senator Bennett: And you think then under this bill you could be held for discrimination if a Negro came along and said, ‘I want to buy the house;” and you said, ‘No, the man has decided not to sell’?

Mr. Emlen: It is terribly hard to defend yourself (U.S. Senate 1967:353).

According to Emlen, frequent trade occurrences like property owners’ indecisiveness to sell could initiate discrimination complaints against their Realtors, who would find it “terribly hard” to explain these admittedly frequent trade occurrences. The Realtors’ top lobbyist thus puts forth an objection to the proposed legislation based upon potential harm to his trade members. However, the likelihood of such harm is
immediately called into question by one of the committee’s Democratic senators. Senate subcommittee chair—William Proxmire—interjected his colleague after Mr. Emlen’s last comment (“It is terribly hard to defend yourself”):

Senator Proxmire: Would the Senator yield on that point?

Senator Bennett: Sure.

Senator Proxmire: …All of these things you raise here now are perfectly common, and anybody with the slightest experience with sale or rental of homes would recognize immediately that you have clients who for various reasons change their mind. It would be, it seems to me, a very clear perversion of the law to say that because people want to sell at one time and don’t want to sell a little later they are necessarily violating this law…

Mr. Emlen: We are pointing out some of the dangers we thought were—

Senator Bennett: Have you had any experience with these situations? Has this sort of thing happened in the past…where you have been charged or accused…of discrimination because of the kind of conditions you describe?

Mr. Emlen: I am trying to think of a specific case of my own. I don’t think I can, Senator (U.S. Senate 1967:353).

The Realtors’ lobby offers then a highly specious, hypothetical problem arising to support their opposition to S. 1358. Despite the fact that Emlen acknowledges that clients change their minds about home purchases a dozen or so times a year and despite the fact that he operates in a state with a fair housing law on the books, he doesn’t have any experience with legal prosecution as a result of this common professional occurrence. Instead of pointing to real injuries sustained by Realtors as a result of fair housing legislation, the trade group’s speaker constructs hypothetical
scare tactics in order to depict real estate agents as potential victims of new government regulations.

**S. 1385 and the Realtors’ Lobby**

All of the Realtors’ testimony took place on what would be the third and final day of the Senate subcommittee’s consideration of S. 1358 on August 23, 1967; the bill was not taken up further and died in committee. Although the Realtor organization’s testimony on S. 1385 was not as comprehensive as in previous congressional appearances, their comments on the Fair Housing Act of 1967 were noteworthy nonetheless. As the group’s last congressional testimony prior to the passage of a federal fair housing law less than a year later, the presentation marks the Realtors’ latest objections to government regulation of the residential housing market. Further, NAREB’s congressional testimony relied on similar argumentative frameworks. (See Table 5.)
---|---
**Constitutionality** | Property owners’ right to sell and rent their property shall not be infringed. | The 14th Amendment and the commerce clause do not provide Congress the authority to regulate private discrimination within the housing market.
**Government Regulation** | Government does not have the power to regulate private practices in the housing market. | Government oversight will harm Realtors with unreasonable burdens of presumed guilt in discrimination claims.
**Professional Responsibility** | Realtors have a professional duty to uphold their clients’ wishes—even if those wishes are discriminatory. | Realtors take on a greater professional burden because of racial discrimination.
**Concern for Minorities** | Racial and religious minority groups’ property rights will be diminished too. | The focus on integration has overshadowed the needs of the urban poor.

*Table 5.* NAREB’s arguments against fair housing during their 1966 and 1967 Congressional lobbying.

The table above illustrates how quickly the Realtors’ lobby against fair housing shifted, developed, and was sustained. In 1966, the group offered an intense defense of the political and social status quo that engendered racial segregation by championing existing property rights as requisite of full human rights. Just a year later, the Realtors’ lobby sustained their refutation of the constitutionality of fair housing through a more pointed critique and maintained that they were interested in helping minorities by advocating for the urban poor. However, instead of defending property owners’ rights, in 1967 the Realtors’ lobby put forth a more comprehensive ideological justification that opposed fair housing by construing burdens upon their profession. By proposing that a national fair housing act would defy the laws of jurisprudence and put the onus on Realtors to prove their innocence, the lobby
designated federal regulation as harmful and thus unfair to their trade. More succinctly, the Realtors’ lobby transitioned from contending that a federal fair housing act would be unfair to existing property owners to contending that it would be unfair to Realtors and the urban poor.

III. Fair Housing Comes Home

What would eventually become the Fair Housing Act of 1968 started out as an amendment to H.R. 2516, a civil rights bill that sought to impose penalties for those enacting violence or intimidation because of a person’s race, color, religion, political affiliation, or nation origin when said person was attempting to participate in their legal civil rights. In early February 1968, Senator Walter Mondale submitted Amendment No. 524 to H.R. 2516 for consideration to the Senate. The amendment duplicated the same three-stage roll out phasing as prior bills and retained a “Mrs. Murphy” exemption that allowed property owners to discriminate in renting out individual rooms in their homes. However, Mondale’s amendment also provided HUD with broader enforcement powers, increased punitive damages, and insured that all HUD hearings be a matter of public record. Over the course of the month, the bill was debated off and on and went through three failed votes of cloture to end debate and force the Senate to vote. However, upon the third cloture vote’s failure, Senator Everett Dirksen (R-IL) hinted at moving closer to a compromise on the legislation (Albright 1968).

48 The civil rights the bill covered included voting, education, employment, court of law, public transportation, federal financial assistance, and public accommodations.
Outside pressure on the Senate, however, was mounting. President Johnson repeatedly urged the passage of a bill. On the heels of the National Advisory Commission on Civil Disorders (the “Riot Commission”) recommendation that the lack of fair housing was a contributing factor in the urban riots that had been occurring, the *New York Times* printed a widely-read article on the commission’s recommendations. In addition, over a dozen business leaders sent an appeal to the Senate to hasten passing a fair housing bill (Hunter 1968b). NAREB spoke, too; however, it resisted progress on the bill. NAREB’s efforts at this time, however, were not engaging in directly lobbying members of Congress (CQ Almanac 1968). The group was absent at the Capitol for the Senate debates. According to one Senate aide, “The whole time we were debating the bill I didn’t see a real estate lobbyist” (CQ Almanac 1968). NAREB’s top lobbyist confirmed this observation, describing the Realtors focus upon participating in strategy sessions with members of Congress and reporting back to local boards. *Realtor’s Headlines* presented three front-page articles on the bill in the March 4th issue of the newsletter, informing its members of the bill’s status. The article “A Call to Action for All Realtors” appealed to its members to respond in kind:

It is time now for the Realtor and others in his community to express their views on these unfortunate developments. *Time is of the essence*...I strongly urge that you begin now to harness the support of your community against any form of federal housing. Telegrams should be directed to your Representative in the House and your two United States Senators (NAREB 1968c:NP, original emphasis).
Then, the last week of February, protracted holdout Senator Dirksen made a remarkable shift in his position to support the bill and got other Republicans to join him, explaining on the Senate floor that only twenty-one states had fair housing laws and that the country should not wait for the others to catch up (Hunter 1968c). He crafted an amendment to Mondale’s amendment that was widely touted as a compromise. The key differences between Senator Mondale’s amendment and Senator Dirksen’s amendment were focused on HUD’s administrative and enforcement powers. Mondale’s amendment gave HUD administrative powers to conduct investigations, while Dirksen’s amendment deleted the reference to investigatory powers for HUD’s Secretary. Senator Dirksen’s amendment also modified the enforcement penalties, lowering the maximum amount of punitive fines from five thousand dollars to one thousand. Additionally, the Dirksen amendment removed a significant enforcement tool that Mondale’s amendment provided— the power to order a temporary restraining order to keep “the respondent from doing any act that would tend to render ineffectual a final order that the Secretary might issues” (Congressional Record 1968:2271). But the most important change occurred under its enforcement section. The Mondale amendment would have further entitled HUD’s secretary with broad power: “The Secretary is empowered, as hereinafter provided, to prevent any person from engaging in any discriminatory housing practice” (Congressional Record 1968:2271). That sentence was subsequently deleted from Dirksen’s amendment and with it HUD was rendered an ineffective legislative mandate that would dictate the agency’s weakness for two decades. Because after a
handful of amendments were considered and turned down in the first week of March—including one offered by ex-Ku Klux Klansman and civil rights filibuster Senator Robert Byrd (D-WV) that would exempt private individuals and thus gut most of the bill’s strength—on March 11th the Senate passed the bill seventy-one to twenty, with four Republicans joining sixteen Southern Democrats in opposing the bill (Hunter 1968c).

Senator Dirksen’s mark on the fair housing bill did not emerge without influence from NAREB. As far back as the early 1950s, the Republican Senator from Illinois spoke before real estate boards throughout the state, including the Illinois state association just a week before his announcing his candidacy to the Senate in 1955. Further, he specifically lobbied with the Realtors on housing issues throughout the 1960s. In January 1962, as Senate Minority Leader, Senator Dirksen spoke before the Republican congressional leaders on the potential development of a cabinet-level department on urban affairs and housing. There, he reported that “it was the believe of the….Real Estate Board that if the order were signed[,] housing starts would be curtailed” (Joint Republican Congressional Leaders Meeting Minutes 1962:1). Later activities point to Senator Dirksen’s allegiance with the Realtors’ opposition to fair housing. For instance, in a form letter to constituents regarding Title IV of H.R. 14765—the Civil Rights Act of 1966—Senator Dirksen used phrasing and concepts to describe the bill that complemented the Realtors’ campaign language against forced housing. He not only identified Title IV as “the so-called Fair Housing Title,” but he also claimed that he was “persuaded that it will aggravate rather than improve
the situation in the housing field…[and] that it will have little to no impact on the so-called ‘metropolitan ghettos’” (Dirksen 1966:1). And immediately after Senator Dirksen’s successful amendment in 1968, a letter to constituents noted that the delayed initiation for H.R. 2516 would be adequate time to “iron out any difficulties which may arise in practice so far as brokers are concerned” (Dirksen 1968:1). (See Figure 7.) Senator Dirksen’s participation, lobbying, interest, and allegiance to Realtor concepts illustrates a political affiliation and lineage between the Republican Senator and the Realtor organization.
March 13, 1968

Dear:

In 10 years only 21 states took any action in the field of fair housing and 5 of those enacted deficient statutes and had to do it all over again. At that rate of progress, it would take at least 15 years or more before the other states took action. I am afraid the mood of America today, and the acceleration of events, will not stand still that long and I felt that something had to be done.

I could not accept the original bill by Senator Hart or the housing amendment by Senator Mondale, and there was no choice except to completely rework these measures after a score of conferences in which many members of the Senate, their staffs, and the Attorney General and his staff, sat in.

The fact that the vote was 71 to 20 on final passage should testify to the fact that we developed an acceptable measure and if there are imperfections — and nobody knows better than I the imperfections that can creep into a very complicated measure — they can be cured.

I believe we held the fort so far as individual homeowners are concerned, and those who own up to four flats, where one is owner-occupied, and in addition, provided an 18 months period in order to iron out any difficulties which may arise in practice so far as brokers are concerned.

As you no doubt know, this matter has now been referred to the House of Representatives and it remains to be seen what action will be taken in that body.

Sincerely,

Everett McKinley Dirksen

Figure 7. Senator Everett Dirksen’s form letter on civil rights. March 13, 1968. Form Letters, 1951-1969, Everett M. Dirksen Papers. The Dirksen Congressional Center, Pekin, IL.
Meanwhile, the Realtors reacted swiftly to the bill’s successful emergence from the Senate. Two days following the bill’s passage, working on behalf of the Realtors’ Washington Committee, NAREB’s public relations committee sent correspondence to every board president requesting their help with a public lobbying campaign to denounce the federal fair housing bill. In the March 13th memorandum, committee chair John Carrott requested that local Realtor boards aid the “efforts to defeat the onerous forced housing bill” by consulting the accompanying Realtor-authored press release and disseminating public statements to the media (NAREB 1968a:NP). The memo recommended reproducing the press release statement on board stationery “with the blanks filled in and then to issue to the news media in the territorial jurisdiction of your board” (NAREB 1968a:NP). The release, entitled “Local Board of Realtors Points to Dangers of Senate Forced Housing Bill,” was extensive. The two-page statement calls on the public to recognize the danger the bill represents to property owners’ rights, the potential government oversight and penalties it provisions, and requests the public to appeal to their congressional representatives in the House. (See Figures 8-9).
FOR IMMEDIATE RELEASE

LOCAL BOARD OF REALTORS POINTS TO DANGERS OF SENATE FORCED HOUSING BILL, JOINS CAMPAIGN FOR DEFEAT IN HOUSE

Dangers of the forced housing bill just passed by the Senate and its disfavor with the voters throughout the nation must be emphasized, (name)_______, president of the (city)_______ Board of Realtors, declared today in calling on all citizens to join in a nationwide campaign to gain defeat of the legislation in the House of Representatives.

"Basically, the bill denies the home seller, who insists on his traditional freedom of choice in contracting for the sale or rental of his property to whomever he chooses, the use of the professional help he needs from a broker to get the best possible price in the quickest possible time," he explained.

"Ostensibly the bill excludes the home owner of a single-family house from the provisions of the legislation, permitting him to continue to decide without governmental coercion to whom he will sell or rent, or not sell or rent, his personal property. But after Dec. 31, 1969, this right is drastically curtailed, and the government can force an unwilling owner to dispose of the house to someone not of his choice if he uses the facilities of any real estate broker or salesman, or, on his own, he indicates in an advertisement a preference on the basis of race, religion, color, or national origin," Mr. (name)_______ added.

"A complainant may appeal for pressure by the Secretary of the Department of Housing and Urban Development or may bring suit in federal court which may award punitive damages against the owner up to $1,000 and court costs."

The Realtors of (area)_______ are joining with thousands of other members of the National Association of Real Estate Boards throughout the nation in pointing out the threat of this tricky bill and urging all citizens to contact their Congressmen to vote against the legislation which will not only set back race relations but strip owners of professional aid in the largest and most complicated transaction in the lives of most of them.

(more)
FOR IMMEDIATE RELEASE

Even the most ardent supporters of the bill in the Senate had misgivings about their action as evidenced by the words of Sen. Philip A. Hart (D., Mich.), floor manager, who admitted, "There was no great groundswell of influential support for 'fair' housing ... What we passed today is not going to bring unblemished political advantage to anyone who voted for or worked for it. For some the advantage will be marginal at best, for others the tally might even be negative."

His analysis was seconded by a number of noted columnists, one of whom predicted that "open housing" may become a big issue in the national campaign this fall since it affects directly more voters than many other questions, Mr. (name) added. In fact, this columnist flatly predicted that voting in favor of this onerous bill could cause the defeat of some Republicans and Democrats, the board president said.

Only a comparatively few voices were raised for maintaining the basic and traditional rights of all Americans, Mr. (name) said. Sen. Frank J. Lausche (D., Ohio), although he eventually voted for the bill, was one of those who raised a telling point so often overlooked. During the debate, he declared, "Much has been said about the right of the buyer. What about the seller, who has thriftily accumulated enough money to buy a home? He has labored for it. It is his home. And the government tells him, 'We are going to direct and control you in how you may dispose of what you have earned through thrift and labor.'"

"The (area) Board of Realtors predicts that if the House concurs with the Senate and interjects the government this far into the private lives and transactions of its citizens, the voters will mark well those guilty of the deed and act accordingly. Every referendum, except one, in which the citizens have had an opportunity to vote directly on the question of forced housing has rejected it, most of them by resounding totals," Mr. (name) declared.

Facing an historic acceptance by the nation’s senators to overcome months of deadlock on the bill to an epic compromise, the Realtors’ statement makes desperate appeals to illustrate the political risk in supporting fair housing. For instance, it characterizes Senator Philip Hart’s acknowledgement of the possible political repercussions concerning voting in favor of the bill as evidence of his “misgivings.” Highlighting only the “misgivings” of the Senator who served as the floor manager of the bill while it was in the Senate for almost three months’ time, the Realtors’ press release chooses an aberrant quotation from an otherwise pro-fair housing senator. The statement’s next paragraph corroborates such skepticism. Citing an anonymous newspaper “columnist” predicting that the fair housing issue will affect the November elections, the statement speculates that both Republicans and Democrats could be on the chopping block because of their support for the bill. These concerns emphasize the political costs the Realtors hope to associate with voting in favor of fair housing as the bill moved to its last hurdle: the House of Representatives.

NAREB’s appeal to publish press releases was taken up by over two dozen local boards.49 Their extensive use of the NAREB-sponsored templates isn’t all that remarkable; however, what is remarkable is how similar news accounts were to the Realtor-drafted copy. Sixteen newspaper articles from across the country quoted extensively from the Realtor-provided copy. Although the articles varied greatly in

49 To locate these data, I searched Google’s news archive, GenealogyBank.com, and Newspapers.com for some of the press release’s terms (“ostensibly the bill excludes” and “board of realtors”) for the year 1968. I found 16 results in the following locations: Indiana, Pennsylvania; Abilene, Pampa, Denton, Baytown, and Victoria, Texas; Hendersonville, North Carolina; Monroe, Louisiana; Nampa, Idaho; Ft. Walton Beach, Florida; Clovis and Albuquerque New Mexico; Lexington, Kentucky; Desert Hot Springs, California; and two results from Hagerstown, Maryland.
length, most of the articles entailed significant quoting from the press release. Under the guise of reporting local Realtor board activities then, these news accounts functioned as vehicles for delivering NAREB’s political lobbying and arguments against fair housing to the American public. One article, “Housing Bill Defeat Is Urged by Abilene Realtor,” was supposedly authored by Joe B. Pouns of the Abilene Reporter-News, but save for one sentence, all of the text provided in the article is taken directly from NAREB’s press release, presumably passed on by Boyd Field, president of the Abilene Board of Realtors (Pouns 1968).

Other articles were even closer to entire duplications of the Realtors’ press release. Some copied the press release in its entirety, appearing in a local newspaper as if it was written by the paper instead of NAREB. In Florida’s Playground Daily News, the article “Local Realty Board Opposes Senate Forced Housing Bill” spans two pages and includes all but a couple of paragraphs from the Realtors’ two-page press release (1968). Another article, “Local Realtors List Housing Bill Dangers,” omits only the very last paragraph from the rather lengthy statement, but is otherwise an exact replica of the Realtors’ press release, specified for its North Carolina audience (1968). But four newspapers drafted articles that copied the entire Realtor press release. The Idaho Free Press published the entire NAREB press release as an article without any acknowledgement that, save for the references to the local Realtor board, the entire copy of the article was written by Realtors to criticize the fair housing bill. (See Figure 10.)
Real Estate Opposes 'Forced Housing' Bill

NAMPA — Dangers of the forced housing bill just passed by the Senate and its disfavor with the voters throughout the nation must be emphasized, Frances Coyle, president of the Nampa Board of Realtors, and John Brandt, legislative chairman, declared today in calling all citizens to join in a nationwide campaign to gain defeat of the legislation in the House of Representatives.

"Basically, the bill denies the home seller, who insists on his traditional freedom of choices in contracting for the sale or rental of his property to whomsoever he chooses, the use of the professional help he needs from a broker to get the best possible price in the quickest possible time," Mrs. Coyle explained.

"Ostensibly the bill excludes the home owner of a single family house from the provisions of the legislation, permitting him to continue to decide without governmental coercion to whom he will sell or rent, or not sell or rent, his personal property. But after Dec. 31, 1969, the right is drastically curtailed, and the government can force an unwilling owner to dispose of the house to someone not of his choice if he uses the facilities of any real estate broker or salesman, or, on his own, indicates in an advertisement a preference on the basis of race, religion, color, or national origin," Brandt added.

"A complaint may appeal for pressure by the Secretary of the Department of Housing and Urban Development or may bring suit in federal court which may result in punitive damages against the owner up to $1,000 and court costs."

The Realtors of Nampa are joining with thousands of other members of the National Association of Real Estate Boards throughout the nation, Brandt and Mrs. Coyle said, in pointing out the threat of this tricky bill and urging all citizens to contact their Congressmen to vote against the legislation which will not only set back race relations but strip owners of professional aid in the largest and most complicated transaction in the lives of most of them.

They pointed out that a political telegram of 15 words may be sent any time of the day or night, to Washington, D.C., to Rep. George Hanson and to Rep. Jim McClure, for 93 cents. A letter of 50 words for $1.91.

Both local board officials urged all voters to deluge their Representatives with requests to vote against this forced housing bill.

Even the most ardent supporters of the bill in the Senate had misgivings about their action as evidenced by the words of Sen. Philip A. Hart (D-Mich.), floor manager, who admitted, "There was no great groundswell of influential support for 'fair' housing... What we passed today is not going to bring unblemished political advantage to anyone who voted for it. For some the advantage will be marginal at best, for others the tally might even be negative."

His analysis was seconded by a number of noted columnists, one of whom predicted that "open housing" may become a big issue in the national campaign this fall since it affects directly more voters than many other questions, Brandt states. In fact, this columnist flatly predicted that voting in favor of this one bill could cause the defeat of some Republicans and Democrats, the legislative chairman said.

"Only a comparatively few voices were raised for maintaining the basic and traditional rights of all Americans," Mrs. Coyle said. Sen. Frank J. Lausche (D-Ohio), although he eventually voted for the bill, was one of those who raised a telling point so often overlooked.

During the debate, he declared, "Much has been said about the right of the buyer. What about the seller, who has thriftily accumulated enough money to buy a home? He has labored for it. It is his home. And the government tells him, 'We are going to direct and control you in how you may dispose of what you have earned through thrift and labor.'"

"The Nampa Board of Realtors predicts that if the House concurs with the Senate and interjects the government this far into the private lives and transactions of its citizens, the voters will mark all those guilty of the deed and act accordingly. Every referendum, except one, in which the citizens have had an opportunity to vote directly on the question of forced housing has rejected it, most of them by rescinding totals," Brandt declared.

Teacher is Selected

VERMILLION, S.D. — Jerald L. Brown, chemistry instructor at Nampa High School, Idaho, is one of 16 selected teachers.
In addition to that article, three others are also exact duplications of the Realtors’ press release, amended to include references to local Realtor boards and their leadership to personalize the forced housing message.\(^{50}\) By contrast, none of the large newspapers (*The New York Times*, *Los Angeles Times*, *Chicago Tribune*, and *The Washington Post*) contained articles that simply duplicated NAREB’s press release or even contained extensive quotations. These small, local newspapers thus became vehicles to the Realtor forced housing publicity campaign at no cost to the organization. The Realtors’ campaigns worked well. According to one source, House members were treated to “an avalanche of letters and phone calls advising Members to oppose the bill” (*CQ Almanac* 1968).

Technological shifts thus helped midwife the Realtors’ forced housing campaign. While television was gaining traction in delivering news content to the American public in the 1960s, newspapers were also undergoing important changes. Newsprint publishing transitioned from the costly and labor-intensive process of letterpress to the cheaper offset printing process (Davies 1997). Moreover, as the newspaper readership moved out of the cities and into the suburbs, smaller daily and weekly newspapers flourished (Davies 1997). The Realtors’ campaign against forced housing mapped seamlessly onto this shift, using small, daily papers to broadcast their message to the white suburban property owners.

\(^{50}\) These articles were “Local Realtors Unit Cites Forced Housing Bill Danger” (1968), “Realtors Point to Danger in Forced Housing Bill” (1968), and “Clovis Realtors Point to Housing Bill Dangers” (1968). The analogous titles further illustrate my point.
Even before the House of Representative took up debate on H.R. 2516, House Minority Leader Gerald R. Ford (R-MI) voiced “grave doubts” about the likelihood of the fair housing bill to find enough support in the House (“Open-Housing Bill ‘Doubtful’” 1968:45). Just in the few weeks in between the passage of the bill in the Senate and when the House took up the measure, a variety of fair housing-related events occurred across the country. After pro-fair housing protesting led to rioting in Milwaukee, Wisconsin, protests at the capital stopped for a brief time and then resumed hoping to pressure the state to pass a fair housing law. And in Kentucky, the southern state became the first of its region to pass a fair housing law. In Maryland, Governor Spiro T. Agnew campaigned in favor of reinstating the state’s fair housing law after the Maryland Court of Appeals suspended the law (“Agnew to Lead Bid for Open Housing” 1968). And local Realtor boards spoke out against the federal bill as it was under consideration by the House. In Lewiston, Idaho, the president of the Lewiston Board of Realtors advocated against the bill’s expansive coverage and publicized their intent to contact their representative and request amending H.R. 2516 before it came to vote (“Realtors See Loss of Rights Through Open Housing Bill” 1968).

Prior to the House taking up the bill, Representative Ford hinted to reporters that he would be treating fair housing with an open mind (Albright 1968b). However, other early reports indicated that he was in favor of passing a much amended bill, one that would allow Realtors to discriminate if instructed by owners of single family homes (Hunter 1968d). In mid-March, House members were jockeying their position
and strategizing how to engineer an administrative approach that would enable more power over the bill’s fate. House Judiciary Committee Chair Emanuel Celler (D-NY) hoped to bypass the bill’s assignment to committee by asking the House for unanimous consent of the Senate version. But then on March 19th, the House’s Rules Committee rejected House leadership plans to accelerate the bill. After Representative Richard Bolling (D-MO) offered a few days for the committee to study and consult the bill and named April 2nd as possible day to come to a decision, Representative H. Allen Smith (R-CA) offered an even later date (“Unit of House Delays Action on Rights Bill” 1968). The committee took up Smith’s suggestion and voted eight to seven to postpone the bill until April 9th (“Unit of House Delays Action on Rights Bill” 1968).

Responding to the delay, John C. Williamson, NAREB council and lobbyist, declared that he “couldn’t have written a better resolution” than the committee’s recommendation (qtd in Lyons 1968:A7). However, the next day, Williamson denied making such a statement and proceeded to write to The Washington Post refuting the quotation, stating “I did not make the statement attributed to me or anything resembling it” (“Open Housing Foe Denies Press Report” 1968:A2). In a follow-up article, the Post reported that two other journalists heard Williamson’s statement, one of whom included it in an article for the New York Daily News (“Open Housing Foe Denies Press Report” 1968:). Regardless of whether or not Williamson

51 Data on the Realtors’ financial contributions to members of Congress during this time is hard to come by since the Federal Elections Committee only has data for PAC contributions starting in 1972.
made the statement—although with two reporters to corroborate Lyons’ initial report, it seems likely—his follow-up denial of the statement points to NAREB’s interest in carefully crafting their public image.

Meanwhile, Republicans were facing growing pressure to address fair housing. Newspaper accounts at the time noted that having congressional debates during the upcoming “poor people’s march” on Washington on April 22nd could set the stage for difficulty in defending a weak bill. In addition, Republican leaders around the country were concerned about the upcoming fall elections and didn’t want to be charged with being against civil rights; for instance, *The New York Times* reported that Ford was being pressured to adopt the Senate’s bill by the Republican frontrunner for president Richard M. Nixon and New York Governor Nelson Rockefeller. So on March 20th, Republican House leaders proposed sending the bill to a joint Senate-House conference for 10 day of negotiations, with the stipulation that if they failed to reach agreement in that time, they would accept the Senate bill (Hunter 1968e). A week later, President Johnson entered the fray, stating “[t]he time for excuses has ended” (qtd in Young 1968:14).

Leaders in NAREB sensed the growing pressure and on March 27th, NAREB’s Executive Committee held a special meeting to urgently authorize emergency expenditures for the Realtors Washington Committee from the Civil Liberties fund. The telephone conference call connected those in Washington to leaders throughout the country. NAREB President Lyn E. Davis put forth the request
to distribute fifty-thousand dollars for a last minute mass mailing and newspaper advertising (NAREB 1968g). The breakdown of costs anticipated the mailings to reach thirty-five thousand dollars and advertisements to cost approximately fifteen thousand (NAREB 1968g). The request was passed unanimously.

The pressure from all sides seemed to be working. On April 2nd, the House Rules Committee second-highest ranking Republican, Representative John B. Anderson (R-IL) told reporters that he expected enough committee members to vote in favor to submit the bill directly to the House by Tuesday, April 9th (Lardner 1968a:A4). But before the House Rules Committee could make another move, in the early morning of April 4th, Martin Luther King, Jr. was assassinated while in Memphis to support striking janitorial workers. The following day, pockets of violence erupted in major cities across the eastern seaboard and Midwest, spurring President Johnson to request a joint session of Congress in order to take “constructive action…in this hour of national need” (qtd in Frankel 1968:1). Over the next few days, various House members spoke in favor of the bill and urged action. Finally on April 8th, President Johnson requested that congressional leaders make haste on the civil rights bill (“Tell Rights, Slum Bill Pleas by LBJ” 1968). Trying to avoid overshadowing King’s funeral, the president postponed his planned speech before a joint session of Congress (Hunter 1968f). On April 9th, as King’s funeral was underway, the House rules committee overcame a motion to send the bill to the joint Senate-House conference and instead moved to send the bill to the floor of the House for a vote (Dodd 1968). To expedite the process on the House floor, the committee
limited debate to one hour total and disallowed any amendments to the provision (Dodd 1968; Hunter 1968g). Reports showed House members as cautiously optimistic for the bill’s passage.

On April 10th, the House approved S. 2516 and President Johnson signed the bill into law the next day. Title VIII of the Civil Rights Act of 1968 immediately banned discrimination in federally financed housing.\(^{52}\) It also would bar discrimination in multi-unit dwellings starting December 31, 1968.\(^{53}\) And beginning January 1, 1970, the bill would outlaw discrimination in the sale of single family homes bought through real estate agents and brokers.

\(^{52}\) Housing built after November 20, 1962.

\(^{53}\) With the exception of owner-occupied dwellings of four or fewer units.
Despite the enormity of the Realtors’ campaign against forced housing, it was not undertaken with unanimous support from its members. Individual Realtors and even some entire boards rejected both large and small parts of the national organization’s campaign. With varying levels of coordination and support, most had little to no success in stymieing the national organization’s campaign to oppose fair housing. I chronicle the emergence of pro-fair housing Realtors across the country and identify how they contested the official Realtor campaign against forced housing in small but notable ways. I pay particular attention to the pro-fair housing Realtor movement in California and internal dissent within the group’s campaign against forced housing.

Washington Realtors for Fair Housing

In the early 1960s, fair housing in the state of Washington was making little progress. According to the local branch of the Congress of Racial Equality (CORE), Seattle area real estate boards were engaging in organized and systematic discrimination to keep blacks out of the suburbs (Singler et al. 2011). The group performed its own area testing and released a report on the real estate industry’s role in maintaining segregation in the Seattle area. So when Washington Governor Albert Rosellini was slotted to speak at the Six State Real Estate Conference in September
1963, CORE picketed the event in hopes of drawing attention to the issue of fair housing in the city (Singler et al. 2011). During CORE’s protest, a number of real estate agents attending the conference offered their verbal support to the picketers (Singler et al. 2011:115). One Realtor conference attendee from Oregon, Grace Walker, told the group that she supported open housing. Walker supported CORE’s protest and even joined the picket line for two days (Singler et al. 2011:115).

Another area Realtor supported fair housing in a more systematic way. Seattle Realtor Elliott N. Couden—member of the Seattle Real Estate Board, the Washington Association of Realtors, and NAREB—stood up in favor of fair housing law at the local and federal level (U.S. Senate 1967:399). As a member of the United Church of Christ and commissioner on the Seattle Human Rights Commission, Couden denounced housing segregation and his profession’s role in upholding the racially unequal practice. In late 1963, Couden refused to pay the increased membership dues to support the Seattle Real Estate Board’s legal expenses for his “share of the obligation in carrying on our fight against the encroachment of government in the field of real estate selling by virtue of the Forced Housing City Ordinance” (qtd in U.S. Senate 1967:410). Under threat of membership termination, Couden paid the Seattle board thirty dollars to cover its political fundraising in March 1964 “under deep protest” (U.S. Senate 1967:412). Along with his remittance, Couden requested a detailed report of the political funding accounting in writing be made available to the membership—it was never provided.
Opposition in Philadelphia

In late May 1966, the minority housing committee of the Philadelphia Board of Realtors met at the board’s headquarters to consider recommendations surrounding Title IV (Philadelphia Board of Realtors 1966a). The five person committee discussed the issue and endorsed a position favoring Title IV, despite some opposition to the bill’s enforcement components (Philadelphia Board of Realtors 1966a). Committee chair Bernard Tonkin was instructed to recommend to the Philadelphia board’s executive committee that it “accept no obligation in the circularization of NAREB literature in this matter” (Philadelphia Board of Realtors 1966a:NP). This record complements the Philadelphia Board of Realtors’ move two years prior when, in 1964, the Board disapproved of NAREB’s oppositional stance on the 1964 Civil Rights Act. However, the Philadelphia board did not adopt its minority housing committee’s recommendation and went on to support NAREB’s position against Title IV. Other documents in the Philadelphia Board of Realtors’ archive illuminate why.

In a letter dated June 22, 1966, Executive Vice-President of the Philadelphia Board of Realtors John E. Teller wrote to the national association’s president after the Philadelphia board voted to support NAREB’s position on Title IV:

At the May meetings in Chicago, I would have willing given damn good odds that the Philadelphia Board would not support NAREB’s position on Title IV of the Civil Rights Bills. I think I can usually read the climate of our members’ attitudes. Nevertheless, one month later, the Philadelphia
Board voted, almost unanimously, to support NAREB’s position—in spite of the fact that Alan Emlen attended the meeting to absolve the group from any feeling of loyalty toward him in arriving at their decision. I feel positive that this spectacular shift in attitude is the result of Alan’s vigorous, objective, and masterful projection of NAREB’s position (Philadelphia Board of Realtors 1966b:NP).

The above letter demonstrates how the Realtors’ extensive organizational apparatus could influence and squash local dissent from the group’s position on civil rights. Even though the Philadelphia board’s minority housing committee and the board’s vice president—a self-proclaimed good reader of “the climate of our members’ attitudes”—would’ve bet on the board opposing NAREB’s position, a visit by the Realtors’ leader of its lobbying arm resulted in what Teller himself calls a “spectacular shift in attitude.” The duties of the Realtors’ national lobbying group thus also entailed persuading internal stakeholders. And although Teller’s letter details how Emlen’s internal lobbying wasn’t entirely successful—the board’s vote wasn’t unanimous—the Realtors’ lobby crafted a carefully respectful campaign that emphasized local boards’ independence, used existing relationship between its lobbyists and their local affiliates, but also carefully emphasized and seemingly respected local boards’ autonomy.

**California Realtors for Fair Housing**

The dissent in Philadelphia to NAREB’s position on Title IV, however, was relatively limited in comparison to the broader opposition to the Realtors’ campaign against forced housing in California a few years earlier. There, the California Real
Estate Association (CREA) took up the state’s now infamous ballot initiative process in hopes of repealing the state’s fair housing act. Just months after the state implemented fair housing, the CREA drafted Proposition 14, the initiative that would appear on California’s ballot on November 3, 1964. The proposition’s text read, in part,

Neither the State nor any subdivision or agency thereof shall deny, limit, or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses (California Voter’s Pamphlet 1964:13).

CREA delegates voted in favor of contributing $10,000 for costs associated with amassing signatures needed to support a ballot proposition in mid-1963—a little over a year before the association would go on to successfully repeal the state’s fair housing act by way of ballot proposition known as Proposition 14 (“State Realtors Begin Fight” 1963:6). The Proposition 14 campaign was commissioned with the extensive support of CREA’s membership, resources, and outreach. Tapping its own membership to finance its efforts, by the end of 1963 the organization assessed a ten dollar fee per member to further enlarge the CREA’s campaign coffers to buttress the campaign’s momentum (“Realtors Continue Action” 1963:1). All told, the CREA spent over six hundred and twenty-eight thousand dollars successfully overturning California’s fair housing law (Weeks 1964:OC1).\footnote{The CREA’s 1964 spending would be the equivalent of almost five million dollars in 2015.}
During the Realtors’ campaign to overturn fair housing in the state in 1963 through 1964, a vocal minority of individual Realtors and a handful of Realtor boards objected to the CREA’s official position. Despite significant critical attention to the CREA’s campaign, the oppositional Realtor position has not been fully considered by scholars. Scattered accounts show that the Watsonville Real Estate Board was the first board to officially reject the CREA’s campaign (Woods 1964:15). And after a closed-door three hour meeting, the San Francisco Real Estate Board decided to oppose the CREA’s position on December 3, 1963 (“Anti-Housing Law Debate” 1963:12). Receiving the CREA’s petitions on November 26, 1963—the day after President John F. Kennedy’s funeral, the Marin Real Estate Board’s board of directors voted to table the issue (“Anti-Housing Law Debate” 1963:12). Other Northern California boards also took care to scrutinize and ultimately reject the CREA’s effort to overturn the state’s fair housing law (Boyarsky 1963:15; “State’s Realtors Defying Leaders” 1963:2). On December 2, 1963, the Palo Alto Real Estate Board took an advisory vote, resulting in a two-to-one oppositional position and shortly thereafter officially rejected the CREA’s initiative (1963:A-5). In addition, many “[m]embers of the Menlo-Atherton Board of Realtors have reported ‘overwhelming opposition’ to the CREA” although their objections did not result in any official stance (Boyarsky 1963:15). Also in December 1963, the Santa Paula-Fillmore Board of Realtors voted to oppose circulating the CREA’s Prop 14 petition (“Realtors Say No to Petitions” 1963).
Despite supporting the state’s fair housing act a year prior by calling it a moral necessity, the Marin County Real Estate Board took a less decisive position on the CREA’s petition. Meeting in early December, the Marin county board of directors decided to abstain from either supporting or rejecting the CREA’s campaign to overturn fair housing in the state. Instead, the board’s directors declared the issue “a matter for each individual to decide” and allowed for the CREA’s initiative petition to be available at the board’s office for signatures (“Realty Board Takes” 1963:1). At the same meeting, Sausalito Realtor Helen R. Anderson requested that a pro-fair housing statement authored by an emerging group of Realtors that refuted the CREA’s petition also be made available; however, her request was denied (“Realty Board Takes” 1963:1).

Even the CREA’s meetings were not immune to some dissent over its initiative. At the group’s September 1963, there was only one vote of dissent among the CREA’s board directors to support the initiative to repeal the state’s fair housing law (“1000 CREA Directors Vote for Rumford Initiative Campaign” 1964). At another meeting in early January 1964, the CREA held its annual conference at the El Cortze Hotel in San Diego, surrounded by almost one hundred members of the Congress of Racial Equality picketing the event. By this time, dissent amongst some Realtors had grown, but not nearly enough to oppose the vast majority, with only about a dozen state board directors voting against the initiative that newspaper accounts at the time described as just a “smattering” (“Marinites Split on Rumford Act” 1964; “1000 CREA Directors Vote for Rumford Initiative Campaign” 1964 ).
The lone oppositional vote from the September Realtor meeting reappeared in January to not only vote no, but make an appeal from the floor to completely overturn the CREA’s initiative (“1000 CREA Directors Vote for Rumford Initiative Campaign” 1964). Howard Lewis, a Realtor from Palo Alto, stood at the floor of the conference in front of the entire delegation on January 11th, offering a resolution that opposed the CREA initiative (“1000 CREA Directors Vote for Rumford Initiative Campaign” 1964). But before Lewis could finish reading his resolution, he was drowned out with shouts of “Out of order!” by his fellow Realtors on the floor (“1000 CREA Directors Vote for Rumford Initiative Campaign” 1964). Outgoing president and chair of the convention, L. H. Wilson informed Lewis from the podium: “You’re a very clever man and you’ve given me a lot of static the last few days. I suggest that you either speak to the question at hand or take your seat” (“1000 CREA Directors Vote for Rumford Initiative Campaign” 1964: 14).

Getting nowhere with the overwhelming opposition by their fellow tradespeople, some California Realtors aligned themselves with a stronger rejection of the CREA’s anti-fair housing stance. Newspaper archives show a handful of California Realtors aligned themselves with the Committee Against Proposition 14. For instance, at a debate in San Francisco over the initiative, two Realtors affiliated with the Committee Against Proposition 14 spoke just weeks before the state-wide vote. The Realtors advanced that the referendum would “ultimately harm the real estate industry itself” (“Religion’s Role in Prop 14 Debate” 1964:28). More concretely, the speakers also challenged one of the Realtor organization’s most sacred
arguments in the campaign against forced housing—the freedom to sell property. A Realtor debate participant called out the obvious exclusion of such a one-sided emphasis, asserting that “[t]here must be freedom to purchase as well as freedom to sell” ("Religion’s Role in Prop 14 Debate" 1964:28).

In addition to public debates, pro-fair housing Realtors participated in letter writing campaign to area newspapers. For instance, San Mateo, California Realtor Harold M. Coleman composed a letter that was published as a political advertisement by the Committee Against Prop. 14 that states in part

Since the beginning of our profession in California, we have been two-faced about housing discrimination. On the one hand we told the people of California that segregated housing was not our fault, that we were merely carrying out the wishes of our clients.

At the same time, we told ourselves, through the California Real Estate Association, that segregated neighborhoods were good and that deeds and leases for property in white neighborhoods should be written to exclude nonwhites. This meant, of course, denying owners the right to sell or lease to whom they chose. Finally, when such deed and lease restrictions were declared unenforcable, we realtors started telling the people of California that no one should deny property owners the same rights which we ourselves had said should be denied them. I am sure [you] will agree that this is sheer hypocrisy (1964:27).

Just above, Coleman indicts California’s Realtor organization as an active participant in the residential segregation of whites and people of color. Moreover, his account also historicizes the CREA’s activities that deprived all property owners of the right to buy or sell their property to whomever they choose in order to support the racist
status quo. Coleman’s historical contextualization reveals the CREA’s fabrication in its past and questions the sincerity of the group’s present claims in its Prop 14 campaign. Coleman’s familiarity with the CREA’s historical activity consequently provides a critical insight to the organization’s arguments to defend the racially unequal status quo in the housing market.

