and HUD should also use the certification process to examine whether such fees are available under State law.

H.R. 5200 carries forth existing case and statutory law regarding "standing," which simply defines those persons who may challenge discriminatory housing practices. The bill uses the phrase "person aggrieved" to define those who may file complaints with HUD or in the courts, or petition for review of the administrative law judges orders. The "aggrieved person" language of title VIII should not be construed to limit the rights of "interested parties" or "interested persons" to participate in the HUD administrative proceeding under the Administrative Procedures Act as set out in sections 554 (c) and 555(d) of title 5.

H.R. 5200 codifies the decisions of the courts of appeals in the Shannon and Otero cases. Those decisions simply say that aggrieved persons have a right of action against HUD or HUD recipients for violations of title VIII, including section 808. The Otero case also makes plain that recipients of Federal assistance under programs and activities relating to housing and urban development are equally bound by the affirmative action requirement of section 808(d) and section 808(e)(5).

Mr. Chairman, housing is a very basic right which is often vital to both educational and employment opportunity. A recent survey of the practices of nearly 3,200 real estate sales firms and rental agencies in 40 metropolitan areas found that the probability of a black homeseeker encountering discrimination would be 75 percent in the rental market and 62 percent in the sales market. The promise of fair housing opportunity made in the original 1968 act is long overdue. H.R. 5200 affords us the means to honor that promise and I urge its adoption.

□ 1040

Mr. RAILSBACK. Mr. Chairman, I yield 7 minutes to the gentleman from New York (Mr. FISH).

□ 1050

Mr. FAUNTROY. Mr. Chairman, will the gentleman yield?

Mr. FISH. I will be happy to yield to the Delegate from the District of Columbia.

Mr. FAUNTROY. Mr. Chairman, I rise in support of H.R. 5200, a bill which may very well be the most important civil rights bill to reach the House floor in over a decade, as it seeks to assure equal housing opportunities for all citizens irrespective of race, creed, nationality, religion, sex, or handicap by amending title VIII of the 1968 Civil Rights Act.

The primary shortcoming in the existing law derives from the almost total dependence upon private remedies. Present law, while giving HUD the responsibility to receive and investigate complaints of housing discrimination, fails to give HUD any authority to remedy the violations its investigations reveal. Where HUD fails to achieve a remedy for the violation through conciliation, aggrieved individuals are left to seek redress through private civil actions. While the court route is adequate for those who can afford to hire legal counsel and pay for alternative housing, this does not afford a viable alternative to the majority of Americans. The immediate problem—an inability to obtain the desired housing—is not resolved expeditiously enough in the courts to help most individuals who experience such discrimination. These private remedies are certainly not adequate for minorities who are generally discrimination's victims.

The consequence of HUD's powerlessness, is that HUD is unable to get respondents to take the conciliation process seriously. Victims, too, do not perceive conciliation as offering any real hope of relief. In the entire country, fewer than 4,000 complaints have been filed with HUD under title VIII in any given year. HUD estimates that more than 2 million instances of housing discrimination occur annually. More pointedly, a recent nationwide survey of the practices of nearly 3,200 real estate sales firms and rental agencies in 40 metropolitan areas found that the chances of a black encountering discrimination when seeking to buy a house is nearly 62 percent, and a staggering 75 percent when seeking to rent.

Today's discrimination now often takes subtle but effective forms. Some examples of housing practices that are currently unlawful, but which continue unchecked because of the lack of effective enforcement include:

Providing a member of a "protected class" racial or ethnic minority—with information different from that provided to others thereby making the dwelling less "available";

"Steering"; that is, suggesting that blacks seek housing only in black or integrated neighborhoods, and whites only in white neighborhoods;

Requiring different terms of sale or rental for certain races; that is, higher interest rates, down payments, security or cleaning deposits, and so forth; and

"Redlining"; that is, refusing to finance or insure a dwelling because of the racial composition of the neighborhood.

H.R. 5200 will strengthen the fair housing section of the 1968 Civil Rights Act in several key areas. Most importantly, however, this bill will finally give HUD the authority it needs to effectively enforce the Federal fair housing law, without compromising the rights of those against whom discrimination complaints are brought.

The fair housing amendments would create an independent administrative law judge (ALJ) and administrative court process to hear housing discrimination cases. Those judges, whose independence is already assured by existing Federal law, would issue final orders subject to an appeal in the local U.S. district court and thereafter the court of appeals. This administrative alternative is far better suited to handle the large majority of discrimination cases, which arises from simple questions of law and fact, than the present private process. It will also respond to the high costs of litigation and the inordinate length of time involved before the final resolution of these cases, while retaining the right of the individual to go directly to the court for relief if he so desires or if the nature or complexity of the case makes it appropriate.

Another important feature of H.R. 5200 is the improvement it offers in its clarification of what constitutes unlawful discrimination by specifically including mortgage redlining and the discrimination in the provisions of hazard insurance and property appraisals. H.R. 5200 also expands the housing rights of the more than 35 million handicapped individuals in the United States.

The effects of housing discrimination on both the individual and society are truly pervasive. To the individual it means economic hardship, loss of job opportunities, humiliation, and alienation; to society, it has meant the creation of the massive problems affecting our neighborhoods, schools, and our economy. H.R. 5200 will not eliminate those problems, but it will help alleviate one of the most persistent and unjustified causes. Accordingly, I urge your support for this bill, and yield back the balance of my time.

Mr. FISH. Mr. Chairman, my father, Hamilton Fish, spoke at the John Wesley American Zion Church in Washington, D.C., on January 2, 1928, the 65th Anniversary of the Emancipation Proclamation. At that time—52 years ago—he assessed racial progress and looked ahead.

All the colored people ask is an equal right to educate their children, to work for wages and enjoy the fruits thereof, to own property and be afforded the protection of the laws and the Constitution for their civil rights, property, and lives. They ask justice, no more and no less.

It is manifest, as both races have lived peacefully together since Emancipation and both have prospered and increased, that the future will show a continuation of the remarkable progress, and that 65 years hence, in 1993, there will in all probability be 35,000,000 colored people in America enjoying equal rights and opportunities in all trades and professions, and having more of their own banks, industries, literature, music . . . political organizations, and Members of Congress. Much of this we will see in our day and generation, and although it is not given to us to unveil the future, but judging it from the progress made in the past, the destiny of the colored race in America is not only secure, but it is exceedingly bright.

My father's words, spoken over 50 years ago, point to the great strides that black people had made since Abraham Lincoln signed the Emancipation Proclamation, and as well—he predicted that progress would continue on an upward course throughout our Nation's history.

I would not be in his tradition, or in the tradition of my party, however, if I were to say that our efforts to bring about equal opportunity and equal justice for blacks and all minorities are over. Advances in the cause of civil rights have been made. In 1964, 1965, and 1968 this House acted forthrightly to outlaw practices incompatible with our Constitution.

Fair housing is a major unattained goal.

In 1968, the Congress declared it unlawful to discriminate on the basis of race, color, religion, sex, or national origin, in the sale, rental, or financing

of homes. Based on the equal protection clause, for the first time a statutory right to equal access to housing for all individuals was established.

We bring H.R. 5200 to the House today because experience has shown that this right has not been available to many persons over the past 12 years. The existing methods of relief for the victim of discrimination simply have not worked. Conciliation is voluntary and can be ignored with impunity. Federal court proceedings have averaged 20 months.

In 1978, a nationwide survey showed that blacks have an 85-percent chance of being discriminated against by rental agents when seeking an apartment; a 48-percent chance when seeking to buy a home.

A recent survey in Richmond, Va., found overwhelming evidence of rampant racial steering—the practice of "directing prospective home buyers interested in equivalent properties to different areas according to their race."

This survey shows that selective directing of sales efforts by real estate agents of blacks away from white neighborhoods affects the racial transition process in a subtle, concealed, and illegal manner. The Richmond survey indicates that there are two separate, distinct, and unequal housing markets—one for whites and one for blacks, contributing to and perpetuating segregated housing patterns.

Persistent and pervasive discrimination exists today up and down the housing chain—real estate agents, appraisers, insurers, landlords, and private homeowners—despite the existence of a law prohibiting such acts. Discrimination, which is tantamount to the denial of an individual's fundamental constitutional right to equal access to housing, clearly frustrates what Congress intended in enacting the 1968 civil rights law.

The new enforcement system embodied in H.R.5200 is needed to fulfill the promise of the 1968 act. It is simple, efficient, and relatively inexpensive. Either an aggrieved party or HUD would be able to file charges in a case of alleged discrimination and the party so charged would have to engage in a conciliation process. The two sides are required to side down and attempt to work out a mutually agreeable solution. What if during the conciliation process HUD believes that reasonable cause exists that the charge is true, and the filing of charges would be in the public interest? The options for the Department are then to either request the Attorney General to file charges in a civil action, or, in order to relieve the courts of congestion and reach a speedy decision, in minor cases, to file a complaint with an administrative law judge for a hearing on the record.

To expedite decision, HUD would be required to refer complaints to States, presently 22 in number, whose laws and enforcement procedures are certified as sufficient to guarantee the right to equal access to housing. This referral system will obviate the need to engage the administrative decisionmaking process.

It is my belief that a vast majority of cases will be decided through conciliation under H.R. 5200. The caseload of the courts should be decreased. The administrative hearing process, which works efficiently and effectively in 16 Federal agencies, should be accorded the presumption of impartiality and fairness. Amendments will be offered and accepted that clearly express as policy the independence of administrative law judges. They emphasize conciliation even after a hearing. This bill protects the rights of the respondent by providing for a judicial review broader than that required by the Administrative Procedure Act.

I also believe that the provisions of the Fair Housing Amendments Act will ultimately alleviate the collateral problems caused by segregated housing, especially busing, and will assist those in the real estate business who wish to obey the law. Mortgage redlining will no longer be tolerated, and the disinvestment of communities by lenders on the basis of race that leads to the decay of neighborhoods will cease.

As Members of Congress we have the opportunity today to further a great cause that ennobles us and our institution—a cause which right-thinking people simply know is right. By making fair housing a reality, we are at one of those moments when it is within our power to further the dream of our Constitution.

Mr. EDWARDS of California. Mr. Chairman, I yield 6 minutes to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I want to begin by commending our colleague from New York (Mr. FISH), a member of the Judiciary Committee, who has, I think, very eloquently summed up the case for this legislation.

We now have before us the method of making real the dream of fair housing for so many millions of people who are waiting and watching to see what the Congress will do. I suppose, Mr. Chairman and my colleagues, law evolves slowly in every case through a deliberative and rational process. It took until 1968 for us to speak to this question in law, and now after 12 years of that experience or more, we now realize we have to put some teeth into the existing law if we are going to make it effective.

My colleagues from California (Mr. EDWARDS) and Massachusetts (Mr. DRINAN), who wrote this law, have done an excellent job. I think the time has come when the question of race discrimination in housing must be squarely addressed. I am hoping that this session of the Congress is up to that great challenge. I know it is not easy, but this is the test of our Congress. This is what we are all about, and now is the time for us to make a modest implementation of the means to make fair housing work in the United States of America.

□ 1210

There is no question that there is a problem in housing, and I say to the Members that there is no way that we can enjoy any of our other rights as long as racial discrimination in housing is as flagrant as it is. There is no way that we can enjoy the full opportunities of employment and the satisfaction of raising our families wherever we want and of living wherever we want until this one important right is secured by the implementation legislation before us. By merely allowing an administrative judge to make a decision from which there can be an appeal, we will not have satisfied the basic right of racial equality in housing, that is so desperately needed and so appropriate at this time.