“I want to display my Realtor’s button proudly”:
California Realtors for Fair Housing

In 1963, a group formed the California Realtors for Fair Housing to support the Rumford Act and protest the CREA’s fight against the state’s fair housing law. The original group consisted of forty-five Bay Area Realtors, led by Stephen Arnold, a Realtor from Berkeley (Boyarsky 1963:15). After the northern group was established, a southern California branch emerged (”Fair Housing Group Urges Free Market” 1963). Late in 1963, the California Realtors for Fair Housing met in Los Angeles to name leadership and organize an agenda. With about eighty Realtors in attendance, the group aired grievances against the CREA’s handling of fair housing issues, claiming that the CREA had “misinterpreted the fair housing law and frowns on open discussion or vote on [the Rumford Act] by local real estate boards” (”Fair Housing Group” 1963:1-C). The head of the California Realtors for Fair Housing steering committee, Perry Hill, explained the reasons for opposing the CREA’s stance including a potential loss of customers and a moral objection. Hill noted that it was a grave mistake of the CREA to “isolate 10 to 15 per cent of their potential customers” and that “it is morally wrong to attempt to legislate against any minority because it is
a minority” (“Fair Housing Group” 1963:1-C). As the CREA campaign to repeal Rumford progressed in early 1964, the California Realtors for Fair Housing warned that “realtors are seen as the defenders of bigotry” (“Realtors Supporting Rumford” 1964:11) In response, CREA leadership mocked the pro-fair housing Realtor group. CREA President L. H. Wilson called it the “rump realtor movement,” populated by “a small handful of dissidents who place their political affiliations above their allegiance to a professional association” (“Realtors Continue Action” 1963:1).

The California Relators for Fair Housing nonetheless participated in a number of public and informational campaigns, outlining the limitations of the official Realtor position on fair housing. In an official letter from the California Realtors for Fair Housing organization to every local realtor board in the state, the group asked local boards to reject the CREA’s initiative in the interest of equality:

The objectives are simple: Equal opportunity for all Californians without consideration of race, religion or ancestry in the acquisition of real property. Candidly, as realtors, we know that this opportunity does not now exist (“Plea on Housing Goes to Realtors” 1963:6-B).

The group thus lobbied its own tradespeople using internal values and concerns. By emphasizing a concept of fairness that emphasizes property acquisition, the California Realtors for Fair Housing point to a moral ideal that complemented a commercial concern (home buyers constitute half of the Realtors’ market after all). The group’s “candid” insights to their colleagues acknowledge on-going racial inequality in the California housing market. In speaking “as Realtors,” the group’s message presents
an informed concern about the current opportunities for racial and religious minorities.

Another campaign document produced by the California Realtors for Fair Housing ran in the San Rafael’s *Daily Independent Journal*, petitioning local realtors to sign a pledge of support for the state’s fair housing law and forward the pledge to the CREA. (See Figure 11.)
To All Marin Realtors And Real Estate Salesmen:

We appeal to the members of the Marin County Real Estate Board to declare their opposition to the initiative on the Rumford Act. This Act protects the democratic right for all people to share equally the benefits of our society, including the opportunity to buy a home of one’s choice.

We think that it would be shameful for our nation, as well as our business, if we seek to deny any portion of our people their democratic right; and that we shall justify in the eyes of many people their suspicion that realtors are an unscrupulous group interested only in what moneyed gain is involved in property transactions, regardless of any social ethics.

We ask all realtors and salesmen to read the following “Declaration of Policy of the California Realtors for Fair Housing”. Search your conscience, and if you agree, sign and return to the undersigned.

“The undersigned Realtors as Brokers and Associate members in good standing in their local board, hereby declare their support of the principle of a fair Housing market unrestricted by such factors as Race, Creed or National origin.

We urge upon the California Real Estate Association and the citizens of California that the Rumford Fair Housing Law be given a reasonable opportunity to evidence how it will operate in actual practice. We are concerned that the initiative to outlaw all legislation in this area may be unconstitutional and destructive of healthy community relations in California.

We request that C.R.E.A.’s stand in support of the initiative be reconsidered by its new Board of Directors. We declare our resistance to assessments on Realtors and local Realty Boards to finance outlawing the initiative.

We welcome the support of all Realtors in this appeal for Fair Play for Fair Housing.”

Name: ___________________________ Address: ___________________________

California Realtors For Fair Housing
Co-Chairmen for Marin County
Helen Anderson
Real Estate Center
322 Miller Avenue
Mill Valley
Maggi Walker
Maggi Walker Realty
476 Magnolia Avenue
Larkspur

Just above, the California Realtors for Fair Housing’s political advertisement defines access to housing void of racial or religious discrimination as a “democratic right.” Such a conceptualization construes these social practices as inherently political and intrinsic to the U.S.’s national ideals of democracy and equality. The inference of a democratic right emphasizes egalitarianism in treating all people as equals within the housing market. Further, the advertisement’s text blames the CREA’s decision to pursue a referendum to annual the state’s fair housing law as premature, which would prevent any “reasonable opportunity” to consider the law’s actual results upon the real estate market. By pointing to the CREA’s haste, the California Realtors for Fair Housing depict the country’s largest Realtor organization as unreasonably aggressive at the state’s fair housing law that had yet to fully materialize. As a result, the group warned that rejecting equality within the housing market would be “destructi[on] of healthy community relations in California.”

In addition to these national ideals, part of the group’s appeal for the CREA and their fellow Realtors to support fair housing was to manage the trade group’s image and brand. Referencing how “shameful” repealing Rumford would be to “our business,” the ad suggested that the trade group’s public appearance could be harmed by such a campaign. Elsewhere, it submitted that such a move could solidify an already unfavorable public persona for the trade group—“justify[ing] in the eyes of many people their suspicion that realtors are an unscrupulous group only in what moneyed gain is involved in property transactions” (California Realtors for Fair
The California Realtors for Fair Housing’s campaign was built on the premise that housing opportunity in California in the early 1960s was unequal because of racial and religious discrimination. The admission of on-going inequality was, admittedly, coupled with a professional interest in upholding the Realtor brand as well as retaining market share. Like the CREA, the pro-fair housing group also mobilized American ideals of egalitarianism and democracy to justify their position. The fact that some of the state’s Realtors conceded inequality in the California housing market illustrates a small division within the trade group on fair housing.

The California Realtors for Fair Housing didn’t stand a chance against an electorate that coalesced around a political ideology of property owner rights and the deep pockets of Realtor money (HoSang 2010; “Realty Leader Confirms” 1964).\(^{55}\) And in early November 1964, Proposition 14 passed overwhelmingly. With over 1.6 million votes to repeal the state’s fair housing law just fourteen months after it was enacted, Proposition 14 insured the CREA’s electoral *coup d’état* against fair housing (Greenberg 1964). The CREA’s success however was short-lived. The proposition was challenged in the courts and ruled unconstitutional first by the California

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\(^{55}\) Owing much of its success to the financial support of NAREB, the national organization provided a $100,000 loan for operational expenses for the CREA’s campaign (“Realty Leader Confirms” 1964:12-A).
Supreme Court in 1966 (*Reitman v. Mulkey*). The following year in 1967, despite continuing opposition from Realtors, the Supreme Court declared Proposition 14 unconstitutional.

**Realtors Testify in Favor of Fair Housing**

By the late mid-1960s, other Realtors were openly questioning the wisdom of their trade continuing to oppose fair housing on a national scale, including six members of a real estate panel who testified in front of the Senate in support of Senate Bill 1358, the 1967 Fair Housing Act, in August of that year. The panel consisted of real estate agents and brokers with decades of experience from across the country. These real estate practitioners decried the official Realtor position against fair housing and advocated for a uniform federal law. Two of the panel’s participants were Realtors—Elliott N. Couden member of NAREB, the Washington Association of Realtors, and the Seattle Real Estate Board and Edward Durchslag, member of the Chicago Real Estate Board.56

Like the California Realtors opposed to the CREA’s campaign, some of the congressional witnesses pointed out the inconsistencies in the Realtors’ argument

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56 Couden and Durchslag were joined by four other real estate brokers. Panelist W. Evans Buchanan was the president of the National Association of Home Builders, whose organization split from the Realtors two decades prior in 1942. Panelist Kennon V. Rothchild was chair of the Minnesota State Commission Against Discrimination and who would go on to become president of the Mortgage Bankers Association in 1976. Panelist Fred Kramer owned a real estate mortgage banking business. And panelist Tighe E. Woods, a real estate broker and appraiser in Bethesda, Maryland, was President Harry Truman’s federal housing expediter in the late 1940s, where he acted to increase the Chicago Housing Advisory Board membership to balance out the real estate industry’s representation after it voted in 1947 to increase Chicago rents by 15% (Plotkin 1998:113). I cannot confirm these panelists’ membership in NAREB or local real estate boards at the time, so I don’t consider their testimony here.
against fair housing. For instance, Couden questioned the official Realtor position that characterized itself as simply reflecting the public’s will in the residential housing market:

One may detect the degree of responsibility assumed by real estate practitioners when they protest that they simply ‘reflect the attitudes of the public that they serve.’…I can state unequivocally that in my 26 years in real estate I can recall no offer turned down by an owner based upon his ‘conscience.’ On the contrary, the only ones I can remember were turned down when minority parties were making an offer were based upon a lack of conscience.

The use of this word is strictly a cover[-]up and a substitute for the word ‘prejudice.’…(U.S. Senate 1967: 401, 402)

Couden minced no words. Questioning the Realtors’ protestations that they simply work to broker property owners’ wishes, he invoked his extensive history in the real estate market and the prevalence of racial discrimination in order to challenge the veracity of the Realtors’ claims. Another self-proclaimed “real estate man” on the panel—Durchslag—affirmed Couden’s comments:

I have been in the real estate business on the South Side of the city of Chicago for 29 years. A good part of that time has been spent in the…sale of apartments and homes to, and sometimes for, Negroes…I agree with my previous speakers, this is purely academic and theoretical. In 29 years, except as a mask for religious or racial discrimination, I have never seen or heard of any deal that has been turned down…It would, therefore seem to me to follow that the right that every American citizen should have to live where he qualifies by all other standards, other than race and religion, should be more important and be protected against the abuse of this theoretical right (U.S. Senate 1967: 412, 413).
These comments to the Senate subcommittee openly question the accuracy of the Realtors’ claims that they seek to protect homeowners’ property rights’ to rent, sell, or lease their property from their conscience. By casting doubt on any conscience-based refusals in their experience, Couden and Durchslag’s testimony provides an alternative narrative for Congress to consider and thus publicly challenge their trade association’s formal position on fair housing.

The same month Couden and Durchslag along with their other panelists were testifying before Congress in support of fair housing, the Realtor organization was accelerating their publicity of self-regulated, voluntary housing policies for minority home buyers. Reporting to NAREB’s executive committee in August 1967, the group’s special committee on housing endorsed four actions for consideration including keeping in communication with “responsible leaders of minority groups,” back anti-block busting regulations, and disseminate NAREB’s statement of policy broadly (NAREB 1967c:3). The fourth recommendation sought to authorize the national association “make available to state associations and Member Boards…copies of voluntary programs…when adopted by local boards and state associations around the country” (NAREB 1967c:3). Further specifying the content of such programs, the executive committee noted interest in policies that could “protect minority buyers and those who sell to them against harassment” (NAREB 1967c:4). And in November, the board of directors approved that authority be given to publish in Headlines news items of interest as to what local boards and state associations have done or are doing in connection with voluntary programs on
equal opportunity in housing that have resulted in favorable public and/or press reaction (NAREB 1967d:20). The Realtors thus sought to develop and publicize their own programming as an alternative to fair housing laws and deployed their information to their members via their weekly newsletter.

The panelists addressed the Realtors’ voluntary policies of so-called equal opportunity. They did so by arguing for the importance of legal redress instead of organizational attempts to improve the housing market for racial and religious minorities. Couden described his thoughts on the matter:

In the State of Washington an addenda to the realtor code of practices, relating to minority housing, was adopted by all boards in the State a couple of years ago. It has been subsequently determined that there has been no implementation of the code, which tended to divest the discriminating act from the realtor and place the burden upon the property owner.

It should be properly noted that even if real estate boards were to adopt and practice, with penalties enforced, a sincere nondiscriminatory policy, it would not affect those who belong to no trade association or those who would drop membership upon the adoption of any such policy (U.S. Senate 1967:401-402).

Citing the Realtor “Policy on Minority Housing,” Couden proposed that the Realtors’ internal policies have made no difference in ameliorating housing market discrimination. After demonstrating the inadequacy of Realtor attempts to address minority housing, Couden further explicated another limitation of self-regulation: that any non-Realtor affiliated real estate agent would not be affected. That is, Couden’s
testimony illustrates how the viability of self-regulation is highly limited due to the organizational limits in representing the real estate trade.

Durchslag reinforced the idea that self-regulation was an impractical solution to combat housing discrimination.

There are those, particularly in the real estate industry, who maintain that this may all be well and good, but there is no need for legislation; that it can all be done on a voluntary basis. Many years ago, I was among those who took that position, but I soon found out that while, in theory, that might be more desirable, in fact, this would mean that, at best, people would be giving lip service to the program, but no real progress or effort would be made (U.S. Senate 1967:413).

Here Durchslag criticizes the Realtor suggestion to enact voluntary self-regulation, offering up his own experience to demonstrate the inadequacy of such a recommendation. The limitation of voluntary policies like the Realtors’ “Policy on Minority Housing” is that they amounted to little more than “lip service” in addressing people of color’s home buying needs because it simply justified the status quo of property owners’ rights to discriminate. By pointing to the insufficiency of the scope, authority, and consequences of self-regulation, these Realtors’ testimony demonstrated the need for governmental oversight to enact the structural changes necessary to equalize access to housing for racial and religious minorities. Their testimonies challenge the Realtors’ perception of government regulation of the residential housing market as excessively burdensome and, instead, illustrate how substantial social problems require the kind of vast authority, regulation, administration, and consistency that only the government could provide.
The appearance of a pro-fair housing real estate panel marked a small crack in the Realtor organization’s power. For the first time in the 1960s, members of the Realtor organization appeared before Congress to speak in favor of federal fair housing law. Although the panelists who appeared on August 23, 1967 spoke as individual real estate practitioners and were not formally representing their trade—not to mention were exceedingly small in number—the panel nonetheless publicly challenged the national association’s campaign against forced housing. Speaking out to Congress in defense of a federal fair housing bill, these panelists challenged NAREB’s lobbying, questioned its sincerity, and provided testimony that fair housing legislation could help rather than hurt members of their trade.

Alongside NAREB’s enormous campaign, a small but significant number of Realtors supported fair housing and publicly campaigned against the organization in large and small ways. These pro-fair housing Realtors are an important component to the narrative of the Realtors’ history on fair housing for a number of reasons. First, they reveal a more complex picture of the trade group’s position on fair housing. Although the official position of national Association and the largest and most populous state Realtor association (the CREA) formally opposed fair housing in the 1960s, their positions were not unanimous. Second, pro-fair housing trade members’ insider status and occupational experience provided an important counter-narrative in that it exposed the hypocrisy of the Realtors’ attempts to claim that their opposition to fair housing was based on occupational rather than racial or religious inequality and discrimination. Third, the stories of pro-fair housing trade members and their
challenges to the organizations’ official campaign highlight the association’s power and resources to quell dissent. And fourth, internal opponents challenged the Realtors’ official claim that discrimination in the residential housing market was a result of prejudiced community standards.
CHAPTER FIVE

Becoming Fair,
Becoming the National Association of REALTORS®

Immediately after the passage of Title VIII, NAREB emphasized how to operate a real estate brokerage within the new legal framework. To do so, a week after the 1968 Fair Housing Act became law, the organization’s *National Legislative Bulletin* was disseminated to every Realtor board in the country. Noting the significance of the historical moment and the implications for its trade, the *Bulletin* closed with a recommendation for local Realtor boards to “reproduce this *Bulletin* and the enclosure for distribution to all Realtors” (1968d:6). The *Bulletin*—along with the next issue of *Realtor’s Headlines*—served as the first post-civil rights communication the national organization had with its members. The *Bulletin*’s April 18th issue was twice the publication’s normal length, providing the space for the Realtors to offer their own narrative on the passage of civil rights as well as administer professional advice on how to practice real estate within the new legal landscape.

The *Bulletin*’s explanation for the passage of fair housing complemented the ideology present in its campaign against forced housing: that a guilt-stricken white public would move to grant the state power over the housing market to make amends for its perceived sins. In addition to outlining relevant national events like the political momentum and pressure of the upcoming presidential election, the Riot Commission’s findings, and even business interests weighing in with support for a
federal fair housing law, the Realtors’ April 18th *Bulletin* also recognized Martin Luther King Jr.’s assassination as an influential factor in the momentum to accelerate the legislation to its passage. They reasoned that “forced housing was now necessary to expiate the white man’s guilt for producing from within its ranks the assassin” (1968d:6). The Realtors’ explanation elides King’s murder outside of a system of racial power, only emphasizing the culpability in the final act and not the ubiquitous racial and economic inequality that King sought to overturn.

The April 18th newsletter has been cited by a handful of scholars for the significance of its enclosure entitled “Some Questions (and their answers) Suggested By a Reading of Title VIII of Public Law No. 90-284, Relating to Forced Housing.” 57 The four page question and answer document considered the applicability of federal and local fair housing laws. The document’s first section details the Fair Housing Act’s scope, emphasizing how racial discrimination would not be illegal in owner-occupied housing with a real estate broker until January 1, 1970. Other questions point to how homeowners could legally discriminate without using a broker or by using an attorney, as long as the attorney had brokered fewer than two real estate transactions that calendar year. Further still, the *Bulletin* also specifies that if a home seller wishes to “preserve his right to freedom of contract” prior to the execution of a listing contract, a Realtor cannot be held legally liable for any discrimination the home seller may have previously engaged in (NAREB 1968i:1). While the failure of the Realtors’ campaign against forced housing is clearly

57 E.g., Gotham 2002; Grayson and Wedel 1968; Lake 1981.
evident in the group’s immediate post-civil rights communiqué, the trade group’s resistance to the fair housing mandate goes well beyond this immediate statement. Although NAREB’s subsequent responses to the new legal mandate are not as openly defying or as explicitly provocative as the Bulletin’s contents, they nonetheless offer a more complicated relationship to the fair housing mandate and have much more significant implications for how the Realtor rank and file undertook the practice of fair housing in their profession.

In this chapter, I develop this history of how the trade organization responded to the mandate for fair housing over the first decade following the passage of Title VIII. I first consider NAREB’s response to the federal mandate for open and fair housing. I then detail the joint fair housing programming the Realtors made with the Department of Housing and Urban Development (HUD): the Affirmative Marketing Agreement. I examine how the policy came into existence, its reception among Realtors, and demonstrate how the Realtor organization took up the policy as part of their post-civil rights identity and what that meant for fair housing.

I. Reactions to the Fair Housing Mandate

By May of 1968, the Realtor organization was reeling from the legislative loss. Some of the group’s factions were more reactionary than others. With the loss of legal maneuverings, key Realtor leaders sought political reckoning. The Realtors Washington Committee, for instance, came before the Executive Committee with a retributive political agenda. Fred C. Tucker, the new chair of the Realtors’ lobbying
arm, presented an aggressive series of recommendations to respond to the “grave injustice…perpetrated…on the American people” (NAREB 1968e:9). They called for using the group’s remaining Civil Liberties Fund to execute a legal challenge to the law, disseminating the voting record in favor of the law “with appropriate explanatory language” to local boards, and seeking commitment from congressional representatives who would “support the repeal of the onerous provision of Title VIII of the 1968 Civil Rights Act” (NAREB 1968e:9).

Other factions of NAREB leadership, however, offered more reasonable steps. At the Board of Directors meeting at the end of May, tempers seemed to have cooled. The group’s Real Estate Economics and Research Committee was instructed to survey members on fair housing law (NAREB 1968f:27). And the Realtors’ Washington Committee had regrouped and put forth a much more moderate stance. Tucker reported to them that his committee was now urging “caution and restraint” in order to assess the political situation and the best way to proceed (NAREB 1968f:9). However, Tucker’s statement also committed the Realtors’ Washington Committee “to continue this fight—in the courts to challenge its constitutionality and…at the ballot box itself” (NAREB 1968f:10).

Perhaps the most outlandish response to the Fair Housing Act’s passage entailed some Realtors hypothesizing how to transform their trade’s practices to circumvent the Title VIII’s legal limitations on property owners. The speculation was produced in full in at least two newspapers in May 1968. One of them, the Record-Eagle of Traverse City, Michigan, reported that the following suggestion was
“advanced informally” by “southern representatives of NAREB” at a March meeting (Srodes 1968:14). What was proposed was no less than a complete revolution of how Realtors would participate in the residential housing market:

Right now, a homeowner goes to a realtor and in effect hires him to sell his house. The realtor then advertises the house to the public…Under the proposal, the realtor would become the representative of the buyer. He would presumably advertise that he has a buyer looking for such-and-such a house and give a price range and then wait until a seller came to him to close the deal.

This would completely get around the intent of the open housing law.

If the buyer coming to him is ‘undesirable,’ all the realtor has to do is fail to turn up a seller. The seller runs no risk of violating the law because he is not offering his house for public sales. The realtor is immune from prosecution because he only failed to turn up a seller and did not refuse outright to sell (Srodes 1968:14).

One of the Realtors’ responses to the passage of fair housing thus advanced a complete privatization of the real estate transaction in order to preserve the right to discriminate on the basis of race, religion, and national origin.

The Realtors were able to speculate about fantastical scenarios in which individual property owners could retain the right to discriminate between April and June 1968 because the Supreme Court had not yet ruled in Jones v. Alfred H. Mayer Co. (1968). The Jones case involved a Missouri couple seeking to purchase a home in the Paddock Woods subdivision in St. Louis County, Missouri. Joseph Lee and Barbara Jo Jones were seeking a home in June 1965 and applied to purchase a home to be built in the subdivision. But the Jones’ application was refused because Joseph
was black. The Jones’ attorneys argued that the state could not support discrimination and reasoned that despite the failed home buying transaction between the immediate buyers and sellers in the case was private, it was built upon a foundation of government power and oversight. The Jones’ complaint listed numerous municipal and state intermingling of the subdivision’s capacities including zoning codes, building codes, furnishing sewer service, the county recording titles, and the furnishing of electricity and gas services by state utilities. The petitioners’ appeal, however, was superfluous because the majority found that section 1982 of the 13th Amendment “operates upon the unofficial acts of private individuals, whether or not sanctioned by state law” (Jones v. Mayer 1968). On June 17, 1968, the Supreme Court ruled that “all citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property” (Jones v. Mayer 1968).

Just two days after the Jones ruling, Realtors questioned its significance to their trade. The director of the Atlanta Real Estate Board claimed, “I don’t think anyone can really say to what extent real estate will be affected” (Lebey qtd in “Supreme Court’s ‘Last Word on Housing’ Confuses Many Realtors” 1968:1-B). And on June 23rd, the president of the Greater Boston Real Estate Board, Richard H. Hallett, declared that the Jones decision would have “no substantial affect [sic] in the Commonwealth,” adding that “[u]ntil such time as we have an opportunity to study the actual written decision, we are unable to comment on the extent of any change, if any, in the present law” ("Court Decision May Affect Owner-Occupied 2-Family
Houses” 1968:7). Other Realtors expressed similar hesitancy to assess the implication of the Court’s ruling on their trade. Executive vice president of the Chicago Real Estate Board said it was “too difficult to make a judgment” just based upon initial reports of the ruling (“Supreme Court’s ‘Last Word’ on Housing Confuses Realtors” 1968:1-B). Other Realtors downplayed the ruling’s significance. President of the CREA, Robert Karpe claimed that the Jones ruling wouldn’t “have any effect on association members in the day-to-day operation of their businesses” (qtd in “Realtors Scanning Housing ‘Change’ in Studied Calm” 1968:12).

Other Realtors questioned the Jones ruling’s relevance to their trade for reasons that implied outlawing discrimination in the housing market was irrelevant to how real estate was being practiced among their trade members. William Simons, president of the Reno Board of Realtors, speculated that the law wouldn’t affect his board because of the lack of discrimination within the local real estate market in Nevada (“Supreme Court’s ‘Last Word’ on Housing Confuses Realtors” 1968:1-B). And California Real Estate Association president Robert Karpe claimed that the Realtor code of ethics made sure Realtors didn’t discriminate:

We have had for many years in our association code of ethics a stipulation that we will offer property equally to any person without regard to race, creed or color. In this regard, I think we have gone further than the Supreme Court, since its ruling only covers racial discrimination (qtd in “Supreme Court’s ‘Last Word’ on Housing Confuses Realtors” 1968:1-B).

Just above, the president of the country’s largest state Realtor association—which just a few years prior successfully deployed the state’s largest political campaign to
temporarily overturn fair housing—boasts of his organization’s expansive ethical code as surpassing the new legal edict. Such a comparison does a number of things. First, it implies that the Realtors’ own self-governance is a comparable governing agency to the Supreme Court regarding real estate agents’ and brokers’ practices. Second, Karpe’s statement omits that the Jones ruling applies to home sellers—including property owners and home builders—while the Realtors’ code of ethics is merely a professional code of contact for Realtor-affiliated agents and brokers. Thus, the suggestion that NAREB “has gone further than the Supreme Court” is inaccurate and misleading tactic meant to depict the Realtor trade organization as a defender of equality within the residential housing market.

The Supreme Court’s ruling presented another level of certainty for the Realtors. Despite the association’s steadfast opposition only a few months prior, midway through 1968, the group was publicly shifting its tune. By July, the organization’s newsletter featured an editorial by Executive Vice President Eugene P. Conser lauding the Jones ruling:

The opinion is clear-cut and positive. The Negro in America is henceforth a free man. Or, if there be any further impediment to that freedom in the future, the Court noted the means by which it would be struck down…Those who have fought for elimination by law of racial discrimination can rejoice in a victory that is complete and more far-reaching than a cursory reading of the public reports would indicate (“Court Rule Endorsed By Realtors” 1968: E4)

Contrary to the organization’s characterizations of fair housing just a few months’ prior, Conser’s language celebrates the significance of a federal fair housing mandate. In this example, the Executive Vice President of NAREB defined federal fair housing
law as not only “positive” but an inherent issue of “freedom” for blacks. Such a designation stands in sharp contrast to how the association previously characterized fair housing as threatening and fundamentally distinct from American ideals of private property, liberty, and overall way of life. Nonetheless, with such judicial certainty before them, the Realtors adopt the language and goals of the civil rights movement. The above passage, however, does not completely diverge from NAREB’s historical position on housing equality—the last sentence speculates that the federal ruling on fair housing was broader than anticipated and, presumably, creates greater potential for Realtors to face discrimination charges.

NAREB responded to the *Jones v. Mayer* (1968) decision pointedly with a month-long editorial series in *Realtor’s Headlines* just three weeks after the Supreme Court’s ruling. The series, while ostensibly acknowledging the “Import of *Jones v. Mayer*” as its title would suggest, foresaw of a number of dangers for Realtors:

> There can be no question but that the law presents opportunities for nuisance suits that can be difficult to defend and can be costly both to homeowners and to their agents…who may be completely innocent of racial discrimination but unwary in guarding against the dangers that are inherent (Conser 1968?:NP).

In so many words, NAREB leadership speculated on the costs involved in defending their members from potentially baseless “nuisance suits” of housing discrimination claims. One of the Realtors’ earliest public comments to its members thus emphasized the possible harm of the new legal apparatus in place.

Additional anti-fair housing rhetoric populated still other Realtor events. In April 1969, the Cobb County Real Estate Board hosted a talk given by the state’s
governor. The event was the Board’s largest event ever, with almost two hundred guests present to hear Georgia Governor Lester Maddox. In his speech, Governor Maddox endorsed the Realtors’ efforts against fair housing, despite the fact that at the time of his speech housing discrimination had been banned for over a year by the nation’s highest legislatures and judges. Regardless of the national legal environment, the large Realtor crowd heard the governor call the federal law “planned in 1928 by the Communist Party” that constituted “a dagger in the back of the free enterprise system” (Maddox qtd in “Maddox Blasts Legislature, Reds” 1969:9-A). Governor Maddox maintained that regardless of the fair housing movement’s claims of ending discrimination, its true goal was “to help overthrow the nation” (qtd in “Maddox Blasts Legislature, Reds” 1969:9-A). The Cobb County Real Estate Board’s hosting of Governor Maddox’s address gave tacit endorsement to such a narrative on fair housing. By 1969 then, while the Realtors were no longer publicly criticizing fair housing, some were giving tacit endorsement to anti-fair housing discourse.

Other local boards nonetheless conceded some obligation to follow federal fair housing laws. In San Antonio, Texas, Realtor leaders promoted adherence to fair housing laws midway through 1969: “Because we are dedicated to the rule of law, we urge all Realtors to comply with all legislative actions and judicial determinations which constitute the law on this subject” (qtd. in “Owners Under Law Barring All Factors” 1969:PAGE). Reasoning that Realtor trade members are dedicated to the broader “rule of law” and not specifically dedicated to an open and equal housing market, the San Antonio Realtor further qualified their acceptance of the new law:
“We reserve the right to seek amendments to such laws, and relief from unfair administration, as inequities become apparent” (qtd. in “Owners Under Law Barring All Factors” 1969:PAGE). By emphasizing that they “reserve the right” to lobby for changes, these Realtors highlight the law’s tractability. In underscoring the law’s malleability, the Realtors’ early statements on the passage of the Fair Housing Act foreshadow its organizational response to a national fair housing agenda for decades to come: a contradictory acceptance.

NAREB claimed a national civil rights mandate for open and fair housing was premature. Burt Daniels, President of the Contra Costa County Board of Realtors of California, asserted that despite agents’ “desire to be law-abiding in their transactions....[t]here have been some instances in other communities where real estate people who showed properties to minorities and brought about a sale to them were harassed and intimidated because of it” (“The Press, the Public, Open Occupancy Laws” 1968:2). Daniels’ account appeared as part of a larger discussion about public (and some Realtor) ignorance of the specifics of the new fair housing law. The harms outlined point to a premature federal law imposed on an unwilling public. Moreover, the harms are said to be suffered by those Realtors showing and selling properties to “minorities”—presumably, those protected classes (race, color, religion, or national origin) listed under the Fair Housing Act of 1968. According to NAREB, in implementing fair housing, “law-abiding” Realtors were forced to midwife a premature social policy on an unwilling public under possible threat of harassment and intimidation for the benefit of “minority” homebuyers. All told,
Daniels’ remarks present fair housing law as prematurely put upon an ignorant public that harmed (presumably, white) Realtors for the benefit of “minorities.”

To inoculate against these threats, the Realtor organization’s leadership called on government to protect its members. In an editorial published shortly after the Fair Housing Act’s passage entitled “Living with Law,” Realtor’s Headlines editor Eugene P. Conser speculated that Realtors would fare worse in the new housing market. Citing that the law would impose “untold mischief and harassment irrespective of how carefully they seek—as good citizens—to conform to its requirements” (NAREB 1968h:NP). He anticipated that Realtors could be “subjected to intrigue, harassment, and punitive action as a means of justifying the law” and that government should, therefore, “take steps to assure that citizens whose livelihood could be endangered by the law” were protected (NAREB 1968h:NP). While Conser didn’t detail how the government could protect Realtors, his statement nonetheless cites specific harms that might befall Realtors following the new legal mandate to abstain from housing discrimination. The Realtor organization thus conceptualizes fair housing as a legal mandate with a substantial cost to its trade members.

In addition to identifying specific harms that fair housing legislation might inspire, the Realtors publicly catalogued offensive fair housing regulations. In 1969, a Pacifica, California Realtor called the demand to display fair housing literature “an insult” and “discriminatory” (“Pacifica Realtor Protests 'Insult'” 1969:21). The President of the Pacifica Coastside Board of Realtors rebuffed the county's Human Relations Commission request to post information on the Fair Housing Act:
If the Commission had requested that each and every place of business, every doctor's office, every lawyer's office, every store, every apartment house, every home rented by its owner post this sign, then the real estate profession could hardly claim discrimination, even though we might consider the request unreasonable. But to require only the real estate offices to display this sign is in our opinion not only an insult, but there is some doubt as to its constitutionality ("Pacifica Realtor Protests 'Insult'") 1969:21).

According to the logic just above, the Human Relations Commission’s request to publicly post fair housing literature amounts to discriminatory treatment of Realtors. In the face of new federal fair housing law that outlawed racial discrimination in private housing transactions, the onus of merely publicizing the law and a one-time act of hanging a poster proves for this Realtor board president too great a burden to bear. And by citing other occupational and trade servicers’ lack of having to declare themselves non-discriminatory, the Realtor leader construes the requirement as a discriminatory burden for trade members. The Realtor’s language thus usurps the concept of discrimination away from systematic racial discrimination in access to housing and, instead, claims the terms for those practitioners forced to hang posters in their office in compliance with federal law.

Once the new fair housing law was well underway in the early 1970s, Realtors around the country were also emphasizing the financial costs associated with breaking the law. In 1972, the Main Line Board of Realtors of Bryn Mawr, Pennsylvania informed their members that “recent [awards] for ‘pain and suffering’ have run to $10,000. Alert your owners!” (Main Line Board of Realtors 1972:NP). And at the national Realtor’s convention in Chicago in May 1972, the Equal Opportunity Committee meeting considered the threat of fair housing. The group
emphasized the importance of not just complying, but documenting agents’ “attempts to comply” with the law (NAREB 1972b:1). Without this documentation, the group warned, government and community groups intend to launch “entrapment” missions (NAREB 1972b:1). When the Realtors’ top attorney William North spoke to the convention delegates, he described a “considerable number of Civil Rights investigations and suits” that “are a manifestation of an administration theory that Realtors are somehow primarily responsible for housing discrimination” (North 1972:3). By pointing to the potential federal surveillance of and possible legal action against Realtors that federal oversight of the U.S.’s residential housing market would bring, NAREB showcased the burden of the civil rights laws on their trade. Despite the Realtors’ paucity of details about housing discrimination’s harms in its campaign, they had no qualms about citing real and potential harm that their members could suffer under the new legal mandate. This broader tendency—to highlight Realtors as victims of fair housing laws—manifests repeatedly throughout the organization’s post-civil rights agenda.

**Realtor-Administered Fair Housing**

Another post-civil rights position the Realtors took was elevating their organizational apparatus as an equivalent to the state apparatus for addressing fair housing complaints. Local realtor boards across the country campaigned to publicize the groups’ organizational resources to deal with housing discrimination. In January 1969, just nine months after the passage of new federal law, newspaper editorials drafted by the country’s largest and most powerful state association—the California
Real Estate Association (CREA)—appeared throughout the state publicizing the organization’s programs as viable alternatives to filing housing discrimination claims. One editorial, composed by Milton Stone, President of the Ontario-Upland Board of Realtors, disparaged handling discrimination through the law: “Laws, of course, require lawsuits to put them into effect. There are alternatives” (1969:2). By characterizing the pursuit of one’s legal right to fair housing with a pejorative connotation of “lawsuits,” Stone's editorial depicts the use of the legal apparatus to ameliorate housing inequality as unsatisfactory and points to a better way to address the problem. The alternative Stone's editorial goes on to describe is the CREA's Code of Practices--“a voluntary pledge that members would serve all clients equally regardless of ethnic background” (Stone 1969:2). Despite his claim that there are alternatives to housing discrimination complaints, the program Stone describes—an optional agreement to act fairly—is not comparable to federal or state laws.

Other editorials that were virtually identical in content to Stone’s were published across California, appearing five times throughout the state over the course of two years.58 These repeated appearances amount to a public campaign by local Realtor boards meant to undermine fair housing law by informing the public of the Realtors' alternative framework to legal recourse.

Later editorials differed only slightly. In March 1969, the chairman of the Southern Alameda County Board of Realtors' equal rights committee, Darrel Jones,

drafted an editorial that reproduced the first seven paragraphs of Stone's. But Jones’ editorial provided greater detail on the recourse available via the Realtors’ organizational policies and programs. It characterized the CREA’s Code of Practices as being updated and expanded in wake of the national fair housing law, providing “machinery for investigation of any changes in violation brought against a member, and disciplinary action if found true” (Jones 1969:16). Such organizational machinery was touted for its ability to handle claims of housing discrimination outside of formal legal channels: “Anyone who feels he has been discriminated against by a realtor can register a complaint with the local board of realtors and have his case heard without resorting to legal procedures” (Jones 1969:16). Jones’ statement offers the Realtors’ organizational apparatus as preferable to state relief.

Other boards across the country promoted a similar message that advanced Realtor self-regulation. In Hillsdale, Michigan, the president of the Hillsdale County Board of Realtors was cited by a local newspaper suggesting that individuals who think they have been discriminated against in a real estate transaction “should contact local board offices” (“Non-Discrimination Code Adopted Here” 1973:2). And in Holland, Michigan, the president of the Holland Board of Realtors made the same request to the public (“Holland Realtors Adopt New Code” 1973:6). Across the

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59 According to the Richmond Board of Realtors, grievance and professional standards committee’s disciplinary actions include a letter of warning in a Realtor’s file for a first violation and the letter of reprimand with an optional fine of up to $1,000 for a second violation and the option to require ethics course training (Wyland 1985). For more serious violations, probation, suspension for no more than 1 year, and expulsion from the Board for no longer than 3 years (Wyland 1985). In 1986, the Cleveland Board of Realtors stated that if a member violated the Code of Ethics, the Realtor could be suspended for up to a year; however, the board acknowledged that no Realtors had been disciplined for such violations in “six or seven years” (Luttner 1986:1-B).
country then, Realtors thus publicized their organizational apparatus as preferable mechanisms for handling discrimination claims.

In constructing the public's right to complain to local Realtor boards as having their “case heard,” the Realtors expressed their self-regulating organizational governance as superior to fair housing law. As a result, they positioned private, self-regulation as a quasi-legal alternative preferable to federal housing laws. In doing so, they bolstered an aversion to government oversight of the housing market while simultaneously offering their organization’s private governance as a comparable mechanism to address racial discrimination in housing. While these editorials inform and invite the public to bring concerns of discrimination to their local Realtor boards, nowhere do they address the potential objectivity of Realtors judging fellow tradespeople nor a vested interest in not finding any discrimination within their ranks. Moreover, by leading complainants to their organization instead of government oversight, the Realtors answer to fair housing could prevent the public from further pursuing state-based regulation and penalties. Due to this self-regulatory maneuvering, the Realtors advanced their organization’s apparatus in lieu of legal adjudication. In erasing the very real differences between the two, the Realtor association inflated its role in policing housing discrimination and simultaneously challenged the state’s legitimacy as a regulatory apparatus.

Another way the Realtor organization’s internal apparatus eclipsed government agencies occurred through NAREB’s code of ethics. Speaking in front of the U.S. Commission on Civil Rights hearing in Baltimore, Maryland in 1970,
Charles W. Hammond, Executive Vice President of the Real Estate Board of Greater Baltimore, outlined the competing interests between the Realtor organization and the state’s authority. The following exchange occurs between Hammond and John H. Powell, Jr., general counsel for the U.S. Commission on Civil Rights:

Mr. Powell: Tell me, Mr. Hammond, has your board adopted a code of ethics?

Mr. Hammond: Yes, indeed, we have a code of ethics which is the code of ethics of the National Association of Real Estate Boards, and when a real estate board is chartered, one of its primary obligations is to make sure that its code of ethics is compiled with by its members.

Mr. Powell: Under your code of ethics, Mr. Hammond, would a member of your board be discouraged from reporting to Federal or State officials’ instances of discrimination in the sale of housing which might be done by another member of your board?

Mr. Hammond: I can’t answer that question with a simple yes or no...Our code of ethics says, primarily, that the Realtor should report any allegations concerning breaches of the code of ethics by a fellow Realtor to the board first. This is his responsibility under the code of ethics. We have counsel, as any organization does, and we pay for legal advice when it is needed...[Our counsel] said that the board should not hear any case which has been reported to an administrative agency of the government and we consider that the Maryland Real Estate Commission is, certainly, an agency of the State government; nor should the board get into any matters where suit has been initiated in a court of competent jurisdiction. So this does not mean that the board cannot get into the matter after the court case has been resolved. But this is advice that has been given to us and we adhere to it (U.S. Commission on Civil Rights 1970:151-152).

Hammond’s comments show how Realtors’ organizational primacy is codified within the group’s code of ethics, requiring housing discrimination claims to be first forwarded to the organization. The Realtor code of ethics thus structures the private
organizational apparatus of the Real Estate Board as primary to the democratic state.

Further, by directing housing discrimination concerns to intra-organizational means, the Realtor code of ethics emphasizes self-regulation.

The following year, the U.S. Commission on Civil Rights pressed NAREB on the issue once again. At the 1971 hearings, H. Jackson Pontius—NAREB Executive Vice President—was questioned by the Commission’s vice chair Stephen Horn and staff director Howard A. Glickstein over Realtor board authority and housing discrimination claims:

Vice Chairman Horn: Do you know if anybody has lost their license as a result of the decision in a court case or is the National Association prepared to impose an ethical sanction when a legal sanction has already been imposed?...

Mr. Pontius: Well, if a legal action is taken and they lose their license, naturally they lose their membership in the association. If legal action is taken and they are not found guilty, the association does not have the power of the courts so we would be in jeopardy if we took further action against such an individual. He’d have grounds for suit against us…

Vice Chairman Horn: You could conduct a separate proceeding and reach your own conclusion and there might not be sufficient grounds for a court to find that the law has been violated but there might be sufficient grounds for a real estate board to find that its code of ethics has been violated.

Mr. Pontius: Yes.

Mr. Glickstein: Different standards of proof…

Vice Chairman Horn: Has any board, any of your member boards, ever taken action to the point of having the license removed?...

Mr. Pontius: The only power that a local board has is to suspend a member or curtail his services for a period of time…
Vice Chairman Horn: Do you keep any list at the national level of the major sanctions which have been imposed by member boards? Do you...keep a record of this?

Mr. Pontius: Yes...

Vice Chairman Horn: I wonder if you would just mind furnishing for the Commission the list of really the most severe sanctions you have granted in the last year, without mentioning any names, but just the type of sanction imposed and what was the reason for the sanction?...

Mr. Pontius: Well, I misunderstood your reference to sanction. You are referring to what action we have taken against individuals?

Vice Chairman Horn: Yes.

Mr. Pontius: And we do not—the National Association cannot take action against the individual.

Vice Chairman Horn: No, but do you collect the data of the actions taken by local boards?

Mr. Pontius: No, the local boards collect that data.

Vice Chairman Horn: In other words, you don’t really know the degree to which sanctions have been imposed on behalf of your national Code of Ethics?

Mr. Pontius: That is correct (U.S. Commission on Civil Rights 1971:141-142).

Pontius’ testimony acknowledges the limits of trade group’s organizational apparatus. Despite the fact that NAREB composes the singular code of ethics, because it does not collect the data from its local Realtor boards, it is unable to assess its professional standards. Local boards’ independence from the national association coupled with individual standards of proof compound to create a process of private enforcement of professional real estate ethical standards. By touting their own enforcement system in lieu of filing “lawsuits,” the Realtors thus put forth their private and insular system as an alternative to filing discrimination claims through the state apparatus.
II. “Because it’s good business”: The Affirmative Marketing Agreement

Title VIII did more than just prohibit discrimination; Section 809 of the act instructed HUD to confer with the housing industry and implement voluntary programming and practices that took affirmative steps to make housing accessible for those people facing discrimination in the housing market because of their race, color, nation origin, or religion. As early as 1972, HUD initiated affirmative marketing agreements with real estate builders and developers who sought to take advantage of HUD’s housing programs, with the intent to “carry out an affirmative program to attract buyers or tenants of all minority and majority groups” (U.S. Commission on Civil Rights 1974:76). This federal directive was taken up by the Realtors and HUD in the early 1970s and resulted in the creation of the Affirmative Marketing Agreement (AMA) and later known as the Voluntary Affirmative Marketing Agreement (VAMA).

From the very beginning however, the Realtors and HUD held conflicting perspectives on the extent of monitoring, oversight, and equivalency the Agreement would provide to its signatories. As early as September 1973, HUD was lobbying for individual agreements with local Realtor boards. NAR leadership and counsel were critical of the varying coverage and content of individual agreements—which usurped the national organization’s centralized control—and proposed to draft a nationwide agreement with HUD. NAR made its case for a uniform and singular document to more efficiently serve its trade members, which also positioned NAR with greater authority, control, and recognition over the process. According to NAR, by
composing a national, uniform Agreement, they could “avoid the expense and [delay] of individual negotiations between HUD and each board” while providing a “common denominator...to promulgate educational information and procedures which would have general applicability to all Boards” (Doherty 1974:1). Furthermore, NAR pointed to the need for industry-wide uniformity on fair housing advertising and argued that without such standards, newspaper publishers were less likely to honor fair housing ad copy requirements (Doherty 1974:1).

HUD brought NAR a draft in September 1973. Six months later, the Assistant Secretary of Equal Opportunity at HUD met with NAR’s executive board to discuss HUD’s initial proposal. NAR vigorously objected to two substantive issues in HUD’s draft: the inability for Realtors to use the agreement as a substitute in place of the Affirmative Action Program required in the sale of HUD- or VA-owned properties and the allowance for agreements between HUD and local Realtor boards. As a result of this disagreement, NAR President Joseph B. Doherty drafted a letter to HUD’s Director of Voluntary Compliance and stated that he and the NAR organization were “uncertain” about the “future status and utility” of the agreement between the organizations (NAR 1974b:1). And at NAR’s Executive Committee meeting in March, the chair of the group’s Committee on Equal Opportunity, James O’Conor, passed around two different Agreements, one drafted by HUD and one drafted by NAR. O’Conor reported to the executive staff that Dr. Gloria Toote, the Assistant Secretary of HUD for Equal Opportunity, had “indicated her approval of the substitute agreement” (NAR 1974a:5). The executive staff considered the drafts and
voted to recommend to NAR’s Board of Directors to approve of the group’s version of the Affirmative Marketing Agreement.

Within the Realtor organization, however, members were hesitant to embrace fair housing regulations—even voluntary ones. The new draft was amended more favorably for the Realtor organization, meeting almost all of the Realtors’ demands and was approved by NAR’s Equal Opportunity Committee. At NAR’s Executive Committee meeting in September 1974, however, three executives voted against it, with one declaring:

I am aware of the pressing need to assist our local boards, at this time, on this problem. However, I am unable to vote affirmatively on an issue that I firmly believe to be a further deterioration of the rights of a citizen in our free republic. This type of harassment should not exist. Personally I will oppose this type of government interference and yet I and my corporation will continue to obey the spirit of the laws (Port qtd in NAR 1974b:5).

At this late date, some Realtor leadership remained outspoken on implementing fair housing, implying the voluntary agreement as “harassment.” Thus, while the National Association officially ended its campaign against “forced housing,” the Executive Committee’s voting record and oppositional commentary show hostility to anti-discrimination regulation of the housing market did not end so quickly within the national leaders of the Realtor organization.

Eight months before the Realtors officially adopted the Affirmative Marketing Agreement, the organization was publicizing its efforts on developing the policy as evidence of their good faith on fair housing. During the spring of 1974, newspapers were reporting on NAR general counsel William D. North’s public comments on the
prospect of the Agreement and what it would mean for Realtors. North emphasized that both NAR and HUD were working together to insure that both agencies were doing more than giving “lip service to the policy of fair and open housing” in order to make fair housing “not merely policy but reality” (qtd in “Realtors Working on Pledge” 1974:E1). Despite the fact that the Agreement had not yet come to fruition because NAR was contesting HUD’s proposed Agreement, NAR publicized its mere consideration of the Agreement in the national press, proclaiming the organization supported the goals of fair housing.

When the Affirmative Marketing Agreement finally came before NAR’s board of directors in November 1975, it sparked a three hour long debate and multiple motions to table the issue (Board of Directors Minutes 1975:9). Despite these contentions, the board of directors passed the Agreement in the early evening of November 11, 1975—two years after HUD brought a first draft to NAR and more than seven years after the passage of federal fair housing law. The Affirmative Marketing Agreement was a robust organizational endeavor, codifying what would become NAR’s position on fair housing that would endure for over two decades. Comprised of a series of contractual agreements to affirmatively promote housing equality, it was an optional and “voluntary commitment of good faith” local boards and Realtors could sign to designate their allegiance to fair housing laws (Affirmative Marketing Handbook 1977:13). By signing the Agreement, Realtors and local member boards’ signatories pledged to follow fair housing guidelines, provide fair housing education to the public, offer outreach in conjunction with local housing
stakeholders, and increase their membership among those racial minorities previously excluded. Additional components required local Realtor boards to include fair housing language in advertisements, directed agents to keep records of their home showings, and obligated local boards to collect demographic housing data from their agents. These self-monitoring components were elective steps Realtors could take as Agreement signatories to dissuade steering or other illegal practices. In addition, the Agreement also created HUD-sponsored local housing groups called Community Housing Resource Boards (CHRB) to affirmatively market fair housing through informational, educational, and monitoring practices that were composed of representatives from real estate boards, fair housing groups, government housing agencies, and civil rights groups.

NAR’s organizational literature on the Affirmative Marketing Agreement emphasizes a legal and ethical duty to uphold fair housing. Its contents required the need for affirmative steps to insure that the Realtor organization pro-actively support and uphold a housing market devoid of discrimination. Early characterizations by NAR described the Agreement’s purpose as to insure that Realtors were “inform[ing] the minority community” about properties available for purchase (Realtor’s Headlines 1976:5). Frequent newspaper accounts at the time cited the oft-quoted statement that the “object of marketing is to sell. The object of affirmative marketing is to sell free choice.” The work, resources, and publicity NAR gave the Affirmative Marketing Agreement in some ways marked a profound shift in the Realtors’ fair housing record. In implementing a national agenda to affirmatively promote non-discrimination
among Realtors within the housing market, NAR embraced a campaign that would’ve been unheard of just a decade earlier. Despite these successes however, NAR’s development and execution of the Agreement nonetheless crafted a questionable legacy on the issue of fair housing.

**Voluntary Fairness**

The Affirmative Marketing Agreement’s voluntary component was a product of both organizational and governmental finesse. According to Assistant HUD Secretary for Fair Housing and Equal Opportunity James H. Blair, the Agreement’s voluntary quality was indicative of HUD’s organizational mandate. Speaking at a Realtors’ conference in New Orleans in 1976, Blair told the audience that in his experience, strict anti-discrimination enforcement was unproductive. Blair stated, “We filed suits, won convictions and obtained injunctions….and the impact was negligible” (“Cooperation in Fair Housing Program Needed” 1976:56). By contrast, he praised the progressive results of voluntary partnerships between government and private enterprise. Similar to the weak federal directive, NAR crafted organizational policy that emphasized elective fairness:

> It is this legislative mandate for ‘programs of voluntary compliance’ upon which the Affirmative Marketing Agreement is based. The provision does not call for ‘required compliance’ or ‘mandatory compliance’ but speaks only to ‘voluntary compliance’, and in that spirit the Affirmative Marketing Agreement was approved...(Equal Opportunity Committee Handbook 1978:5).

Just above, NAR’s organizational literature carefully frames a fair housing directive as the result of weak federal law. In outlining the legal and policy antecedents for
putting forth a voluntary partnership to ameliorate housing inequality, NAR stresses the difference between voluntary and mandatory compliance. Such a qualification shows a strict affinity for following the weak federal mandate to the letter of the law and no more.

The Affirmative Marketing Agreement handbook also provides a detailed explanation of how volunteerism was the foundation of the organization’s role in affirmatively marketing fair housing:

While the National Association has committed itself to implement a wide range of activities and programs contemplated by the Agreement, in the final analysis attainment of the objectives of the Agreement will be possible if each Board of REALTORS® adopts the Agreement and each firm of REALTORS® individually subscribes to the Agreement. However, the National Association has no right to require a State Association or local Board to sign, and no State Association or local Board has the right to require its members to sign (Affirmative Marketing Handbook 1977:29).

The Agreement was thus neither a governmental nor organizational mandate; instead, it was an optional agreement that local Realtor boards and individual Realtors could voluntarily sign and pledge to support. Realtor boards celebrated entering into the Agreement on their own volition: “We’re entering into this agreement because we want to, not because we have to” (“Affirmative Marketing Pact Ok’d by Realtors” 1977:1B). The Agreement’s deliberate, discretionary quality here is contrasted by Realtors with forced compliance to federal laws. It thus offered Realtors a way to accept that mandate on their terms and carved out a quasi-legal position that elevated them from subjects of fair housing law to signatories pledging to uphold the law through their own volition.
Voluntary compliance, however, meant that some Realtors declined to sign the agreement. In 1976, the attorney for the Grand Prairie, Texas Board of Realtors recommended board members forego signing the national agreement and, instead, adopt the existing affirmative marketing agreement between HUD and the Greater Dallas Board of Realtors because it was “less onerous” (McKinney 1976:1). Even the national Realtor association’s voluntary agreement was deemed too excessive. In 1977, a member of the Richmond Board of Realtors in Richmond, Virginia reasoned that some members were hesitant to sign the Agreement because it might imply previous guilt: “I think that some of them feel like it’s a matter of appearing to have been guilty and that by signing it you are saying; ‘Now, I’m not guilty anymore’” (Jefferson qtd in “Realtors Went ‘The Extra Mile’” 1977:R-33). And according to an article in the Washington Post, “some individual brokers decline[d] to sign because they insist that [AMA] is merely a pledge to uphold a law that already binds them” (Willmann 1979:C14). The redundancy of an agreement requiring Realtors to uphold what was already federal law was clearly not lost on some NAR members.

More evidence shows pockets of Agreement holdouts. At first, there was tremendous growth in the rate at which Realtors were signing on. According to NAR’s records, in 1977, two hundred and fifty thousand Realtors were signatories (U.S. House 1978:177). One Realtor spokesman testified before Congress about a “subscription rate of nearly 14,000 brokers and salespersons per month” signing on in 1978 (U.S. House 1978:172). And by 1980, over four hundred thousand of its members had signed the Agreement (NAR1980b:6). These aggregate figures,
however, disguise the fact that large, populous states constituted the majority of the Agreement’s endorsements. It took the Florida Association of Realtors three years to sign the Agreement by 1978, and then a third of the state’s local boards had still not adopted it (“Daytona Realtors Endorse Equal Housing Agreement” 1979). Local boards were much less likely to sign the agreement; in 1979, the Kansas City Board of Realtors was the only one in the region that had signed (Erickson 1979). And by 1983—eight years after the Agreement was initiated—seven state associations and seventy percent of local boards had still not committed to it (NAR 1983c). For instance, in Portland, Oregon, only eighteen percent of the city’s Realtors but fifty-six percent of adjacent Washington County Realtors had signed the Agreement by 1983 (Hilderbrand 1983:C6). And closer to the end of the decade, the Greensboro Board of Realtors in Greensboro, North Carolina only ten percent of its brokers had signed the Agreement, despite a state-wide adoption rate of eighty-six percent of Realtors—a national record (Vogel 1989). Over the course of the next decade, NAR saw some more progress, but still fell short of its broader goal to have fifty percent of its boards sign the Agreement. By 1993, NAR reported that just forty-two percent of its local boards subscribed to Agreement (NAR 1993a). These figures indicate that even voluntary, professional standards to follow fair housing protocol were not popular well after the establishment of a federal fair housing law.

Implementing the Affirmative Marketing Agreement wasn’t always a smooth process. In Ohio, the Cleveland Board of Realtors had major disagreement with its affiliated Community Housing Resource Board. The Cleveland Board disagreed with
the CHRB in interpreting HUD guidelines. In response, the co-chairs of the CHRB monitoring body reported that the Realtors were “not committed to the plan” (Andrzejewski 1979:2-D). And in June 1979, the Ohio area HUD manager recommended to the HUD Chicago office that the Cleveland Board of Realtors’ Agreement be terminated (Andrezejewski 1979). The Realtors’ lack of initiative appeared to be one of the problems—the group met in May 1977 and then not again until almost two years later (Andrezejewski 1979). In response, the Realtors claimed that the committee was hostile to them and told HUD that they would dissolve their Agreement status if it didn’t HUD appoint a new one (Andreszejewski 1979). By early July, the Realtors were reporting that HUD’s actions were premature and they were attempting to resolve the issue (Andreszejewski 1979).

**Self-Regulating Fair Housing**

During renegotiation of the Affirmative Marketing Agreement in 1980, NAR and HUD sparred over the terms so significantly that the Realtors doubted an agreement could be reached before the current version expired in mid-December (NAR 1980d:899). Despite NAR’s self-described “reasonable and sincere effort” in the process, the organization claimed that HUD was putting forth proposals that “would impose inappropriate burdens” and that “HUD has declined to participate in further meetings unless [NAR] accept these conditions” (NAR 1980d:899). The disagreement centered on three substantive issues: authorship of the Community Housing Resource Boards’ (CHRB) manual, dissemination of Agreement signatory information, and federal funding for CHRBs (NAR 1980c:656).
NAR’s request for joint authorship of the CHRB manual was based on a March 1979 meeting between NAR’s president and HUD’s Assistant Secretary that established that the manual would be jointly developed. During the negotiations, however, NAR reported that “our current position is that much of the manual’s usefulness is lost if the National Association does not have a recognizable and controllable role in it” (NAR 1980c:6). Despite this position, NAR was advised that HUD had ultimate legal authority over the manual and that the organization focus on constructing input into the manual’s desired contents (NAR 1980c:6).

The second issue of contention between NAR and HUD was over disseminating Agreement signatory information. This on-going dispute began in 1978 and culminated into the 1980 impasse. Per the 1977 Affirmative Marketing Agreement, the list of signatories would only be released to “responsible officials of HUD upon reasonable request. It shall be made available to parties other than HUD only on such terms and conditions as are mutually agreed upon” (NAR 1977:20). In 1978, however, NAR’s Equal Opportunity Policy Committee was alerted to the Agreement’s vulnerability to public disclosure due to the newly passed Freedom of Information Act, claiming it would permit anyone to solicit HUD’s records as government agency. As a result, the committee met in May 1978 and clarified its policy by defining a “reasonable request” as a “written request…on whether or not a specific REALTOR® has subscribed to…the Agreement, with the purpose for the request clearly stated” (NAR 1980c:7). In addition, the group explicitly denied the access to “a blanket request for a list of all signatories” (NAR 1980c:7). HUD
responded to NAR’s policy clarification by calling it “excessively restrictive” and unilateral (HUD qtd in NAR 1980c:8-9).

At this standstill, NAR reached out to its membership to measure opinions on disseminating signatory data. HUD joined NAR’s efforts and selected two of the five signatory boards to be surveyed (NAR 1980c:9). Although the results showed more Realtors did not oppose the release of signatory data than those who did (fifty-three percent vs. forty-six percent), NAR nevertheless refused to back down from its perceived slight and declared the survey results “inconclusive” (NAR 1980c:9). Based on this new information, the Equal Opportunity Committee met and drafted a recommendation to concede to HUD’s terms. The recommendation emphasized the problem of Realtors lacking access to the VA-FHA equivalency requirement. But the recommendation also included a candid moment of clarity in the Realtors’ otherwise stubborn refusal to negotiate with HUD when it acknowledged that “if a Realtor subscribes to the Agreement and fulfills the accepted responsibilities, we see no real risk in disclosure of the fact. Quite frankly, there should be pride in this positive step” (NAR 1980c:10). Later, NAR’s Equal Opportunity Committee proposed modifying the 1978 draft to allow for individual signatories to elect to have his or her name made available for public dissemination…Interpretation of the term ‘reasonable request’ as included in the AFFIRMATIVE MARKETING HANDBOOK and adopted by the Board of Directors on May 9, 1978, will continue to apply to REALTORS® who

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60 According to NAR’s briefing paper, the Philadelphia Board of Realtors failed to follow the survey’s directions to poll its entire membership and surveyed only its Board of Directors, who all opposed disseminating signatory data. The Philadelphia Board reported its Board of Directors results as the results of the entire membership. While this data error was significant—causing NAR to lose 20% of its reporting agencies, the organization seemed eager to deem its membership conflicted over the issue.
do not elect to have public dissemination (NAR1980c:10-11).

In addition to these disagreements, NAR encountered a shifting political landscape during the summer of 1980 as Congress passed a bill that would give HUD expended regulatory judicial strength by establishing administrative law judges to review cases of housing discrimination. Specifically, the Realtors were “concern[ed] that HUD would attempt to interject” the “legislative process of the Fair Housing Amendments into these negotiations” (NAR1980:59). NAR’s fears, however, were unfounded and HUD did not address outside political legislation (NAR 1980c:59).

Self-regulation also included investigating discrimination claims. In 1987, when NAR was publicizing its commitment to the Agreement’s second extension, executive vice president William D. North spoke about the Realtors’ investigative role. According to him, as a whole, Realtor boards investigate between fifty to one hundred complaints of discrimination each year (“Housing Pledge Renewed” 1987:D9). However, because the organization was not required to release its findings to HUD or the public, the results of NAR’s investigative process are unclear. Despite some Realtors’ interests in researching discrimination complaints, the Agreement’s self-regulatory powers were limited. In the words of one chair of a Community Housing Resource Board, “[t]here’s really no teeth” in the process (qtd in Molets 1981:53).

In March 1976—just four months after NAR adopted the Agreement—former HUD Secretary Robert C. Weaver testified before the House of Representatives’
Subcommittee on Civil and Constitutional Rights that NAR’s Agreement “falls short” of other housing industry affirmative marketing plans (U.S. House 1976:4). Weaver elaborated that the Realtors’ Agreement provides little in the nature of affirmative action, requiring instead simply pledges that those boards which sign it will refrain from violating the law…An industry group which has made so many contributions toward racial residential segregation in the past would under the plan, become self-monitoring and self-policing to effect change (U.S. House 1976:4).

Weaver based his ruling the NAR/HUD Agreement inadequate upon a rubric of over twenty criteria for effective affirmative action programming. (See Table 6.)
<table>
<thead>
<tr>
<th>Affirmative Action Criteria</th>
<th>NAR Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Is there communitywide and industrywide participation?</td>
<td>N</td>
</tr>
<tr>
<td>2. Does the agreement recognize and identify existing discriminatory practices?</td>
<td>N</td>
</tr>
<tr>
<td>3. Do the objectives set forth increase minority families outside of minority concentrations?</td>
<td>N</td>
</tr>
<tr>
<td>4. Do the objectives set forth include an increase of white families in minority areas?</td>
<td>N</td>
</tr>
<tr>
<td>5. Do the objectives set forth include specific affirmative marketing programs?</td>
<td>Y</td>
</tr>
<tr>
<td>6. Do the objectives set forth include action programs within the industry?</td>
<td>N</td>
</tr>
<tr>
<td>7. Does the agreement cover all housing serviced by signatories?</td>
<td>Y</td>
</tr>
<tr>
<td>8. Are signatories required to file with HUD an affirmative marketing plan for each project stating minority occupancy goals?</td>
<td>L</td>
</tr>
<tr>
<td>9. Does agreement provide for outreach efforts to inform minorities of all housing options?</td>
<td>L</td>
</tr>
<tr>
<td>10. Does agreement provide for a sustained advertising campaign?</td>
<td>Y</td>
</tr>
<tr>
<td>11. Does agreement provide for staff training programs in area of race-relations?</td>
<td>Y</td>
</tr>
<tr>
<td>12. Does agreement include declarations against red lining?</td>
<td>N</td>
</tr>
<tr>
<td>13. Does agreement provide for affirmative hiring?</td>
<td>Y</td>
</tr>
<tr>
<td>14. Does agreement provide for opportunities for minority business enterprise?</td>
<td>N</td>
</tr>
<tr>
<td>15. Does agreement provide for a plan coordinator for each signator, plus a coordinating committee?</td>
<td>Y</td>
</tr>
<tr>
<td>16. Are signators required to file information on housing within 60 days of listing?</td>
<td>N</td>
</tr>
<tr>
<td>17. Does agreement require detailed record keeping on sales and rentals by race?</td>
<td>Y</td>
</tr>
<tr>
<td>18. Does agreement provide for staff to administer it?</td>
<td>Y</td>
</tr>
<tr>
<td>19. Does agreement provide for a board to supervise implementation?</td>
<td>Y</td>
</tr>
<tr>
<td>20. Does agreement provide for HUD monitoring with availability of information?</td>
<td>Y</td>
</tr>
<tr>
<td>21. Does agreement provide for furnishing signatories with standard report forms for periodic data reports?</td>
<td>N</td>
</tr>
</tbody>
</table>

Key: Y=Yes, N=No, L=Limited.

Weaver’s evaluation of NAR’s Agreement exposes inherent shortcomings to the much-touted policy. It points to nine areas of failure and three areas of limited provision, in fifty-seven percent of the criteria Weaver identified as necessary for a robust affirmative action housing policy. Scrutinizing those categories more closely, we can see that NAR’s Agreement fails to meet many of those criteria (“recognize and identify existing discriminatory practices,” “increase minority families outside of minority concentrations,” “increase white families in minority areas,”), it is perhaps not surprising that Weaver closes his testimony before the committee with a strong rebuke of the programs:

This documents the inadequacy of such agreements and substantiates others’ and my belief that voluntary Affirmative Marketing Agreements are generally ineffective and often relieve the industry participants and even HUD from complying with the requirements of recent civil rights legislation (U.S. House 1976:11).

Expanding Legal Protection…for Realtors

Not only was the Affirmative Marketing Agreement a weak policy, the organization’s allegiance to its members and their protection frequently eclipsed any fair housing directive. For example, the Agreement was depicted in organizational literature as a protective measure for Realtors:

REALTORS® will be recognized as part of the community concern for equal opportunity in housing in an official sense and hence cannot be made the victims of that community administration desiring to ‘play politics’ with civil rights (Affirmative Marketing Handbook 1977:31).
According to organization’s handbook, Realtors who signed the Agreement would benefit from public recognition, which would supposedly inoculate them from falling victim to those wishing to “play politics with civil rights.” One of the ways NAR conceptualized its Agreement as protecting Realtors then was through an improved community reputation. Implicit in such a formulation is that the fair housing program was perceived by leadership as a method for improving Realtors’ public relations and managing the group’s image as a pro-fair housing organization.

NAR asserted that the Affirmative Marketing Agreement offered additional protections. Despite the Agreement’s non-binding, voluntary nature, the Realtors declared that signatory members gained expanded legal protections. NAR’s language throughout its Affirmative Marketing Handbook set a low bar for Realtors to meet, where simply signing the Agreement presumably put their members above legal reproach. Specifically, NAR claimed that signing the Agreement

enables the REALTOR® to establish a *prima facie* case that any violation of law by a salesperson was not part of a pattern or practice for which he should be held responsible (Affirmative Marketing Handbook 1977:32).

And that

properly implemented, standing alone, establishes both a commitment and program to comply with the civil rights laws and by necessary implication denies the existence of a pattern or practice of discrimination (Affirmative Marketing Handbook 1977:34).

According to the reasoning in these passages, a voluntary, non-binding trade agreement to uphold existing federal fair housing law should grant Realtors expanded legal rights in the event of housing discrimination charges. The mandate to practice
and uphold fair housing here quickly blurs into an organizational agenda to render fair housing difficult to legally enforce. In such a conceptualization, the symbolic and rhetorical commitment from Realtors to uphold fair housing laws challenges the very applicability—and thus viability—of those self-same laws.

Still other examples of how NAR engineered the Agreement as a legal protection for Realtors focused more on limiting legal liability. In a speech before the New York Association of REALTORS®, Equal Opportunity Committee Chairman Harley W. Snyder touted the Agreement’s affirmative quality as both a way of advancing fairness for homebuyers and as a protective instrument for Realtors. After his earlier and much briefer statements about the Agreement’s benefits to homebuyers, Snyder made an extensive case for how helpful and beneficial it would be for Realtors. While some self-interest is to be expected in a pitch for a new program, Snyder’s remarks did much more. They depicted the threat of civil rights litigation and positioned participation in the Affirmative Marketing Agreement as a defense against such a threat:

It is just like insurance...This Affirmative Marketing Agreement gives a REALTOR® the program and opportunity to demonstrate integrity, good faith, ethics and voluntary compliance with the spirit and the letter of the civil rights law. In the event of accusations of unequal treatment, the REALTOR® can affirmatively demonstrate their falsity through his commitments and compliance with the Agreement...Think of this, in the event of civil rights accusations against, you, you, as a REALTOR®, can affirmatively show that you are complying with a program which has been reviewed by the Justice Department and approved by HUD...This will not guarantee that charges might not come, but it will give you a positive basis for answering them (Affirmative Marketing Handbook 1977:15-16).
By characterizing the Agreement as a form of “insurance,” Snyder portrays a signed agreement as the first defense against charges of discrimination. His remarks further suggest defensive maneuvers by invoking its data-keeping practices as evidence of Realtors’ innocence. Per the Agreement, signatories were—in varying degrees—to record demographic information about their clients to presumably limit steering. According to Snyder, the Affirmative Marketing Agreement’s data collection mandate is not meant to insure open and fair housing; it is meant to provide Realtor “insurance” against claims of housing discrimination. In this same vein, Snyder’s closing comments (“can affirmatively show”) refer not to taking affirmative action against discrimination within the housing market, but instead to protect Realtors from potential legal recourse brought on by fair housing legislation. Together, Snyder’s comments shift the focus of what it means for Realtors to be affirmative on fair housing law—from protecting the underserved to protecting themselves.

These organizational statements about the Affirmative Marketing Agreement’s protective qualities were taken up by its membership. In 1984, the attorney for the Texas Association of Realtors spoke about the Agreement’s benefits before the Galveston Board of Realtors at its weekly Wednesday breakfast meeting:

The Affirmative Marketing Agreement is a means by which we can offer evidence that the Board of Realtors and its members are not violating the law, but have gone beyond it to implement it...It is important that Realtors go the extra mile to protect themselves from anti-trust and civil rights suits...If you decide not to be a signatory to the agreement, it will be all right, but if you are ever challenged on...civil rights violations, you will be glad you did (Hanna qtd in Webber 1984:1-B, my emphasis).
And in 1989, the chairman of the Colorado Springs Board of Realtors’ Equal Opportunity Committee spoke about the benefits of the Agreement, admitting that while he doesn’t “like to pitch from a defensive posture...[f]rom a practical standpoint it’s just smart business for you to cover yourself” (Andrews 1989:1) Remarks such as these illustrate how the Realtors promoted the Affirmative Marketing Agreement as a defensive fair housing tool to prevent discrimination charges—as the post-civil rights political and legal landscape grew dangerous for Realtors to practice their trade.

Moreover, the Realtors’ organizational literature contended that the Affirmative Marketing Agreement would provide members additional legal protections. NAR claimed that the Agreement “will shift the burden of proof back to the plaintiff where it rightly belongs” (Affirmative Marketing Handbook 1977:37). 61 Implicit in such a formulation is that NAR believes discrimination charges are unfairly putting the burden of proof upon Realtor defendants. To help Realtors navigate the uncertainty and potential danger, NAR claimed its Agreement provides its membership legal protection that shifts the burden of proof back to the government. According to NAR, the Affirmative Marketing Agreement expanded Realtors’ legal protection by requiring “substantially” more proof of discrimination. Elsewhere, NAR clarified what substantially more evidence entails:

A number of cases appear to have been filed by the Civil Rights Division of the Justice Department on the theory that two or three discovered violations by two or three salespersons over a period of time are evidence of an

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61 Such a claim recalls the organization’s speculations in its forced housing campaign about Realtors being presumed guilty.
undiscovered but established illegal pattern or practice...In the face of such Agreement, it is not enough for the government to infer a pattern from isolated violations; it is necessary to prove that the commitment represented by the Agreement was illusory and the program to implement it a sham. And this is a burden of proof requiring substantially more facts than inferences to sustain (Affirmative Marketing Handbook 1977:34).

The quotation illustrates how NAR discounted the federal method of measuring discrimination. In establishing that federal charges of discrimination occur because the government conflates discrete acts with patterned practice, NAR contended that Realtors were at risk of wrongful and discriminatory prosecution under federal fair housing law without the Agreement. NAR boasts its Agreement as a preemptive legal defense against excessive and misplaced discrimination charges. By suggesting that the Agreement offers another legal threshold to surmount in order to rule a Realtor’s activities discriminatory, NAR highlights the Agreement as a risk mitigation tool for its trade members.

In at least one instance, a Realtor took NAR up on its protectionist claim. The Agreement made a noteworthy appearance during the 1980s in an unsuccessful countersuit against a fair housing group for previously charging him on multiple accounts for violating the Fair Housing Act. Donald DeHaan, a Realtor from Glenwood, Illinois requested that the U.S. District Court rule that his Affirmative Marketing Agreement signatory status demonstrated that his agency did not steer clients (Millenson 1980:B1A). DeHaan’s request was exceptional for two reasons per the executive director of the area’s housing leadership council. First, the director remarked, “It’s a naked and blatant attempt to substitute that…agreement for any
other kind of enforcement” (Millenson 1980:B1A). And two, DeHaan’s appeal to his signatory status was unprecedented; the same executive director reported that in thirty suits filed against over fifty real estate brokers in the area, none had invoked the Agreement to defend themselves against fair housing charges (Millenson 1980:B1A).

In addition to positioning the program as a vehicle of trade protection, NAR also employed the Affirmative Marketing Agreement to influence fair housing law regulation. NAR cited the Agreement as demonstrative of the organization’s “substantial and long-standing commitment to equal opportunity in housing and fair housing compliance” in one of the most important legal landscapes in the country: the United States Supreme Court (NAR 2002:2). Over the course of three decades, NAR’s legal division invoked the Agreement as evidence of NAR’s commitment to fair housing in at least three amicus curiae briefs before the Court. In each brief’s introduction, the Agreement is highlighted as a major component of NAR’s organizational mandate on fair housing and used to justify NAR’s relevance to the legal interpretations of the Fair Housing Act underway.

In the case of Gladstone Realtors v. Village of Bellwood (1978), NAR’s brief identified the Affirmative Marketing Agreement as an official authority listed in the document’s table of contents, alongside statutes like the Civil Rights Act of 1968. The language NAR used to describe the Agreement paints a similar official picture of the policy. Boasting the organization’s “recognition of its legal and moral obligation to support fair and equal housing opportunity,” NAR claims that its program is the “first

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nationwide Affirmative Marketing Agreement in the real estate industry,” with “over 250,000 Realtors” subscribing to the Agreement along with “over 14,000 additional subscribers…being processed each month” (NAR 1981:5). NAR’s comments serve to project a large and growing commitment to fair and open housing before moving onto the substantive purpose for its brief: to challenge fair housing testers’ legal standing under federal fair housing law.

Publicizing Fairness

NAR promoted the Affirmative Marketing Agreement as a component of their fair housing advertising throughout the 1980s and 1990s. As part of deploying the Agreement, NAR executives sent staff members across the country to lobby local Realtor boards to adopt it. Starting in the spring of 1976, local member Realtor boards began signing the Agreement. The organization touted signatory successes throughout the issues of NAR’s then weekly newsletter Realtor's Headlines—advertising to its membership its allegiance to and successes in pursuing a fair housing agenda. (See Figure 12.)
The Agreement thus circulated among Realtors through intra-organization advertisements and lobbying efforts by national staff. Documenting the local adoption of the Agreement, NAR touted its acceptance of fair housing programs and made this work visible to its members. The ceremonious feel of the local boards’ adoption of the Affirmative Marketing Agreement emphasizes Realtor-led policy, contract, and oversight. In 1976 alone, the National Association of Realtors’ weekly newsletter included seven publicity photos of Agreement signatory ceremonies, four of which
were given front-page coverage.\textsuperscript{63} The frequency and publicity of the signing ceremonies further engineered an image of pro-fair housing as part of its new, modern organizational identity disseminated across the membership.

The signing ceremonies are also notable for another reason—they replicate a symbolic component of the legislative process and duplicate it within a Realtor framework. The image of presidents flanked by members of Congress and other relevant parties as they sign historic bills into law is simulated by the Realtor organization. The Affirmative Marketing Agreement as a voluntary pledge is thus elevated to an almost quasi-legal status through its affiliation with a government agency (HUD), a formal adoption and signing ceremony, and publicity and dissemination of the event.

Local boards throughout the country publicized their affirmation of the Affirmative Marketing Agreement in newspaper accounts throughout the late 1980s and early 1990s. For instance, the Adams-Hanover Board of Realtors of Pennsylvania’s Agreement activities in 1981 were largely promotional. The group met with the local Community Housing Resource Board “to promote its commitment to fair housing through ads in the area media” and “have educational activities through displays, television, radio and newspapers” (“New Housing Group Meets” 1981:26). While the distinction between educating the public about fair housing and publicizing the Realtors’ brand as fair housing-affiliated are difficult to distinguish, the Realtors routinely promoted the Agreement in the 1980s.

\textsuperscript{63} The seven images appear in Realtor’s Headlines April 26, May 17, May 31, June 21, October 25, December 6, and December 20, 1976.
Later in 1988, the Greater Pittsburgh Board of Realtors took out a full page ad of the News Record publication of North Hills, Pennsylvania with a large picture of the signing ceremony under the headline “The Greater Pittsburgh Board of REALTORS® Supports the Voluntary Affirmative Marketing Agreement.” The Buffalo News described organizational activities like fair housing seminars—cleverly titled “Fair Housing SemiNARs”—occurring nationwide (“Realtors Schedule American Home Week” 1989:HF11). In addition to holding two upcoming fair housing seminars in Tulsa, Oklahoma, the Greater Tulsa Association of Realtors reported in early 1989 that billboards throughout the area would publicize the message of fair housing month along with the city’s mayor delivering a proclamation for the celebration (“Realtors to Mark Fair Housing Month” 1993:2). In my newspaper archival research, I found forty-four Realtor boards and eight state associations publicizing their adoption of the Agreement in local newspapers.64 The

Affirmative Marketing Agreement thus served as a means for the Realtor organization and local Realtor boards to publicly announce their work on fair housing.

The process of reaffirmation offered NAR another opportunity to promote a publicity campaign for its pro-fair housing image. By characterizing resigning as proof of a commitment to fair housing without acknowledging the substantive changes in the Agreement, Realtors promoted a highly visible but ultimately anemic fair housing agenda. For instance, the Hanover/Adams Board of Realtors from Gettysburg, Pennsylvania hosted a fair housing month party in April 1988 at a local restaurant with speakers on fair housing, a “ceremonial re-signing of the Voluntary Affirmative Marketing Agreement,” and a free dessert buffet (“‘Building a Nation of Neighbors’ is Fair Housing Month Theme 1988:3A). The language of “re-signing” here works to emphasize the Realtors’ continuing efforts to uphold fair housing. In doing so, their commitment to fair housing focuses on publicly associating the Realtor organization’s name with the cause of fair housing.

Other sources further attest to the fact that the Realtors’ efforts on voluntary fairness and open housing campaigns were largely symbolic. In 1976, the “Equal Opportunity in Housing” hearing before the U.S. House of Representative’s Subcommittee on Civil and Constitutional Rights included a report from the Housing Opportunities Council of Washington D.C. evaluated the Prince George County,
Maryland Board of Realtors’ affirmative marketing agreement. The plan—the Equal Housing Opportunities Plan—was signed in conjunction with Housing Opportunities Council (HOC) of Metropolitan Washington D.C. in November 1973. According to the HOC, there was significant “fanfare” surrounding the agreement, including a banquet and Congressional recognition within the Congressional Record (U.S. GAO 1978:2). The report found that “the Prince George’s County Board of Realtors have yet to translate much of the good will and written intention into effective action” (U.S. GAO 1978:2). Specifically, the report found that only two of twelve firms had black salespersons on staff (U.S. GAO 1978:8). Out of 179 salespeople, 7 were black, representing less than four percent of the Realtors’ employees (U.S. GAO 1978:8). Further, none of the firms surveyed used “minority oriented media” to advertise (U.S. GAO 1978:8). None of the Realtor boards ran advertising campaigns to promote open housing (U.S. GAO 1978). And none of the Realtor boards used the Equal Housing Opportunity slogan in classified advertisements (U.S. GAO 1978). Based upon these findings, the report concluded that the Prince George’s County Board of Realtors’ “adoption of the plan was simply a pro forma public relations activity” (U.S. GAO 1978:2).

In 1980, the Realtor-produced magazine Real Estate Today had a multi-page spread publicizing the Agreement. In anticipation of the Agreement’s renewal in December, the magazine reached out to Randy Raynolds, a NAR committee leader to defend the program:

*Why should I sign an Affirmative Marketing Agreement? I don’t discriminate against minority homebuyers—never*
Besides, open housing is a part of our Code of Ethics, so why should I bother?

‘Because it’s good business,’ says Randy Raynolds, 1980 chairman of the Equal Opportunity Committee of the NATIONAL ASSOCIATION OF REALTORS®.

Part of Raynolds’ job is traveling around the country telling member Boards about the National Association’s Affirmative Marketing Agreement...

‘But more than that, they add to their stature in the community and that can only help the bottom line—especially these days,’ Raynolds says (NAR 1980f:55).

The article begins by introducing popular reasons for disinterest in signing the Agreement. It further illustrates NAR’s concern in promoting the Agreement and obtaining a large number of signatories by employing a Raynolds to travel the country. Noting that simply by signing the Agreement can help Realtors “add to their stature in the community” points to how NAR conceptualized the Agreement as promoting individual real estate practitioners’ reputation and the economic significance of such a move in helping “the bottom line.” As shown by NAR’s efforts, the Affirmative Marketing Agreement was used to establish the organization’s allegiance to fair housing, demonstrate how their rank and file incorporated the fair housing platform, and, as a result, benefited both NAR and their individual members by promoting the Realtor brand as embracing fair housing.

NAR’s own study on the Affirmative Marketing Agreement confirms that the program’s self-serving components were more successful than its fair housing mandate (NAR 1993a). The study found that the most popular component of the program was publicizing fair housing (NAR 1993a). Surveying seventeen state and
local associations, ninety-nine percent of survey respondents reported that they included fair housing publicity as part of their marketing program. By contrast, only sixty percent of responding associations reported participating in “minority outreach” activities. Thus, despite the fact that Agreement’s purpose was to “provide fair housing for all through affirmative marketing, outreach, and education,” the most common component of the Agreement among member Boards was publicizing their participation in it. The disparity between these two programming components illustrates how the marketing of fair housing was readily adopted by the Realtor organization as a publicity campaign for the organization and its member boards to brand themselves as a supporter of fair housing, but at the same time were less likely to participate in the heavy-lifting of outreach programming that would actually work to fulfill the promise of the Fair Housing Act.

The End of the Affirmative Marketing Agreement

The Affirmative Marketing Agreement ended not with a bang, but a whimper. What little power the Agreement had was chipped away piecemeal during subsequent renegotiations. In 1983, Community Housing Resource Board powers were stripped of the right to originate fair housing complaints (Sloane 1984:140). In addition to this ban, the 1982 Agreement also completely prohibited CHRBs from “sponsoring, conducting, or funding” fair housing tests (Sloane 1984:140). According to one scholar, the limitations on the roles CHRBs had in conjunction with Agreement ultimately “display[ed] distrust on the part of Realtors for the fair housing community, a doubtful premise on which progress in fair housing can be based”
According to an official at HUD, NAR had bullyed HUD into submission. HUD’s Assistant Secretary for Equal Opportunity Antonio Monroig described the process: “[NAR] would not have signed the amended VAMA agreement if HUD had not agreed to those terms” (qtd in Metcalf 1988:21).

Even with the CHRBs’ weakened powers, some still pursued strict compliance with fair housing law from Realtors. In 1984, the Portland Community Housing Resource Board charged the Portland Board of Realtors with “serious deficiencies” in adhering to the Affirmative Marketing Agreement (Enders 1984:B2). The Portland CHRB pressed HUD to instruct the Portland Board to comply with the Agreement. At stake were charges that Portland Realtors were offering “less assistance and limiting information to” homebuyers of color (Enders 1984:B2). In response, the Portland Board of Realtors charged the CHRB with overstepping its authority. The executive director of the Board complained, “We feel they are supposed to be of assistance to the board, not to criticize” (Enders 1984:B2).

In 1992, HUD and NAR signed a revised Affirmative Marketing Agreement—which would be the last—that included even less federal oversight than previous iterations. It eliminated all federal monitoring and oversight by the Community Housing Resource Boards. In lieu of such voluntary federal oversight, the new Agreement eliminated HUD assessment of fair housing efforts other than random spot-checks. Instead of HUD’s oversight, local boards were responsible for assessing Realtor practices. The amended Agreement was described as “offer[ing] more

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65 HUD eliminated the Community Housing Resource Board Program entirely in 1995.
flexibility in applying fair housing principles to daily business practices” (National Association of REALTORS® 1993:2). It further restricted the already meager agreement’s regulatory conditions, brought on to “respond to input from Realtors” (“Realtors Asked to Sign Affirmative Agreement” 1993:25). Such a shift in oversight responsibility was publicly downplayed by NAR leaders. Fred Underwood, vice president of NAR’s Office of Equal Opportunity, explained: “The basic purpose of [the Agreement] has stayed the same and that’s basically to make sure people have fair housing rights” (qtd in Turner 1993:REG6).

After two decades in service, in 1996 the Affirmative Marketing Agreement was sunset and replaced with the Fair Housing Partnership (FHP). The FHP was touted by the NAR organization’s leadership as “a more flexible agreement promoting partnership between the industry and the public” (NAR 2001:NP). The flexibility meant that individual Realtors “would not be required to submit individual plans” like its predecessor. As a result of these looser requirements, the more “flexible” Fair Housing Partnership was adopted by all state Realtor associations by 1996.