I would like to close by pointing out to the Members that all those who have been concerned about busing now have an excellent method to dispose of the busing problem. I think that we ought to acknowledge the fact that many of the busing orders derived from the fact that there are unfair housing patterns and practices in the United States, and for all who have decried that remedy—and there have been times when I have taken exception to it in particular instances myself—here is a way of dealing with it by making the opportunity of housing open to everybody.

We have modified this legislation in the full committee. The subcommittee came forward with a much tougher bill, in my view, and it was compromised already in the full Committee on the Judiciary.

I can say to the Members that the civil rights and fair housing advocates across this land are not prepared to accept any weakening amendments to the legislation, particularly the one that would in effect gut the administrative judge's ability to bring about its implementation.

So, Mr. Chairman, I would point out that history can be made today in the House of Representatives. This is our chance. I know the lobbies are strong against this bill. I know that certain business interests are opposed, but it seems to me that if this Congress is to meet the challenge of civil rights progress, we must pass this legislation, and I urge upon my colleagues to accept the fair housing legislation before us now without amendment.

Mr. HYDE. Mr. Chairman, I yield 10 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, in 1968 the fair housing law was enacted with the intent of preventing racial discrimination in housing sales and rentals. H.R. 5200 was introduced to address some of the shortcomings of the present law, specifically the creation of a new fair housing enforcement mechanism within HUD.

HUD should be the last agency to be given increased enforcement powers. In the last two reports issued by the Civil Rights Commission, HUD was severely criticized for its lack of enforcement guidelines, poor dispute conciliation methods, slow investigatory procedures, and poor enforcement staff.

H.R. 5200, besides giving HUD the power to initiate, investigate, and prosecute complaints, also allows for HUD

administrative law judges to adjudicate complaints. Other shortcomings include the following:

First, not actually assisting the victims of discrimination. The only sanction available under the bill is a $10,000 civil fine, which goes to the Government and not to the victim, and injunctive relief.

Second, allowing only seven administrative law judges to adjudicate fair housing complaints. This is not even one ALJ per HUD regional district.

Third, allowing for concurrent jurisdiction by HUD and State agencies over fair housing cases. Proponents have argued that many of the fair housing cases will be referred to the 22 certified State agencies. What proponents fail to mention is that current HUD regulations force these certified State agencies to enter into agreements with HUD that would allow HUD to keep jurisdiction over fair housing cases. H.R. 5200 does not prevent HUD from coercing States into contracting away their rights as to exclusive jurisdiction.

Fourth, allowing zoning cases to be handled by an administrative law judge. The February 5, 1980, Federal Register specifically states this intent. Proponents of H.R. 5200 have argued all along that this was not the case. These same people are now endorsing a proposal to only adjudicate zoning complaints in court. If it is unfair to hear a zoning case before an administrative law judge then it is unfair to hear any case before an administrative law judge.

Fifth, section 811 of the bill is not eliminated, HUD will continue to have the capacity to use the administrative tribunal as the primary forum for achieving its comprehensive program for redefining and restructuring of neighborhood communities and living patterns. So long as section 811 remains intact, HUD has the capacity to second guess the motive of every local and State ordinance, law, rule, regulation, or policy before its own tribunal.

Finally, the de novo review contained in the bill is inadequate. The committee report language indicates that the administrative record is to be relied upon and the "special expertise of the adminstrative law judge is to be deferred to." That hardly gives an appellant a fair day in court before an impartial tribunal.

To address all these shortcomings, the gentleman from Missouri (Mr. VOLKMER) and I are offering an amendment which will truly put teeth in the law. Highlights of the Sensenbrenner-Volkmer amendment include the following:

First. Utilization of the 515 U.S. district court judges and the 237 magistrates, thereby insuring a speedy hearing of the issues. I would remind the Members, Mr. Chairman, that the bill, as reported from the committee, only contemplates seven administrative law judges to hear all complaints arising under this act.

Second. Encouraging the settlement of disputes through conciliation by providing sanctions against those who refuse to attempt conciliation in good faith.

Third. Providing direct relief to actual victims of housing discrimination, rather than merely enriching the Government, through the award of monetary damages thereby avoiding the constitutional problems inherent in the administrative law judge approach.

Fourth. Specifically providing a mechanism for binding arbitration of disputes, with HUD having the ability to enforce any such awards administratively;

Fifth. Allowing the Department of Justice to institute suits on behalf of individual victims of discrimination. This would be an expansion over the present power of the Department of Justice only to institute suits where a pattern or practice of discrimination is alleged;

Sixth. Maintaining the Department of Justice as the lead enforcement agency, thereby insuring a coordinated enforcement effort;

Seventh. Maintaining the current law requirement of expediting fair housing cases in court, contrasted to the 270-day delay within the administrative proceeding that is contained in the committee's bill; and, finally

Eighth. Mandatory referral to certified State agencies for 90 days of all cases. This will eliminate the yo-yo effect in H.R. 5200 which allows both HUD and State agencies to have concurrent jurisdiction.

Recently we improved the judicial system by increasing the number of U.S. district court judges and greatly expanding the authority of magistrates. In times which requires fiscal restraint, is it not logical to create a parallel system of administrative law judges to handle fair housing cases?

□ 1110

Mr. Chairman, Clearly, it is not logical to create an additional bureau within the Department of Housing and Urban Development. We should utilize the existing court structure and not create an expensive addition to the Federal bureaucracy. The Sensenbrenner-Volkmer amendment accomplishes this purpose, and I urge the committee's support of this amendment.

Mr. BETHUNE. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Arkansas.

Mr. BETHUNE. Mr. Chairman, I wonder, has the Department of Justice taken a position on the gentleman's proposal?

Mr. SENSENBRENNER. I have not received any communication one way or the other from the Department of Justice. I assume, as loyal followers of the administration, they would be opposed to my proposal, but nonetheless, on the law and on the facts, I believe that the Sensenbrenner-Volkmer amendment has merit.