The Realtors were able to take advantage of the political mandate for HUD to work with NAR and guide the policy development of the Agreement, further entrenching its power to affect fair housing policy. The practice of objecting to government recommendations, accepting only trade-friendly regulation, and slow adoption became a habitual practice of the Realtor’s post-civil rights fair housing agenda. NAR promoted and executed the Affirmative Marketing Agreement that ultimately advanced a fair housing agenda largely on its own terms. Despite its intent,
NAR and its Affirmative Marketing Agreement—as a voluntary, self-regulatory, and self-interested process—ultimately undermined the spirit of fair and equal housing. While weak federal governance by HUD and the Fair Housing Act contributed to the Agreement’s limitations, NAR’s organizational hostility to government regulation of the residential housing market and also resulted in a much delayed and, ultimately, impotent fair housing mandate.
Chapter Six

The Realtors Steer Fair Housing Law, 1973-1980

The passage of Title VIII meant that the pursuit of fair housing had only just begun. The Realtor organization quickly adopted an active legal campaign to influence the viability of fair housing law on its trade members. While the Realtors lost the overarching argument against fair housing, the trade group’s vast power and resources were able to delay what little influence federal fair housing law had by engaging lengthy legal battles against those seeking fair and full access to housing under the law. What few lawsuits that did emerge under Title VIII, the Realtor organization fought in the courts to define fair housing as narrowly as possible. In the first section of this chapter, I examine a selection of those legal challenges and how the Realtors used their extensive organizational power to argue against a robust judicial interpretation of fair housing law.

Title VIII’s mandate for fair housing was a contradiction. On one hand, the act was quite weak in terms of providing administrative and enforcement protocols and provisions. However, Title VIII contained progressive mandate to “affirmatively further” fair housing. When community and civil rights groups went to work on creating and deploying programming designed to integrate communities, the National Association of Realtors responded swiftly. In the second section of this chapter, I tell
the story of how the Realtors objected to an expansive and inclusive interpretation of Title VIII.

The Realtors’ campaign to stymie Title VIII objected to two community-based housing programs: fair housing testing and integration maintenance programming. Fair housing testing—commonly known as ‘testing’ and its practitioners known as ‘testers’—seeks to identify legal and illegal housing practices by landlords and real estate agents. To do so, community housing organizations or government agencies craft standardized scripts for individual testers to follow in order to measure disparate treatment for legally protected categories. Testers conduct housing searches by following a script and record their treatment by property owners and brokers. Differential treatment of similarly situated individuals is then assessed for any possible violations of the law.

Integration maintenance programming sought to uphold Title VIII’s promise to affirmatively further fairness in the housing market by promoting integration. The programs pursued racially-conscious marketing campaigns and even some financial aid for homeowners who would contribute to a racially integrated community. Specific activities included broadening marketing campaigns for properties to include racially balanced audiences and even lower financing rates for homebuyers who would sustain racial integration. While the Realtors would attack these programs as
racial quota systems, the majority of integration maintenance programming sought racially conscious marketing campaigns, not quotas.\textsuperscript{66}

In addition to a handful of integration maintenance programs, a larger number of governmental and community groups responded to Title VIII ineffectiveness in the early and mid-1970s, growing pressure to address the law’s abysmal enforcement. As a result, key members of Congress drafted legislation to insure a more robust legal framework. Three bills in as many years came before Congress in the late 1970s. In inspecting this eventful but otherwise overlooked period of legislative activity, in the third and final section of this chapter, I investigate how the Realtors lobbied against strengthening the Fair Housing Act.

I. Fighting Fair Housing in Court

Perhaps the most influential way the Realtors undermined fair housing’s viability was through protracted and heavily financed legal campaign to challenge the Fair Housing Act’s efficacy. Realtors took up various methods to avoid legal liability for housing discrimination. According to a NAREB’s Board of Directors’ meeting minutes, the association’s legal counsel was “engaged in a massive program to coordinate legal research” to defend against housing discrimination lawsuits brought by the Department of Justice against local Realtor boards in 1973 (NAREB 1973a:13). NAREB was able to execute formidable legal battles over fair housing because their organizational power allowed them to quickly increase their financial

\textsuperscript{66} An important exception is the apartment building in the Starrett City housing complex in Brooklyn, New York City. See Lubasch (1988) and Keating (1994:226-228).
reserves. For instance, the Legal Action Committee petitioned the trade group’s Board of Directors repeatedly throughout the 1970s to increase member dues to furnish legal assessment costs. The Board granted a five dollar per member dues increase in 1972 (NAREB 1972:24). The increased dues assessment was again petitioned for and passed unanimously for the years 1973 and 1974 as well (NAREB 1972:19; NAREB 1973b:8). As a result of these organizational moves to increase available funding along with the precipitous increase in membership in 1974, NAR was able to generously support individual fair housing cases it deemed actionable. During the 1970s, the Realtors’ deep pockets to fight fair housing moved away from the ballot box, for fair housing was already on the books. Instead, the national Realtor organization—in conjunction with relevant local boards—used its financial backing to support legal defenses of real estate practitioners charged with violating Title VIII, calling their activities “a massive program” of defending Realtors against Justice Department lawsuits (NAR 1973a:13).

While the Justice Department was not excessively pursuing racial discrimination in housing in the early 1970s, it nevertheless did probe a handful of housing discrimination cases. One of the first of these cases—United States v. Bob Lawrence Realty, Inc.et al. (1971)—involved the Justice Department charging six Atlanta-area real estate agencies with blockbusting. Together, the six named proprietors directed over one hundred employees selling real estate in southeast Atlanta and DeKalb County. As a result of the pending charges, two defendants settled with Justice Department through consent decrees and one case was
dismissed.67 The other defendants had their case heard by the U.S. District Court, which ruled that repeated instances of blockbusting by a single realty company did not meet the standard of pattern or practice to prevent the full enjoyment of rights granted by Title VIII. The Fifth District Court of Appeals overruled the judgment and found that the agents were in violation of Title VIII and practicing illegal activity, including mailing over two hundred letters to residents in transitional neighborhoods describing to homeowners the “large number[s] of prospects on our waiting lists, many [of whom] would be interested in your particular home” (Lawrence 1971:7). In January 1972, NAREB’s Executive Committee met and heard the report of legal counsel on the Lawrence case. William North, the Realtors’ attorney reporting to the committee, suggested that it “would be a very good case to appeal” (NAREB 1972c:21). Noting interest from the Atlanta Board and their offer of additional aid and resources, the Executive Committee unanimously carried a motion to financially support the Lawrence appeal “not to exceed $2500” (NAREB 1972c:21). However, in the following year, NAR’s Legal Action Committee reported that although “individual brokers involved have done nothing illegal,” they were nevertheless found “guilty of violating the civil rights law” (NAREB 1973b:8). NAR consequently upped its contribution to the Lawrence legal defense to $6,600 (NAR 1973b:8). With the help of the Realtors’ financial contribution, the Lawrence defendants appealed—albeit unsuccessfully—all the way to the Supreme Court.

67 Consent decrees are court ordered settlements that require no admission of guilt but provide injunctive relief.
Federal charges against the Real Estate One, Inc. (REO) of Detroit, Michigan constituted another case the national Realtor association defended racist home-selling practices. The Justice Department filed suit against REO claiming that the company was violating Title VIII of the 1968 Civil Rights Act and Title VII of the 1964 Civil Rights Act. As Michigan's largest real estate company, REO maintained 27 sales offices across the state and employed four hundred salespeople and over one hundred and fifty staff members at the time of the U.S. District Court's ruling on the case. According to the Justice Department's findings, REO was steering black and white homebuyers via newspaper advertisements. The Justice Department also determined that while REO hired black salespersons, they segregated them into city offices, keeping black agents out of the largely white suburbs. Moreover, the government also found evidence of patterned practices of limiting listings to black salespeople and home sellers. For instance, in April 1972 REO’s general sales manager put his house up for sale. No “for sale” sign was installed and a listing flyer was produced with the slogan “Don’t tell, but show and sell” that was distributed to a handful of other REO suburban offices, absent the one and only REO office with black sales associates.

In May 1973, NAREB's Legal Action Committee requested funding from the organization's Executive Committee to support REO. The Realtors' Legal Action Committee appropriated five thousand dollars to aid REO's defense (NAREB 1973b:8). In addition, the Michigan State Realtor Association contributed another five thousand dollars to REO’s legal defense costs (NAREB 1973b:8). NAREB's executive committee further promised to match any other associations' contributions.
to REO's legal costs (NAREB 1973b:8). Later that year, the U.S. District Court granted the government’s request for injunctive relief, which required the REO to educate its sales people about discriminatory conduct and maintain demographic records on their sales practices. Characterizing the suit's charges and its implications for fair housing law, NAREB's legal counsel William North claimed that government regulators “specified not only that a broker must advertise, but also the specific newspaper in which advertising must be carried, specific amount of advertising, and, in general, specific properties to be advertised” (NAREB 1973b:8). Instead of acknowledging REO’s illegal practices and displaying any interest in ameliorating such systemic racial discrimination within its membership some five years after the passage of Title VIII, NAREB’s legal counsel denounced government deployment of fair housing standards.

Then in the late 1970s, NAR’s legal counsel lobbied on behalf of an Illinois Realtor office—the Gladstone Realtors—in a case of racial steering. The case was brought by six plaintiffs and the community of Bellwood, Illinois. The Village of Bellwood was concerned that real estate agents were steering white home buyers to other communities and conducted fair housing tests that confirmed their suspicions. The group filed a suit in Illinois district court. Two trial courts ruled that the plaintiffs and Bellwood had no standing to sue using indirect victims. The Bellwood plaintiffs appealed, and the 7th Circuit Court of Appeals ruled that the individual plaintiffs and the Village of Bellwood had legal standing based upon the intent of the Title VIII
(569 F.2d 1013). However, the 7th Circuit Court’s ruling conflicted with a ruling by the 9th Circuit Court on granting indirect victims legal standing.

The conflicting interpretations of the Fair Housing Act led to the Supreme Court taking up the case in 1978 (Gladstone Realtors v. Village of Bellwood). There, the National Association of Realtors filed an amicus brief in support of the Gladstone Realtors. NAR objected to testers’ ability to sue because they claimed that the testers suffered no direct harm. The group characterized the lower Court of Appeals’ decision to grant standing to the Bellwood testers as having created an instrument of legal harassment and oppression unprecedented in American jurisprudence. In its legitimate concern for the interests of the homeseeker, the Court has countenanced a concept of standing which cannot help but incite litigation, coerce unwarranted settlements, discourage legitimate business activity, and reward perjury (NAR 1978:4-5).

The Realtors’ amicus brief further contended that the Fair Housing Act dictated that injuries should be adjudicated through HUD and not the courts. On this point—and facing the possibility of legal recourse granted to a much broader public—the Realtors described broadened interpretation of Title VIII as an “essential evil of affording direct access to the courts to those who have suffered no direct injury is that it encourages the bringing of ill-founded or specious lawsuits” (NAR 1978:9). While the Court ultimately rejected the Realtors’ complaint and ruled that municipalities and communities have established legal standing “to protest the intentional segregation of their community,” NAR nonetheless occupied a powerful position in that it offered the only amicus curiae brief for the Gladstone Realtors. By arguing against broad and
inclusionary definitions of legal standing to sue under the Fair Housing Act, the Realtor organization sought to construct a highly limited actionable legal framework.

The fair housing movement continued to pursue housing testers as a method for realizing the Fair Housing Act. In response, the Realtors again attempted to limit the legal application of Title VIII by challenging various groups’ right to legal standing in fair housing cases. In an *amicus curiae* brief filed by the organization in regard to the *Havens Realty Corporation v. Coleman* (1981), NAR strenuously objected to the lower court's granting of legal standing to fair housing testers and their organizations under the Fair Housing Act. NAR’s objection to what it called “civil rights vigilantes” ability to sue real estate brokers and sales agents would result in the “sale or transfer of real estate in this country....will be conducted in an environment of fear, suspicion and exploitation” (NAR 1981a:2). NAR’s objection was supported by President Reagan’s Assistant Attorney General for Civil Rights William Bradford Reynolds, who also filed a Supreme Court brief in the *Havens* case opposing testers’ right to standing under the Fair Housing Act (Massey and Denton 1993:207).

NAR’s legal strategy sought to clarify if “testers *as* testers have standing to sue under the Fair Housing Act and Article III of the Constitution” (NAR 1981a:10). The group’s *amicus curiae* to the Supreme Court in the *Havens* case was based upon its rejection of the lower court’s ruling that fair housing testers as “surrogates” of discrimination have standing to sue under Article III of the Constitution. Calling the lower court’s ruling a “judicial fiat…utterly devoid of even a scintilla of precedential
support,” the Realtors’ legal counsel appealed to the Supreme Court to overturn the decision establishing a plaintiff’s right to standing (NAR 1981a:11).

In 1980, the case *Arquilla-DeHaan Realtors v. Village of Park Forest* was first heard in Illinois Circuit Court, which issued a summary judgment for the Arquilla-DeHaan Realtors. According to the court, municipal fair housing ordinances were improperly applied to real estate agents. The Village of Park Forest appealed and an appellate court reversed the ruling, finding that as long as municipal ordinances did not govern real estate licensing, they were applicable to real estate brokers and salesmen. The *Arquilla-DeHaan* case thus centered on Realtors’ interest in limiting government regulation and the applicability of municipal fair housing laws to its trade members. In November 1980, the Realtors’ Executive Committee approved financial support toward the Arquilla-DeHaan Realtors’ legal expenses. One of nine legal cases approved for support at the Realtors’ November meeting, the committee voted to contribute five thousand dollars (NAR 1980d:14). NAR’s contribution added to the five thousand that was also provided by the Illinois Association of Realtors (NAR 1980d:14).

NAR thus used financial and organizational resources to contest a robust and vigorous fair housing legal framework. Despite their objections that their trade members would be harmed financially by fair housing lawsuits, the Realtors’ internal records reveal an organizational apparatus that could absorb legislative costs by spreading them out over their growing membership and manipulating the trade organization’s dues year-by-year in order to grow their financial legal reserves.
Further, the Realtors’ extensive staff and resources to challenge fair housing court cases did not necessarily translate into narrow applications of the fair housing law; they did, however, result in delay of the law being fully realized. The financial contributions to help support claims as they made their way through court appeals meant that fair housing was put on hold while the Realtors attempted to limit its reach.

II. The Failed Fair Housing Amendments, 1977-1980

In addition to fair housing lawsuits and integration maintenance programming, the Realtors were also assiduously opposing stronger fair housing legislation during the late 1970s. Title VIII’s inadequate administration and enforcement was built into the original legislation without providing for a new agency to enforce the law like the Equal Employment Opportunity Commission (Lamb 1982). While the Justice Department could try those cases that demonstrated a “pattern of practice” in discriminating, and individuals could file suit in court, the Secretary of HUD was responsible for enforcing the law with only conciliatory powers. As a result, less than ten years after Title VIII passed, the law’s enforcement provisions were noted as having “no more than a superficial impact” on the country’s problems with housing inequality and ultimately “no comprehensive or coordinated Federal strategy to secure fair housing” (Spencer 1977:515; U.S. Commission on Civil Rights 1979:ii).

During the mid-1970s, community groups across the country were initiating programs to monitor the fair housing mandate. Community organizations took up the
mandate by commencing public education campaigns, executing programming to test the real estate industry’s compliance with the law, and lobbying Congress to strengthen existing regulations. Meanwhile, government officials were also overseeing how the country’s fair housing regulations would be cultivated. Government agencies habitually reported to Congress that HUD’s limited authority rendered fair housing enforcement inadequate, including the Government Accounting Office, the U.S. Commission on Civil Rights, and even HUD’s own leaders. Beginning as early as 1970, the U.S. Commission on Civil Rights reported that

Under Title VIII…enforcement is weak. In fact, enforcement is limited largely to resort to litigation, either by the person discriminated against or by the Department of Justice in the case of ‘pattern or practice’ lawsuits. In housing, where the need for relief frequently is urgent, the time involved in litigation, as well as the cost, make it relatively ineffective enforcement mechanism (U.S. Commission on Civil Rights 1970:435).

In 1973, the U.S. Commission on Civil Rights issued another report, “Understanding Fair Housing,” that charged that Title VIII’s directive to “affirmatively to further the purposes of [fair housing]” had been ignored (1973a). That same year, the Commission also identified that the real estate industry and its practices—including “steering, failure to admit sufficient black brokers to white real estate boards, control of listings, and reluctance of brokers to establish affirmative marketing procedures”—helped sustain racial segregation (U.S. Commission on Civil Rights 1973b:67). And in March 1976, the U.S. House of Representatives’ Subcommittee on Civil and Constitutional Rights held hearings on HUD’s ability to enforce fair housing. Former
HUD Secretary Robert C. Weaver testified before the committee that Title VIII needed revision:

I wish, therefore, to suggest that your subcommittee might find it appropriate and timely to initiate a thorough review of the provisions of title VIII as to their adequacy to achieve the goals enunciated by Congress in passage of this legislation. Such a review could pinpoint the line of demarcation between the optimum results that might be reasonably expected from efficient and conscientious administration of title VIII and those required results that are likely to be achieved only through remedial legislation (U.S. House 1976:8).

Still other stakeholders in the 1970s emphasized HUD’s inability to force compliance as a fatal flaw in the law. Glenda G. Sloane, representing the Center for National Policy Review, testified before the House subcommittee that HUD’s “[l]ack of enforcement authority is a serious and obvious handicap in securing compliance” (U.S. House 1976:553). The following year in 1977, Senator Charles Mathias (D-MD) was asked by HUD Secretary Patricia Roberts Harris to help strengthen the Fair Housing Act (Mathias and Morris 1999). Contributions like these spurred Congressional civil rights advocates to fortify the Fair Housing Act.

Civil Rights Amendment Act of 1977

The first of these pieces of legislation was H.R. 3504—the Civil Rights Amendments Act of 1977—introduced by California’s Congressman Don Edwards. The bill’s scope was expansive. It sought to expand fair housing enforcement through a variety of means including lengthening the statute of limitations for federal discrimination claims and broadening HUD’s capacities to include investigative and adjudicative powers. But the bill’s most controversial feature was that it gave cease
and desist power to HUD—a power no other executive agency held. Included in the bill to ameliorate HUD’s anemic governing authority, the cease and desist power meant to broaden HUD’s power well beyond its conciliatory function. H.R. 3504 would further grant HUD the power to investigate complaints, direct administrative proceedings, and direct cases to the Department of Justice.

When the Judiciary Committee’s Subcommittee on Civil and Constitutional Rights held hearings on H.R. 3504 the following year, the Realtors’ general counsel appeared with a lengthy prepared statement and provided additional testimony to the trade group’s extensive opposition to the bill. Once again, the Realtors sent their top attorney to testify before the congressional subcommittee.68 William North—accompanied by NAR director of consumer affairs Atilla Ilkson—testified on May 11, 1978. The Realtors’ opposition to H.R. 3504 was multifaceted. They opposed lengthening the statute of limitations, asserting that the proposed extension was unreasonable a propos standard real estate practices. Calculating it as a six-fold increase that would augment the legal statute of limitations from 180 days to three years, the Realtors declared that H.R. 3504’s recommended extension would create an undo hardship on their occupation. The trade group testified that such an extension would impair its trade members by “impos[ing] intolerable recordkeeping burdens on every broker and salesperson since without complete records there is little or no possibility of disproving a charge of discrimination” (U.S. House 1978:172-173). In

68 The five members of the Subcommittee on Civil and Constitutional Rights were Representatives Don Edwards (Chair), John F. Seiberling, Anthony C. Beilenson, Robert McClory, Robert F. Drinan, Harold L. Volkmer, and M. Caldwell Butler. Representatives Beilenson and McClory were not present for North’s testimony.
addition, the Realtors pointed to the short tenure of real estate employees and claimed that such business environments further complicate compliance. Citing high turnover rates, the Realtors offered industry-specific contexts to support their opposition to lengthening the potential timelines for fair housing claims. In sum, the Realtors’ lobby maintained that their trade would experience an unreasonable and even impossible burden to be held accountable for discrimination within the past three years. Not mincing words, the trade group described the potential expansion of federal fair housing statute of limitations to three years—only one year longer than what would eventually become federal law—as a “gross miscarriage of justice” (U.S. House 1978:173).

Another way the Realtors opposed expanding the statute of limitations for federal discrimination claims was by alleging that discrimination is a fully transparent process of social exclusion. North contested the need for extending legal statute of limitations in the following exchange with the government’s associate counsel, Roscoe B. Starek:

Mr. North: …people know when they have been the object of discrimination almost instantly.

Mr. Starek: That is interesting because yesterday we received testimony that said, it is very subtle and it takes a long time to realize that you have been discriminated against. That is not your experience?

Mr. North: That is not our experience. As a practical matter, you walk in, are shown houses and are either told a house is available or not available. If you discover that a house you were told was sold or off the market or sold to somebody else or you see a for-sale sign on that house or are offered the house by another broker you can fairly perceive discrimination…The discriminatory action occurs in a
steering case at a time that a minority person walks in and is left sitting out on the porch stoop while six white families walk in and get the full treatment (U.S. House 1978:210).

According to North, racial discrimination in housing is explicit and easily perceivable by its victims. Notably, his testimony demarcates two components of housing discrimination that the Realtors downplay and even deny elsewhere. First, despite his claims that discrimination is apparent “almost instantly,” North’s testimony illustrates how the passage of time is required to observe discrimination. In his example, North depicts a home buyer being told that a property isn’t available, but later learns it was made available to another buyer. In order for there to be discriminatory access to housing in North’s account, the home buyer has to see access to the property after his or her original inquiry. While the time after inquiring need not be excessively lengthy, it nonetheless is not instantaneous except under the most unusual circumstances. Perhaps that’s why North includes such an example—where “a minority person…is left sitting out on the porch stoop while six white families walk in and get the full treatment”—in order to reason that discrimination is readily apparent at the time of service and thus does not require extending legal statutes of limitation. North’s account of instantaneous discrimination, however, not only depicts behavior that would have been illegal for over a decade by this time, but as such it depicts a highly improbable scenario. By narrowly defining discrimination in this way, the Realtors are able to maintain that discrimination is explicit and so easily apparent that extending the statute of limitations only invites an unreasonable burden on Realtors.
The Realtors’ most robust contention was that legal action was premature. Calling it premature and counterproductive, North assailed the possibility of granting HUD the ability to investigate and prosecute fair housing violations. He described such expansion of governmental oversight and power as both substandard and detrimental: “It substitutes a bludgeon for persuasion. It sanctions coercion in lieu of voluntary action” (U.S. House 1978:172). North’s characterization contrasted any potential expansion of HUD’s legal authority with the Realtor organization’s voluntary programming, rendering the former as an invasive and aggressive means in comparison to the more reasonable and logical latter. Such a conceptual move was not overlooked by House members.

Congressman Robert F. Drinan (D-MA) inquired about the viability of the Realtors’ Affirmative Marketing Agreement program as effective against on-going housing market discrimination:

Mr. Drinan: You are assuming that all of that is working well?

Mr. North: We believe, Congressman, that it will work well if this Congress will provide the support which HUD needs to implement the program…There are to date only 103 community resources boards, and this was pivotal organization which was going to supervise and monitor the implementation of equal housing opportunity under these programs. Of the 103 HUD has only had the funds or resources available to cause 10 to be operational. We would hope that before this approach and this initiative, which was developed over 3 administrations and literally over 8 years of effort is abandoned by the election of an alternative approach, that it would be given a real try. It has not been given a real try. (U.S. House 1978:177).
The Realtors’ lobbying against expanding HUD’s legal authority emphasized already expended political efforts, pre-existing HUD programming, and insufficient monetary support for existing programs. By pointing to the unfulfilled potential of a pre-existing program as a viable alternative to H.R. 3504, North’s testimony pointed to the work the Realtors were doing in conjunction with HUD and reasoned that effort to improve equality in the housing market had not effectively used programming already in place.

In their testimony to Congress against the proposed bill H.R. 3504, the Realtors construed community-based integration maintenance programming as the most dangerous threat to fair housing:

This is the most serious problem confronting us, and it is the major barrier to the ultimate elimination of steering...A realtor will represent, particularly under our code of ethics, any person who desires to sell his home, regardless of race, creed, color, religion, or natural origin. He makes no distinction in terms of services. But the pressure to steer arises from the community (U.S. House 1978:180).

According to the Realtors, their organizational code of conduct directs fairness in the housing market, while community based integration maintenance plans result in unequal treatment and steering. The group further reasons that without addressing this threat to a free and open housing market, any proposed legislation would be futile:

The most serious defect in H.R. 3504 is that it ignores completely the most flagrant and powerful offenders of the fair housing laws—those cities, towns and neighborhood organizations which have established and are implementing quota systems (U.S. House 1978:173).

Just above, the National Association of Realtors—a group over seventy years old, composed of over six hundred and eighty-three thousand members, with over
seventeen hundred local Realtor boards across the country and maintained its own political action committee—describes fewer than a dozen community-based fair housing group’s integration maintenance programs as the “most powerful offenders of fair housing law.” Despite the trade group’s insistence, the most frequent offenders of fair housing laws at that point were real estate agents and landlords (Galster 1990a, 1990b; Mariano 1984:E11).

When the Congressional subcommittee inquired about the organization’s work to eliminate steering, North admitted:

We would be the last people to say steering does not go on but we feel that a major part of the steering is steering dictated by the conduct of local communities. This is where we are concerned. We feel that if you, the Congress, or HUD, or the Department of Justice…if you can relieve the real estate broker and the salespeople from the sanctions which the cities can and do impose, and if we, the broker and the salespeople, do not have to steer to achieve what the community views as its proper demographic profile, you will in large measure eliminate steering in this country (U.S. House 1978:208-209).

In the face of Congressional consideration of expanding fair housing regulation due to on-going inequalities in the residential housing market, the issue of responsibility for those problems had to be accounted for. The Realtor organization deftly pivoted from any implication that their tradespeople’s practices were culpable by assigning responsibility for steering onto community-based integration maintenance programs. Their legal counsel thus shifts the question over the practice of steering by providing the committee an alternate entity to blame. In contrast to addressing any on-going racial discrimination and steering within the Realtor trade, North remained resolute in
directing the committee’s attention to community integration maintenance programs as the origins of racial discrimination and steering:

Mr. Drinan: Do you agree there is a lot of voluntary steering going on?

Mr. North: The voluntary steering we have observed with most prominence has been that by the cities and towns.

Mr. Drinan: You do not believe on the part of Realtors there is a lot of steering going on?

Mr. North: I do not believe so. Let me say this. We believe there is a great deal of education to be done.

Mr. Drinan: Wait, let’s answer the question. You say there is little voluntary steering going on.. the part of realtors.

Mr. North: Yes, sir.

Mr. Drinan: Can you get somebody else to say that?

Mr. North: Yes, sir.

Mr. Drinan: Besides realtors?

Mr. North: Yes.

Mr. Drinan: All the evidence for 10 years has been contrary, by everybody involved, including testimony that we heard yesterday that voluntary steering occurs. Realtors, bankers, and city officials are all involved in a de facto conspiracy to segregate and resegregate.

Mr. North: And that testimony does not comport with our information, Congressman. We find that steering has been promoted by the cities and the communities (U.S. House 1978:177-178)

North steadfastly denies Realtors are the ultimate cause of steering problems, refutes previous Congressional testimony deposing Realtors participation in illegal steering, and, instead, accuses community-based housing groups of the propagation of illegal steering. Interspersed with his oral testimony, North submitted documentation of a
few community-based integration maintenance programs. These papers included correspondence from fair housing associations to local Realtors requesting compliance with their policies, maps showing neighborhood demographic distributions, and an example of an integration maintenance guidebook.⁶⁹ All told, North introduced nineteen pages of evidence into his 1978 Congressional testimony from community housing groups’ literature on their efforts to curb resegregation. The Realtors’ counsel offers to Congress as an alternative group to blame for housing inequality is extensive.

In the end—and despite a majority of Democrats on the House subcommittee and only two of the seven subcommittee members backed by extensive campaign financing from NAR’s political action committee—the political will to advance H. R. 3504 was absent.⁷⁰ Several reasons account for the bill’s failure. First, its scope was exceedingly broad. Second, the political will to improve civil rights was focused on the newly elected President Jimmy Carter (Rosenbaum 1977). However, by September 1977, news reports were already discussing two political developments that would further estrange the civil rights platform from amending the Fair Housing Act. One, civil rights advocates were emphasizing fair employment and urban development as a way to overcome discrimination (Wilkins 1977). And two, some black leaders were suggesting that “the President and his staff were out of touch with

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⁶⁹ Specifically, the South Suburban Housing Center’s integration maintenance guidebook “Integration maintenance for Integration Promotion and Maintenance—A Guide.”

⁷⁰ Representatives Edwards, Drinan, and Beilenson received no campaign contributions from 1978-1980 from the Realtors’ political action committee (RPAC). Representatives Seiberling and Butler received $100 and $250, respectively in 1980. Representative Volkmer had received $7825 between 1978-1980 from RPAC and Representative McClory had received $5250. All figures come from the Federal Election Committee.
the main currents of thought in the black community” (Wilkins 1977:35). This confluence of factors meant that there was little momentum to strengthen fair housing. And H.R. 3504 never made it out of committee.

**The Fair Housing Amendments Act of 1979**

By mid-1977, the U.S. General Accounting Office was circulating a draft of a report that would be officially released in early 1978. The report (‘‘Stronger Federal Enforcements Needed to Uphold Fair Housing’) cited federal housing agencies’ ineffectiveness in abating housing discrimination within the country’s residential housing market (Staats 1978). For instance, the report noted that, in a sample of 332 discrimination complaints to three regional HUD offices, only 36 complainants—fewer than eleven percent—gained housing or monetary compensation as result of HUD’s resolution efforts (Staats 1978). The report’s release sustained attention to the inadequacy of federal law and its dissemination across government agencies.

In 1979, the Senate was considering its own fair housing bill—S.506. The bill was introduced on March 1\textsuperscript{st} and by the end of the month, its hearings were underway before the Senate’s Subcommittee on the Constitution, chaired by Birch Bayh (D-IN). In his introductory remarks on the morning of March 21\textsuperscript{st}, Senator Bayh outlined the legislative need the bill sought to fulfill:

> The legislation my colleagues and I are now pursuing is to try to finish the job that was only started in 1968. We all know that the present act is not an instrument we can use to move toward justice...Rather, title VIII should be called the ‘civil-rights promises of 1968’—for promises is all that act now delivers...That was the promise that was made 11 years ago. It is a promise, I feel, that goes to the heart of the interlocking system of segregation, both formal and informal, that we have been trying to tear down for the last
25 years. The interlocking system of education, employment and housing has been used to enslave a people by keeping them uneducated, jobless, and poor, as well as separately and substandardly housed...The reason for this deplorable situation lies in the political realities of 11 years ago, when a compromise was forced on the proponents of the title VIII bill setting up the present enforcement procedure—the result of which was that the law could not be enforced (U.S. Senate 1979:1).

The Senator makes a compelling statement on the inadequacy of the present fair housing law and justifies the need for taking corrective measures. Such a vehement indictment of Title VIII’s inadequacy identifies how the “political realities” insured that residential segregation would be maintained and, by extension, upholding the sedimentation of racial inequality, or those historically durable tendencies of systemic inequality (Oliver and Shapiro 1995). The Realtors did not take kindly to Senator Bayh’s position on the bill. Eight months after his remarks and after his refusal to meet with Realtor lobbyists including Al Abrahams, the Indiana Board of Realtors political action committee was reporting that they were supporting Senator Bayh’s opponent in the 1980 Congressional race (Morris 1979:2).

The National Association of Realtors again sent their top legal counsel William North to testify against S. 506 on September 17, 1979. According to North, his delayed appearance—almost six months after the committee began the hearings—was due to negotiations with the HUD Secretary “in an effort to resolve certain concerns that we have perceived in this legislation” (U.S. Senate 1979:421-422). Prefacing his remarks to the Congressional Subcommittee on the Constitution by

71 That same month—November 1979—the national Realtor association’s PAC would also contribute to Senator Bayh’s opponent, giving that candidate a five thousand dollar endorsement. That candidate was James Danforth Quayle.
stating that the National Association of Realtors “has been for many years deeply concerned with assuring equal opportunity in housing,” North proceeded to outline the organization’s numerous objections to the bill (U.S. Senate 1979:422). Although his organization claimed that they “unequivocally endorse[d] the concept of prohibiting discrimination on account of handicap,” North testified that the bill’s definition was too broad and unsupportable in its present state (U.S. Senate 1979:422). 72 The Realtors’ attorney testified that by operationalizing disability based upon appearance (“being regarded as having such an impairment”) rendered the concept “a nondefinition which generates unlimited ambiguities and uncertainties and has the potential for generating a great deal of unnecessary costly and unwarranted litigation” (U.S. Senate 1979:422-423).

Once again, the Realtor representative objected to the law’s scope, challenging all but the narrowest of legal standing under fair housing law. North opposed the bill’s far-reaching definition of actionable parties to the proposed law, which stated that an aggrieved person constituted “any person who is adversely affected by a discriminatory housing practice that has occurred, is occurring, or is about to occur” (U.S. Senate 1979:7). The Realtors’ legal counsel responded with harsh language, which was cited repeatedly by newspaper accounts at the time covering the hearings:

> We believe that the extension of standing to sue—that is, injury—contemplated by the definition of aggrieved person is an indication for abuse and misuse of the law by people

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72 Senate Bill S.506 (1979:7) defined handicap to include those persons with “physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment.”
who are in essence self-appointed, self-selected, and self-elected vigilantes (U.S. Senate 1979:423).

While the Realtors’ statement’s use of adnomination (“self-appointed, self-selected, and self-vigilantes”) and incendiary language (“vigilantes”) made for a provocative journalistic response, newspaper accounts failed to cite North’s subsequent comments, which specified the injuries that such broadened definitions of standing would allow:

We have seen too many cases and the number is increasing significantly of people bringing suit for alleged violations of Title VIII not involving the loss of housing, not by people who have not been denied housing, in fact who have not even sought housing who then come in within a few weeks and suggest that there is a good basis for settlement of these disputes if we will only make a contribution to a specific organization, if we will advertise in a specific publication, if we will pay legal fees to the attorneys bringing this case, or if we will pay a settlement cost in an amount equal to the cost of defending ourselves...We feel that legislation which continues to provide an incentive for this type of legalized extortion does a disservice to the cause of civil rights and the cause of equal opportunity in housing (U.S. Senate 1979:423).

Just above, North renders broadened legal standing as suspect and incentivizing “legalized extortion.” By questioning the motivations of fair housing testers in such a way, North depicts a veritable shake down of Realtors. However, the group’s top attorney also inadvertently illustrates housing “disputes” that result in Realtors seeking ways to settle that seem to suggest Realtors continue to practice racial steering habitually enough for North to describe them as “too many cases” and a “number” that “is increasingly significantly.” Moreover, North’s comments further point to a common Realtor claim against civil rights laws—that they don’t protect the
groups they claim to and are only used by unscrupulous non-victims bent on fleecing honest real estate tradespeople.

The Realtors’ lobby, however, did more than just oppose federal legislation. As part of the group’s submitted statement, it included a retelling of the organization’s history on fair and inclusive housing:

The National Association of Realtors® was the first housing industry group to adopt and implement an Affirmative Marketing Agreement. The Agreement, designed for voluntary adoption by member boards and state associations of Realtors® on a national basis, and developed through three years of effort and cooperation with the Department of Housing and Urban Development and the Department of Justice, was jointly approved by HUD and the National Association in 1975 and obtained HUD’s approval for implementation in mid-1976.

But the agreement’s history predates that by many years. For more than sixty years the Realtor® Code of Ethics, to which every Realtor® and Realtor-Associate® is answerable, represents one of the most comprehensive commitments to affirmative action in support of civil rights developed by any industry or profession. Article 10 of that Code provides: “The Realtor® shall not deny equal professional services to any person for reasons of race, creed, sex or country of national origin. (U.S. Senate 1979: 432).

Just above, the Realtors’ statement implies that its code of ethics has supported civil rights for more than sixty years. Such a statement is a gross mischaracterization of the Realtors’ code of ethics, which has been widely cited for its role in perpetuating housing segregation (Gotham 2000; Helper 1969; Plotkin 1999; Weiss 2002). However, “Article 10 of NAR’s Code of Ethics” wasn’t adopted until November 1974, some six years after the passage of Title VIII. Prior to that, the last code of ethics was amended in November 1962:

The Realtor should not be instrumental in introducing into a neighborhood a character of property or use which will
clearly be detrimental to property values in that neighborhood (NAREB 1962:1).

The 1962 iteration replaced a 1950 code that strictly codified racial segregation:

A Realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood (NAREB 1928:2).

The above code was in place at NAREB for over two decades—from 1928 until it was amended in 1950. The Realtors equated the introduction of certain kinds of people into neighborhoods as harmful to property values and codifies its opposition to that practice in its code of ethics that lasted from 1928-1974, or forty-six years. Further, the organization had six opportunities to amend its code of ethics after the April 1968 passage of Title VIII and failed to do so. To describe the organization’s code of ethics as anything other than upholding racial segregation in spirit and practice until 1974 is a gross mischaracterization and to do so before Congress in order to promote the Realtor organization as a friend of fair and open housing is exceedingly dishonest. But it wouldn’t be the Realtors’ only attempt to rewrite the organization’s history on racial segregation in housing.

Progress in the House

Meanwhile, the House of Representatives was having better luck with its bill. H.R. 5200 was introduced by Don Edwards (D-CA) in early September 1979 and was quickly assigned to the House Committee on the Judiciary. That group met in late
October for a mark-up session, where Congressman Edwards emphasized the prolonged attempt to amend the Fair Housing Act:

This bill today has a long history beginning back in the 93rd Congress, nearly seven years ago, when the Subcommittee Chair held five days of hearings on housing discrimination. We continued this work in the 94th Congress. We had nine days of hearings. The Subcommittee continued its work in the 95th and 96th Congress, a total of 29 days of hearings to date (U.S. House 1979:9).

Congressman Edwards thus begins his appeal to his committee members by highlighting the protracted efforts of multiple sessions of Congress to amend federal law. As proposed, H.R. 5200 was robust, giving HUD power to initiate investigations, to hold hearings at the initiative of the department’s own administrative law judges, and to levy up to $10,000 in punitive fines. H.R. 5200 also provided some very restricted coverage to the disabled. The bill was immediately assigned to the House’s twenty-nine member Committee on the Judiciary on September 6, 1979. That committee met weekly in October, but the never made much progress, even failing to reach quorum on occasion. The bill languished in the committee that fall.

The following year, President Jimmy Carter’s administration attempted to gather broad support for an amendment to the Fair Housing Act by lobbying civil rights groups and petitioning undecided members of Congress. The result pulled the bill out of from the Judiciary Committee in April 1980. The National Association of Realtors moved assuredly against the legislation when it reappeared. Their opposition to H.R. 5200 focused upon the new conciliatory powers granted to HUD and the use
of administrative law judges to enforce the Fair Housing Act. In the organization’s report to its executive committee and board of directors in April 1980, the group reported on its lobbying efforts:

We activated our ‘Call to Action’ network to have members tell their Congressmen to support stronger enforcement powers for Fair Housing but oppose creation of the HUD ‘administrative law judge.’ We also asked local board counsel to contact local elected officials to stimulate letters to Congressmen from mayors opposed to HUD’s use of the ‘administrative law judge’…(NAR 1980:266).

The Realtors also used direct lobbying to its members by way of the organization’s magazine Real Estate Today. In the September edition, a half-page article contained an update on the status of the fair housing legislation and reiterated the organization’s position on administrative law judge system, quoting the chair of the Realtors legislative committee Harley W. Snyder: “Whether the administrative tribunals are in HUD, the Justice Department, or the White House, they still cannot provide the long-standing environment of fair play” (NAR 1980:79).

Local Realtor boards responded quickly, taking up NAR’s Call to Action. In Baton Rouge, Louisiana, the Sunday Advocate published the local Board of Realtors’ statement, outlining the Realtors’ political stance against H.R. 5200. In anticipation of Congress moving on the bill, other local Realtor board leaders were publicizing their opposition to H.R. 5200. In Marietta, Georgia, Tony Serkedakis, president of 21 Southeastern Realty, spoke to the press against the expansion of fair housing laws. Citing his recent return from “Washington D.C. for a legislative conference of

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73 Administrative law judges are independent adjudicators and can execute subpoenas, hold hearing, issue decisions, and order relief.
Realtors and congressmen,” Serkedakis claimed that H.R. 5200 would “encourage minorities to file discrimination complaints” (Schoppenhorst 1980:2A). Serkedakis’ comments illuminate the extent of the Realtors’ political lobby in organizing legislative conferences with the instructions for local Realtors to return home and publicize their opposition to fair housing in the press. An extensive political lobby is thus deployed in order to challenge legislation that would incentivize “minorities” to file discrimination complaints.

And in Arlington Heights, Illinois, Executive Vice President Donald W. Freels of the Northwest Suburban Board of Realtors also denounced the bill. Freels drafted a lengthy letter to the editor published in *The Daily Herald* in early June in response to that paper’s editorial in support of H.R. 5200 a few weeks prior. In his letter, Freels challenged the bill’s proposal for administrative law judges within HUD as “creat[ing] a powerful new bureaucracy within HUD that would virtually eliminate due process for defendants in fair housing complaints” (1980:8). Freels’ letter cites government expansion to deal with the ineffectiveness of HUD’s ability to enforce Title VIII as bureaucracy. Invoking the Realtors’ catch-phrase, Freels described the possibility of HUD-based administrative law judges as questionable: “If…H.R. 5200 [is] enacted, HUD would be…acting as prosecutor, judge and jury in those cases” (1980:8). Freels’ opposition questions HUD’s neutrality and openly speculates that any administrative law judge within the agency is suspect: “At best, the HUD tribunal

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74 Recall the Realtors’ written statement submitted to the House two years’ prior: “Finally, the National Association objects strenuously to the enforcement system contemplated…which constitutes HUD employees the investigators, prosecutors, and judges of complaints of alleged discrimination” (National Association of Realtors qtd in U.S. Congress 1978:173).
would provide a biased forum, which could result in a form of legalized extortion and prohibitive defense costs” (1980:8, my emphasis). If HUD’s “best” attempt would be biased, Freels insinuates that the agency is incapable of neutrality and fairness in pursuing fair housing.