Mr. BETHUNE. I would like to follow that up with this question: It does appear that there has been considerable lobbying one way or the other for the various proposals that are coming to the floor. The gentleman from Michigan mentioned the interest of civil rights advocates and the gentleman in the well seems to be making the point that the administrative tribunal would have shortcomings, one of which is that such tribunal might somehow be subject to the political force that might be in power in the administration at the time.

Listening to the arguments here, I suspect that there might be some validity to that. I wonder, why is the magistrate's forum superior, then, in the gentleman's mind? Is it then insulated from such forces, and could the gentleman expand on that, please?

Mr. SENSENBRENNER. The magistrate's forum can be utilized under the Magistrates Act by consent of all parties involved. Magistrates are appointed by the district judges in the district in which the magistrate serves. Under the committee bill, the administrative law judges are appointed by the Secretary of HUD. In effect, under the committee bill, it makes HUD the prosecutor of the case, it makes HUD the judge of the facts, and it makes HUD the executioner of the judgment.

I think that when you are considering a complaint of discrimination, which is a very serious allegation, a person who is complained against ought to have his day in court. And utilizing the Federal district courts and the magistrates will insure that an impartial trier of fact, somebody who does not get their paycheck from the Department of Housing and Urban Development, will end up making the determination of whether somebody is in fact guilty of discrimination or not.

Second, the administrative law judges cannot constitutionally award damages to either victims of discrimination or innocent third parties. The only penalty that is available to the administrative law judge in this bill is a $10,000 civil fine which accrues to the Government.

The victim of discrimination, who cannot get the house or who cannot get the apartment and who has to spend some time in a motel waiting for the administrative procedure to reach a determination, cannot even be reimbursed for his hotel bill for the period of time he had to sit there.

Similarly, the innocent third party, somebody who sold his home because he was transferred to another part of the country, if his closing was delayed as a result of a complaint of discrimination filed and he loses the house in his new city because he could not get the money from the sale of his old home, because he could not close the house sale, cannot be reimbursed under the administrative law judge proceeding.

Under the Federal district court, anybody who is aggrieved and who is injured can get compensatory damages and, if the situation warrants, punitive damages as well.

Mr. BETHUNE. I thank the gentleman.

Mr. EDWARDS of California. Mr. Chairman, I yield 10 minutes to the distinguished gentlewoman from New York (Mrs. CHISHOLM).

Mrs. CHISHOLM. Mr. Chairman, I rise today with strong support for the legislation now before us. I commend the Committee on the Judiciary and the able chairman of the Subcommittee on Civil and Constitutional Rights on their dedication to this issue and the care with which this bill was drafted. H.R. 5200 received careful scrutiny and debate throughout the committee's deliberations and the final product, supported by a strong bipartisan majority of the Judiciary Committee, deserves the support of my colleagues on both sides of the aisle.

Although there have been improvements in the area of housing discrimination since passage of title VIII of the Civil Rights Act of 1968, for the past 11 years title VIII has remained a statement of goals, rather than an active force against discrimination in the housing market. Housing discrimination continues to be an all pervasive factor against the evolution of an equal and integrated American society. All Americans suffer from the ills of segregated housing, which deny us the opportunity to break down prevailing racial barriers and impacts upon the educational and employment opportunities of the victims of discrimination.

It is important that we assess in human terms the real impact of the legacy of generations of discriminatory treatment in housing against certain groups in our society. As a professional educator, I know only too well that discrimination in our public schools is closely intertwined with the evils of bias in the housing market. Housing discrimination lies at the root of our segregated educational system. When we survey the patterns of segregated housing in this country, it is no wonder that much of the Nation's public school system continues to suffer the ills of racial segregation, 25 years after its unconstitutionality was declared. I would say to those of my colleagues who have consistently voiced their opposition to remedies to educational segregation such as busing, that eradication of housing discrimination through the enforcement mechanisms in H.R. 5200 will move us in the direction of alleviating other forms of segregation without the need for artificial remedies.

In the 11 years since passage of title VIII, the absence of effective enforcement mechanisms have surfaced as the critical factor in our inability to eliminate housing discrimination. The Department of Housing and Urban Development, although charged with responsibility for enforcing title VIII, has been limited to the process of conciliation and persuasion as their only available enforcement tools. The extremely small percentage of complaints that have been resolved through the conciliation method is evidence enough that the enforcement powers of HUD must be strengthened. Currently, there exists little incentive for a respondent to agree to a remedy, or even enter into the conciliation process. For the most part, these parties can be assured that they run no risk of further proceedings; hence they are encouraged, rather than discouraged, from continuing their discriminatory actions.

Our judicial system, by and large, has been true to the objectives of the fair housing law. Indeed, much of the clarification of law that this legislation achieves is a result of prior court rulings. However, judicial relief is not readily available to the great majority of Americans who are victimized by housing discrimination.

Beyond the obvious and insurmountable financial obstacles which face individuals seeking judicial relief, judicial proceedings can be lengthy due to technical and cumbersome court procedures which create a greater opportunity for delays in proceedings for reasons unrelated to the merits of a case. It is obvious that housing cases, more than in any other area, demand a speedy forum for relief. In many instances, a complainant may eventually receive a favorable judicial ruling, but in the meantime the unit in question may have already changed hands. Thus, the question of relief is rendered moot.

The provisions of H.R. 5200 relating to administrative enforcement mechanisms within HUD are the product of careful scrutiny and compromise. They have been tailored to remedy current law, which places impossible burdens on the individual victim, while protecting the rights of all parties involved in a fair housing dispute.

While explicitly encouraging conciliation throughout the process, the committee has recognized the necessity of administrative enforcement of fair housing law. The use of HUD administrative law judges to rule on disputes is of paramount importance if we are to achieve effective enforcement of the law. Numerous State and local fair housing agencies have already seen fit to provide administrative authority to resolve fair housing cases. Adequate safeguards have been included in the bill to protect litigant's rights in the administrative hearing, and a thorough review of the administrative law judge's findings in the district courts is assured. In short, H.R. 5200 provides for an effective and fair avenue to resolve fair housing disputes through complementary processes of conciliation, administrative enforcement, and judicial action.

In addition to the vital enforcement mechanisms contained in the legislation, the inclusion of "handicap" as another prohibited ground for discrimination in housing is of great importance to the many Americans who find themselves denied their rightful choice of residence due to a physical handicap. I fully support this provision. This inclusion will insure that an individual is not discriminated against in housing activities on the basis of a handicap and allow the individual to make reasonable accommodations at his or her own expense, while protecting the owner of property from any financial burden.

I urge my colleagues to oppose the amendments to be offered to this legislation which seek to effectively undo the carefully crafted bipartisan compromise which the Judiciary Committee has presented us with. I am dismayed at some of the Civil Rights Act, but seek to add legitimacy to actions which serve only to perpetuate discrimination against Americans on the basis of their race, religion, or national origin.

After the events of recent weeks, no one in this Chamber can doubt the precarious state of race relations in this Nation. I will not delude myself for others in rhetoric by proposing that this legislation will mark some miraculous movement toward equality for all Americans and tolerance of our differences. It is my sincere hope that passage of this legislation will at least lead us away from the recalcitrance that we have witnessed in achieving an equal society, and mark a firm new commitment to that goal.

□ 1120

In 1976 we celebrated the 200th anniversary of the founding of this great Nation and we engaged in all kinds of ceremonialisms and enunciations of the espousal of equalitarian principles. However, we know that at the root of so many of the difficulties in our society is the housing pattern in which certain groups of people live in specified areas in a given community or in a given district and that many of the attendant problems that have arisen go right back to the root of this segregated housing pattern. Our neighborhood schools should be reflective of the multifacetedness of this society. We would not have to talk about artificial remedies like "quotas" and "busing" and all of those words that evoke fantastic emotionalism in this Chamber. If we would but have the conscience and the morality to move in this positive direction as we proceed into the 1980's of trying to finally achieve a fair housing law that would bring together Americans regardless of their race, creed, or color, a fair housing law that in the final analysis will actually bring about an integrated school system, because the schools will be reflective of the different kinds of people that make up America then we would not have to spend hours upon hours of debate in this Chamber debating such words as quota and all other terms that almost cause people to have heart attacks.

The only reason we have to use these artificial instruments is because we have neither the morality nor the conscience to do that which is right.

Mr. Chairman, we have just celebrated the 200th anniversary of this country a few years ago. It is my hope that we will begin to make additional progress toward achieving fairness and justice for all Americans.

Mr. HYDE. Mr. Chairman, I yield 10 minutes to the distinguished gentleman from Illinois (Mr. RAILSBACK).

Mr. RAILSBACK. Mr. Chairman, I would like to begin by congratulating the distinguished chairman of the subcommittee, the gentleman from California (Mr. EDWARDS) for leading a very lengthy and a very difficult fight to try to improve and provide a meaningful enforcement mechanism in the Civil Rights Act of 1968.

I also want to congratulate one of the

gentlemen who is retiring from this body, the gentleman from Massachusetts, Father DRINAN, with whom I seldom agree on anything, but I want to recognize that he has been dedicated and committed to the area of civil rights, and this happens to be a bill which I agree with him about.

In addition, I want to mention that there are some people on the minority side that I believe have played a very meaningful role in improving the bill. Among those is the ranking minority member of the subcommittee, the gentleman from Illinois (Mr. HYDE). I know that the gentleman from Illinois (Mr. HYDE) has some problems with some of the provisions, but he did support it in subcommittee. He supported it on final passage and has played a very leading role, along with the gentleman from Illinois (Mr. MCCLORY), the gentleman from New York (Mr. FISH), the gentleman from Michigan (Mr. SAWYER), and the gentleman from Virginia (Mr. BUTLER).

Mr. Chairman, on April 10, 1968, the Civil Rights Act amendments, section VIII of which dealt with the area of fair housing, was passed by a vote of 250 to 172.

I am very proud that 100 Republicans voted for that bill on final passage, along with 150 Democrats.

It was the first major statutory effort to outlaw housing discrimination. It held out hope and it held out promise for many Americans that had been discriminated against by different discriminatory practices. Despite that effort, the promises held out by that legislation have clearly never been realized.

Empirical evidence gathered over the last few years in a number of hearings indicates that discrimination still persists in some areas, and further, that there was a serious omission in the law that we enacted. Putting it simply, there is no adequate enforcement mechanism in the 1968 Fair Housing Act.

Well, why is that? One of the reasons is that many American citizens have no idea that they are being discriminated against in the first place, when discrimination has, in fact, occurred.

Second, they are not aware of what recourse is available for them to deal with discrimination.

Third, those who are aware may not wish to go through the expense and the time-consuming process of going to court.

This particular bill represents a compromise reached by a number of us on the minority side that believed that the original bill did not afford sufficient protection for a defendant, and for that reason worked out a compromise with the so-called Civil Rights Coalition.

This legislation has been billed by the Civil Rights Coalition as the most important piece of civil rights legislation in the last decade, and I concur in that. While title VIII of the Civil Rights Act of 1968 gave the Department of Housing and Urban Development the responsibility to receive and investigate complaints of housing discrimination, it did not give HUD any real power to remedy the housing violations that its investigations revealed. HUD can only strive for conciliation between the parties involved, and if that fails, the aggrieved individuals are left to seek redress through private civil action.

□ 1130

Because of the cost and delay involved, the individuals usually decide to forego seeking vindication and look elsewhere for housing. Alternative enforcement under title VIII is limited to "pattern and practice" cases brought by the Attorney General. These enforcement procedures are grossly inadequate. Discrimination continues to persist.

One of the main purposes of this bill is to provide an enforcement mechanism that will provide the means to halt discrimination in housing practice. In other words, to fulfill the promise of the 1968 act. While the bill was still in committee, I assisted in working out an enforcement compromise which I feel carries out the purposes of the new bill, but at the same time safeguards the rights of the alleged discriminator.