The Realtors’ lobbying efforts against H.R. 5200 also entailed unprecedented congressional involvement. Representatives Ronald Mottl (D-OH) and John Wydler (R-NY) disseminated campaign letters written on congressional stationary that were paid for and “partly written by the 760,000-member National Association of Realtors” (Burke 1980:12-A; Cohodas 1980b:A9). The Realtors spent $941.60 for correspondence sent to over four thousand recipients across the country to criticize the bill’s legislative reach (Burke 1980:12-A). In response, five members of the Congressional Black Caucus requested that the House ethics committee investigate Mottl and Wydler’s actions. Mottl responded publicly, claiming that the move was meant to silence his opposition to the bill. Less than six months later, the National Association of Realtors’ political action committee (RPAC) would contribute fifteen hundred dollars to Mottl’s re-election campaign and another fifty-two hundred dollars the following year before he was beaten in a Democratic primary that ended his political career (Federal Election Commission 1980, 1981, 1982). This congressional scandal was relatively minor and garnered little public attention at the time, but it nonetheless constituted part of the Realtors’ extensive lobbying campaign.

In June 1980, the House finally accepted H.R. 5200 from the Judiciary committee. The National Association of Realtors’ influence was immediate. On the
very first day that the bill made its appearance on the House floor, Congressman William Moorhead (D-PA) announced his intention to support the Sensenbrenner-Volkmer amendment, which would eliminate H.R. 5200’s provision of HUD administrative law judges to hear fair housing complaints. Moorhead’s description of H.R. 5200 was strikingly similar to the Realtors’ characterization of the same enforcement provision: “Section 811 of H.R. 5200 essentially makes the Department of Housing and Urban Development the investigator, the prosecutor, and the judge in discrimination cases” (U.S. Congress 1980a:13967, my emphasis). Meanwhile, the Realtors’ political lobby was dispatched across the country to report on the fair housing bill. In Reading, Pennsylvania, William J. Strachan, a representative from the Pennsylvania Association of Realtors’ legislative committee appeared at the Greater Reading Board of Realtors’ monthly luncheon to report on the H.R. 5200. Strachan’s comments were published in the local newspaper the Reading Eagle, including the phrasing about Realtors rejecting the creation of “a HUD tribunal” (“Realtors’ Topic is Tax Shelters” 1980:31).

The legislative jockeying in the House seemed to be progressing well for H.R. 5200’s integrity. Fair housing opponents were unable to weaken it, though they tried repeatedly. Henry Hyde (R-IL) offered an amendment that would allow real estate appraisers to legally make race and religious demographic information relevant to the appraisal process. Hyde’s amendment lost 257-156. And an attempt against the proposed expansion of HUD’s enforcement mechanism to include the use of administrative law judges was taken up by Congressmen James Sensenbrenner (R-
and Harold Volkmer (D-MO). Their amendment also failed. Then on June 12, 1980, the House passed the bill.

In the interim, the Realtor public lobby continued in the editorial pages of local newspapers. In Greensboro, North Carolina, Margaret L. Harley, president of the Greensboro Board of Realtors, authored a letter to the editor of the *Greensboro Daily* to refute that paper’s editorial characterization of the Realtors’ lobby. Harley’s letter duplicated many of the Realtors’ bullet points against H.R. 5200. After carefully qualifying that Realtors only opposed the section of the bill that grants HUD new enforcement, Harley continues the theme of rendering HUD an impartial authority: “Realtors believe citizen-versus-citizen civil rights cases should be adjudicated by the judicial branch, not by the executive branch, and certainly not by HUD” (1980:A4, my emphasis). Harley’s phrasing suggests that HUD is a poor choice for fair housing claims to be heard. Once again, the Realtors’ lobby against expanding the Fair Housing Act questions the legitimacy and impartiality of HUD. The denigration of HUD—the agency in charge of implementing the mandate for fair housing—highlights the Realtor organization’s superficial support for fair housing.

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75 Sensenbrenner would receive five thousand dollars from the Realtors’ political action committee three months after the Sensenbrenner-Volkmer amendment was introduced to the House; Volkmer received three thousand dollars from the Realtors’ political action committee on the same day and another two thousand dollars the following month. To put these figures in perspective, the average financial contribution a House candidate received from the Realtors in 1980 was just under three thousand dollars. However, out of the 866 candidates running in House elections, only 396—or, less than half of all—candidates received political contributions from NAR.
Fair Housing Dies in the Senate

Meanwhile, the Senate’s own bill—S. 506—underwent some changes in committee. In response to the Realtors’ criticism that the bill defined “aggrieved person” too broadly, the Senate bill was amended in committee to limit those with legal standing to claim injury as those persons “whose bona fide attempt or bona fide offer to purchase, sell, lease or rent, or whose bona fide attempt to obtain financing for a dwelling has been denied, on the basis of race, color, religion, sex, handicap, or national origin” (U.S. Senate 1980a:18). The limiting of legal recourse to exclude testers, community groups, and community residents from filing housing discrimination claims was a powerful attempt by the Realtors to limit the scope of the Fair Housing Act’s viability. A number of amendments meant to weaken the bill’s enforcement provisions were offered, only some of which were defeated. The Senate Judiciary Committee rejected three amendments put forward by Senator Orrin Hatch (R-UT) that sought to allow Congress to veto HUD regulations under the Act, to require HUD to show intent to discriminate when challenging local zoning laws, and to require HUD to show that individuals or organizations intended to discriminate.76 However, the committee did adopt one of Hatch’s amendments that would allow real estate appraisals to include any relevant factor—including race and religious demographic data—to provide an estimate of fair market value of properties. The

76 Despite never receiving any financial contributions from the National Association of Realtors previously, Senator Hatch received $5,000 in political contributions less than a year after his proposed amendments to S. 506. The following year, he received an additional $5,000 from the Realtors to total $10,000 from the group toward his successful 1982 campaign. Of the seventy-one senatorial candidates to receive money from the Realtor PAC, the average amount was $3,410 for the 1981-1982 cycle. In addition, Senator Hatch was only one of five other Senators to amass $10,000 from the Realtors in 1981-1982.
Judiciary committee finished its work and sent the bill to the full Senate, which accepted the bill to the Senate calendar in late November.

Further lobbying efforts by the Realtors appear in the organization’s internal documents. A report by the group’s executive vice president noted that NAR’s leadership—including the organization’s president, first vice president and top legal staff—were “communicating in person and by phone with the Association’s state and regional leadership for key Senate lobbying” (NAR 1980:62). It also stated that while the Senate bill was under consideration by the Judiciary committee, Senator Dennis DeConcini (D-AZ) sought to eliminate HUD’s administrative law judges and in their place offered federal magistrates. It was rejected. NAR’s report detailed that Senator DeConcini’s amendment was rejected in committee but that he would proffer the amendment again once the Senate bill reached the floor.77 In addition to the NAR report, there is evidence that Realtors were encouraged to lobby their members of Congress. Senator John Heinz’s (R-PA) archive contains a response from the Senator addressed to Richard R. DeTurck, President of the Greater Reading Board of Realtors regarding S. 506. In it, Senator Heinz thanks DeTurck for his letter and opinion and addresses the Realtor’s substantive concern about the bill: “I am sympathetic to the argument that the administrative law judge system contained in the Senate Judiciary Committee bill might violate or appear to violate the rights of the accused. I trust that this issue will be resolved satisfactorily” (Heinz 1980a:NP). Senator Heinz’s response to his Realtor constituent was one of 147 letters he received regarding the bill which

77 Senator DeConcini was also the recipient of NAR political contributions, receiving $8750 for his next campaign.
specifically opposed the administrative law judge system (Heinz 1980b:12). By contrast, the senator received only 6 letters in favor of the administrative law judge system and 74 total letters either supporting or rejecting S. 506 (Heinz 1980b:12). Thus, while the identity of the authors of the 147 letters can’t be confirmed, there is a high likelihood that they were written by Realtors due to their disproportionate number and targeted opposition to administrative law judge.

Once the bill was taken up on the Senate floor, both sides were attempting a compromise behind the scenes—at first. Senator Orrin Hatch (R-UT) and allies wanted changes allowing all defendants a right to a jury trial and to stipulating that discriminatory intent must be proven (Averill and Houston 1980:B16). His demands were not take up by the Senate, but a compromise led to an amendment directing federal magistrates to oversee housing discrimination claims, instead of HUD (Averill and Houston 1980). However, Senator Hatch would disagree with Senator Edward Kennedy (D-MA) over wanting to amend the bill to require HUD to demonstrate that fair housing violations were intending to discriminate. Even when Senator Kennedy offered to include language that allowed discrimination in the course of justifiable business or government reasons, Senator Hatch was not persuaded and remained steadfast in demanding only intentional discrimination be codified. While Hatch’s amendment was overruled in subcommittee by one vote, there was concern that he would propose it again before the full committee in the Senate (Mathias 1979). Senator Kennedy commented on the overwhelming Realtors’ lobby: “I don’t think I’ve ever seen such an intense lobbying effort. There’s a [real estate] broker on every
corner” (*Congressional Quarterly* 1980:1614). In addition to this impasse, there was more disagreement over when and where administrative law judges would operate and when they would be bypassed for jury trials in district court. As the compromise route quickly disappeared, supporters of the bill attempted to put the bill to vote while opponents—including Senators Hatch and Jesse Helms (R-NC)—filibusted. After a number of failed attempts to invoke cloture, on December 10th, supporters tried again and lost by six votes. After that vote, Majority Leader Robert C. Byrd (D-WV) removed the bill from the Senate calendar, killing it, in order to move on to other items (Averill and Houston 1980).79

Three months after the Realtor organization successfully helped to defeat the 1979 Fair Housing Amendments Acts, NAR President Jack Carlson announced: “We want to get on with the business of fair housing enforcement and we look forward to joining in the search for solutions which will bring equal opportunity to all” (United Press International 1981:NP). Coming so soon after the Realtors’ legal challenge to make the Fair Housing Act as ineffectual as possible, Carlson’s claim casts doubt on the Realtor organization’s sincerity and dedication to the fair housing mandate. However, his comments align with the association’s agenda of presenting itself to the American public as a pro-fair housing organization.

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78 Senator Helms was a previous recipient of RPAC money prior to his 1978 campaign, where he took in $9,000 from the Realtors. He received an additional $10,000 from the Realtors, but not until the 1983-1984 cycle that preceded his 1984 re-election campaign.

79 Senator Robert Byrd had never received financial support from the Realtors before. However, he would go on to amass $9,669 for the 1981-1982 term—almost three times the average amount RPAC provided to senatorial candidates that term.
III. Integration Maintenance

The national mandate for fair housing did more than outlaw discrimination; Title VIII of the 1968 Fair Housing Act directed the Secretary of HUD to administer housing and urban development programs to affirmatively further fair housing law. This directive was taken up by pro-fair housing groups, many of which began to accelerate desegregating communities in the 1970s. Community and civil rights groups across the country were deploying their own efforts toward ameliorating discrimination and segregation in residential housing, working under the instruction to implement policies that affirmatively furthered racial integration.

Sometimes called “integration maintenance”—or “affirmative integration” or “benign steering”—these programs sought to prevent resegregation by affirmatively marketing properties with targeted, race-conscious sales strategies to increase the potential home buying market depending on neighborhood demographics.80 In the 1970s, only two towns in Cuyahoga County, Ohio had operable integration maintenance programs (Galster 1990c). Shaker Heights and Cleveland Heights’ programs included disseminating information celebrating integration, enforcing fair housing laws, providing subsidies for home maintenance to uphold strict housing codes, and marketing housing vacancies with a focus on integration (Galster 1990c:351-352). Over a decade later, fair housing researcher George Galster (1990c)...

80 The terminology of these programs was highly inconsistent. Sometimes called integration maintenance and affirmative marketing by fair housing proponents, the Realtors largely used the phrase ‘integration maintenance,’ which I retain here.
found that, from 1970-1980, these two Ohio communities had higher than expected integration levels, which he attributed to the integration maintenance programming.

The executive director of the South Suburban Housing Center—a fair housing organization working in the southern suburbs of Chicago—described the relevance of integration maintenance programming as ultimately a question of whether “long-term racial diversity is going to exist or [whether] we will have patterns of resegregation” (Mariano 1984:E12). The town of Park Forest, Illinois in conjunction with the South Suburban Housing Center promoted their program as “integration maintenance” and identified their goal as “taking an active hand to prevent…resegregation” (Kelly 1985:H58). The vast majority of integration maintenance programs did not deny housing, but instead attempted to guide and influence housing choices.81 For example, according to the director of the Beverly Area Planning Association in Illinois, the group attended to broader trends of demographic shifts as they occurred within a neighborhood level. Housing groups that practiced integration maintenance described systems of cooperative real estate brokers who would market properties to underrepresented groups based upon existing neighborhood demographics (Witt 1985).

An important component of NAR’s on-going lobbying efforts during the late 1970s and up until even the early 1990s consisted of opposing the efforts of

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81 One integration maintenance program that did restrict black access to housing was the case United States v. Starett City Associates (1988), wherein the Court of Appeals ruled that Starett City’s integration maintenance policy violated the Fair Housing Act. In that case, the New York apartment building owners held apartments unoccupied despite having waiting lists of black residents. The Starett City case is an example of “introduce[ing] constraints upon members of protected classes in the absence of any discriminatory act” (Goetz 2015:825).
integration maintenance programs. The National Association of REALTORS® identified fewer than a dozen programs in operation by the late 1970s, with the majority in New York, California, and Illinois. Despite these programs’ relative rarity, NAR spent an inordinate amount of energy and a number of resources to combat them. Because the programs acknowledged that integrated communities were desirable, sought to maintain demographic heterogeneity, and purposefully executed race-conscious policies, the Realtor organization attacked them as “quota systems” (Millenson 1980:B1). NAR representatives frequently invoked pejorative terms such as “quotas” and “steering” in their public statements to describe integration maintenance programming. For instance, NAR attorney William North claimed that integration maintenance programs sought social control: “They will decide what the quota is and when you can move in and out” (Millenson 1980:B1). Like the Realtors’ 1960s campaign against forced housing, the threat of a communist-inspired quota system remerges.

And a few years later, while speaking to reporters, North feigned ignorance about what practices were legal under the law:

We thought we knew what fair housing was…We thought it meant equal opportunity in housing without regard to race. We didn’t know there was ‘good steering’ and ‘bad steering’ [or] that there was some optimal racial mix to be aspired to in a neighborhood (Witt 1985:D1).

North’s comments purport color-blindness as the only acceptable interpretation of the Fair Housing Act’s legal implication. The Realtors’ attorney consigns Title VIII’s goal to affirmatively further fair housing altogether by labeling integration
maintenance as quotas and steering. Equating affirmative marketing of properties via integration maintenance as “good steering,” the Realtors’ legal representative implies that such efforts are comparable to so-called “bad steering” (in that any acknowledgement of race is racist). Such reductive understandings of racial discrimination are constitutive of color-blind ideologies. By calling integration maintenance practices “steering,” the Realtors contribute to understanding racial discrimination in the housing market as any race-conscious policy.

NAR leadership publicly campaigned against community-based integration maintenance programs. In October 1983, NAR President Harley W. Snyder responded to a Chicago Tribune editorial in a letter to the editor:

We are puzzled by the Tribune’s suggestion…that real estate brokers ‘seek common ground’ with local municipalities that are attempting through so-called integration maintenance programs, to limit the movement of minority groups into their communities…But this federal mandate of free choice is in direct conflict with the choice restrictions that many municipalities seek to impose under the guise of ‘integration maintenance’ (Snyder 1983:8).

Snyder’s letter proposes that integration maintenance programs limit housing choices for people of color, are in conflict with the spirit of fair housing law, and thus, prevent Realtors from interest in seeking common ground with the community groups that promote them. Once again, Realtor leadership attempts to speak on behalf of people of color’s housing interests. The Realtors’ characterization of integration maintenance programs, however, wouldn’t go unchallenged. The following month at NAR’s annual convention, HUD Secretary Samuel Pierce spoke before the trade group on the issue of community-based integration maintenance programs (Simpson
1984). Contrary to the Realtors’ concerns over quotas, Pierce affirmed that HUD officials found no illegal practices among the programs it studied in the early 1980s.

NAR pressed government officials for clarification on integration maintenance. In 1981, NAR President John R. Wood wrote to President Ronald Reagan asking for clarification on the administration’s fair housing plan:

> Since its enactment in 1968, the goal of the fair housing law has been confused…In the name of fair housing agencies of government or agencies supported by government are promoting programs of ‘integration maintenance,’ ‘benign steering,’ and ‘community quotas,’ which deny individual housing choice and opportunity… (“Realtors Ask Goals Be Clarified” 1981:1B).

Just above, the Realtors’ president finds fault with the national mandate, suggesting that the “government”-sponsored materialization of fair housing programming has led to fewer housing opportunities.

Then, in late 1984, the National Association of REALTORS® pursued HUD to define the practice of integration maintenance. NAR’s legal counsel William D. Butters requested a formalized position on the issue by HUD: “We need to know if the law requires color-blind marketing or if the marketing of houses should be based on percentages or quotas set by local communities” (Mariano and Swallow 1984:A17). HUD responded to the Realtors’ charges with their own questions for the group. HUD general counsel John J. Knapp asserted, “I ha[d] a lot of trouble getting [the Realtors] to define what they are talking about” (Mariano and Swallow 1984:A17).
Although the Realtors’ opposition to community-based integration maintenance plans was comprehensive, it was not unanimous. An article in *The Washington Post* described conflicting positions between the national association and the Illinois state board of Realtors. Realtor legal counsel William North corresponded with Robert Cook, Executive Vice President of the Illinois Association of Realtors, and warned that engaging with fair housing groups who promoted integration could result in cessation of insurance coverage and even charter revocation (DeMuth 1984:E1). But the national association didn’t remain firm in its threats. A little over a month later, North speculated that while charter revocation was highly improbable, loss of the state board’s errors and omissions insurance coverage was much more likely (DuMuth 1984:E1). While no state board ever lost their coverage, NAR nevertheless pursued organizational and legal redress against those who took up the practice of integration maintenance.

**Integration Maintenance Goes to Court**

The Realtors took their most formidable step against community groups’ integration maintenance programs when they filed suit against the South Suburban Housing Center in district court in 1985. The South Suburban Housing Center was founded in 1976 and worked to end housing discrimination by executing fair housing testing and promoting integration in many southern Chicago suburbs. Park Forest’s integration maintenance policy included “the use of educational and service programs to encourage the continuation of integration in the community” (Kerch 1983:A3). According to the town’s village manager, the program enjoyed broad support among
its residents. At the time, the Center was working against the larger repercussions of an economy that was still overwhelmed by recession (Miller et al. 1983:3). In what was cited as the worst domestic recession since World War II at the time, domestic unemployment rates advanced to 9.7 percent by 1983 (Bureau of Labor Statistics 2015). The state of Illinois’ unemployment rate hit its own historical record high in February of 1983, reaching a staggering 13.1 percent (Bureau of Labor Statistics 2015). High interest rates also prevailed. Although rates were falling from their 1983 high, they were still in double digit territory, averaging over 13 percent that year (FreddieMac 2015). Just a year prior, rates peaked at over 17 percent in some months, leaving average rates at over 16 percent in both 1981 and 1982. Additionally, mortgage delinquencies and foreclosure rates doubled. These bleak economic indicators provide some of the context that drove the South Suburban Housing Center’s programming. Attempting to prevent blight and maintain stability in the area, Park Forest bought the abandoned homes and then sold them to the Center. Financed by private monies, municipal contributions, and community block grants, in early 1983 the Center purchased three properties at 9, 15, and 26 Apache Street in Park Forest, Illinois (Kerch 1983).

Social pressure and racial anxiety also influenced the emergence of the integration maintenance plan for the Center’s work on the Apache Street properties. According to later court documents, town officials were receiving complaints from residents that their area was being perceived as “a black block” (South Suburban Housing Center v. Greater South Suburban Board of Realtors and NAR 1991:12).
Although Park Forest officials believed residents to be mistaken, they nonetheless pursued an integration maintenance agreement to assuage residents’ concerns. Town president Ronald Bean recognized the disparity between reality and perception and its racial implication: “[W]hether the neighborhood was or was not a predominantly minority neighborhood was not as important as what the people in the area believed it to be.” Bean further acknowledged that after meeting with the Center, he felt that it was in the town’s best interest to “try to increase white traffic” through the area.

In April 1983, the Center signed a listing agreement with William Motluck, Jr. of Century 21, Host Realty as the sales agent for the Apache Street properties (South Suburban Housing Center v. Greater South Suburban Board of Realtors and NAR (1991)). The parties also agreed to an integration maintenance plan that included participating in outreach marketing to white home seekers. Per the agreement, Motluck would maintain a register of racial data on persons inquiring about the properties, being shown the properties, and applying to purchase the properties. But the agreement explicitly stated that the listing agency “shall not take any action which prohibits, restricts, narrows, or limits the housing choice of any client on the basis of race” (1986 WL 1419 (N.D.Ill):1). Motluck submitted two Apache street listings to the MLS in April and a third in June.

The Realtor at the center of these events—Bill Motluck—recalled the South Suburban Housing Center as a group despised by local Realtors. “You know what they used to do? They used to send in testers into Realtors…It was a crazy time,
everyone was afraid of the Center.”\textsuperscript{82} According to him, local real estate agents still steered the racially segregated area and he speculated that the odds of the Apache Street listings would be bought by whites was about “ninety-nine to one.”\textsuperscript{83} Motluck accounted for signing on with the Apache properties and the Center as a result of being “stupid or a rebel, probably a little bit of both.”\textsuperscript{84} Outlining the requirements to market the property, Motluck emphasized them as fundamentally minor and just dedicated outreach: “What the Center wanted to was…they weren’t going to discriminate, but they wanted a special outreach to what white people would look at.”\textsuperscript{85} So in addition to listing the property in the local publication that would be primarily seen by a black readership, Motluck recalled that they also published the listing in \textit{The Chicago Tribune} hoping to give the properties broader demographic exposure. And according to later court documents, the Center’s integration maintenance plan required Motluck to distribute fliers to rental agencies and large employers where whites worked and lived.

Realtors took varying stands on Motluck’s integration maintenance plan with the Center. In early May, Robert Turpin, the Executive Vice President of the South Suburban Board of Realtors, wrote to Motluck informing him of potential organizational violations. Specifically, the local board charged Motluck with violating its code of ethics, claiming that he was not providing clients with equal service (Kerch 1983). However, court documents note that their specific complaint

\textsuperscript{82} William Motluck, personal communication, March 13, 2015.
\textsuperscript{83} Ibid.
\textsuperscript{84} Ibid.
\textsuperscript{85} Ibid.
was that Motluck was conducting “special outreach…to whites” (935 F.2d 868 1991:Footnote 21). Other sources support this fact. NAR legal counsel Bob Butters reported to the press that his discovery process identified documentation “indicating the housing center in league with the municipalities engaged in an elaborate program designed quite clearly to limit the influx of minorities into these areas” (Kerch 1984:A4).

Turpin’s letter further claimed that Motluck’s signatory status with Center conflicted with his status as a NAR/HUD Affirmative Marketing Agreement signatory. Motluck answered Turpin with his own request for the legal basis for rescinding the agreement. An answer came instead from NAR’s legal counsel Stuart Z. Lindenberg who informed Motluck that NAR considered the Center’s integration maintenance plan as racial steering and in violation of federal law. In late June, the NAR’s Equal Opportunity Committee (EOC) filed an ethics complaint against Motluck. They charged that the integration maintenance plan—by providing special outreach based on race—violated Article 10 of NAR’s Code of Ethics. Their complaint procedure did not include notifying Motluck but its ruling would have a significant impact on his Apache Street listings. On June 24, 1983 the EOC found Motluck’s listings in violation of the organization’s code, which prompted Turpin to remove the listings from the Realtor-proprietary MLS database. NAR sent notice to Motluck that the listings would not be reinstated until he signed an indemnification

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86 At this time, the Realtors Code of Ethics’ Article 10 read: “The REALTOR® shall not deny equal professional services to any person for reasons of race, creed, sex, or country of national origin. The REALTOR® shall not be party to any plan or agreement to discriminate against a person or persons on the basis of race, creed, sex, or country of national origin” (National Association of Realtors 1981).
agreement in the event of litigation over the Center’s integration maintenance procedures. Motluck refused.

However, the Illinois Association of Realtors’ professional standards committee met later that fall to address NAR’s complaint against Motluck. The panel voted unanimously in his favor. The following day, Motluck resubmitted the two remaining Apache street listings to the MLS, but the South Suburban Board of Realtors refused them absent a signed indemnification agreement. As a result, the South Suburban Housing Center filed suit against the South Suburban Board of Realtors for violating Title VIII on November 14, 1983. In response, the South Suburban Board of Realtors along with NAR filed a countersuit against the Center, claiming its integration maintenance program violated the Equal Protection Clause of the U.S. Constitution and was therefore unconstitutional.

The United States’ District Court of Illinois dismissed the South Suburban Housing Center’s counter charges in 1988. The court ruled that, because the Board of Realtors had reason to believe that the listings could create a legal liability, removing the listing was not based on racial prejudice. And despite the fact that the court ultimately ruled that the Housing Center’s integration maintenance agreement was legal, it did so with the acknowledgement that “there was insufficient evidence to establish that defendants’ concerns over illegality were a pretense for discrimination” (713 F.Supp.1068:1079).

Further—and in an interesting comeuppance to the Realtors considering their legal pursuits against fair housing testers—the District Court also held that Greater
South Suburban Board of Realtors and the National Association of Realtors lacked standing. Because the Realtors could not identify home buyers whose equal protection rights were harmed, the District Court ruled that the Realtors lacked standing to make an equal protection claim. The Realtors appealed the District Court’s decision to the 7th Circuit Court of Appeals. But in 1991 that court stayed the lower court’s ruling. Not to be deterred, NAR requested a rehearing from the Court of Appeals but was denied on September 5, 1991. The Realtors then petitioned for a *writ of certiorari* to have their appeal heard by the U.S. Supreme Court. On January 27, 1992, the U.S. Supreme Court denied the Realtors’ petition, staying the ruling that the South Suburban Housing Center’s integration maintenance program did not violate the Fair Housing Act or the Equal Protection clause.

In the end, despite his affiliation with the Center and affirmative marketing of the Apache Street properties that set off what would become a ten-year battle going all the way to the Supreme Court, Motluck would eventually advance to a position on the South Suburban Board of Realtors’ Board of Directors. Such an event highlights the difference between the national association’s dogged fixation on blaming integration maintenance for housing discrimination and the detachment to the issue by local Realtor boards. Motluck’s ascent also points to the Realtors’ true adversary: integration maintenance as a community-based fair housing policy. As the case of the South Suburban Housing Center illustrates, integration maintenance programs preoccupied the Realtor organization for more than a decade. *Washington Post* columnist Ann Mariano identified the essential issue at stake: “At the center of many
disputes over quotas and integration maintenance plans is the question of whether federal law requires measures to achieve integration or merely prohibits discrimination” (1984b:E12). The underlying opposition to integration maintenance was thus laid bare: NAR rejected community groups pursuing racial integration under the larger political umbrella of a fair housing mandate. By challenging the legality of integration maintenance in this way, the Realtors attempted to further narrow the efficacy of the Fair Housing Act.
Chapter Seven

The Fair Housing Initiatives Program (FHIP)

By the late-1970s, the Department of Housing and Urban Development was taking on a more aggressive programming approach to monitoring housing discrimination. Informed by the growing work of community groups, HUD began to take affirmative steps in addressing the intractability of discrimination in the nation’s housing market. One key background study was the National Committee Against Discrimination in Housing’s 1979 report. HUD leadership cited its findings—including that forty-eight percent of blacks encountered discrimination in home sales and seventy-two percent of blacks encountered discrimination in renting property—as evidence of the sustained problems with racial discrimination in the nation’s residential housing market (U.S. Senate 1986:7). HUD also moved forward with its own research on the issue, compiling a report on fair housing enforcement in 1983 (HUD 1983). Citing testing as “one of the most important tools in the battle against discrimination in housing,” HUD joined with the National Committee Against Discrimination in Housing to execute the Fair Housing Enforcement Demonstration Project, a two year experiment to measure the effectiveness of HUD joining with local fair housing groups (HUD 1983:Foreward). The results of that demonstration were published in a HUD report, wherein the National Committee Against Discrimination in Housing noted that, with the additional resources (working with
HUD and $20,000 per year), fifty percent more complaints forwarded to HUD, with more complaints resolved more quickly (HUD 1983:2). So in 1984, as a result of HUD’s report, over two dozen fair housing organizations adopted a resolution appealing to HUD Secretary Pierce to provision public monies to public and private organizations seeking to eliminate housing discrimination (Temkin et al. 2011).

The efforts of fair housing and community organizations to raise the issue of on-going housing discrimination coincided with a growing relationship between HUD and the National Association of Realtors. After the two organizations brokered the Affirmative Marketing Agreement in the mid-1970s, they slowly became less adversarial. HUD hired Realtors and ex-NAR staff in key positions in the early 1980s. President Reagan named Robert W. Karpe to a position in Ginny Mae, an arm of HUD. Karpe had previously been president of the California Association of Realtors in the late 1960s and director of the National Association of Realtors twice. And in 1982, Joy E. Moore was appointed as the Deputy Assistant Secretary for Legislation, coming immediately to that HUD office from her role as NAR’s director of Government Assisted Housing and Community Development (U.S. Department of Housing and Urban Development 1982). Moore’s duties in her new position in HUD’s legislative staff would include designing and developing the agency’s legislative program and instructing legislative staff (U.S. Department of Housing and Urban Development 1982).
Perhaps the most infamous HUD staffer was Donald Hovde, a Realtor from Wisconsin and former NAR president, who became the Under Secretary of the Department under Secretary Pierce (U.S. Department of Housing and Urban Development 1981). As a high level staff member, Hovde oversaw the daily operations of HUD and functioned as Acting Secretary in Secretary Pierce’s absence. Hovde’s activities for HUD frequently involved Realtor organizations. Over the course of 1982, Undersecretary Hovde spoke before nineteen Realtor groups (Kurtz 1983:A9). According to sources at the time, Hovde encouraged close relationships between HUD staffers and housing industry groups. For instance, he sent a memo backing HUD senior officials to accept free travel from trade groups due to “[c]urrent fiscal realities [that] make it appropriate…such offers be not only accepted but encouraged” (Kurtz 1983:A9). The only limitations Hovde acknowledged was that “public impression” may see the accepted offers as letting the paying groups “influence the department’s official actions or to obtain preferential treatment” (Kurtz 1983:A9). His trips included a sponsored attendance at a Pennsylvania Realtors Association convention and free lodging from the Colorado Association of Realtors (Kurtz 1983:A9). In addition, Hovde’s two-day trip to Puerto Rico that was paid for by the Pennsylvania Realtors Association, resulted in an investigation by White House legal staff after publicity in prominent newspapers like The Washington Post (“Reagan Staff Probes HUD Aide’s Junkets” 1983:4). While nothing came of the minor scandal—Hovde would be promoted out of HUD within the year, it
nonetheless illustrates the connections between top HUD staff and Realtor groups in the early 1980s.

Despite the increasing Realtor presence at HUD, the National Association of Realtors still remained unsupportive of HUD’s efforts to expand fair housing testing in the early 1980s. When HUD hosted a two-day forum in December 1984 to develop and promote uniform testing evidence and programming, over two hundred participants attended the meeting, including representatives from numerous government agencies and fair housing staffers and attorneys. HUD also invited the National Association of Realtors to send representatives; however, the trade group declined the invitation (“Fair Housing Initiatives Program” 1985:1). The conference sought to encourage the use of testing, promote objective and reliable standards in testing, and provide fair housing experts to discuss and exchange ideas (Heintz 1985). Upon the conference’s conclusion, the participants and report cited an emphasis on the value of systematic testing. The Realtors’ disinterest in participating with government agencies over fair housing testing stands in sharp contrast to the political lobbying the group would take on over the issue shortly thereafter.

Within this context—of housing agencies and community groups acknowledging the need for more discrimination testing—HUD proposed the Fair Housing Initiatives Program (FHIP). The enterprise provided direct financial aid to private fair housing groups to execute anti-housing discrimination programming. First proposed in 1985, with the purpose of incorporating such monies into the 1986
budget, FHIP would require Congressional approval. The provision was introduced to Congress in mid-March 1985 by Senator Jake Garn (R-UT) as part of S. 667. The proposed FHIP called for a pilot two-year program, granting ten million dollars across three policy areas: administrative enforcement ($3 million), educational outreach ($3 million), and private enforcement ($4 million).

I. The 1985 Congressional Hearings on FHIP and Their Aftermath

A week later, the Senate’s Subcommittee on Housing and Urban Affairs held three days of hearings on the omnibus Housing, Community Development, and Mass Transportation Authorizations for the 1986 federal budget, including S. 667, which contained the FHIP proposal. The programming proposal was one of HUD Secretary Pierce’s top priorities in his presentation to the Senate subcommittee. Secretary Pierce told the subcommittee that housing discrimination continued unabated, despite the Fair Housing Act and was perpetuated by “sophisticated and subtle” practices (U.S. Senate 1985:733). Calling the program an important need for the nation’s housing market and supported by both HUD and President Reagan, Secretary Pierce stated that “the President and I have long recognized that we need to strengthen the enforcement provisions of our fair housing law” (U.S. Senate 1985:734).

On March 25, 1985, the Realtors’ executive vice president, Jack Carlson, also testified in front of the subcommittee. Before specifically confronting the issue of FHIP, Carlson discussed the broader economic climate, emphasizing the country’s problem with deficit reduction, inflation, and a sluggish housing market. His
description of the economic environment transitioned into an argument that the
government should reduce its overall budget by two percent and cut government
spending in the areas of housing assistance by a whopping twenty percent in order to
lighten Americans’ tax burden (U.S. Senate 1985:404). After extensively outlining
the country’s economic plight and identifying government largesse as part of the
responsibility for assisting with economic struggles, Carlson questioned HUD’s
sincerity in supporting equal opportunity because of its support for integration
maintenance programs.87 Calling HUD’s actions a “double standard of conduct,” he
described how the agency

stated that various race-conscious marketing practices constitute racial steering in violation of the Federal Fair
Housing Act (Title VIII) if done by real estate brokers but has held those same practices to be entirely legal if it is done
by private or community fair housing groups, including those who would receive funds and other support under the
Fair Housing Initiatives Program (FHIP) (U.S. Senate
1985:408).

The National Association of Realtors used integration maintenance programming as a
persistent argumentative frame to cast itself as a defender of equal opportunity in
housing.

After implicating the government’s financial largesse and HUD’s inconsistent
deployment of housing fairness, Carlson then moved into criticizing potential
expansion of fair housing testing with FHIP. Calling the prospective program a “gross
and irresponsible delegation of enforcement responsibility to private groups and

87 Additionally, the subcommittee held a question-and-answer session later with a small panel of the
day’s speakers including Carlson. However, that discussion session focused upon the weak housing
market and FHIP was not mentioned.
communities which have neither the competence nor the objectivity required to properly and fairly enforce the law,” the Realtors’ executive vice president questioned the appropriateness of involving community and fair housing groups as partners in upholding fair housing (U.S. Senate 1985:416). They challenged the competency and objectivity of private housing groups and their potential participation in testing their trade members. The group further depicted private fair housing groups as a dangerous threat to their trade:

Passage of this program without clarification of the fair housing goal and removal of this double standard will create a class of private and community vigilantes licensed and federally financed to harass, coerce, and even destroy legitimate real estate practitioners in the name of HUD-directed fair housing testing. Legal testing will become legalized extortion (U.S. Senate 1985:408).

In short, the Realtors put forth a twofold demand: have HUD clarify fair housing testing standards, and eliminate its support of integration maintenance programming. Once again, the Realtors construed legal liability for housing discrimination as a veritable shake-down of their trade members by civil rights “vigilantes.”88 While their opposition to integration maintenance programming would be settled in the courts, the trade group’s fight to delay FHIP over the issue of testing standards would have to be settled through the legislative front.

Directly addressing NAR’s substantive protests about FHIP’s provisions, Secretary Pierce spoke on the final day of testimony and maintained that FHIP’s

88 In Chapter Five, I noted that the organization also used the phrase “civil rights vigilantes” in reference to fair housing testers in an amicus curiae brief in Havens Realty Corporation v. Coleman (1981).
“funding criteria will be carefully drawn to ensure that taxpayers’ money supports only those organizations which function responsibly to ferret out unlawful discriminatory practices” (U.S. Senate 1985:734, my emphasis). The Realtors’ objections to FHIP as potentially leading to unscrupulous community and fair housing groups receiving tax payer dollars thus caused Secretary Pierce to account for the Realtors’ concerns within his own remarks before the subcommittee. Moreover, Secretary Pierce configured the possibility that some private housing organizations might not function “responsibly” in fair housing testing.

Two months later, a House Subcommittee on HUD-Independent Agencies held hearings on congressional appropriations for 1986. On May 2, 1985, William D. North—the Senior Vice President and General Counsel to NAR—testified on behalf of the six hundred and seventy-five thousand members of the Realtor trade group to urge the subcommittee to deny federal monies for FHIP. The Realtors’ representative made many of the same claims that were contained in the Senate subcommittee testimony delivered by Jack Carlson earlier in the year, including calling federal financing of private testing by fair housing groups potentially harassing and possibly extorting Realtors. The most provocative new claim North made in his testimony, however, concerned integration maintenance.

North cited the problematic testing component to the FHIP appropriation and stated that NAR was opposed to the funding until Congress, HUD, and the civil rights division of the Department of Justice clarified the law. Maintaining that the Realtors
had struggled with the lack of certainty in the laws for “over seven years now,” North requested that Congress take steps to specify whether Title VIII of the 1968 Civil Rights Act require

- ‘equal opportunity in housing’ or ‘integrated housing’
- ‘no discrimination’ or ‘some discrimination’
- ‘no discrimination by citizens’ or ‘systematic discrimination by government or government sponsored groups’ (U.S. House 1985:825).

By bifurcating his remarks, North attempted to configure affirmatively promoting equal housing opportunity as inherently distinct from and outside of fairness as presumably determined by fair housing law. The perspective here that the Realtors’ speaker presents is that any and all affirmative steps in making race relevant to housing choices constitutes discrimination. Such a colorblind perspective posits “integration” as unfair and interprets the legal mandate for Title VIII narrowly in that any consideration of race in housing constitutes racial discrimination. In this way, the Realtors not only opposed the practices of fair housing groups to undo racial segregation, but they used their objections to stymie broadening government resource allocation to testing housing discrimination (and thus regulation of their industry). Moreover, by claiming that any awareness and treatment of racial inequality in housing—like segregation—was unfair and antithetical to Title VIII, the National Association of Realtors ultimately attempted to operationalize federal fair housing law in the most narrow parameters.
Even after the hearings were completed, the Realtors continued to lobby against FHIP. While their presence at Congressional hearings entailed prominent, public spectacles of their rejection of FHIP, the Realtors maintained an aggressive political lobby through communicating with members of Congress and its membership. NAR’s senior vice president of government affairs, Albert E. Abrahams, sent a letter to Representative Gerald Kleczka (D-WI), a member of the House Banking Subcommittee on Housing and Community Development, advising Kleczka to “oppose any attempts to authorize a proposed HUD Fair Housing Initiatives Program (FHIP), a large portion of which supports the ‘testing of real estate brokers’” (NAR 1985d:1). Presumably, other members of the same committee also received correspondence from the NAR regarding FHIP in mid-May because, at the end of May, the ranking Republican in the House’s Subcommittee on Housing and Community Development wrote a letter to HUD Secretary Pierce (McKinney 1985). Stewart B. McKinney (R-CT) reported meeting with NAR staffers and referenced the trade group’s concern with how FHIP would be implemented (McKinney 1985). As a result, McKinney requested further clarification of FHIP’s parameters: “It would be helpful for me and the other Members of the Subcommittee if you could provide a little more explanation of how this proposal will work” (1985:NP). NAR approaching Representative McKinney about their concerns with FHIP highlights his importance and use to the organization by way of his leadership position on the subcommittee and his receipt of RPAC monies.89

89 McKinney received sustained financial campaign support from the Realtors over the years,
In early June, HUD Secretary Pierce responded to McKinney’s letter. His four-page response provided a thorough overview of the FHIP program and then immediately moved into refuting three of NAR’s objections. The first was NAR’s opposition to the program as a “gross and irresponsible delegation of enforcement responsibility to private groups and communities which have neither the competence nor the objectivity to properly and fairly enforce the law” (Pierce 1985:2). Secretary Pierce challenged NAR’s position by pointing to the Supreme Court rulings in *Gladstone Realtors v. Bellwood* (1979) and *Havens Realty Corp v. Coleman* (1982) that upheld testing’s constitutionality. Not to put too fine a point on it, Secretary Pierce also noted NAR’s place on the wrong side of the Supreme Court’s rulings by citing the trade group’s filing of *amicus* briefs in support of the real estate agencies in both cases (Pierce 1985:2). Furthermore, Secretary Pierce pointed to another Supreme Court case—*Trafficante v. Metropolitan Life Insurance Co.* (1972)—which ruled that since HUD was not endowed with enforcement capacity, private suits were the expected recourse for fair housing complaints.

The HUD Secretary’s letter closed with a scathing criticism of NAR characterizing integration maintenance programming as quotas. Prefacing his extensive comments with a judgment that “[a]ny attempt to characterize HUD’s affirmative marketing requirements with racial quotas is clearly off the mark.” Secretary Pierce clarified that reference to racial demographics during a tenant selection process was meant as demographic data and did not function as prescriptive accepting $3,150 from RPAC in the 1983-1984 years and $5,100 in the years 1985-1986.
quotas to fill (Pierce 1985:3). But Secretary Pierce’s most resounding reproach to NAR’s characterization of FHIP was the following:

Testing only identifies differential treatment of minorities and non-minorities in the homeseeking process; the very principle on which testing is based in that it is differential treatment which the Fair Housing Act forbids. Under the hypothetical ‘integration maintenance’ standard that NAR suggests is held by some, it would be the failure to provide differential treatment that would constitute the violation. It is difficult to imagine how a testing program could be made to support such a standard (Pierce 1985:4).

Just above, the head of the U.S. Department of Housing and Urban Development deftly shows the illogical quality of employing integration maintenance to oppose fair housing testing. Secretary Pierce closed his letter to Representative McKinney stating that HUD sought to provide fair housing to all parties and that NAR’s opposition to the government’s plans were “plainly without merit” (Pierce 1985:4).