This enforcement compromise first of all emphasizes conciliation and also includes the mandatory referral of a complaint to a certified State housing agency, of which there are now 22 (with 5 awaiting certification) without a right of recall by the Secretary. It then provides for a hearing before an administrative law judge (ALJ) after a decision has been made by HUD to file an administrative complaint rather than refer the matter to the Department of Justice as it may do in section 810(c). Since this hearing is "on the record" as required by section 811(a), all the due process advantages of the Administrative Procedure Act (APA) attach.

Because the ALJ's involved would be employees of HUD, and therefore might have an institutional bias which cannot be satisfactorily protected by the APA, I felt, as did some of the other Members on our side, that there must be a way to design an enforcement mechanism that did not rely exclusively on the so-called APA to guarantee impartiality. It occurred to me that in the last Congress the Subcommittee on Courts, Civil Liberties and the Administration of Justice, of which I am a member, passed into law the Magistrates Act, which provided for an appeal from the decision of a magistrate to a Federal district judge. The judge could then make a de novo review and determination.

Similarly, under the compromise enforcement procedure, once a decision has been made by the ALJ, his ruling or order can be appealed to a Federal district court for a de novo determination. Additionally, the court on its own initiative can call additional witnesses, and I want to make this point very emphatically, the court on its own initiative can call additional witnesses where there is a compelling need or when witnesses were excluded by the ALJ.

I believe the right of judicial review, in a Federal court located where the property in question is located, guarantees that justice will prevail over the order of a potentially biased administrative law judge.

I feel that the passage of this legislation would provide a flexible and effective means by which to achieve the goals embodied in the Civil Rights Act of 1968. It would make possible the right of equal opportunity in housing, and I urge my colleagues to join me in supporting this bill.

In addition I want to make some comments about the comments made by the gentleman from Wisconsin. As I understand it there is going to be an amendment offered by the gentleman from Oklahoma (Mr. SYNAR), which is designed to do some things which I believe afford even further protection under the bill and which I can support.

For one thing, if the Synar amendment is adopted, it is my understanding that HUD will no longer appoint the administrative law judges, but rather they will be appointed impartially.

In addition, it is my understanding that land use cases will not be assigned to an ALJ, but rather will be handled by a court like they are right now.

Also, I want to make the point that an aggrieved party, and this is very important, has the election or the right to choose whether to go to court or whether to go in to the administrative law proceeding. In other words, that election is on the part of the aggrieved party, and no one can take it away.

I want to make the point that the Attorney General can intervene in the private actions, which I think is good.

In addition, let me say in the original bill that we modified by the compromise there was no mandatory reconciliation, there was no mandatory referral to a State grievance mechanism. In addition, there was no appeal, no de novo appeal to the district court. Rather, one had to go directly from the ALJ all the way up to the Court of Appeals, and in that case the typical, traditional appellate standard would prevail. That standard is: there had to be no substantive evidence in support of the lower court decision in order to overturn.

In the original bill the HUD Secretary could have modified the ALJ's decision. We knocked that out.

I would say to my colleagues there have been many, many changes, some of them effectuated by the subcommittee. With efforts by the gentleman from Illinois (Mr. HYDE), I think we have a fair bill. I want to say if the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER), is adopted—and I do not like to say this—in my opinion, it completely would abrogate what is the most important thrust of the bill and that is to permit expedited hearings and expedited resolutions but in fair manner.

Mr. EDWARDS of California. Mr. Chairman, this bill has been a product of much hard work over the years and much compromise. Key to the success of the bill, which I feel is assured, is the imaginative appeals process worked out by the gentleman from Illinois (Mr. RAILSBACK); the gentleman from New York (Mr. FISH); the leadership conference on civil rights; and the Departments of Justice and HUD. Both of these gentlemen deserve very much credit for

that appeals process, which is an ingenuous and fair device, and all of the other improvements that have been made steadily in this bill over the years and over the months.

Mr. Chairman, I now yield 10 minutes to the gentleman from Missouri (Mr. VOLKMER).

Mr. VOLKMER. Mr. Chairman, I do not believe I will take my full time, but I would like to go over some parts of the bill and some of the things that have been mentioned here earlier in the debate.

First, I wish to commend the gentlewoman from New York (Mrs. CHISHOLM), for her statement, and also the gentleman from New York (Mr. FISH), for reviewing some of the problems with discrimination in this country.

I think it noteworthy that perhaps the only city that I have heard mentioned during this whole debate to which we should look to for the problems of discrimination has been the city of Miami which was mentioned earlier. I do not think that is true. I think we have to look at it and be practical and matter of fact. Let us realize we have discrimination, because of race and religion, whatever it may be, throughout this country. It exists in the Northeast in New York, in Boston. We have seen that it exists in Detroit. It exists in Chicago. It exists in St. Louis, Los Angeles, wherever we go. It is not only in the South. Let us not look to that old thing. It is all over.

Now what we are trying to do with this bill is make it so that people will be able to get housing anywhere they desire without being discriminated against because of race, religion, or other grounds, that they will be afforded the same opportunity in obtaining that housing as anyone else.

□ 1140

We know that because of circumstances that exist in this country and that have existed for a good many years we have discrimination in housing. We all know that. It is a state of mind with a number of people, many people in this country. Many people right now say, I do not want certain people to live next to me, or in my subdivision, or in my area. We know that. All right, how are we going to correct it?

I feel that the proper way to correct it is to provide the necessary tools to the people who are being discriminated against, and through government agencies to provide for corrective measures in the most objective way possible so there will not be discrimination in providing the remedy. I think that we can do that through the bill with the Sensenbrenner-Volkmer amendment.

In that amendment basically one of the first things that we do that is very important is that we strengthen the conciliation process. As one on the subcommittee who attended almost all the hearings, it became very apparent to me that during the hearings, and examining the original bill as introduced, conciliation was abandoned, completely abandoned as an attempt to provide for a remedy for discrimination. I thought this was wrong and that the best way to attack the problem was to strengthen the conciliation. You will find that in the Sensenbrenner-Volkmer amendment. There are incentives there for conciliation so that it can be done. The remedy can be arrived at a lot quicker if you want to do it quickly than either through ALJ's or through the courts.

The other thing that bothers me about the bill is the use of ALJ's, and it became apparent to me that we are abandoning the court system that we have for this much-needed remedy throughout this country in this bill. This court system, which we just recently enlarged through additional judges, this court system which helped through the Magistrates Court Act, and which I would like to see go a little further so that we could use the magistrates more—the bill we abandoned in favor of ALJ's. How many ALJ's do we have? Very few. To handle 3,000 complaints a year in this country, we are going to have 7 ALJ's? No way. I disagree with that. I think that if you want a proper, objective remedy, use that court system and make it work, and it can be done.

Mr. BETHUNE. Mr. Chairman. will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Arkansas.

Mr. BETHUNE. I thank the gentleman for yielding. As the gentleman knows, I am not on the committee. I am, however, trying very hard to get a handle on this issue. It occurs to me that there is not an adequate enforcement remedy in place at this time, and the quest here is to find a remedy. There should never be a right without a remedy.

Mr. VOLKMER. That is correct.

Mr. BETHUNE. In trying to do that—and I am as sincere as I can be on this—we are trying to determine which would be the best court of first instance.

Mr. VOLKMER. That is correct.

Mr. BETHUNE. And are we looking for a fair tribunal, or are we looking for a forum where the ultimate goals of one political force or another might prevail?

Mr. VOLKMER. Yes; I would like to point out that that political force is a two-edged sword. It can go both ways.

Mr. BETHUNE. It depends on the administration in power at the time.

Mr. VOLKMER. That is correct.

Mr. BETHUNE. So my sincere inquiry is, What should be the court of first instance? Should it be a fair tribunal, or should it be a forum wherein a political force might have some influence?

My question to the gentleman is, and I really want to know the answer to this, Why should we not give it to the magistrates? Is the magistrate forum a better place, as the gentleman from Wisconsin (Mr. SENSENBRENNER) has suggested? Are they not impartial? Are they not able? Are they not capable of handling this problem?

Mr. VOLKMER. If we deny these things, then we condemn our magistrate court system, in my opinion. I say that they are, and they are the proper place to have the initial proceeding, and that it is the objective place, and there is no influence that can be brought upon them. And you have numbers and availability throughout this country in every district. You are not relegated to a few who have to run all over the country. I would say it is the best avenue, much referred to ALJ's.

Mr. BETHUNE. It has been suggested that it would gut the bill.

Mr. VOLKMER. I know that has been suggested, but I believe that if any Member here personally feels I am trying to gut the bill, that is their prerogative. But I would like for any Member to look at my record in this regard, not only in housing but also in all matters of civil rights, and I do not think that they can come up with that. I personally feel that it is more proper, like I said before, to strengthen the system that we have and use that system rather than abandon it.

Mr. BETHUNE. I thank the gentleman.

Mr. VOLKMER. One other thing in regard to that, I would like to point out a deficiency within the bill. I believe the gentleman from Wisconsin has earlier commented on it. I would like to elaborate on it a little further, where the courts are much superior to the ALJ's. Within the court system a complainant can get damages, not only out-of-pocket expenses, but he can also recover damages for discriminatory practice. Can he do so with an ALJ? Under the bill, you can get up to a $10,000 civil penalty. That does not go to that complainant out there who has been discriminated against. No. That goes to the U.S. Treasury. What else can you get? It says, other remedies. Let us look at that, and let us look at article VII of the Constitution. Let us look also at Supreme Court cases. Then if you want, you can look at the opinion of the Assistant Attorney General of the United States and his opinion, who all say—and it is my opinion—that you cannot have an ALJ giving civil damages and have it be constitutional. It is unconstitutional, in my opinion. So says Mr. Hammond of the Attorney General's Office of the United States, the General Counsel. He says that it is very questionable for ALJ's to award damages. There is no question in my mind.

You want a speedy remedy. You use the ALJ, and that ALJ awards civil damages. You have got a Supreme Court case. How long does it take for a Supreme Court case? You cannot say that about the Volkmer-Sensenbrenner amendment. No way. Can they tie the case up that long? I have got an opportunity if I want, to tie the case up 6 or 7 years on the constitutional issue in every case in which civil damages are awarded. If you do not give civil damages, what have you done for that individual who has been discriminated against? You say, Well, we gave him the property. No way. Read this bill, because if that property has been sold in the meantime to a bona fide purchaser for value the purchaser keeps it. No way does the complainant get that property. That property still goes to that purchaser. The complainant still has not gotten a thing.

I think you people should read it and understand that, in my opinion, your ALJ process is not going to work.

The other thing I would like to com-

ment very briefly on is that the gentleman from Oklahoma (Mr. SYNAR) previously mentioned or circulated an understanding that there will be amendments to the bill. However, it is my understanding now that he will be offering a substitute—and correct me if I am wrong—for the Sensenbrenner-Volkmer amendment. I urge the Members not to vote for that substitute because, although it does do some things to strengthen parts of the bill, they are very minor, and will have little effect on the bill. I feel that it is nothing more than a subterfuge in which to try to defeat the Sensenbrenner-Volkmer amendment. The Synar substitute—not amendment but a substitute—should be defeated.

Mr. HYDE. Mr. Chairman, I yield 5 minutes to the distinguished and learned gentleman from Virginia (Mr. BUTLER).

Mr. BUTLER. Mr. Chairman, I have lived with this bill in one capacity or another for several years, and based on my analysis from time to time and views of it, I think I have systematically gotten myself in a position where I have a constituency of about one with regard to unanimous agreement with me as to this bill. Nevertheless, I would like to take a few minutes to share with you some of my views based on my attendance and membership in the subcommittee during the last Congress, and membership on the committee.