In the meantime, Representative Kleczka—a longtime beneficiary of REALTOR® political action campaign contributions—was composing an amendment to limit FHIP funding.90 Kleczka’s amendment would delete funding for testing from FHIP altogether. In response, the National Association of REALTORS® composed a memorandum to the House’s subcommittee urging its members to vote in favor of the Kleczka amendment (NAR 1985e). Meanwhile, NAR’s top political lobbyist, Albert E. Abrahams, was reporting to the Washington Post that the trade

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90 In the 1984-1984 years, Representative Kleckza received $8,000 in campaign contributions from RPAC. In 1985-1986, Representative Kleczka received $6,500 (of the four hundred and sixty-one House candidates that received RPAC money those same years, the average was $5,213.) The next three periods, Kleckza received $8,600, $10,000, and $10,000 respectively from RPAC.
group could be convinced to support public funding of private fair housing testing if HUD would “work with” them on testing standards (Crenshaw 1985:A17).

**The House Subcommittee Vote**

Despite the Realtors’ efforts, on June 19th, the House’s Subcommittee on Housing and Community Development voted 25-13 in favor of the FHIP provision, at a meeting the *Los Angeles Times* described as “crowded with realtors” (Ryon 1985b:K4). After the House subcommittee vote, both HUD and NAR accelerated their lobbying campaigns. At the end of June, NAR published an article in its weekly newsletter *Realtor News* concerning FHIP. The article described the issue of testing as a “major task to resolve” and detailed the political developments of FHIP and its path through the houses of Congress (NAR 1985b:1). Suggesting that the FHIP program was usefully amended by the House’s subcommittee to require HUD to issue testing regulations, the National Association of REALTORS® objected to the limited parameters of such regulations, noting that they “would pertain only to the application procedures” for FHIP (NAR 1985b:1). NAR further cited the subcommittee’s rejection of Congressman Kleczka’s amendment to forego funding for testing and instead fund education and outreach. The article closed by listing every member of the subcommittee’s vote on Kleczka’s amendment.

In July, the National Association of Realtors published a memorandum on their suggested testing standards. The first three pages detailed the problems of integration maintenance, the pursuit of “quotas,” and race-conscious housing policies;
subsequent pages outlined seven proposed testing standards (NAR 1985c). One standard proposed “to eliminate any preference for the integration maintenance position” and requested that a testing applicant “shall not have participated during the preceding 12 months in any program of integration maintenance” (NAR 1985c:4). The memo cited the ongoing legal challenge to integration maintenance practices as reason to prohibit groups affiliated with practicing affirmatively pursuing fair housing from testing funding. The other standards NAR proposed included prohibiting testers with an economic interest in the outcome of testing, a standard that would require uniform criteria and testing the same agent and not different agents of the same firm, a prohibition of conflicts of interest, and testing non-profit housing intermediaries like housing counselors and referral servicers (NAR 1985c).

Meanwhile HUD leadership granted lengthy interviews with the press to speak about FHIP. In August, Secretary Pierce’s executive assistant explained how the FHIP issue tested HUD and NAR’s working relationship: “Ninety-five per cent of the time the realtors are on target about housing industry issues, but on this one, we part company” (Ryon 1985b:K4). Noting the “powerful forces in the [real estate] industry committed to seeing that his legislation never sees the light of day,” the assistant proposed that the Realtors were stalling: “The realtors just want to add 10 years to the process (of getting FHIP approved)” (Ryon 1985:K4). Moreover, by explicitly citing how frequently HUD and NAR are on the same page concerning “housing industry issues,” the speaker demonstrates how the federal housing agency had seen NAR as a partner and was struck by its adversarial position on FHIP. HUD
leadership characterized NAR’s political lobby against FHIP as stalling, which further delayed strengthening fair housing enforcement. NAR’s attempt to stall FHIP translates into less testing and enforcement of federal fair housing law.

FHIP’s future, however, remained uncertain in the summer of 1985 as national fiscal concerns remained. So when NAR president-elect Clark E. Wallace spoke on FHIP that fall, his criticism of the program emphasized its costs. Wallace called out HUD Secretary Pierce for making the program a “cause célèbre” (Ryon 1985:9). Maintaining that the Realtor organization is “not against fair housing,” Wallace clarified: “We just don’t like our tax dollars being spent on testing when HUD and the Justice Department appear to have different rules for it” (Ryon 1985:9). Like the Realtors’ previous arguments against broadening and strengthening fair housing, NAR leadership emphasized who would be burdened by the proposed legislation. Moreover, by citing the use of “our tax dollars” to go to fair housing testing, the Realtors’ president-elect incorporated the American tax payer into the financial burden of financing fair housing oversight and administration. The mid-1980s economic climate made for a compelling emphasis on FHIP’s cost as a federal expenditure.

The Realtors also resisted FHIP for what it called confusion for real estate agents. In their Board of Directors’ meeting minutes in September 1985, NAR complained of a lack of clarity over what constituted discriminatory conduct. Once
again the Realtors invoked integration maintenance programming as the real opponent to fair housing:

We are urging the Congress to reject this program because a large portion of the funds will support testing of real estate brokers, salesperson, and homesellers at a time when testing procedures are confused because of the need to clarify government required discrimination in some cases and government required non-discrimination in other cases…Because of this confusion brokers are ‘unaware’ as to what is permissible conduct. Integration maintenance programs…prevent brokers from knowing which law to follow in the event they are tested (NAR 1985a:22).

NAR’s board of directors’ meeting minutes further outlined the political lobbying the organization arranged for its rank and file related to FHIP: “REALTORS® from the states represented by Senate Banking Committee members will be visiting those Senators the week of September 9th” (NAR 1985a:24).

NAR continued to obstruct FHIP throughout the fall months while HUD officials made last-ditch efforts to get the new program legislative attention. NAR and HUD Secretary Pierce approached Senator John Heinz (R-PA) to support their respective positions on FHIP. Data from Senator Heinz’s archive are particularly illuminating of the political struggle FHIP engendered and the Realtors’ entrenched opposition. In September, H.R. 1 was held up by Senator Jake Garn (R-UT) who refused to put the bill in for Senator mark-up (Shannon 1985a). In an internal memo, Senator Heinz’s staff outlined FHIP’s lobby: “[T]he Realtors have prowled all

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91 Senator Garn received his first political donation from RPAC in five years just weeks prior to obstructing FHIP, when he acquired a $1,000 for his campaign. Garn would go on to obtain an overall generous political donation for the 1985-1986 political calendar years, acquiring $10,000 from RPAC. By contrast, of the sixty-six Senate candidates RPAC gave campaign contributions to in the 1985-1986 years, the average amount was $5,300.
over the Hill making plain their opposition to the direct testing component (in fact, when I left you on Friday it was to meet with Al Abrams and a Realtors lobbying group” (Shannon 1985a:1). The Senator’s staff met with the Realtors in September and presented their case to Heinz to object to FHIP testing without standards. They were confounded by the political stalemate: “This is a mess because HUD and Realtor lobbyists are fools” (“Fair Housing” 1985:1). In the end, the Senator’s legislative staff proclaimed that the program lacked true backing from civil rights groups who, instead, were “whip[ped]…into a frenzy of enthusiasm” by HUD Secretary Pierce in order to get them on board with the program designed “as the litmus test of this Administration’s and our party’s willingness to do something meaningful about discrimination in housing” (Shannon 1985a:1). However, Secretary Pierce was abroad in September as Congress was reconvening to get to work and his absence gave Senator Heinz’s legislative staff the view that HUD was giving lip service to the program. Later that fall, political will to pass FHIP waned and no legislator stepped forward to move it through Congress.

Despite the excessive politicking by the National Association of Realtors, not all of the trade group’s rank and file opposed FHIP. According to a staffer’s correspondence to Senator Heinz, Pennsylvania’s real estate groups lacked the interest NAR held about FHIP: “I have been contacted by only one PA. Realtor who didn’t really care about the issue but was doing what the National Realtors told him to

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92 Senator Heinz received no money in the 1985-1986 calendar years from RPAC.
do” (“Fair Housing” 1985:1). And another Heinz staffer hand-wrote a note on another memo, confirming the same:

Also, FYI: I spoke with Rick Stampahar, w/the PA Realtors PAC…He says that he is embarrassed by Abrams’ tactics and, although he wishes FHIP and testing would go away, thinks that you have suggested a compromise of sorts on this and that you have been of enormous help to Realtors on more important issues (Shannon 1985b:5)

These references illustrate and how the national Realtor association’s political agenda against fair housing legislation differed from its state and local affiliates. While the national association aggressively rejected the mandate to broaden fair housing enforcement, local Realtors—even highly politicized PACs like Pennsylvania’s—were positioned divergently on the FHIP issue. Moreover, the statements show how the national organization used its rank and file as political capital (“doing what the National Realtors told him to do”).

Another account also points to local Realtor opposition to FHIP stemming from trade group affiliation and loyalty, rather than ideological agreement. The Miami Herald reported in late December 1985 on the Realtors opposition to FHIP but cited Pat Mellerson—chair of the Miami Board of Realtors’ fair housing committee—clarifying, “I am very much in favor of equal housing…Personally, I don’t have any reason to believe that testing would cause problems. But the local board has adopted the position of the national board on testing” (Boyd 1985:11H). The Realtors’ organizational apparatus thus spurred individual Realtors to fall in line with the national association’s positions on fair housing. Further, evidence of the Miami Board
of Realtors “adopting” NAR’s position on testing shows how the national Realtor organization deployed its political opposition to stricter fair housing with local support.

II. The 1986 Senate Hearing on FHIP Guidelines

The following year, in late March 1986, the National Association of REALTORS® members were asked by the Banking Committee congressional leadership to meet with HUD about their objections to the FHIP program and its provision to expand private fair housing testing (NAR 1986a). The meetings began on March 25th and continued for six weeks. Despite Secretary Pierce’s initial objection to forming guidelines for testing under FHIP the preceding year, with the help of these intensive and closed meetings the two groups came to an agreement over testing procedures that were accepted by NAR’s Board of Directors on May 12th (NAR 1986a). The proposed guidelines included a handful of new, stricter requirements. The most significant of them required a ‘bona fide allegation’ wherein initial discrimination allegation must originate outside of any private fair housing group, their associates, friends, relatives, or any other person that may financially gain from the claim or any other conflict of interest. In addition, the guidelines required two tests per individual agent or owner. There were also restrictions on testers, who could not have any prior felony convictions or any convictions involving fraud or perjury. Furthermore, fair housing groups applying for FHIP monies would have to have a least one year’s experience of operating fair housing programming. These stricter testing standards and parameters were incorporated into S. 2507—The Housing Act
of 1986. HUD officials justified the guidelines by referencing the lack of fairness in the current housing market: “The national picture on fair housing is bleak and we see this as an excellent opportunity to get fair housing in front of people, to get as much money as possible into fair housing” (Kerch 1986:A6).

During the bill’s mark-up session by the Senate’s subcommittee on Housing and Urban Affairs, Senator William Proxmire (D-WI) called for a public hearing over the guidelines and how they came to fruition (Mariano 1986). Senator Proxmire—a longtime opponent of money’s undue influence on politics—remarked in his hearing on HUD granting the Realtors exclusive initial consultation to the fair housing policy discussions,

You see, here we have a situation where the National Association of Realtors, a fine group—they have the biggest political action contributions to Members of the Senate and House of any group. You’re fighting with nuclear weapons here. You’re fighting against a little organization that can’t make any PAC contributions to those of us who are in office. So you have an enormous advantage. (U.S. Senate 1986:65).

The one-day hearing convened the following month on June 18th and Senators John Heinz (R-PA), Alfonse D’Amato (R-NY), Alan Dixon (D-IL), William Proxmire (D-WI), Slade Gordon (R-WA), and the committee’s chair, Chic Hecht (R-NV) were in attendance. Representatives from five fair housing groups and the Realtors’ attorney William North were also present along with a representative from HUD, attorney John J. Knapp. Knapp spoke on the failed efforts to initiate FHIP in 1985, explaining that the “principal source of that opposition” was the “700,000-
member National Association of Realtors” (U.S. Senate 1986:7). According to him, the Realtors posed a particularly significant political threat to potential legislation, noting that the group could “prevent enactment of the program” (U.S. Senate 1986:7). In addition, Knapp argued that even if the FHIP program could get passed over Realtor objections, without industry support, the initiative’s success was questionable:

Here we had a national organization whose many thousands of members had clearly come to believe, however mistakenly, that they were about to be subjected to unfair enforcement procedures and possibly even harassment with the assistance of Federal funds...In this democratic Nation, broad consent of the governed is an essential prerequisite to the success of any government effort. If we undertook a program of direct funding of testing by private organizations in an atmosphere of undispelled fear and suspicion, even if founded on ignorance and misunderstanding, held by so large and extensive a segment of directly affected citizens, the ultimate success of the enforcement effort could not help but suffer (U.S. Senate 1986:7, 8).

Citing NAR’s size (“many thousands of members,” “large and extensive segment”), HUD reasoned that the Realtor group’s numbers and power are just too big to ignore and that their interests must be reconciled. HUD further justified its private consultations with the Realtors in order to overcome the trade group’s members’ uncertainty and practice a healthy democratic process of consent of the governed. What HUD ignored is how the Realtors’ “ignorance and misunderstanding” was purposefully cultivated in order to create the political will to combat the proposed federal monies and programming to enact stronger housing discrimination testing.93

93 Evidence of the Realtors’ misinformation campaign against fair housing even appears during the group’s testimony before the subcommittee.
Further, HUD cites unilateral programming as inherently flawed and gives evidence of the previous year’s failure as reason for giving the Realtors privileged political lobbying status on FHIP.  

Knapp justified HUD’s giving the Realtor organization a privileged consulting status because the group put forth “a significant break from that organization’s apparent history of intransigent opposition to legislative proposals in the fair housing area and to federally funded testing programs in particular” (U.S. Senate 1986:3). Knapp outlined how HUD and NAR negotiated the testing guidelines. One key point of contention was the use of unpaired testing. According to Knapp, NAR demanded that unpaired testing (wherein only one tester complaint is considered adequate to show that discrimination occurred) be excluded from the initiative. Despite that, Knapp conceded that other fair housing organizations, courts, and administrative agencies used and upheld use of the procedure. In order to get NAR’s acceptance of the program, Knapp admitted that “the exclusion of some legitimate activities seemed a small price to pay if we could succeed in allaying the destructive level of opposition and resentment” from NAR (U.S. Senate 1986:4). The Secretary capitulated to NAR, conceding that the government purposefully limited the program designed to more effectively enforce fair housing.

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94 HUD’s language sounds eerily close to the Realtors’ own calls for fair housing laws and policies to only be taken under voluntarily.
Fair Housing Groups’ “Grave Reservations” About NAR’s Political Influence

Fair housing group representatives at the subcommittee hearing outlined three concerns with HUD’s partnering with NAR on FHIP testing guidelines. First, they opposed the federal housing agency granting NAR exclusive access to negotiations over the program’s testing guidelines. Throughout the 1986 Senate hearings, multiple groups remarked on NAR’s privileged position at the negotiation table. The executive director of the Kentucky Commission on Human Rights testified that his organization didn’t “see any reason to restrict that device as has been proposed and as HUD has agreed to” (U.S. Senate 1986:17). Note the speaker’s characterization of HUD agreeing to NAR’s testing standards. And the director of the National Association for the Advancement for Colored People (NAACP) also testified concerning NAR’s sway over FHIP’s proposed parameters: “[W]e are concerned about the fact that one group has had undue influence in helping to frame the guidelines and the people who helped to pioneer in the area of testing were systematically excluded from such consultations” (U.S. Senate 1986:32). The executive directors for the Metropolitan Milwaukee Fair Housing Council and the Fair Housing Council of Northern New Jersey both testified that the HUD-NAR testing agreement on FHIP was contrary to government’s role in regulating industry (U.S. Senate 1986:37, 45). And, fair housing advocate attorney Avery S. Friedman pronounced the process as contrary to the country’s on-going testing efforts:

95 The NAACP also testified before the Senate subcommittee and one of the subheadings of their testimony was “Grave Reservations on Guidelines.”
Instead of building in to the proposed guidelines the well accepted and sensible standards which have offered all parties, plaintiffs and defendants alike, reliable, credible and reasonable guidelines, private arrangements between HUD personnel and the National Association of Realtors resulted in the establishment of ‘guidelines’ that are objectively burdensome and far exceed the fine-tuned standards which the federal courts have carved out for nearly two decades (U.S. Senate 1986:15).

In sum, according to the nation’s top fair housing activists, the HUD-NAR guidelines were crafted without input from community groups and discordant with current fair housing policies in ways that favored the real estate industry.

Senator Chic Hecht (R-NV) sought clarification from HUD on how the negotiation process with NAR didn’t necessarily exclude input from other organizations:

Senator Hecht: We understand that only representatives of HUD and the National Association of Realtors were present in the negotiations over the FHIP guidelines. Did HUD consider any outside sources and, if so, do you feel that those sources were representative of the groups affected by the guidelines?

Mr. Knapp: We did not consult outside sources until we were finished… We frankly had little enough optimism that we would be able to reach an acceptable agreement with NAR by ourselves. We did not think that that ability would be enhanced by having the private groups within the same negotiations as well. We anticipated that there could be some resentment at the end…We thought that that risk was worth taking (U.S. Senate 1986:12).

Just above, HUD’s top attorney articulates how the agency prioritized NAR’s participation and thus arranged the policy negotiations in a way that would reflect the trade group’s significance. Conferencing with the group whose trade member practices would be at the center of the fair housing inquiries is understandable;
however, placing the trade group in an exclusive position of privilege is less reasonable because it provided the Realtors unparalleled power to dictate FHIP’s testing parameters, as many of the fair housing groups reported. The impact of HUD bringing the Realtors alone to the negotiating table signaled to the organization a chance to further compound the effects of their power to influence federal fair housing policy in their favor.

The second and most compelling concern fair housing representatives challenged, however, was the stringent testing standards that emerged from HUD and NAR’s exclusionary negotiations. Their objections emphasized how significantly FHIP’s proposed testing standards deviated from established, industry-wide fair housing testing practices. The foremost concern among fair housing proponents was that FHIP standards restricted testing for discrimination only after a bona fide allegation was first made. NAR attorney William North defended the limited guideline:

We merely say that if you’re going to—if you, as a testing organization, are going to undertake a testing program, you should have a complaint from somebody other than yourself. It could be from the community, from a neighbor, from a city councilman, but not confined or in any way restricted to a bona fide home seeker or apartment seeker or a homeseller. We are talking about a source of a complaint other than the organization that is going to investigate the complaint (U.S. Senate 1986:70).

According to NAR, what constitutes a bona fide allegation is one that doesn’t originate from fair housing groups or their affiliates, since those groups are presumed to be unable to be objective. The Realtors’ representative thereby casts doubt on the
broader legitimacy of these groups’ work in the residential housing market, considering that such limitations do not constrain non-FHIP fair housing testing. Furthermore, by suggesting that the initial complaint should come “from somebody other than yourself,” North indicates that fair housing groups weren’t merely documenting housing discrimination—they were creating it through a self-interested process that funded their organizations.

Relatedly, the National Association of Realtors defended the strict testing guidelines for FHIP before the subcommittee, based upon the claim that some fair housing organizations have essentially blackmailed realty firms with threats of positive discrimination tests:

Senator Proxmire: Can you give me an example of the gross abuse you describe from my state of Wisconsin?

Mr. North: … I have a situation in Wisconsin where an organization indicated that they were going to undertake a testing program and having so indicated to the board of Realtors that they were going to undertake the testing program, then said, ‘Why don’t we skip over the results of the testing which we know will result in our finding defects…and why don’t you hire us as the source of our education in the fair housing field?’ Now the price of that was $50,000, at least the initial price of that was $50,000 (U.S. Senate 1986:61).

According to the Realtors’ attorney, a Wisconsin fair housing organization attempted to blackmail a real estate firm into paying for fair housing education in lieu of being cited for legal violations. However, North’s testimony came under scrutiny of fair housing organizations in Wisconsin just a few months later when William R. Tisdale, the coordinating director of the Wisconsin Fair Housing Council, refuted the
Realtors’ claims. According to the Tisdale, there was no fair housing case charged by the Wisconsin Equal Rights Division matching the description North gave to the Senate subcommittee. Instead, he pointed to a case where an interracial couple was steered to predominantly black areas of Beloit. After filing a claim with the Wisconsin state authority, the couple received a $23,000 settlement and the realty firm in question was ordered to undergo fair housing training; however, the fair housing training cost only one hundred and thirty dollars, which was paid to the Fair Housing Council of Rock County (U.S. Senate 1986:62). As a result, Tisdale called North’s description of fair housing violations in Wisconsin “totally without merit or substantiation” (U.S. Senate 1986:62).

Although fair housing cases were successfully litigated with a paired test from within an agency or office in order to establish discriminatory conduct, HUD and NAR proposed more rigorous standards. The Realtors proposed and HUD accepted more systematic testing methods requiring two tests of the same agent or owner in order to establish that discrimination had occurred. Fair housing group representatives decried the stricter standards. For instance, the director of the Fair Housing Council of Bergen County, New Jersey described such an insistence as “tantamount to a bank robber having to rob the same bank twice, not only rob the same bank but the same branch with the same tellers, in order to be convicted” (U.S. Senate 1986:43-44). The FHIP standards required a paired test of the same real estate agent or landlord instead of the paired test testing an agency or office. Galen Martin—the executive director of
the Kentucky Commission on Human Rights—offered his assessment of the likelihood of housing discrimination shackled by FHIP-like testing requirements:

If we had been required to wait until an identified would-be black homeseeker became suspicious, most if not all the cases that we have had in the last 5 years would not have been filed and the clandestine discrimination would have continued unsuspected and unchecked (U.S. Senate 1986:17).

And William R. Tisdale—the executive director of the Metropolitan Milwaukee Fair Housing Council (MMFHC)—furnished Senator Proxmire with a case that showed how fair housing law required only one account to prove housing discrimination occurred. For instance, he referenced an interracial couple using the testing data from the MMFHC to show that an apartment complex had discriminated against them, they were awarded thirty-five thousand dollars in damages by a jury, and the apartment complex subsequently began renting to people of color (U.S. Senate 1986:42). According to Tisdale, “[n]one of this would have been accomplished if the Fair Housing Council used the FHIP guidelines for the initiation of systematic testing” (U.S. Senate 1986:42).

Extending the Realtors’ goal to associate fair housing agencies with questionable standards of conduct, North further claimed the stricter FHIP guidelines would prevent real estate agencies from having to provide financial kickbacks to fair housing agencies. He recounted the Chicago-based Leadership Council for Metropolitan Communities’ activities regarding three housing discrimination suits, claiming that the Council received over twenty two thousand dollars in contributions
from the defendants. North continued: “This is what we’re concerned about--$22,461. Not in damages, not in settlement, but in contributions to the Leadership Council” (U.S. Senate 1986:64). According to North’s Senate testimony, a large fair housing group in Chicago was able to parlay assisting with discrimination charges into significant financial rewards for itself. Moreover, the Realtor’s top attorney also claimed that the Leadership Council amended their testing standards because they lost one case because their testing procedures were deemed inadmissible to the court.

Executive director for the Leadership Council, Kale Williams, responded to the Realtors’ comments in a statement submitted for entry into the official Senate record on FHIP hearing. In his statement, Williams contests the Realtors’ narrative about the Chicago housing group:

Any payments received by the Council from defendants have been damages or attorney’s fees awarded by the court or agreed to in a settlements filed with the court…In fact, the amount [North cited] was not correct and the payments to the Leadership Council were damages and attorneys fees detailed in the court orders filed with the U.S. District Court…[Moreover,] [t]he Leadership Council has not modified its procedures (U.S. Senate 1986:66).

Williams’ statement thus refutes the insinuation from the Realtors that his organization received unjust financial gains from the discrimination claims. In addition, the Council’s director informs the Senate subcommittee that not only did the fair housing group not change its testing procedures, he also cites that the “beneficial results in these cases would not have been permitted under the guidelines negotiated by NAR and HUD” (U.S. Senate 1986:68). Williams thus compounds the Realtors’
inaccuracies to the Senate subcommittee by countering more than one of North’s assertions that the fair housing organizations are self-serving, profit-raising enterprises.

The third contention fair housing groups made was a concern that tighter testing protocols for FHIP could expand and become the new federal standard for discrimination claims. Fair housing groups cited a letter dated May 9, 1986 from NAR President Clark E. Wallace speculating that the proposed testing guidelines for FHIP “would also become the measure of fairness and objectivity by which courts and enforcement agencies measure all real estate testing” (U.S. Senate 1986:41). NAR’s written statement to the Senate subcommittee made a similar conjecture. So when North claimed in his oral testimony at the hearing that Realtors were only advocating for the testing protocols for FHIP programming, Senator Proxmire questioned him on the apparent inconsistency:

Senator Proxmire: Mr. North, I understand that you say that your intention and your expectation is that the guidelines would be limited to the private Fair Housing Initiatives Program and that’s all. Is that right?

Mr. North: My expectation and my understanding is that they are limited to the Fair Housing Initiatives Program…

Senator Proxmire: Well, I’m confused because you say in your statement—this is the National Association of Realtors, page 2, you say

We hope and expect that these guidelines if enacted into law would impact not only the FHIP funded testing programs but would also become the measure of fairness and objectivity by which courts and enforcement agencies measure all real estate testing.
Mr. North: Certainly.
Senator Proxmire: You want it for everything.
Mr. North: We said we hope…(U.S. Senate 1986:59-60).

The Realtors’ influence on formatting testing guidelines for FHIP thus spurred the group’s hopes for their further guidance on how housing discrimination would be regulated.

The fact that on two separate occasions the Realtors speculated about applying stricter testing guidelines beyond FHIP also prompted William R. Tisdale, the executive director of the Metropolitan Milwaukee Fair Housing Council, to respond. He joined the chorus of speakers who warned the Senate subcommittee that the Realtors interests exceeded FHIP programming. Tisdale claimed that the Realtors were “intent on not only restricting, but rolling back gains made through qualitative and effective testing programs currently providing the bulk of case law in the area of fair housing litigation” (U.S. Senate 1986:41). The threat of FHIP’s testing guidelines would encroach more broadly and affect fair housing regulation and laws was addressed by fair housing attorney Avery Friedman, who proposed: “If Congress makes clear that these regulations deal exclusively with this limited program and have no application to the rights of Americans who enforce their rights directly in the Federal district courts, I think a lot of problems will be solved” (U.S. Senate 1986:29). Friedman’s suggestion was incorporated into FHIP, but not before the Realtors revealed their interest in limiting federal fair housing testing as narrowly as possible.
On June 12, 1986, a companion bill HR. 1—the Housing Act of 1986—passed the House. The Senate outcome was not as successful. According the executive assistant to the HUD Secretary, the housing bill failed “in small part because of the FHIP guidelines controversy” (Dean 1987:8). However, another source argues that FHIP floundered because it was part of a broader “authorization bill for all federal housing programs” that were not advanced (Barlow Burke 2013:13-12). The 1986 elections, however, seemed to have a better outcome for FHIP.

III. FHIP’s Enactment and Legacy

The 1986 midterm elections resulted in Democrats adding eight seats to their numbers, gaining the majority. This political shift drummed up new momentum on FHIP and the following year, the Senate’s Subcommittee on Housing and Urban Affairs held hearings on reauthorizing housing and community development programs, which included FHIP. There, NAR President-elect Nestor R. Weigand—joined by William North and Al Abrams—testified before the subcommittee regarding their concern over federal housing credit programs and FHIP on February
The Realtors’ spokesperson reiterated NAR’s recognition of and allegiance to the country’s fair housing laws. Weigand also introduced himself as part of the negotiating team from NAR that met with HUD to draft the testing guidelines for FHIP the previous year. However, despite ingratiating himself to the subcommittee on FHIP, Weigand ultimately arrived at his conciliatory offering: removing the testing guidelines from their statutory provision. Instead of requiring FHIP’s testing guidelines, the Realtors conceded that they simply accompany the statute as recommended instructions. Weigand’s position was the result of NAR strategizing over FHIP in the previous months. In late 1986, the group’s legislative committee had proposed an almost identical capitulation to the one Weigand presented to the Senate subcommittee. Then, in late January, NAR’s Equal Opportunity Committee affirmed the recommendation and forwarded it to NAR’s executive committee for final approval. The executive committee made one amendment—qualifying “the guidelines” to “the NAR/HUD guidelines”—and approved the amended policy position on FHIP on February 2, 1987—or less than

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96 Despite the National Association of Realtors’ lobbying on FHIP, other Realtor organizations felt less compelled to speak on the program within the confines of the Senate subcommittee hearing. For instance, the California Association of Realtors (CAR) submitted written commentary to the Senate subcommittee for consideration. However, the group didn’t address FHIP at all; instead, CAR offered ten pages of written testimony on other budgetary proposals, including changes to FHA statutory loan limits in high priced housing markets and potential increases in the mortgage insurance premium on single family homes. Considering there was no limitation on testimony CAR—or any other interested party—could provide to the Senate subcommittee, it is safe to presume that CAR did not address FHIP because it was less relevant to the California Realtors’ group than the other substantive issues included in the association’s written submission.

97 NAR’s Equal Opportunity Committee formed in 1971 with six initial members to “disseminate information and bring to the attention of REALTORS the vital issues in the 1968 Civil Rights Act that must be obeyed and supported” (NAR 1973a:404).
three weeks prior to Weigand’s appearing before the Senate subcommittee (NAR 1987d:218; NAR 1987b).

What led the National Association of Realtors to perform such an about-face over the deeply contested guidelines? In their place, the Realtors asked for FHIP to be authorized as only a temporary, two-year program (U.S. Senate 1987:316). By requesting that FHIP initiate “as a demonstration program….that would automatically sunset after 2 years,” the Realtors suggested that such a recommendation constituted a “viable alternative” to the continued stalemate over testing guidelines (U.S. Senate 1987:316, 317). The Realtors’ request was successful. In the very first and every subsequent version of the Housing and Community Development Act of 1987, the bill specified the program as demonstrative to sunset on September 30, 1989. The result was FHIP’s initial deployment, comprised of a temporary, two-year term, spearheaded by NAR (Dean 1987; Temkin and McCracken 2011). According to an informant quoted in a later HUD report, “[NAR] wanted the ability to shut down the program if they found that they weren’t able or weren’t satisfied with the way the program was operating” (qtd in Temkin and McCracken 2011:10-11).

In early March, the National Association of Realtors lobbied congressional members to support the FHIP program. In a letter from NAR President William M. Moore to members of the Senate Banking Committee, the Realtors emphasized their conciliatory work with on FHIP. Describing the organization as having “come a long way since 1985 when we opposed FHIP because the program did not contain
standards by which its testing component would be implemented,” the Realtor letter went on to tout how they “acquiesced to Congressional requests to resolve our differences with HUD” (NAR 1987c:1). Dropping one policy demand (mandating testing guidelines in the statute) for another (two-year, provisionary program) thus constituted for the Realtors’ political lobby acquiescence. The letter further called the Realtors’ attempts to limit FHIP to a two-year, demonstrative program “a sincere effort to avoid further confrontation” (NAR 1987c:1). The letter closed by emphasizing NAR’s support of the current bill’s language and encouraged members of Congress to support it in order to “resolve this long-standing issue” (NAR 1987c:1). NAR thus maintained its modus operandi of holding up fair housing law and policy to assure the most meager provisioning for scrutinizing discrimination within the residential housing market—and then subsequently using the very delay they helped impose as motivation for compromise.

Several political factors helped midwife FHIP into serious consideration as well. The previous year’s political compromise on the program, the increasing numbers of Democrats in Congress, support from President Reagan, and support from the Realtors meant that FHIP had a fairly unremarkable inclusion within the Housing and Community Development Act of 1987. The only amendment to FHIP came from Representative Fernand St Germain (D-RI), which required HUD to issue testing guidelines. The language further specified that such guidelines were only relevant to FHIP programming and “shall not be construed to limit or otherwise restrict…testing not funded under this section in any legal proceeding under Federal fair housing
laws” (Public Law 100-242 1988:129). St Germain’s amendment did restrict testing to as those only originating outside fair housing testing organizations; this restriction, however, was later dropped and the final 1987 bill that passed contained no such constraint. The omnibus housing bill held far more controversial and far-reaching components, including FHA authority to insure home loans. In November, a Senator reported that the bill ran over the new budget limitations. But in the end, compromises were made, some programming was trimmed, and the Housing and Community Development Act was signed into public law on February 5, 1988 by President Reagan.

**NAR’s Post-Adoption Politicking of FHIP**

Well after the program was incorporated as federal housing policy, the National Association of Realtors continued to lobby and influence FHIP. Beginning less than three months after FHIP was enacted in May 1988, the Realtors’ Legislative Committee recommended to the Executive Committee that the trade group oppose the National Housing Policy Task Force’s recommendation to extend FHIP beyond its two-year demonstration period (NAR 1988a). According the Executive Committee Meeting Minutes, such an extension would be “inconsistent with existing REALTOR® policy” (NAR 1988a:429). NAR’s cause was not taken up and FHIP was reaffirmed in November 1990. Two years later, the Housing and Community Development Act of 1992 made FHIP a permanent program.
In 1993, HUD initiated revising and broadening the program’s parameters and invited public input on the process. The official public comment period resulted in a total of eighteen public contributions, eight of which were from Realtors, Realtor organizations, or constituted “identical form comments submitted in support of comments submitted by an individual broker” (U.S. HUD 1995:58446). The Realtors’ comments—while not identified by name—are nonetheless apparent by their substantive claims concerning the proposed changes to FHIP guidelines.98 For instance, HUD proposed replacing “bona fide allegation” with specifying “meritorious claims.” According to HUD, eight commenters objected to the replacement by avowing that it would “allow fair housing organizations to engage in harassing behavior, and that the meritorious claim standard will make any business that has made an economic decision to settle out of court an instant target of fair housing groups” (U.S. Federal Register 1995:58446-58447). In addition, despite commenters who supported the “bona fide allegation” requirement, in the end HUD opposed it, stating “testing is continually evolving to accommodate changing discriminatory practices identified in the market place, and that the rule should be flexible enough to accommodate changing practices” (U.S. Federal Register 1995:58449).

In 1998, internal documents show that the National Association of Realtors still opposed a robust FHIP program. The group’s Equal Opportunity-Cultural Diversity Committee opposed FHIP’s power:

98 According to a Freedom of Information Act disclosure, the public comments to HUD have been since destroyed.
The Equal Opportunity Cultural Diversity Committee believes that NAR’s policy on FHIP funded testing needs to be expanded to also oppose funding for all investigations if there is not first an allegation of discrimination...NAR does not seek to remove from private fair housing organizations or others the right to use other resources to conduct audits, general testing, or reviews of newspaper ads, etc. but wants to limit their use of federal funds to those situations where there has been an allegation of discrimination before the investigation begins (NAR 1998a:NP).

The committee adopted a motion and forwarded it on to the board of directors, who officially adopted the policy position in November at the group’s annual meeting (NAR 1998b:NP). The Realtors thus maintained their opposition to proactive discrimination testing of the residential housing market and especially the provision of federal dollars to pay for such scrutiny. In short, the National Association of Realtors claimed that public funds were inappropriate to pursue proactive fair housing endorsement. Such a limited conceptualization of fair housing enforcement constituted the Realtor post-civil rights platform.

NAR’s Equal Opportunity-Cultural Diversity Committee continued to report on FHIP and its provisions in 1999. Starting in February, NAR was defending its bona fide policy position. NAR leadership—including the chair of the group’s Equal Opportunity-Cultural Diversity Committee and the group’s executive vice president—conferenced with the Leadership council for Metropolitan Open Communities in Chicago. The president of the Leadership council, Eve B. Lee—herself a Realtor and builder—made the case for the need for systematic discrimination investigations (NAR 1999a). Lee explained that because
discrimination requires comparison about how home seekers are treated, individual home seekers have a hard time identifying that they’ve been discriminated against (NAR 1999a). In response, NAR’s staff justified their position because of a concern over how newer fair housing groups are more aggressively seeking to test systemically prior to or in lieu of educational compliance (NAR 1999a). And at the midyear business meeting in May, the committee’s fair housing policy update included a discussion on FHIP. Longtime NAR staffer on the Equal Opportunity Committee Fred Underwood reported on “two provisions benefiting REALTORS®, including the creation of “only two new organizations” and observed that HUD would now require approval of testing methodologies (NAR 1999b:2). Here then, the Realtors’ organizational structure designed to promote equal opportunity and cultural diversity celebrated the limited parameters of federal fair housing enforcement and enactment.

Then in July 1999, NAR’s lobbying journal The Washington Report cited HUD’s June 30th announcement about changes to FHIP would include improvements that had “been long sought by NAR,” including omitting applicant’s estimated number of complaints to be generated and reimbursement to HUD if fair housing groups recovered costs from prosecuting discrimination (NAR 1999c:NP). The new FHIP procedures also created a “mechanism for citizens to complain about improper activities by FHIP funded agencies” (NAR 1999c:NP). NAR’s steadfast concern with government funding to fair housing enforcement thus remained. Moreover, The Washington Report entry identified Representative Bob Riley (R-AL) as
“instrumental in bringing this issue forward to the House Banking Committee” (NAR 1999c:NP).99

In 2001, NAR codified its position on FHIP within its organization’s Statement of Policy. Under the subject heading “Realtors® Position on Current Issues—Fair Housing,” the group changed the existing statement:

As a condition of federal funding of testing, appropriate statutory safeguards and guidelines must be required (NAR 2001b:2).

to

As a condition of federal funding for private fair housing enforcement, there should be a bona fide allegation of discrimination (a bona fide allegation exists if someone alleges that they have been injured by a discriminatory housing practice). Where there is no bona fide complaint, federal funds should be used to work with the housing industry to raise awareness and provide education to address potential violations of the law (NAR 2001b:2).

By specifying the fair housing practices and funding directive the group preferred, the Realtors delineated their rejection of systematic housing discrimination testing and, in its place, classified ‘bona fide allegation’ as a more appropriate and less antagonistic policy for the real estate industry. Moreover, in moving this language into the trade group’s Statement of Policy, the group codified a regulatory position ultimately at odds with federal fair housing policy.

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99 Congressman Riley was also the recipient of $10,500 in campaign contributions from RPAC in the 1997-1998 campaign years and $10,000 for the 1999-2000 term.
CHAPTER EIGHT


I ain’t what I ought to be,
and I ain’t what I’m gonna be,
but thank the Lord I ain’t what I was.
-NAR Vice President William North,
borrowing Martin Luther King Jr.’s words
on the fifteenth anniversary of the Fair Housing Act 100
1983

The 1980s made up a pivotal decade for the National Association of REALTORS®—both in growing the organization’s image and in polishing the organization’s brand as an ally of fair housing. In the following chapter, I consider two components of NAR’s fair housing efforts. First, I detail the organization’s political efforts to influence what would eventually become the 1988 Fair Housing Amendments Act. And second, I examine the organization and its local boards’ publicity campaigns for Fair Housing Month.

I. Fair Housing Amendments Act of 1987

The legislative defeats of 1978-1980 did not stop additional attempts to amend the Fair Housing Act. Only two months after the Senate unceremoniously dropped S. 506, Senator Charles Mathias (D-MD) introduced another fair housing bill in February 1981. The month after that, Representative Hamilton Fish (D-NY) submitted another one. Both amendments were short-lived, dying in committee.

100 (Qtd in Markham 1983:38H).
Despite groups like the Leadership conference on Civil Rights and the NAACP declaring fair housing legislation a top priority, the conservative majority in the Judiciary Committee meant a certain quick death for such a thing (United Press International 1981). In addition, relations between HUD and civil rights groups were strained. Outlining the political climate in which to move on fair housing in the next legislative session, one of Senator Mathias’ staffers composed a memo noting “alienation” between civil rights groups and HUD “at an all-time high” in 1982 and requested that the Senator encourage Secretary Pierce to amend those relationships (Morris 1982a:NP). It pointed to civil rights groups’ growing distance from HUD and that those groups were not attending the agency’s sponsored Fair Housing Month activities (Morris 1982a:1). The memo also described the NAR’s activities and influence, calling on the Senator to help “[p]ut some distance between HUD and NAR” (Morris 1982a:2).

Two years later, however, momentum on fair housing grew. In January 1983, President Reagan spoke on the need to more effectively enforce fair housing laws and promised to work on strengthening their enforcement. And in April the National Committee Against Discrimination in Housing held a large national fair housing conference, which hosted among other Former HUD Secretary Patricia Roberts Harris, Representative Don Edwards, and Senator Bob Dole. One of the immediate reasons for the appearance of the administration-sponsored amendment was President Reagan’s political concerns. In July, White House communications director David R. Gergen acknowledged that the president’s pitch on fair housing could “assuage
concerns of white moderates opposed to a presidential retreat on civil rights” (Cannon 1983:A3).

In anticipation of the upcoming election year, 1983 saw three new fair housing amendments introduced by U.S. Senators. Senator Orrin Hatch (R-UT) introduced the first on January 26th. His amendment—S. 140, the Equal Access to Housing Act—limited discrimination claims to only aggrieved persons who had made *bona fide* attempts to purchase, sell, lease, or rent housing, and it transferred enforcement responsibility from HUD to the Justice Department. Senator Hatch’s bill also capped fines for violating fair housing law at a meager $1,000. But S. 140 did include expanding legal protection to individuals with disabilities (“handicapped”). NAR vice president William North publicly lent support to Hatch’s amendment: “Our perception is that the Hatch bill is trying to make sure that accidental discrimination is not the source of condemnation” (Cambell 1983:31). North’s comments, however, confuse the bill’s proposal. It did not attempt to limit unintentional housing discrimination; rather, it sought to deny fair housing testers legal standing. NAR’s public support for Hatch’s bill solidified the political relationship between the real estate trade group and the senator. And in August that same year, RPAC provided Senator Hatch with a $5,000 campaign contribution.101

In May, Senator Charles Mathias (D-MD) along with thirty-eight co-sponsors, including ten Republicans, introduced a second amendment. That bill—S. 1220, the

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101 The $5,000 contribution brought NAR’s total political contribution to Senator Hatch to $10,000 for the 1981-1982 years. In comparison, RPAC’s average contribution to those few Senate candidates who received Realtor campaign financing was just under $3,000 for the same 1981-1982 FEC period.
Fair Housing Amendments Act of 1983—maintained an expansive definition of ‘aggrieved person,’ established a Fair Housing Review Commission to appoint administrative law judges, and capped penalties at $10,000. It also included amending the Fair Housing Act to protect and people with disabilities and people with one or more minor children.

On July 13th Senator Howard Baker (R-TN) introduced a third amendment. That one—S. 1612, also titled the Fair Housing Amendments Act of 1983—was ordered by President Ronald Reagan and composed by HUD Secretary Samuel Pierce (Campbell 1983). Like Hatch’s bill it also limited actionable discrimination claims based upon bona fide complaints and offered the Attorney General to take on cases where conciliation failed. However, S. 1612 proposed punitive fines, capping the maximum of which at an impactful $50,000 for a first offense and up to $100,000 for a second offense. S. 1612 included expanding legal protection to individuals with disabilities, but not those with minor children.

NAR maintained their scrutiny of potential fair housing legislation. The group’s subcommittee on Consumer and Regulatory Affairs consulted with NAR legal staff in early May 1983. The subcommittee then forwarded a report to leadership, recommending that the Realtor organization only support legislation that would accelerate enforcement via the judicial branch (NAR 1983a). This position reiterated the REALTORS’® stance against fair housing enforcement that would consist of administrative law judges within HUD. Although the report sustained NAR’s support for “the principal of fair housing,” the committee nonetheless
proposed continued monitoring fair housing legislation, along with publicizing “its concern over any unreasonable proposals which broaden criteria used to determine discrimination” (NAR1983a:418). The short entry within the group’s otherwise unremarkable report illustrates NAR’s post-civil rights legislative trinity: acknowledge support for fair housing, lobby against robust fair housing legal protections, and insure continued monitoring the legal landscape for actionable items.

But by 1984, Congressional interest was on the upcoming election. This, despite the executive director for the Leadership Council on Civil Rights claiming that “grassroots support is there [for S. 1220—Mathias’ bill] and civil rights groups are chaffing at the bit to get it passed” (Kerch 1984a:B27). Later in the month, Joel Motley, aide to Senator Daniel Patrick Moynihan (D-NY), noted that the bill was languishing in the Senate Judiciary Committee without more Republican support (Goodman 1984). Republicans weren’t the only holdouts: Democrats made up a majority of the eighteen-member Judiciary Committee, including one Southern Democrat, Senator Robert Byrd, and Senator Howell Heflin (D-AL), who received $5,000 from the RPAC in early May. While the partisan frame may have aided the Democratic political narrative that Republicans were anti-fair housing, the diffusion of potential amendments sitting in the Senate, key Congressional members’ disinterest in passing tighter fair housing ordinances, including Democrats’, and the election year anticipation seemed to dilute the potential for political compromise (“Fair Housing, Anyone?” 1986). Once again, a confluence of factors—including the
NAR’s efforts—contributed to an inability to pass tighter federal fair housing regulations.

The decade’s later years held greater promise for bolstering fair housing law. Political alignments proved crucial. With Democrats controlling the Senate, civil rights supporters were optimistic about the potential to expand federal fair housing law before the upcoming presidential election year (Curry 1987). Civil rights groups cited the Democratic-controlled Senate and particularly, Senators Joseph Biden (D-DE) and Paul Simon (D-IL), who were potential presidential contenders and also well-positioned on the Judiciary Committee (Hardin 1987).

In February 1987, Senator Edward M. Kennedy (D-MA) was joined by thirty-seven other Senators—including seven Republicans—to co-sponsor a new bill expanding the nation’s fair housing law. Noting that “[s]ix unsatisfactory years have passed on civil rights,” Senator Kennedy characterized the 1987 Senate as “under new management” and better poised to improve fairness in the nation’s housing market (qtd in Weinraud 1987:B7). At a press conference introducing the bill, Senator Kennedy boasted that in addition to the bill’s bipartisan backing it was supported by nearly two hundred civil rights and housing organizations. Subsequently, he declared that its chances for passage were “excellent” (qtd in Weinraud 1987:B7).

The Senate Hearings (S. 558)

The Senate’s Subcommittee on the Constitution held hearings on S. 558, the first fair housing hearing in the Senate in eight years. The bill sought to broaden
HUD’s enforcement powers via an administrative law judge system, grant such judges cease and desist powers, and levy fines up to $1,000 a day for violating judges’ orders. The hearings were extensive, covering six days spread across four months, beginning in late March and concluding in early July. Four Senators were present—chair Paul Simon, Arlen Specter, Edward Kennedy, and Orrin Hatch—along with four staff attorneys and clerks.

The National Association of REALTORS’® representative—attorney Robert Butters—appeared on the first day of the hearing on March 31, 1987. He presented an account of uncertainty and confusion surrounding the Fair Housing Act and requested amending it for greater clarity before considering other substantive changes:

We…firmly believe that any effort to amend the Fair Housing Act, and particularly for increasing the penalties for violating the Act, should occur only after the purpose of the Fair Housing Act is clarified whether the law mandates equal housing opportunity or the creation and maintenance of integrated housing patterns. We…strongly support provisions in the bill introduced by Senator Hatch that clarify the purpose of the fair housing law as ensuring equal housing opportunity and expressly stating that the law does not require the achievement of any particular proportion of minorities to majorities within any…community (U.S. Senate 1987b:108-109).

Consider this: NAR petitions the Senate subcommittee that the nineteen year-old law is unclear and inadequate. According to Butters’ testimony, the law’s lack of preciseness has allowed competing legal mandates, with one promoting “equal housing opportunity” and the other commanding “integrated housing,” because it holds presumably competing mandates (with one mandate promoting “equal housing
opportunity,” and the other “integrated housing”). By opposing “integrated housing,” Butters further defined integration maintenance programming as a racial quota system:

We have seen over the last 20 years that despite what Congress may have intended in 1968, open housing does not necessarily result in integrated housing patterns. Because of this, municipalities…have encouraged or required marketers of housing to adopt specific, race-conscious marketing practices to achieve some demographic goal or quota as to maintain or preserve integrated housing patterns (U.S. Senate 1987b:109).

Like the group’s campaign against forced housing of the 1960s, the National Association of REALTORS® once again invoked a communist specter of government-forced quota system in order to refute the mandate for fair housing. Rather than attending to the proliferation of ongoing housing discrimination at the time, NAR’s political lobby continued its aggressive and prolonged diligence in attacking integration maintenance programming.

The group’s testimony further derided how fair housing audits operationalized discrimination. Citing a HUD study, NAR’s attorney claims that one criterion “defined discrimination including such differences as whether a broker offered a home seeker a cup of coffee” (U.S. Senate 1987b:110). The study in question—a 1979 national audit overseen by HUD with testing provided by the National Committee Against Discrimination in Housing—identified significant racial disparities in real estate sales audits (HUD 1979). It not only found “large and statistically significant differences in treatment of black and white auditors” but racial disparities in courteous treatment between sales audits and in rental audits (HUD
1979:195). In addition, while the Realtors’ attorney disparaged reducing discrimination to a singular courtesy like offering a cup of coffee, his view ignores the list of additional courtesies sales agents denied blacks in higher rates than whites. For example, black testers were twice as likely to wait longer than white testers, were less likely to have the agent introduce themselves, and were less likely to be offered something to drink, a cigarette, or a seat (HUD 1979:130, 131). Furthermore, despite the attorney’s outrage through whether or not a broker offered a home seeker a cup of coffee, his outrage is based upon inaccurate information. Nowhere does HUD’s report refer to coffee. Such an imprecise summary of HUD’s otherwise extensive research—from the trade group’s top attorney—shows a careless allegiance to depicting the realities of the nation’s residential housing market before Congress.

While the Realtor organization recognized the importance of establishing social relationships with clients, NAR’s attorney suggests that broker hospitality is irrelevant. His position illustrates NAR’s great reluctance to acknowledge the perpetuation of discrimination through subtle and differential treatment rather than outright denial of services. Moreover, the context of the attorney’s claims furthered NAR’s refutation of the legality of fair housing audits. Their objection to this metric of discrimination is thus two-fold: real estate professionals should not be liable for hospitalities nor should they be legally subject to non-market testers.

NAR’s lobby emphasized the potential harm existing and potential fair housing law posed for Realtors. Its attorney claimed that S. 558 could endanger real estate practitioners in three ways. The first was increased financial penalties for fair
housing violations. The proposed criminal penalties for failing to answer a subpoena or falsifying testimony was no more than $100,000, up to a year in jail, and punitive fines (up to $50,000 for a first offense and $100,000 for subsequent offenses). Such large financial penalties, NAR’s attorney reasoned, were improper because of ambiguity in existing fair housing law. The second objection the Realtors’ attorney raised was NAR’s by then common refrain against integration maintenance. The attorney said that the confluence of the supposed lack of clarity in existing law—and the proposed increase in financial liability—could result in “commercial capital punishment on a real estate broker” (U.S. Senate 1987b:109). He further appealed for the Senate subcommittee to “rescue” real estate brokers from the potential of “effectively [being] put out of business if he violates the law” (U.S. Senate 1987b:109).

The third harm the Realtors’ attorney object to was expansion of the grounds for standing to sue under the Fair Housing Act. Claiming that the 1968 Congress would have “never contemplated” that anyone other than “persons other than bona fide housing seekers would be entitled to sue,” NAR’s attorney construed fair housing testing as an illegal amalgamation of federal law. These “problems” led NAR’s attorney to propose restricting standing under federal fair housing law:

We believe that a limitation on standing to a bona fide home seeker is absolutely essential before any consideration is given to increasing the sanctions on a person who violates the act. Otherwise, a broker can be put out of business upon a single charge brought by a person who suffered no actual injury (U.S. Senate 1987b:110).
Here, NAR’s attorney strategizes against existing fair housing law by pointing to the irreparable harm that real estate brokers could face by people “who have suffered no actual injury.” What he illustrates then is that the trade group wants to confine fair housing law to market—not civic—practices. By NAR’S logic, those actors outside of real estate transactions should be have no legal reproach. Thus, NAR’s representative testifies in front of the Senate Subcommittee on the Fair Housing Amendments Act of 1987 that the Senate should narrow not broaden the applicability of existing law.

Admittedly, NAR did support some strategic broadening of the law. They supported Senator Orrin Hatch’s (R-UT) bill. Citing the bill’s improved enforcement provisions that would authorize $1,000 in attorney fees in the event a respondent refused to participate in the conciliatory process and maintained conciliation confidentiality, NAR focused on incrementally improving the conciliatory process in place. Moreover, NAR’s attorney told the subcommittee that the Realtor organization “wholeheartedly” endorsed the inclusion of “traditional handicaps” defined as “blindness, deafness, [and the] inability to walk unaided or live unattended” (U.S. Senate 1987b:111). The careful delineation of what types of disabilities the NAR would support—so-called “traditional” debilitatingss—meant narrowly defining how broadly government regulation could reach. Relatedly, in its testimony before the Senate subcommittee, NAR only supported an abridged

102 In the 1987-1988 reporting cycle to the Federal Election Commission, the National Association of NAR reported $9,600 in contributions to Senator Hatch’s re-election campaign.
extension of giving families with children legal protection under the Fair Housing Act. In contrast to the broadened protections proposed in the bill, NAR’s support for families with children carried a large caveat—suggesting that property owners be able to designate “areas within a development as appropriate for families with children and other areas as appropriate for families without children or single adults, so as to maximize the enjoyment of the development for all residents” (U.S. Senate 1987b:111).

A Chorus of Realtors

Two days after NAR’s attorney’s testimony on April 2, 1987, a panel of Realtors also testified before the subcommittee. Three out of the five panel members were leaders of state and local Realtor boards: Fletcher R. Hall, Executive Vice President of the Greater Baltimore Board of Realtors; Randall Raynolds, President-elect of the Illinois Association of Realtors; and Alvis Pearson, President of the Greater South Suburban Board of Realtors. These witnesses’ typed testimonies were so similar that one of the Senators commented on their likeness:

Senator Metzenbaum: I notice that you and Mr. Hall and Mr. Pearson, that all of your material seem to have been prepared by the same person or group. Is this sort of a concerted effort that is reflected here? You have a right to do that, but if----
Mr. Raynolds: I can only speak for myself. I prepared this after over 8 years of being involved in this business and I had no prior speaking or knowledge of what their testimony was at all.
Senator Metzenbaum: I guess maybe it is the same typewriter. Maybe all Realtors use the same real estate group typewriter.
Mr. Raynolds: It was typed, mine and Mr. Pearson’s were typed in the same place. (U.S. Senate 1987b:297).
Just above, Senator Metzenbaum notes the Realtors’ testimonies stylistic similarities, appearing concerted in effort. Despite Raynolds’ assertion that he had no prior knowledge of the content of other Realtors’ testimony, the three Realtor witnesses all discussed similar content including integration maintenance. Both Raynolds and Pearson discussed integration maintenance as harmful to minorities:

Mr. Pearson: The integration maintenance concept grew out of the theory of tipping. Proponents believed that by limiting the number of blacks allowed into an integrated area to a percentage below the tipping point, integration would be preserved…Integration maintenance has the tendency to undervalue the individual freedoms that minority group members are asked to sacrifice in implementation of integration maintenance plans. Integration maintenance does not depend on the consent of blacks, individually or as a group. White communities impose integration maintenance in order to prevent the community from becoming black (U.S. Senate 1987b:305).

Mr. Raynolds: This philosophy of balanced integration had been determined successful by integration proponents, because it allows an acceptable number of minorities to live within one area without the fear of white flight. For those of us who have never known rejection of free choice in housing, the racially balanced system answers the desires for safety and stable housing values by controlling the inflow of minorities. The success of these programs is at the expense of the civil rights of minorities because it is based on the management and distribution of the population solely by race and limiting the numbers of minorities to that acceptable level determined by the white population (U.S. Senate 1987b:298).

Moreover, both Raynolds and Pearson address how whites control black entry into certain communities under the guise of preventing segregation with integration maintenance programming. The overlapping content and exactness in some of the language (“limiting the number”) even challenges the Realtors’ claims that they produced their testimony independently. Furthermore, the statements display the
same sophisticated opposition to integration maintenance that the National Association of REALTORS® endorsed a blunt operationalization of civil rights ideology, whereby their objection focused upon the potential infringement of so-called “minority” rights.

**Testifying In Favor of Fairness: Realtor Jackie Simon**

Joining the Realtor panel were two other real estate agents—T.L. Holmes, the president of the National Association of Real Estate Brokers, an organization that began in 1947 as a response to minority brokers being denied access to NAREB, and Realtor Jacqueline Simon. By the late 1980s, Simon had been practicing real estate for a decade, a decorated sales agent dedicated to selling moderately priced homes in Maryland. A member of the Montgomery Country Board of REALTORS®, the Maryland Association of REALTORS®, and the National Association of REALTORS®, Simon was also active in government fair housing groups, serving in leadership roles on the Maryland Housing Policy Commission, the Suburban Maryland Fair Housing organization, and the Human Relations Commission of Montgomery County. Senator Charles Mathias (D-MD) learned of Simon’s work at the Suburban Maryland Fair Housing, and he contacted her by phone to request that she testify before Congress concerning the need for tighter fair housing laws.

Simon described her interest in civil rights as a “lifetime passion and concern” and said that she “was willing to put myself where [other Realtors] might have liked

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103 Members of the National Association of Real Estate Brokers (NAREB) self-identify as a “minority organization” and I retain that phrasing here.
to, but weren’t in a position to” (personal communication 2015). Wearing her “career apparel” as an ERA employee, Simon had her trademark sports jacket that featured a large, prominent company logo (personal communication 2015). When I spoke with her by phone in 2015, she recalled the acrimonious reception that she received from NAR. Upon her arrival at the Senate hearing on April 2, 1987, the other Realtors waiting to testify joined her, stating they were glad another Realtor was there to speak against the bill. After Simon clarified that she supported the bill, her colleagues drifted over to the other side of the room.

Simon was undaunted by her colleagues’ treatment. Her spirited testimony described S. 558 “long overdue and essential,” remarking on the prolonged delay in addressing the limitations of the Fair Housing Act as well as affirming the present bill’s content (U.S. Senate 1987:311). Although Simon was a member of three Realtor organizations, she nevertheless denounced NAR’s stance on fair housing legislation with aplomb. Calling the organization’s stance on testing and administrative law judges “an embarrassment,” she publicly defied the trade organization’s stance in front of Congress (U.S. Senate 1987:312). Further, she openly challenged the NAR’s justification for opposing a robust fair housing law:

It is an embarrassment because it seeks to protect us, the Realtors, at the expense of the interests of many of the very customers and clients we seek to professionally serve. The obligation of a professional is to hold one’s self fully accountable for compliance with the letter and spirit of the law, not seeking to form the law to our convenience or for our self-serving protection, as our national association is seeking to do (U.S. Senate 1987:312).
Here, Simon illustrates how occupational protections put the public’s right to a fair housing market at risk. She further characterizes the Realtor position as self-serving and unprofessional.

Despite the National Association of REALTORS’® vehement objections to S. 558 and their interest in rolling back existing fair housing law to exclude fair housing testers, Simon’s testimony offered some hope. Her concluding remarks even evoked applause from the Senate hearing’s audience:

Ms. Simon: In these times of increased hate and violence, in these times of absence of leadership in civil rights, in these times of significant and all-too frequent acts of housing discrimination, the victims…require this legislation. They require protections from discrimination because of the presence of children, they require the use of testing and random testing, they require an opportunity for speedy, affordable resolution.

Senator Simon: If you would conclude, please.

Ms. Simon: I submit that their needs are paramount. Thank you. [Applause.] (U.S. Senate 1987:312-313).

Despite the support from the Senate’s audience that afternoon, Simon’s comments were not universally well received. After her testimony, NAR threatened Simon with the loss of her real estate license (Simon 2015). Although Simon was not an official representative for NAR, her testimony before the subcommittee illustrates that some NAR members contested the national association’s position on fair housing.

The House Bill - H.R. 1158

Meanwhile in late April, the House of Representatives Subcommittee on Civil on Constitutional Rights was holding its own hearing on its fair housing bill H.R.
1158—which had been introduced by Representative Hamilton Fish (R-NY) on February 19, 1987. The bill sought to expand fair housing coverage to include disabled persons and families with children as protected classes. The bill also provided greater enforcement powers for HUD. It allowed the HUD Secretary to forward complaints about Realtors failing to comply with conciliation agreements to the Attorney General. It proposed levying fines for any public release of the details of conciliatory agreements. And, it granted administrative law judges the power to order subpoenas to aid in fair housing hearings and to significantly increased the penalties for fair housing violations. A few days after its introduction, H.R. 1158 was directed to the House Judiciary Committee, who then furthered it to the appropriate subcommittee—the Subcommittee on Civil and Constitutional Rights, which would hold hearing on the bill beginning in April.

But before the House’s hearings began, an April 28, 1987 Supreme Court ruling would stymie the political progress on fair housing. In the case of *Tull v. United States* (1987), the Court held that, when the federal government used administrative hearings, the seventh amendment guarantees the right to a jury trial in order to collect civil penalties (Fish 1988:10). Representative Fish called the ruling a “political bombshell” with regard to the proposed fair housing legislation (Fish 1988:11). Not surprisingly, NAR lobby would reference the *Tull* decision in their objections to the administrative law judge system.

In the middle of the hearings on May 11th, Representative Fish met with ten Realtor constituents from the surrounding Westchester, Duchess, and Putnam
Counties of New York (Fish 1988:8). The Realtors “expressed deep concerns and strong misgivings about the bill” (Fish 1988:8). Some of their specific concerns were the administrative law judge system would not insure due process and questioned the institutional home of the system within HUD and the large fines for a first offense (up to $50,000) (Fish 1988:9). Representative Fish discussed the legislation with his NAR constituents for almost two hours, constituting a “good, spirited exchange” that resulted in his promising an amendment to allay some of the NAR’s concerns. As a result of that meeting, he offered an amendment to his own bill that elucidated NAR’s due process concerns. The Fish amendment would go on to be adopted by the full Judiciary Committee (Fish 1988:9). A month later, Representative Fish would receive the first of what would eventually total $10,000 in political contributions from RPAC for the 1987-1988 years.¹⁰⁴

NAR’s Testimony on H.R. 1158

When the House held its hearings on H.R. 1158, the National Association of REALTORS® Executive Vice President William North once again appeared before Congress and testified on May 15, 1987. He used a variety of rhetorical strategies to construe his organization as reasonable and conciliatory on the issue of fair housing. He began by highlighting the NAR’s practices that supported the federal Fair Housing Act, including revision of its code of ethics and a mandated equal opportunity program for each local board. Then, he noted the trade group’s participation with HUD in the Affirmative Marketing Agreement and the recent legislative compromise

¹⁰⁴ By contrast, the average RPAC contribution to House candidates for the 1987-1988 years was $5,941.
to push the Fair Housing Initiatives Program forward. The Realtor organization’s attempts to present itself as pro-fair housing and conciliatory were purposefully designed to ingratiating their opposition to the subcommittee.

North stated that the purpose of his testimony before the House was to eliminate “confusion as to what the law requires of us” (U.S. House 1987:522). Of course, he was referring to the handful of integration maintenance programs that sought to affirmatively further fair housing by way of incentivizing integration.\footnote{NAR’s written statement cites four integration maintenance programs. They include Oak Park, Illinois; Cuyahoga County Model Bonus Plan; the Fund for an Open Society; and HUD’s Chicago Regional office (U.S. House 1987:553-554). The policies North cites are all incentive-based programs. The Oak Park program provided $1,000 to landlords and $300 to lessees who would participate in the town’s pro-integration plan (U.S. House 1987:552). The Cuyahoga County Model Bonus Program also offered below-market mortgage interest rates to homebuyers to incentivize integration—a two percent lower to black applicants applying to an area with 90% or more white residents and to white applicants applying to areas with 40% or more black residents (U.S. House 1987:553, 525, 524). The Washington D.C.-based Fund for an Open Society functioned similarly (U.S. House 1987:553).}

Citing an urgency to the need to offer a specific definition of fair housing because the proposed bill would increase fines, North gave Congress an imperative to clarify fair housing law: “We submit that before any other amendments to the Fair Housing Act are considered, the Congress must first come to grips with the total absence of any definition in the current law concerning what is meant by ‘fair housing.’” (U.S. House 1987:543). NAR thus claimed that the Fair Housing Act and the two decades of subsequent court rulings on Title VIII constitute a “total absence of any definition” of fair housing law.

Like its testimony before the Senate just two months’ earlier, NAR’s testimony before the House of Representatives included limiting the legal standing for aggrieved persons under existing law. The group detailed a handful of legal cases...
(like Havens and South Suburban Housing Center) that held broad interpretations of legal standing under Title VIII before suggesting that prior to any potentially “staggering increases” in penalties that fair housing complaints be limited to narrowly defined aggrieved persons, excluding fair housing testers (U.S. House 1987:557).

Moreover, NAR’s testimony objected to H.R. 1158’s strengthening of the conciliation process. The bill proposed conciliation agreements no longer be private between the two parties, but instead be a matter of public record. NAR reasoned that such a demand would minimize the possibility for conciliation because of the threat of public exposure. Remarking on the importance of confidentiality within the conciliation process, North claimed that real estate professionals may be willing to conciliate a dispute and agree to a monetary settlement, even when the evidence of guilt is in considerable doubt. Settlements are often made by businessmen on economic considerations rather than assessments of actual liability. A respondent’s willingness to settle to avoid the costs, aggravation, and potential adverse publicity of a public adjudication would be seriously undermined if the conciliation agreement was required by law to be made public (U.S. House 1987:558).

By maintaining that conciliation is often a business decision, NAR implies that it is distinct from guilt of breaking fair housing laws, and therefore, reasons that conciliatory efforts should remain solely between the immediately interested parties. Here, NAR bolsters its case that private business transactions within the real estate industry to remain private and out of public scrutiny. NAR once again conceptualizes housing as relevant to the two parties in question within a (presumed) business transaction—where public knowledge of or publicizing any legal infractions harm the “businessmen[’s]” enterprise.
NAR further challenged the measure’s granting administrative law judges the power to hear fair housing cases. Recycling their successful lobbying slogans from the previous decade, NAR objected to investing HUD as the “prosecutor, judge and jury” of fair housing complaints (U.S. House 1987:560). But the group also used contemporary judicial rulings to augment its criticism of the proposed administrative enforcement. Recounting the Supreme Court ruling in *Tull* case, which held that suits seeking punitive damages were constitutionally required to hold jury trials, NAR asserted that the administrative law judge system was unconstitutional because it would infringe on defendants’ due process rights to a jury trial if imposing civil penalties.

NAR’s objections to H.R. 1158 extended into even the most notable areas of legal enhancement: broadening the protected classes of ‘handicapped’ and families with children. In its written statement, NAR decried the bill’s definition of ‘handicapped’—which included physical and mental handicaps and anyone regarded as having such an impairment—as “entirely too vague to constitute a meaningful guide to conduct” and argued that such a “non-definition…creates unlimited ambiguities” (U.S. House 1987:562). Instead, NAR offered a definition of handicapped to mean “an impairment of a person’s ability to see, hear, walk unaided, or live unattended” (U.S. House 1987:563). Moreover, the trade group sought to restrict the legal classification of presumably immoral behaviors. Endorsing the Justice Department’s recommendation, NAR supported excluding “drug or alcohol
abuse, or other impairment that could present a threat to the safety or property of others” (U.S. House 1987:563).

But NAR’s most provocative comments before the subcommittee painted itself as a victim of housing discrimination:

Mr. North: …I would recall to your mind the fact that the real estate industry has, in many ways, been the victim of past policies of the Government in respect to discrimination. Specifically, for example, that the FHA did not lend in integrated communities until the late 1950s, and that the courts and the Government consistently supported racially restrictive covenants until the Supreme Court overturned them. So, we have a problem in the sense that we, the National Association and its members, are on the ‘firing line’… (U.S. House 1987:540).

According to this statement, the federal government’s withholding access to financing and housing in discriminatory ways contributed to the real estate industry being victimized “in many ways.” Configuring the Realtor organization as harmed by government limitations in access to homeownership to people of color, NAR’s testimony stands in stark contrast to the historical record. To be sure, the government’s housing policies and judicial rulings contributed greatly to discriminatory housing access for people of color; however, the Realtor organization’s influence in the enactment and deployment of the color line was an equally compelling contributory factor. With a role in crafting and deploying restrictive covenants, maintaining a segregated workforce that denied people of color from becoming Realtors and fair and open access to real estate listings, perpetuating and profiting from the color line in housing, and submitting legal views to the highest court in the nation defending the right to bar people from owning or occupying
property simply because of the color of their skin, NAR’s hands were hardly bloodless.

**Jackie Simon Returns**

On May 6th, Realtor Jackie Simon once again testified in favor of amending the Fair Housing Act. Calling the NAR’s opposition to the use of administrative law judges and testing “an embarrassment,” Simon openly criticized the Realtor association’s political maneuvering on these two important areas of fair housing enforcement (U.S. House 1987:339-340). Taking such positions, according to Simon was “mak[ing] NAR part of the problem, not part of the solution” (U.S. House 1987:339). Simon made a compelling claim about the reasonable quality of government oversight via testing:

> Those of us [NAR] who conduct ourselves in a professional, ethical way have nothing to fear from testing. I acknowledge testing does consume an agent’s time, but I submit that that cost is an appropriate price to pay to reduce discriminatory practices. I see it as no different than auditors from the Real Estate Commission auditing our escrow accounts periodically. It is simply a cost of doing business. I vehemently disagree with NAR’s position that testing is a means of extortion. REALTORS® who discriminate should feel the full force of the law. NAR protests too much regarding testing (U.S. House 1987:339).

Just above, Simon offers an insightful refutation of the NAR’s position on testing, emphasizing the responsibilities professional real estate brokers and salespeople must uphold to insure equal housing opportunity. Taking a position opposite NAR, Simon emphasized Realtors’ responsibilities while framing their liabilities as part of working in an industry that serves the public’s housing needs.
Later, when she is questioned by the subcommittee members, Simon elaborated on the significance of housing discrimination for families with children:

Ms. Simon: They are rented by word of mouth for other ‘compatible,’ if you will, tenants. We see the same problem in subdivisions where licensed sales people are not used and a builder will hire the spouse of one of his first purchasers in a subdivision. That purchaser is now the sales agent. They are selecting their neighbors, and I submit that many times non-pertinent criteria creep into the selection process…

Mr. Conyers: Are you suggesting that a ‘no children’ policy is used, really, to screen out minorities?

Ms. Simon: I think that it has the effect of doing that, absolutely.

Mr. Conyers: Either deliberately or accidentally?

Ms. Simon: It is an effect (U.S. House 1987:351).

Simon thus outlined the real estate practices that seek to produce racially discriminate results. Property owners and landlords could legally discriminate against people of color by claiming that they don’t rent or sell to families with children.

According to James B. Morales, attorney for the National Center for Youth Law who spoke after Simon, the country’s shifting demographics of single households and growing number of households without children resulted in a market demand that allowed property owners to deny housing to families with children. When HUD researched the issue in 1980, the agency found that twenty-five percent of all rental properties did not allow children (U.S. House 1987:360). Further illustrating how insidious discrimination against families with children was at the time, Morales’ testified that California’s fair housing agency said discrimination against families with children constituted almost forty percent of their caseload (U.S. House
And as Simon observed, this was a routine practice of the real estate industry that would continue if families with children were not granted legal protection.

II. Fair Housing Amendments Act of 1988

Despite the National Association of REALTORS’® March testimony before the Senate subcommittee, in late 1987, the group’s internal documents still showed opposition to expanding the Fair Housing Act’s legal protections. At NAR’s annual convention in Honolulu in November, the Executive Committee meeting minutes included “Recommendation #10,” which read

Subject to the review and concurrence of the Equal Opportunity Committee, the Subcommittee recommends that the NATIONAL ASSOCIATION OF REALTORS® oppose the inclusion of family status as part of the Fair Housing Amendments Act of 1987.

Subject to the review and concurrence of the Equal Opportunity Committee, the Subcommittee recommends that the NATIONAL ASSOCIATION OF REALTORS® oppose the inclusion of a broadened definition of ‘handicapped’ status, to include those individuals who are known mentally handicapped, alcoholics, or drug abusers, in the Fair Housing Amendments Act of 1987 (NAR 1987e:1306).

Just above, in November of 1987 NAR proposed an exceedingly narrow mandate. Also in November, Stephen Driesler, NAR’s Senior Vice President of government affairs suggested that families with children would be “best addressed at the state and local levels” rather than federally (Phillips 1987:J1). Months prior to the formulation

106 The state of California had fair housing protection for families with children in effect for more than five years at the time.
of what would become the Fair Housing Amendments Act of 1988, NAR was displaying sustained objections to some of the most integral parts of the bills.

A number of significant political developments affecting NAR were underway. First, the trade group was still reeling from losing legislative ground to the previous years’ tax policies (also known as the Reagan tax cuts) when, in 1986, the Tax Reform Act limited tax shelters in real estate investments. Second, the Omnibus Budget Reconciliation Act of 1987 capped mortgage interest deductions to one million dollars, non-indexed for inflation (NAR 2013:5). These tax policies removed attractive tax benefits for real estate, threatening NAR’s bottom line. The Reagan administration’s attempts to lower the deficit—a helpful frame for the trade group while lobbying against expanding federal programs like FHIP—became a liability for the trade group when gratuitous tax breaks for real estate came upon the chopping block. The tax policy changes in the late mid-1980s nevertheless contributed to the NAR’s political insecurity (Salvant 1998).

Third, the broader political environment supported expanding fair housing. The upcoming 1988 Presidential election was spurring bipartisan Congressional support to move on the issue. With Republican members of Congress urging legal reform to strengthen fair housing, NAR lacked any political allies who weren’t interested in addressing the issue. Both presidential candidates—George H. W. Bush and Michael Dukakis—supported amending the law. The Democrats were also uniquely poised in their control of Congress, having passed the Civil Rights
Restoration Act in the spring of 1988, which conservatives in the Senate had obstructed since 1984 (Vobejda 1987). The Act was attempting to overturn a Supreme Court decision that had narrowed federal law barring discrimination at educational institutions to only those programs that took federal funding. In mid-March 1988, President Reagan vetoed the civil rights bill, only to have his veto overridden by bipartisan support in Congress that provided more than the two-thirds margin needed (Curry 1988:1). Such impressive bipartisan Congressional support for civil rights legislation negated NAR’s chances at amending or rejecting bill altogether, making negotiation much more attractive and politically practical.

The political climate thus spurred NAR’s interest to compromise. In April, George H. W. Bush’s lead on Michael Dukakis had fallen from just the previous month. And by May, Dukakis was leading and would continue to do so until September. With the possibility of the Oval Office and Congress controlled by Democrats, NAR was primed to compromise with a Republican president (Parks 2002:129). However, the Reagan administration contended that they would veto any bill that solely relied upon the administrative law judge system. Representative Fish indicated that while Congressional support was high, it was not strong enough sustain the necessary measures to override a Presidential veto.

The NAR lobbying machine, meanwhile, was in full swing. That spring, the group released via direct mail an “Urgent Call For Action” memo to its membership across the country, pressing for a jury trial option (Fish 1988:13). In response to the
memo, NAR rank and file flooded their congressional offices with mail (Fish 1988). Once again, the NAR’S lobbying arm successfully rallied its membership to demand fair housing legislation addressing real estate practitioners’ legal protection.

Within one month of Congress’s overriding the president’s veto on the Civil Rights Restoration Act, members of NAR were openly speculating about approaching the Leadership Council on Civil Rights to work out a compromise on fair housing at the strong behest of Representative Fish (Parks 2002; Salvant 1998:14). Representative Fish would go on to observe that private meetings with Realtors from his Congressional district that had a “major impact” on his views and even “on the eventual legislative result” (Fish 1988:2). NAR’s decision to move forward on compromise was spurred by both political allegiance and a desire to free up resources for the pursuit of fiscal policy reforms (Parks 2002:132). The trade group further narrowed their demands during the spring of 1988. In contrast to their previous arguments against broadening protection to families with children and the disabled, NAR’s sticking point in negotiations was the right to a jury trial. The Leadership Council on Civil Rights, however, was suspicious of such limited NAR demands. Council President Ralph Neas said,

Frankly most of us thought that was just the tip of the iceberg. If that issue were resolved in any way, there would be a myriad of other issues that would quickly surface. We would be spending the next four or five or six months engaged in endless negotiations. And then once again like in 1980 the bill would die (qtd in Parks 2002:139).
NAR was in favor of getting legal authority out of HUD’s dominion, while the Leadership Council—like other civil rights groups—was skeptical of how much justice black claimants could get in jury trials (Parks 2002). NAR’s position was supported by President Reagan, who threatened to veto any bill that didn’t offer a jury trial to defendants (Hess 1988). The Reagan administration and NAR compromised and supported Representative Fish’s amendment which would allow a jury trial in federal district court in lieu of the administrative law judge system if either the petitioner or defendant demanded it as well as allowing for appealing administrative law judge’s rulings (Phillips 1988).

On June 29, 1988, H.R. 1158 passed the House of Representatives by a vote of 376-23. According to the Chicago Sun Times, the legislation successfully passed the house because both the NAR and the Leadership Conference on Civil Rights had something to gain (“A Victory For Fair Housing” 1988:40). While civil rights groups sought out a win in an election year, NAR “wanted to improve their image”—which in the past had depicted their organization as “condon[ing] discrimination” (“A Victory for Fair Housing” 1988:40). The following day, NAR issued a press release with the group’s president Nestor R. Weigand, Jr. emphasizing the new law’s “equitable enforcement of America’s fair housing laws because it protects the Seventh Amendment right to a trial by jury for person charged with a violation” (NAR 1980g:1). In addition, the statement highlighted NAR’s conciliatory tendencies:
Most importantly, H.R. 1158 reflects a profound dedication to stamping out housing discrimination by our nation’s lawmakers, as well as the leading civil rights groups and the National Association of NAR who joined to support this bill. We have worked together and have risen above our disagreements of the last decade to push for this bill (NAR 1980g:1).

The story of reaching consensus thus became a visible and highly circulated narrative to illustrate the National Association of REALTORS’® new image as a fair housing partner.

**NAR: The Heir Apparent of the 1988 Amendments**

Leading up to and well after the passage of the Fair Housing Amendments Act of 1988, the Realtors were far and away the law’s biggest political beneficiaries. A week prior to the bill’s passage, several sources were attributing the amendment’s success to compromise and conciliatory tendencies by the NAR. From the floor of Congress, Representative Robert Kastenmeier remarked:

> Interestingly enough, if I may make a final observation, it is not with the same antagonism and bitterness of earlier days. The National Association of REALTORS® have, rather than fighting this, tried to achieve minimally what they thought they needed in terms of due process (Congressional Record 1988:H4603).

Here, Kastenmeier lauds NAR members for their lack of “antagonism” and “bitterness.” The trade group’s historical vitriol for fair housing legislation subsequently provides an exceedingly low bar of expectations to surpass, and once it does so, it is considered remarkable. Moreover, despite appearing before Congress twice to suggest repealing the existing fair housing law in significant ways—and
objecting to every component of the bill’s coverage and enforcement mechanisms—members of NAR are described as not fighting H.R. 1158. Instead, they are recognized for their attempts to “achieve...due process.” However while Kastenmeier’s praise for the Realtors is perhaps not surprising in light of his receipt of RPAC donations, he was not alone in complimenting NAR on its political compromise on fair housing.107

Others remarked on NAR’s new conciliatory position on fair housing. For instance, the San Francisco Chronicle reported that the “key to the compromise was the NAR, who helped defeat similar legislation earlier this decade” (“Compromise Reached – Some Muscle for Fair Housing Bill” 1988:A13). The same news article cited a civil rights group participant in the bill’s negotiations—crediting NAR President Nestor Weigand Jr. as a “new generation of leadership in the NAR’ group for an open attitude that allowed the compromise” (“Compromise Reached – Some Muscle for Fair Housing Bill” 1988:A13). By the late 1980s then, NAR was being recognized as changed organization. The Realtors thus had help in rebranding themselves as an organization of reasonable political participants in fair housing efforts.

IV. Remodeling the REALTOR® Brand

Legal developments in fair housing in the 1980s occurred alongside a nascent marketing campaign to modernize and promote the REALTOR® brand. The project

sought to associate the trade group as a pro-fair housing organization to both internal and external stakeholders. Consisting of highly symbolic activities, educational components, and organizational promotion, NAR’s campaign challenged its enduring image as a fair housing opponent, remolding the real estate trade group as an ally of equal housing opportunity. Below, I examine the activities that helped build up the trade group’s fair housing “equity” into the REALTOR® brand. And I demonstrate the material and ideological ramifications of the Realtors’ branding campaign.

**Educating REALTORS® about Fair Housing**

During the 1980s, Realtor boards across the country were implementing fair housing informational sessions and training for their members. As early as the year 1980, the Tacoma-Pierce County Board of Realtors (in conjunction with area fair housing groups) held a fair housing workshop, featuring keynote speaker William D. North. And in 1985, the Stamford (Connecticut) Board of Realtors worked with Stamford’s Community Housing Resource Board to produce fair housing education (Brooks 1985). The result of the efforts was a 20-page pamphlet to be distributed to all of the Realtor members and used as the trade group’s syllabus for its fair housing continuing education course (Brooks 1985). That same year, the Montgomery County (Maryland) Board of Realtors was cited in a joint award from HUD (to the Montgomery County Department of Housing and Community Development and the Montgomery County Community Housing Resources Board) for fair housing educational programming (Devereaux 1985).
Still more evidence shows Realtors fully embracing fair housing education for its trade members throughout the mid-1980s at the state, local, and national levels. For instance in 1986, the Ohio Association of Realtors’ legislative conference featured its state chair of the Equal Opportunity in Housing Committee speaking on fair housing training before leaders from the state’s boards (“Ohio Realtors Plan Legislative Meeting” 1986). Also in 1986, Realtor leadership in Georgia emphasized the importance of professional standards and education on fair housing (Pate 1986). In Pennsylvania, the Centre County Board of Realtors’ 1986 annual orientation included a fair housing component, which was aimed at new and existing Realtors (“Board of Realtors Plans Meeting” 1986). The national association also took measures to improve Realtor education. The vice chair of NAR’s Equal Opportunity Committee, Anna Soulios, promoted a three-hour training course that some states accepted as part of continuing educational credits for renewing real estate license beginning in 1986 (“Realtors Board Selects New Chief” 1986). Soulios, the first woman to be elected president of the Richmond (Virginia) Board of Realtors in 1980, emphasized “education and training is our main goal and getting the word out on what the law is…The law makes good sense” (“Realtors Board Selects New Chief” 1986:E13). The Richmond board’s Equal Opportunity Committee Chair set a goal to have two thousand participants in the group’s equal housing seminars for the year (“Realtors Board Selects New Chief” 1986:E13). And other Realtor boards implemented Fair Housing Month activities in conjunction with continuing education credit. For instance, in Oklahoma, the Norman Board of Realtors offered a
continuing education course entitled “Fair Housing Law and Practice in Real Estate” in conjunction with the Metropolitan Fair Housing Council of Oklahoma City during Fair Housing Month (Denton 1986).

Some of the Realtor educational drive was created in direct reference to accelerated fair housing testing enforcement and court orders. The Cleveland Area Board of Realtors’ President attended the 1986 Parma, Ohio’s first fair housing seminar; the seminar was spurred by a federal court order to end housing segregation (“35 Attend Seminar on Parma Fair Housing” 1986). In early 1987, the Ohio commission on real estate approved NAR-produced equal opportunity video training sessions for continuing education credit (Jordan 1987). Armin Guggenheim, celebrating his election to the presidency of the Ohio Association of Realtors in January 1987, explained the need for such courses:

For the last couple of years, Congress has wanted to appropriate about $3 million to be used by fair housing groups to test the real estate industry…We fought that because there were no objective guidelines. We think there will be testing everywhere in the country and we want those guidelines. We want to make sure all citizens have equal access to the marketplace and we want agents who know they are not involved in steering practices (qtd in Jordan 1987:11).

Just as NAR was preparing for its recalibrated position on the Fair Housing Initiatives Program before Congress, Realtor state leaders like Guggenheim were anticipating the need for fair housing and education for their membership. Whether for professional development, in anticipation of fair housing testing and legal enforcement, an interest in improving fairness in the housing market, or some
combination thereof, the Realtors’ took on systematic training on fair housing in the mid-1980s. But the professionalization was largely self-contained.

Some community groups’ efforts to improve Realtor education on fair housing were unsuccessful. The fair housing organization Housing Opportunities Made Equal (HOME) whose suit against the Havens Realty Corporation was confirmed by the Supreme Court in 1982 ruling (that fair housing testers had legal standing to sue under Title VIII) was pursuing novel ways of combating housing discrimination. The organization approached the Richmond Board of Realtors in 1985 (Lazarus 1985). According to HOME Executive Director Kent Willis, Realtors’ disapproval of testing had meant little demand for the fair housing group’s services, but with the new judicial fiat in place in support of testing, the real estate industry might be more conciliatory. HOME was interested in changing its perception as an adversary to the real estate industry and focusing on educational efforts rather than legal pursuits. Such pursuits were costly and didn’t inoculate against housing discrimination before it could occur (Lazarus 1985). A partnership would also mean fewer public lawsuits that could embarrass real estate brokers and harm their professional image. For these reasons, Willis proposed an offer to the Richmond Board of Realtors leadership that seemed mutually beneficial. The proposal included HOME testing for up to one year and, instead of sending the results to the Virginia Real Estate Commission, sending them to the Realtor board’s fair housing committee (Lazarus 1985). In exchange, the board would form a training program with HOME (Lazarus 1985).

108 Personal communication with Willis 2016.
The Richmond Board of Realtors, however, rejected HOME’s offer. According to Willis, the Richmond Board of Realtors’ President was in favor of the proposal and an overall strong supporter of fair housing, but he confided that the board would never sign on to a such a deal, much less a deal coming from HOME.\footnote{Ibid.} The adversarial relationship between the two groups could not be overcome. While Willis acknowledged that his plan was “admittedly…pie-in-the-sky stuff,” he thought “it was worth a shot.”\footnote{Ibid.} Willis left HOME three years later to go to the American Civil Liberties Union and the Richmond board never took up HOME’s offer to partner in testing or training.

Later, in the face of a new regulatory environment, the need to train Realtors on fair housing law became apparent. In 1991, NAR Regional Vice President George F. Peek was touring Utah in honor of Fair Housing Month. Though the 1988 Fair Housing Amendment had been the law of the land for two years, Peek claimed that Realtors and property managers were not fully aware of the full reach of the law (Knudson 1991).

**Fair Housing Month**

Another significant Realtor project beginning in the 1980s was the trade group’s efforts to inform the public about fair housing law. While some Realtor boards were implementing such programming prior to the 1980s, they were sparse and weren’t executed in conjunction with one another. For instance, as early as 1974,
Maryland’s Greater Baltimore Board of REALTORS® joined the Board of Education in Baltimore County to incorporate fair housing education in high schools (“Board Develops Fair Housing Program” 1974). The result was the “People Are People” program for ninth graders that educated students on the political, economic, and social dimensions of fair housing (“Board Develops Fair Housing Program” 1974). Such early programming displayed what would eventually become standard Realtor programming components to a new creation, Fair Housing Month, to educate young people about fair housing.

By the late 1970s, the country’s civil rights organizations in conjunction with HUD celebrated Fair Housing Month in April to commemorate the April 11th passage of the Title VIII of the 1968 Civil Rights Act. Both the national Realtor association and its local boards, however, did not systematically participate in Fair Housing Month during the 1970s and even into the early 1980s. Instead, in the early 1980s, the Realtors referred to Fair Housing Month as an external celebration. For instance, NAR president John R. Wood released a 1981 press statement mentioning his support for HUD’s celebration of Fair Housing Month. Noting that he endorsed HUD’s efforts “to make the concept of fair housing a reality,” Wood outlined his suggestions for legislative actions that could help foster fair housing in the residential housing market. One of Wood’s recommendations was to “[e]liminate neighborhood housing quotas that are increasingly enacted by local governments—and do more to deny individual freedom of choice than help achieve integration” (“Fair Housing Praised” 1981:3).
Eight years later in 1989, the Realtors were still pitching integration maintenance as the origin story of housing discrimination. A Chicago-area newspaper described NAR as having “been active for nearly 25 years in efforts to promote fair housing (Busk 1989:1).” Ira Gribin, NAR President, maintained the Realtors’ dogged fixation on integration maintenance programs:

> Although much progress has been made in the area of fair housing, a great deal more needs to be done in many areas...There is no question that the changes [of the Fair Housing Amendments Act of 1988] do not go far enough to clarify that the federal Fair Housing law (enacted 21 years ago) prohibits all forms of race-conscious marketing of real estate (Busk 1989:1).

Thus, in throughout the 1980s, Realtors used fair housing publicity as a way of further promoting the trade group’s persistent defamation of integration maintenance programming.

Instead of promoting Fair Housing Month in the early 1980s, NAR was sponsoring its own celebration: Private Property Week. During Fair Housing Month in April 1982, for instance, NAR’s president-elect Harley W. Snyder was slotted to speak before the Metropolitan Indianapolis Board of Realtors to kick off the week’s festivities. Snyder addressed the importance of rights and responsibilities of homeownership, including a warning concerning the erosion of private property rights and urging Realtors to stand up to government intervention that would assault

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111 According to such a calculation, NAR would’ve had to have been supporting fair housing since 1963. The fact that such a comment comes from within the pages of the Chicago Sun-Times, a large paper of the Chicago area—where NAR is headquartered—is not surprising.

112 Private Property Week was established by NAR in 1976 as part of the organization’s extensive bicentennial celebration. Private Property Week replaced REALTOR week (est. 1952) and would be proceeded by American Home Week (est. 1986).
“oppose government action to limit it” (Wilkinson 1982). As late as 1985, NAR was still giving its week-long celebration top billing over Fair Housing Month:

Private Property Week, which coincides with Fair Housing Month, is being celebrated in the Southland today through Saturday with activities planned by various real estate boards. The annual observation was designated by the National Assn. of Realtors to focus on increasing the public’s awareness of the right to use, own or transfer private property (“Realty Board Plan Private Property Week Activities” 1985:L17).

The Realtors’ interest in celebrating Private Property Week and asserting the primacy of private property rights meant that it directed less attention toward Fair Housing Month in the 1970s and into the early 1980s.

But in the mid-1980s, Realtors began participating in Fair Housing Month in earnest. Local Realtor boards across the country began advertising their affiliation with Fair Housing Month to promote fair housing awareness, to educate young people and the public on the law, to inspire civil engagement, and to associate the REALTOR® brand with fair housing. Activities in Florida in 1986 illustrate how Realtor boards were transitioning into greater participation in Fair Housing Month. Shirley Simpson Wray, the Community Development coordinator for West Palm Beach said, “Since the Realtors sponsor one week in April as American Home Week, and April is observed as Fair Housing [M]onth, we decided to something together” (Gibson 1986:3B). The group’s participation in Fair Housing Month entailed highly visible, ceremonial activities. Central to the Realtors’ participation was publicity
coverage in area newspapers, to disseminate and promote the group’s activities and goals.

*The Poster Child of Fair Housing*

Perhaps the most ubiquitous way Realtor boards participated in Fair Housing Month was by sponsoring poster competitions. These competitions involved student-produced fair housing posters for cash awards or other prizes sponsored by local Realtor boards. For example, in 1984, the Salina (Kansas) Board of Realtors sponsored a fair housing poster competition for fifth and sixth graders at Salina County schools, giving $35 in prize money (*The Salina Journal* 1984). In 1985, the 15th District of the California Association of Realtors co-sponsored a Fair Housing Month poster competition for San Bernardino County school children. Offering prizes ranging from $75 to $250, the poster contest was part of the group’s efforts with HUD and the San Bernardino County Community Housing Resource Board in order to “stimulate awareness of the law and the concepts of equal housing opportunity and to provide a strong focus on housing issues” (“Good Poster Could Help Fair Housing” 1985). In 1986, Arizona’s Mesa-Chandler-Tempe Board of Realtors sponsored a Fair Housing Month children’s poster contest, with the seventh, eighth and ninth grade winners receiving computers, typewriters, and telescopes. And in 1987, New York’s Orange County Board of Realtors provided fifty and one hundred dollar savings bonds to a local fair housing poster contest winners (“Housing Month” 1988:4A). The same year, South Carolina’s Spartanburg Board of Realtors also put
up prize money for a local poster contest (Thomas 1987:C1). Newspaper accounts named local winners and often published students’ names, artwork, and images of them receiving their awards. (See Figure 13.)

Figure 13. Creighton Middle School student Scott Howard’s poster for the Phoenix Board of Realtors’ Fair Housing month campaign. (Doerfler 1986:19)

In putting forth images of smiling children and children’s artwork, the Realtors involved in these competitions strategically engineered a publicity campaign demonstrating their moral allegiance to fair housing surrounded in good will.

The Realtors’ Fair Housing Month activities consisted of targeted, educational projects to promote equal opportunity in housing and publicize the REALTOR® brand in conjunction with that doctrine. Ideally, the project sought to advance moral and educational development in the field of civil rights and housing. One
announcement described the prize as “a more enlightened community” (“Good Poster Could Help Fair Housing” 1985:21). In this way, the Realtors’ post-civil rights agenda fulfilled at least one of the group’s pre-civil rights’ suggestions: achieving fairness and equality in housing. As the Realtors noted back then, moral deficiencies need to be addressed by “men of goodwill.” While in the 1960s NAREB had advocated for civic institutions to develop moral campaigns to abet racial discrimination in housing, in the 1980s NAR sought to become the civic institution to deploy such a campaigns.

“Building a Nation of Neighbors”: Promoting the REALTOR® Brand

Fair Housing Month further endorsed the REALTOR® brand by referencing local Realtor boards’ adjudicative potential. In 1981, California’s San Fernando Valley Board of Realtors was the topic of a mid-April Fair Housing Month column in the Los Angeles Times. The article summarized the history of civil rights laws and National Association of Realtors’ work with HUD on the Affirmative Marketing Agreement before introducing the Realtors’ Code of Ethics:

Should a home buyer claim discriminatory treatment in the availability, purchase or rental of housing, member boards will accept complaints alleging violations of the Code of Ethics by realtors and realtor associates. Member boards have a responsibility to enforce the Code of Ethics through professional standard procedures which guarantee a full and complete hearing to determine the facts, due process for all involved and corrective action in cases where a violation of the code has occurred. The San Fernando Valley Board of Realtors...can provide more information about the filing and handling of a professional standards complaint (“April Observances Stress Legal Guarantees of Equal Opportunity” 1981:A16).
While the article also notes that complaints can also be filed with HUD, that possibility is only mentioned after discussing the Realtor boards’ potential to mediate such complaints. Highlighting the trade group’s professional standards and ability to adjudicate housing discrimination claims with “due process,” the article depicts Realtor boards with legal powers comparable to the state’s. The only remedy Realtor boards can offer discrimination victims, however, is professional censure and penalties, not legal recourse.

Other boards’ celebrations of Fair Housing Month re-entrenched the national organization’s already-ineffective policies and consequently promised little improvement in housing equality. For the nineteenth anniversary of the passage of the federal Fair Housing Act, the Cleveland Area Board of Realtors promoted their signatory status of the Affirmative Marketing Agreement. The Board president acknowledged that the Realtors’ image of opposing fair housing “remains in the minds of many” (“Top Realtor Calls for Fight Against Racism” 1985:13-A). The Cleveland Realtor president further claimed that the organization “no longer resisted changes in civil rights laws and fair housing principles” and cited the board’s new incoming president—a black man—as evidence of the board’s progressive position on equality (“Top Realtor Calls for Fight Against Racism” 1985:13-A). Despite the Board’s promotion of the month however, the Greater Cleveland Community Housing Board and others divulged that little progress toward housing integration had been made in the Greater Cleveland area since 1960. A University of Wisconsin study ranked Cleveland at the time as the most segregated city in the U.S. and the locus of
record numbers of housing discrimination complaints. The study concluded that the Cleveland Board of Realtors’ approach to fair housing appeared deaf to the community’s housing needs (Jordan 1986). They further noted that the state of Ohio was producing more discrimination complaints than any other state and that Cleveland constituted “the leader in racial harassment cases, generally targeted at blacks” (“Fair Housing Goals Pushed” 1987:8). Responding to the housing discrimination data, the Cleveland Realtors surmised that they “have a responsibility to help solve the problems by advocating participation in the [Affirmative Marketing Agreement]” (“Housing Goals Pushed” 1987:8). In short, faced with new knowledge concerning their community, the Cleveland Realtors recycled an old answer. The group put forth the Affirmative Marketing Agreement as the answer to ameliorate discrimination in housing, despite acknowledging earlier that the Cleveland Board had already been increasing its signatories with apparently little effect on the community.

The Realtors’ participation in Fair Housing Month emphasized publicizing the event, the board’s celebratory activities, and affiliate the REALTOR® logo in conjunction with the ideas and imagery of equal opportunity and fair housing. (See Figure 14.)
The Greater Greensboro Board’s advertisement proclaims Fair Housing Month as “right,” “fair,” and “for everyone.” This all-inclusive message also strategically places the REALTOR® logo directly across from the equal opportunity in housing logo. In 1990, the Greater Syracuse Association of Realtors—at the behest of Syracuse, New York’s Community Housing Resource Board—furnished all four thousand of its rank and file with vinyl decals of the equal housing opportunity emblem (“Decals Promote Fair Housing” 1990:E1).

Narrating Fair Housing and the REALTOR® Brand

While some Realtor-led discussions of fair housing showed evidence of an orchestrated campaign, others were less polished and even abrasive. One article provided an interpretation of why fair housing took so long to gain acceptance,
historically speaking. President of the Southside Virginia Board of Realtors, Betsy Butler, explained that blacks “knew they would lose...Everything was segregated in those days. People have now gotten pushy enough to push it” (Caggiano 1989:12). Such a simplistic and reductive account is equivocated by the equally-insulting characterization of the contemporary presence of fair housing. By attributing fair housing law as the result of “people” who have “gotten pushy enough,” this Realtor board president offers an impertinent narrative of the country’s fair housing mandate.

Other Realtors presented more professional explanations for why they celebrated fair housing. Virginia’s Richmond Board of Realtors celebrated its first Fair Housing Month in 1981 after Board President Anna D. Soulios noted an increasing number of inquiries on the subject (Halsted 1982). Aimed at educating Board members and the public, the Richmond Board of Realtors’ Fair Housing Month activities initially focused on seminars. When Board members described the importance of upholding the law, the Richmond REALTORS® emphasized neither fairness nor equality in housing, but the professional liability of breaking the law:

> It’s dangerous to take a prejudice[d] position as a Realtor. You’ll get caught....You’ll lose your license, lose your business.. A number of agencies are trying to catch people. They’re testing, looking for discriminatory practices. Any Realtor who does it will get caught (Halsted 1982:K-16).

Numerous Realtors boards justified the need for promoting fair housing education because of the discriminatory views of American homeowners. In April 1985, Alabama’s Calhoun County Board of Realtors noted that their members were
pledging “to refuse discriminatory housing listings” and that some of their agents were even “turned down business because the property owners wanted to restrict sales to white” (“Fair Housing” 1985:4). Here, the Calhoun County Board of Realtors depict fair housing violations as based upon racist property owners and Realtors refusing to engage in such illegal practices, despite, presumably, a financial incentive for the agents. A number of newspaper articles on Fair Housing Month activities contained more of the same. The following year, a representative from the Phoenix Board of Realtors noted that agents “may run into a case where the family says, ‘We’ve lived here 30 years and all our friends are here. Please don’t show it to a minority person’” (qtd in Doerfler 1986:19). And the chair of the Ohio Association of Realtors’ Equal Opportunity in Housing claimed that Realtors struggled under fair housing law. Citing once again homeowners’ attempts to circumvent the law by selling their own homes, he claimed that as a result of these homeowners’ racism, “[o]ur own salespeople are being harassed in neighborhoods—you don’t hear much about that” (Jordan 1986:11). And in Lemoyne, Pennsylvania, a member of the Rothman Schubert and Reed Realtor Boards maintained that the problem wasn’t “in the real estate industry…it’s in our clients” (Eshelman 1987:H1). The president of the Greater Harrisburg Board of Realtors agreed, explaining that her Board members were interested in staffing a booth on fair housing in a public square during the month of April, in order to challenge the public’s ignorance of fair housing laws: “They have to know that they can’t ask us to do that…A lot of homeowners think they have the right to discriminate, and they don’t” (Eshelman 1987:H1). The following year, the
president of the New Braunfels Board of Realtors also addressed homeowners and fair housing violations. Listing the real estate industry as the third and final group with responsibility to uphold fair housing law, the Realtor leader explained how real estate agents could defend the law: “A request from the home seller and landlord to observe discriminatory requirements in the sale, lease or rental cannot be done by the real estate industry. It is a violation of the law” (Pospisil 1988:21).

What these examples show is that Realtors conceptualize property owners as the locus of discriminatory housing practices in the contemporary residential housing market. By circulating the idea that homeowners’ discriminatory views need to be addressed, the Realtors endorsed the need to educate an uninformed public on the requirements of the law. Moreover, by detailing the public’s ignorance, the Realtors demonstrate their professional expertise and knowledge of fair housing law. Such a strategy further locates the problem of housing discrimination as originating among discriminatory homeowners, thereby positioning Realtors as enlightened professionals with the interest and ability to shepherd homeowners to act more fairly in the residential housing market. In doing so, they challenge the presumption that Realtors were part of the problem of housing discrimination.

Realtors’ attempts to portray fair housing violations originating from property owners stands in stark contrast to housing discrimination data from the 1980s. At this time, civil rights groups, housing policy experts, and academic scholars were examining covert, but nonetheless institutional, discriminatory home-selling practices
real estate agents were engaged in called steering (Galster 1992; Wienk et al. 1979; Yinger 1975). While these researchers are careful to note that real estate agents’ steering practices happen within a broader cultural milieu of inequality, they nonetheless analyze how agents direct homebuyers to housing choices based on race and offer selective commentary or “editorialize” about home locations (Galster 1990a, 1990b; Galster and Godfrey 2005; Pearce 1979; Ross and Turner 2005; Turner and Mickelson 1992; Turner, Edwards, and Mickelson 1991; Wienk et al. 1979; Yinger 1995). Scholars have identified a broad range of steering practices including selecting neighborhoods based on race, commenting on neighborhood racial demographics, and withholding properties (Galster 1990a, 1990b; Galster and Godfrey 2005; Pearce 1979; Yinger 1986). Based upon his review of thirty-six housing audits conducted from the 1970s until 1987, George Galster (1990a:124) found that the steering from the studied areas entailed most significantly a failure to show White homebuyers options in neighborhoods and school districts with nontrivial proportions of minorities, and a propensity to show minority homebuyers disproportionately in areas currently possessing or soon to be expected to possess significant proportions of minorities.

These scholars’ findings on discriminatory home selling practices are important to note in connection with the Realtors’ maintained opposition to tighter fair housing regulation in the spring of 1988. Then, in a newspaper report on Fair Housing Month activities in South Carolina, the State Human Affairs Commissioner lamented the state’s weakness on fair housing, identifying it as one of eleven states in the country
without its own fair housing law and that despite the agency pushing for a law, it had been aggressively opposed by the South Carolina Association of Realtors (Smith 1988:2C).

Some Realtors addressed the prevalence of steering during Fair Housing Month. Learning that results from a comprehensive fair housing study in the Omaha, Nebraska area showed thirty-eight percent of testers of color were treated less inclusively than white testers, the president of the Omaha Board of Realtors maintained, “In the six years I have been on the board, we have not had one complaint on unfair housing procedures” (Cattau 1980:4). The report cited the fact that “many Realtors referred to busing in the Omaha School District as a general reason not to buy in that district” (Cattau 1980:4). Such editorializing—while illegal—wouldn’t deny home seekers from buying homes, but might influence their decision on where to do so. And because this kind of treatment doesn’t specifically refuse service or deprive home seekers from housing, it would rarely be reported to Realtors as unprofessional.

A few years later in 1985 in Indiana, the Fort Wayne Board of Realtors’ Fair Housing Month activities were also cited as a result of racial steering (Leininger 1985). A newspaper article described how after the Metropolitan Human Relations Commission studied the Fort Wayne Realtor Board in 1983 and found that steering present in almost half of all of the testing encounters (21 out of 57), the Realtors
agreed to participate in a Voluntary Affirmative Marketing Plan, which included the 1985 production of a pro-fair housing television commercial (Leininger 1985:NP).

Realtors also used Fair Housing Month as a way to promote their progress in fair housing. A Realtor in Harrisburg, Pennsylvania emphasized how, twenty-five years ago, his real estate office “used codes to describe neighborhoods. That way agents could easily identify if a listed house was in a black, white or mixed neighborhood” (Eshelman 1987:H1). Some Realtor boards’ recognition of Fair Housing Month inadvertently noted how fair housing efforts had only recently come to fruition in their communities. In Richmond, Virginia, Realtor Riley Ingram stated, “Fair Housing has come 100 percent…I don’t know if I could have made that statement five years ago” (Caggiano 1989:12). And in Columbus, Ohio, the chair of the Columbus Board of Realtors’ Equal Opportunity in Housing Community boasted, “As far back as three or four years, there have been no formal complaints against Realtors here” (Jordan 1986:11). However, the Columbus board’s record is contradicted later in the same article.

You’ve Come a Long Way, Realtors

When Realtors did acknowledge their responsibility in housing discrimination, it was highly qualified. In 1982, the vice chair of the Richmond Board of Realtors’ equal opportunity committee described fair housing violations as “mistakes, not intentional” (Halsted 1982:K-16). By configuring housing discrimination as unintentional, Realtors put themselves forth as sympathetic business
practitioners who are simply making “mistakes,” not actively discriminating.

Reducing housing discrimination in this way to unintentional mistakes positions the Richmond Board of Realtors’ and their trade members in a more sympathetic light. And at his keynote address to North Carolina Fair Housing Conference to celebrate Fair Housing Month in 1989, NAR executive vice president William D. North emphasized working together and “not scape goat[ing] each other…You can’t lay off responsibility of discrimination on the banks and the brokers. It is a problem for the real estate community and the minority community but most of all it’s a problem for the community as a whole” (Vogel 1989:9). The Realtors concessions here emphasize unintentional acts and shared responsibility.

Perhaps the most pernicious example of Realtors attempting to rewrite their organizational history occurred in 1988—in a celebration of the twentieth anniversary of the passage of Title VIII of the 1968 Civil Rights Act. NAR president Nestor Weigand was visiting Minnesota to discuss integration maintenance with representatives from some state associations (Porter 1988). Noting that Minnesota itself had no complaints regarding integration maintenance, at the press conference Weigand nonetheless covered a variety of housing topics including the upcoming legislative considerations for amending fair housing. Speaking about the aggressive stance the Realtors were taking, Weigand juxtaposed it with a peculiar characterization of the organization’s efforts in 1968. According to Weigand’s account, the Realtors supported the 1968 federal Fair Housing Act but were unable to offer anything “more than moral support” to the civil rights’ legislation (Porter
Weigand explained that the Realtors’ underwhelming lobby in 1968 was due to the group’s small membership numbers—at the time consisting of only one hundred thousand members—and thus limited financial resources, the Realtor trade group subsequently “lacked the budget and sophistication to give much more than moral support” (Porter 1988:6B). Just two decades after the passage of federal fair housing law and facing the possibility of tightening such law in 1988, NAR’s president publicly rewrites the organization’s history on fair housing law. Weigand’s comments are perhaps the most odious, but they constituted part of a broader organizational effort to reimagine the Realtor organization as a fair housing ally.

Another Fair Housing Month revision occurred in 1990 as NAR was celebrating the twenty-second anniversary of the Fair Housing Act. NAR President Norman Flynn recognized the group’s efforts on recent political projects and boasted: “The 1988 Fair Housing Act is a positive example of the commitment by NAR to make housing a reality for more people in this country” (“Realtors Mark Fair Housing Month” 1990:2). Flynn’s remarks illustrate how the Realtor organization employed its otherwise reticent support for the amendments to the group’s later advantage—displaying its affinity for fairness in the residential housing market. Relatedly, the Realtor President called the passage of the 1988 amendments as “long overdue”—ignoring the Realtors’ vehement opposition to every fundamental component of the 1988 Act (“Realtors Mark Fair Housing Month 1990:2). Such purposeful distortion of NAR’s position regarding such a recent event demonstrates how the trade group’s
leaders will contort its historical record on fair housing in order to ingratiate itself to an otherwise unaware public.

Only in the 1990s did Realtors begin offering unequivocal public support for Fair Housing Month. (See Figure 15.)

Figure 15: “Fair Housing is Every American’s Right,” Rockford Board of Realtors advertisement, Register Star, Rockford, IL, April 14, 1991. Page 4.
In 1990, NAR marked the twenty-second anniversary of the Fair Housing Act with a national campaign titled the “Heart of America” celebration. As part of the campaign, NAR leadership publicized the organization’s fair housing efforts. 1990 NAR President Norman Flynn credited the campaign with “recogniz[ing] NAR’s work with the leadership Conference on Civil Rights and other National Fair Housing and Civil Rights groups, such as the NAACP, in obtaining the recent passage of the Fair Housing Amendments Act” (“Realtors Mark Fair Housing Month With Campaign” 1990:31). Local and state boards also promoted Fair Housing Month. A previous President for the Greensboro Board of Realtors in North Carolina publicly advocated support for Fair Housing Month: “The Realtors’ Association strives to keep Fair Housing as one of our prominent focal points in today’s housing market… just when we are lulled into thinking there is no problem, that is the time that we need to be most vigilant” (“Realtors Affirm Fair Housing Focus” 1990:3). Such proclamations in support of fair housing were joined with financial expenditures to support fair housing as well. In 1991, the Massachusetts Association of Realtors contributed over twenty-three thousand dollars to help host twelve fair housing seminars throughout the state (“Realtors to Sponsor Fair Housing Seminars” 1991:32). The seminars were slotted to begin in conjunction with Fair Housing Month in April and promised to provide registrants with fair housing information materials on how to comply with the law.
CHAPTER NINE

CONCLUSION

THE NATIONAL ASSOCIATION OF REALTORS
AND THE MANDATE FOR FAIR HOUSING

Decades after the rise and fall of restrictive covenants and the Realtor code of ethics dictating racially disparate treatment of home seekers, the organization that would eventually become the National Association of REALTORS® continued to influence fairness in the residential housing market. While social science literature has cited the significance of the Realtors’ objection to fair housing laws in the 1960s, real estate practitioners’ on-going illegal steering practices, and some acknowledgement of the Realtors’ role in defeating federal fair housing legislation in the late 1970s and early 1980s, it has not considered how the country’s largest real estate trade organization systematically influenced the national mandate for fair housing. This dissertation shows how the Realtor trade group constituted an impactful and tireless foe to fair housing law and policy for over three decades. Not only did the Realtors successfully contribute shaping the definition of ‘fairness’ in the housing market, my research demonstrates that fairness in the contemporary housing market is an on-going process that is continually being built into the nation’s housing laws and policies anew. Below, I review my findings from each decade.
The 1960s

In the 1960s, the Realtors employed existing organizational mechanisms and implemented new ones to wage an aggressive material and ideological campaign against so-called forced housing. Leveraging time, energy, organizational, and financial resources in their campaign, NAREB sought to codify existing property owners’ rights to discriminate as sacrosanct. The Realtors didn’t just point to an American political and legal lineage that entitled property rights, their campaign against forced housing constructed a tradition of inalienable property rights. The Realtors’ campaign included multiple organizational statements of policy that conceptualized existing private property rights—including the right to discriminate—as sacrosanct. These policies circulated widely, appearing in newspaper advertisements; reproduced in pamphlet form; and duplicated in speeches, policies, and legislation. The Realtors deployed imagery and language meant to evoke good will and sentimentalized an otherwise exclusionary and racist mandate. Further, these policies deceptively put forth concepts of ‘freedom’ and ‘rights’ that denied the socio-historical and economic realities of the residential housing market. Moreover, the group maneuvered their professional occupational status in order to justify the relevance of racial and religious identities as relevant to the home buying process. While some of the NAREB’s policies detailed in this section circulated more broadly and had greater influence than others by way of public opinion and political influence, they all constituted a trade-wide allegiance to buttressing the discriminatory housing market of the 1960s.
NAREB’s campaign against forced housing provided a robust ideological campaign that conceptualized fair housing as morally, socially, and economically disastrous. In situating themselves as a platform of moderates and remaining steadfast in their opposition to government regulation of the residential housing market, the group sought to uphold the residential—and thus racial—status quo of white property owners’ freedom to discriminate. In their campaign, they proposed moral, not legal or governmental, authority to address racial discrimination in housing. Moreover, they contended that state regulation and penalties were inappropriate realms for dismantling discrimination because these constituted federal over-reach into an arena of human rights that it was unfit to monitor. Despite their claims to the contrary, the Realtors’ campaign fundamentally disagreed with the axiom of the Civil Rights Movement: that government is empowered with the authority to outlaw discrimination when such discrimination prohibits full and equal access to basic civil rights. The campaign also denounced state intervention as ineffectual for racial and religious minorities. Even later, when the Realtors’ campaign conceded limited government oversight, it maintained that laws without requisite social support were misplaced. As a result, the Realtors’ campaign constructed a platform of opposition to governmental regulation and support for voluntary, non-governmental programming on social education to improve equality within the residential housing market. Taken together, NAREB’s organizational activities buttressed segregated housing in both practice and spirit.
Despite a major legislative loss in 1968, NAREB’s ability to organize, campaign, and fortify its influence on public opinion and government regulation solidified. While the Realtors’ drive against fair housing law was unsuccessful, it was nonetheless successful in shaping implementation and enforcement of how fair housing law would be taken up. In doing so, the Realtor organization solidified its political power. The implementation, deployment, and routinization of their political action committees within local Realtor boards offered the trade group unprecedented cohesion to a unified, national movement against government regulation of their trade. The organization deployed their rank and file to act as financial and ideological foot soldiers in a vast and costly campaign. The group also effectively used the news media to disseminate the campaign materials; the production of well-written, lengthy, and detailed press releases resulted in generous newspaper quotations—both cited and uncited—for the organization. The Realtors’ opposition to fair housing foreshadows how the trade group would understand, deploy, and habitually undermine fair housing in the coming decades.

The 1970s

In the wake of a new legal precedent ordering racial and religious discrimination out of the U.S. residential housing market, the Realtors initially floundered with uncertainty. In the first few years that followed the legal mandate of Title VIII of the Civil Rights Act of 1968 and *Jones v. Mayer*, Realtors and their allies were not immune from criticizing fair housing law. The sporadic appearances of
vehement opposition and ugly rhetoric point to the legacy of the Realtors’ campaign against forced housing. The group’s initial response also put forth competing messages about accepting national law, directing its members how to act within the law but also speculating on how to permanently absolve themselves from the law’s reach. With a new vigor to identify victims of the nation’s housing market, the Realtor organization contrived their trade members’ vulnerability to the new laws. Further, the Realtors negated the Fair Housing Act’s legal parameters by bolstering its own organizational apparatus to handle discrimination claims.

Importantly, the Realtor organization underwent a massive transformation during the 1970s. Starting with a fresh name for its organization, the National Association of REALTORS® was born anew. The Realtors’ name change coincided with a fledgling new public persona on fair housing. As part of the group’s metamorphosis, the Realtors seemingly reversed their position on fair housing. However, close examination of their activities in adopting and implementing programming reveals a sustained hostility to a viable fair housing platform.

One of the group’s most visible policies on fair housing was its participation in the Affirmative Marketing Agreement with HUD. But despite Realtor claims to the contrary, fair housing agreements were weak, voluntary measures. With its role in affecting the timing (by great delay), composition, deployment, and oversight of the Affirmative Marketing Agreement, NAR put fair housing in motion largely on its own terms. The Agreement’s collaborative nature between HUD and NAR as fair housing partners assigned the latter group to a position of strength in negotiating the limits its
trade members were willing to go to in the name of fair housing. In this way, Realtors
were endowed with regulatory power of the residential housing market even within
this voluntary program. The Realtors’ participation in the Agreement meant the group
wasn’t just passively adopting agreements drafted by government regulators; its
members were actively constructing the fair housing policy of the post-civil rights’
residential housing market.

Voluntary compliance via the Agreement translated into individual Realtors
and Realtor boards self-selecting to affiliate with fair housing. But the tangible results
of the Agreement were anemic even by Realtor standards. The California Real Estate
Association charged the Affirmative Marketing Agreement as ineffective, with too
many resources going to the collection of signatories “and too little time was spent
developing fair housing programs” (CREA 1998:NP). The Realtors’ use of the
Agreement thus worked for a purposeful and vested self-interest in crippling what
little adjudicative power Title VIII allowed. That contradictory stance embodied
NAR’s post-civil rights’ agenda: a façade of pro-fair housing activity that ultimately
served Realtors’ trade interests in weakening federal oversight of discrimination in the
residential housing market.

While the Affirmative Marketing Agreement offered NAR and its members a
way of demonstrating good will toward fair housing, the national association’s pursuit
against integration maintenance programming provided the trade group with an
offensive political position for challenging fair housing law. The Realtors confused
integration maintenance’s race-conscious programming and with racial determinism,
rejecting Title VIII’s dictum to affirmatively further fairness in housing. Setting off what would become a decade-long contest, NAR vigorously pursued political and legal challenges to integration maintenance, the majority of which would be unsuccessful.

Within the organization, the number of members joining NAR exploded in the 1970s. Between 1971 and 1981, NAR’s membership rolls increased by almost six hundred percent, due to the establishment of a new membership classification known as a “Realtor-Associate” (“NAR Expanded to Include Associates” 1974:7). (See Chart 1.)

![Chart 1: Increase in National Association of REALTORS® membership, 1961-1991.](chart1.jpg)

Its growth translated into more dues-paying members and more financial power for the organization. Such financial backing meant that the Realtor organization could
use its expanded power and status to oppose legal regulation and broaden its already well-established lobbying muscle. In contrast to the group’s campaign against forced housing of the 1960s, the Realtors’ campaign to limit fair housing regulation in the 1970s relied upon the group’s internal political structure, its financial power, and its lobbying capacity to affect the national legislative threats. While its shift in its lobbying profile was most likely instrumental—since the fair housing regulation’s political realm moved from the ballot box to inside courtrooms, Congressional offices, and the floor of national legislatures, it nonetheless shifted the public persona of the Realtor organization.

The 1980s

At the dawn of the 1980s, the Realtors were also in many ways beginning anew—fighting the legal and political mandate for fair housing largely out of the public eye, sculpting a new and more recognizable brand name, broadening its membership base, growing political clout, and shaping fair housing law and policies favorable to the trade group’s members. Importantly, the decade’s earliest moments were some of the most significant in the group’s attempts to amend fair housing laws, with S.560 just a few votes short of passing both houses of Congress. The legislative loss set the tone for fair housing over the course of the decade, as efforts dissipated to pursue a more robust law. The trade group would face an uphill battle as economic concerns of recession and political will for compromise dissolved.

Its efforts on the Fair Housing Initiatives Program illustrate the group’s purposefully slow acceptance of negotiated fair housing enforcement and
regulation—and its dedication to carving out a top position as a legislative and regulatory stakeholder in the country’s debates over fair housing projects. NAR first rejected FHIP in 1985 and the national economic climate helped buttress its position. However, the group’s initial rejection also influenced later policy steps. The following year, HUD—an ever increasing partner with the trade group—took a more conciliatory approach with NAR and provided them with an exclusive position at the bargaining table. The National Association of REALTORS® early and privileged consultation meant that members of Congress and fair housing groups would be positioned at a legislative disadvantage from the outset, having to challenge the existing guidelines after a so-called compromise had already been established and without a comparable political machine and lobby behind them. While some political allies of fair housing worked within the legislative system to draw attention to the inequality in the negotiations, their objections would not hamper NAR’s gaining political power in influencing fair housing policy.

The Realtors were thus able to direct federal programming in a way that would benefit its trade members and ultimately constituted a weakened government mandate to uphold fair housing. For instance, the trade group’s obstruction of FHIP resulted in delayed passage of the federal project and monies for further housing discrimination testing. According to housing scholar George Galster (1999:124), private fair housing organizations constitute “one of the central component[s]” of fair housing enforcement, crediting them with the ability to “create a credible deterrent to differential treatment discrimination” (1999:124). NAR’s opposition to what would
become one of the central elements in fair housing enforcement not only put the trade group on the wrong side of history again, it contradicted the organization’s earlier claims that fair housing should be the purview of private citizens. Moreover, given scholars’ (Massey and Denton 1993; Yinger 1995, 1999) findings that executive policy and enforcement are the linchpins of a viable federal fair housing mandate, the National Association of REALTORS’® objections and delays in implementing FHIP translate into the organization directly slowing fair housing enforcement. In fact, Ross and Galster (2005:13), who measured the relationship between fair housing enforcement and changes in the incidence of housing discrimination, found that larger amounts of financing for programs like FHIP resulted in “greater declines in discrimination against black apartment-seekers and home-seekers.”

Despite popular accounts that attribute the 1988 Fair Housing Act amendment’s passage to the conciliatory working of civil rights groups and NAR, a broader historical perspective on the trade group’s work over the decade of the 1980s reveals an entrenched opposition to expanding fair housing administration, enforcement, and viability. By the mid-1980s, NAR was still forming its relationship to fair housing and in the initial stages of branding itself as a fair housing organization. Perhaps such a struggle over the issue explains why the national director of research, policy, and plans for the NAACP described the Realtors as “a johnny-come-lately to fair housing” (Meyers 1984:9). Fair housing was the means through which the organization built itself anew. The National Association of REALTORS® implemented a number of branding strategies to align itself as a fair
housing organization. The real estate trade group nevertheless continued to promote its trademark in connection with the symbol of fair housing. Across the country, local boards sponsored civic projects to promote fair housing by way of poster contests, booths in town squares, and public proclamations.

Yet these seemingly progressive projects nonetheless reproduced limited conceptualizations of fair housing. Realtor boards in the 1980s took little responsibility for racial steering and, instead, frequently blamed racist property owners for any on-going struggles with racial discrimination in the residential housing market. Additionally, others demonstrated that opposition to fundamental components to fair housing—like discrimination—need not be intentional. The Realtors’ Fair Housing Month projects were thus contradictory; they explicitly called attention to housing discrimination while also implicitly reinforcing ideologies that denied the real estate industry’s role in on-going housing discrimination—and denigrated the legal codification upon which fair housing rests.

**Fair Housing in the Post-Civil Rights Era**

Contemporary scholarship suggests that racial discrimination has not disappeared, but has been transformed in the post-civil rights era (Brown et al. 2003; Goldberg 2002, 2009; Ross and Turner 2005; Williams et al. 2005). My study illustrates one part of that transformation, showing how the Realtor organization was able to delay and diminish fair housing opportunities even after Title VIII was the law.

113 See the discussion of the “intent doctrine” in *Whitewashing Race* (Brown et al. 2003).
of the land. My consideration of the National Association of Realtors reveals that the post-civil rights era was just as eventful as the early twentieth century’s formative developments for fairness in the residential housing market. Scholarly research unanimously rules the Fair Housing Act ineffective (Massey and Denton 1993; Price 1990; Yinger 1995, 2001). However, the Realtors’ sustained and cumulative efforts to achieve that ineffectiveness have not been adequately acknowledged. From 1978 to 1986, nine pieces of fair housing legislation to amend Title VIII were submitted for Congressional consideration. All nine failed to become law. While the National Association of REALTORS® was not single-handedly responsible for the losses, their extensive political lobby was nonetheless a key factor in the delay to amend the law.

My dissertation demonstrates that after their loss in 1968, the Realtors were far from finished in their opposition to fair housing. In many ways, their fight had only just begun. When the passage of federal fair housing caught the organization off-guard and ill-prepared—leading to a legislative (Title VIII of the Civil Rights Act of 1968) and judicial loss (Jones v. Mayer) regarding the constitutionality of government regulation, the Realtor organization took incremental but nonetheless significant steps in reconfiguring its relationship with HUD, Congress, its membership, and later, the public in order to more effectively oppose fair housing. The trade group’s loss on federal fair housing resulted in no less than the creation of the largest professional trade group in the country and one of the country’s largest political action committees. While this power wasn’t only targeted at fair housing—the Realtors’
political lobbying is ubiquitous—it nonetheless defended the housing inequality by opposing fair housing regulation. Thus, the Realtors’ opposition to government regulation of racial and religious discrimination in the residential housing market set into motion the rise of the political and organizational power to better negotiate the new legal and social terrain that fair housing demanded.

True to its affinity for self-governance and opposition to government regulation, NAR’s contemporary post-civil rights agenda focuses on self-regulating, voluntary educational housing programming that the organization can publicize as evidence of its embrace of fair housing. In many ways, the Realtor organization opposes fair housing in the strictest sense—countering affirmative steps to offset racial segregation via a decade’s long and expensive fight against a handful of integration maintenance programs. They attack robust financial and legal support from the government to uphold and enforce the law, and devote considerable time and resources to legal battles defending the racist home selling practices of their rank and file members.

In its early stages, the Realtors’ post-civil rights campaign successfully delayed and weakened fair housing legislation, influenced public perception of government regulation of the housing market, grew its membership base via its publicity campaign, and established itself as an organizational directive toward voluntary programming in lieu of government regulation of the housing market. Although they embraced fair housing publicly, I argue that they did so as part of a
process to craft a pro-fair housing public image to better serve the REALTOR®
brand. The Realtors’ actions on fair housing constituted an organizational campaign
to publicly sell itself as upholding the law, while internally it crippled the law’s
viability. Despite their initial and sustained opposition to the bill itself, NAR has
benefited enormously from the 1988 Fair Housing Amendments Act. Officially
recognized by the public as a partner in fair housing, the REALTOR® brand enjoyed
unprecedented political good will by the end of the 1980s.

The Realtors’ practices in the contemporary post-civil rights housing market
further illustrate the significance of political legislative politicking and policy
development. While getting civil rights laws passed is enormously significant, those
interested in having the state uphold fairness and justice in the residential housing
market should recognize the immense importance of implementing and adjudicating
these laws. Industry groups like the Realtors—with large memberships and deep
pockets—are empowered to conduct prolonged, exhaustive legal battles that threaten
to chip away the efficiency of fair housing laws.

Even though this study shows what an important role NAR played in the pre-
and post-civil right era on fair housing, I do not suggest that it is the sole component
affecting structural inequalities in the residential housing market or that the people
who populate the organization are racist. However, the Realtor organization—both in
its historical and contemporary iteration—staunchly opposed and continue to oppose
government regulation of discrimination, using public money to fund housing
enforcement and testing, and deploying race-conscious policies that seek to
affirmatively further fair housing. The trade group’s marketing of its brand alongside fair housing platforms thus produces a contradictory relationship to fairness in housing. To wit, at the opening of this dissertation, I described how in 2007, the president of the National Association of REALTORS® announced at a press conference that the organization was providing one million dollars to the Martin Luther King, Jr. memorial to commemorate fairness and equality. What the NAR president did not acknowledge was that the Realtor press conference did not take place at the Martin Luther King, Jr. Memorial Foundation official ground-breaking ceremony of the memorial. Instead, the Realtors’ ceremony occurred three months later, at the U.S. Capitol in press conference organized and publicized by NAR—where Harry E. Johnson, Sr. President and CEO of the King foundation emphasized: “Having the financial commitment from the Realtors® is very important to our efforts, but having their everyday commitment to enable people to live their dream is crucial” (NAR 2007:2).
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