Within the context of the constitutionally protected rights against discrimination on account of race, creed, or sex, I do not view this as major civil rights legislation.

□ 1150

In my view, it is a modest progression and improvement of enforcement of a Federal policy which has been enshrined in statute since 1968. In my view, the committee has an approach which is eminently fair and reasonable expansion of existing policy. For reasons to be mentioned later, I consider it more reasonable than the approach of the gentleman from Wisconsin and the gentleman from Missouri but nevertheless both, however, will improve the enforcement procedures of the legislation so in my view whatever the results of our action here today, I do not think they jeopardize, but improve, the enforcement procedures.

Mr. Chairman, I have some suggestions about the procedures which we have adopted, which the committee brought to you, which I am hopeful will tighten the timetable so that the process will improve, and I think that is important. Likewise, while I am not familiar with all the substitutes to be offered by Mr. SYNAR, what I know of it indicates that clearly these will be further improvements on the committee bill and I would urge their adoption.

Mr. Chairman, the key to the process, the key to the improvements in the enforcement process in my judgment is its emphasis on State enforcement. Twenty-two States, including mine, now are certified for their enforcement process under the existing law and, of course, they have to accommodate to the new provisions of law in order to remain certified. In order that the membership might be fully aware of what I am talking about, I would quote for a moment from the bill, on page 21, line 7:

(3) Whenever a charge alleges a discriminatory housing practice within the jurisdiction of a State or local public agency certified by the Secretary under this paragraph, the Secretary shall, within 30 days after receiving such charge and before taking any action with respect to such charge, refer such charge to that certified agency.

In my judgment, Mr. Chairman, this is a very significant portion of the bill.

If I could have the attention of the gentleman from California (Mr. EDWARDS), I would like to question the gentleman from California on the question of the subject of the HUD certification of the State and local housing agencies.

As I understand the bill, one of its principal purposes is to spread the burden of discriminatory housing enforcement throughout the States by way of State and local agencies which are certified as being, and I quote from the bill, "substantially equivalent" to the Federal agency created by this bill. It is my understanding that substantially equivalent means the right protected by the State agency, the procedures followed by the State agencies, the remedies available to the State agency and the availability of judicial review from the State agency's action are substantially equivalent to those created by this legislation. Is that a fair summary?

Mr. EDWARDS of California. The gentleman from Virginia is correct.

Mr. BUTLER. I thank the gentleman.

Now, Mr. Chairman, if I may continue, toward that end, as I mentioned before, some 22 States now have certified agencies, including my State of Virginia.

If I may have the further attention of the gentleman, throughout consideration of this bill, extensive efforts have been made by Representatives of both sides to more fully guarantee the complaints of housing discrimination are first processed through the competent State agencies before being reviewed and acted upon by HUD.

For example, during subcommittee consideration, the ranking minority member, the gentleman from Illinois (Mr. HYDE), was able to change the language of the bill to make referral mandatory rather than discretionary. In full committee, the Railsback compromise eliminated the need for the consent of the aggrieved person as a precondition to referral.

The gentleman from New Jersey (Mr. HUGHES) offered an amendment which was adopted, deleting the Secretary's right to recall a complaint once it has been referred to the State agency.

I offered an amendment which would help tighten the time period within which the referral must take place.

I offered another amendment which was also adopted designed to place a 90-day cap on approval of the State's request for certification. If HUD fails to object to the request within that 90-day period, the State or local agency is automatically deemed certified.

If the Secretary chooses to object to certification within that period, he must provide the agency with an explanation specifically outlining his reasons and the Secretary's decision as to whether the State agency is substantially equivalent to the Federal agency is subject to review by the appropriate Federal court.

I hope the gentleman from California (Mr. EDWARDS) will agree that the meaning of "substantially equivalent" is very important and I want to clarify that.

The CHAIRMAN pro tempore. The time of the gentleman has expired.

Mr. EDWARDS of California. Mr. Chairman, I yield the gentleman from Virginia 2 additional minutes.

Mr. HYDE. Mr. Chairman, I yield the gentleman from Virginia 1 additional minute.

The CHAIRMAN pro tempore. The gentleman from Virginia is recognized for 3 additional minutes.

Mr. BUTLER. Mr. Chairman, I want to clarify what we mean by substantially equivalent. Based on our experience in Virginia, it is likely that our general assembly will alter the existing statute in an effort to retain the State's present certification. It is also likely that any change in our present statute will enable the existing State agency, which is now the Virginia Real Estate Commission, to entertain or originate complaints, investigate those complaints and make recommendations for punishments, including a fine or injunctive order. The order will probably be issued by the existing agency or an officer thereof, following a review of the facts. If it should decide to contest the order of the State agency, he will in all probability be entitled to an appeal to the General District Court of Virginia, which is a court not of record, wherein he will be entitled to a trial de novo with appeal as a matter of right to the circuit court, which is a court of record wherein he will again be entitled to a trial de novo in its entirety.

I have submitted this question to the gentleman earlier. I would ask if the gentleman would agree that a State which creates an agency along these lines I have described, should be certified by HUD within the meaning of this statute.

Mr. EDWARDS of California. Mr. Chairman, if the gentleman will yield, I certainly believe that it should, and would.

Mr. BUTLER. I thank the gentleman very much.

Mr. Chairman, I yield back the balance of my time.

Mr. EDWARDS of California. Mr. Chairman, I yield 5 minutes to the gentleman from Oklahoma (Mr. SYNAR).

Mr. SYNAR. Mr. Chairman, I rise to associate myself with the remarks of the distinguished committee chairman and subcommittee chairman and to briefly comment on some amendments to the committee approach which I intend to offer on the floor.

I want to reemphasize two points:

First, there is a legitimate need for amending the Fair Housing Act of 1968.

There is tremendous support for including the handicapped under the coverage of the act; and

Second, we all recognize that there is a need to improve the enforcement process. The approach embodied in the existing law simply does not work.

The only tool available under current law—short of a long, drawnout, and expensive Federal court case—is conciliation. And conciliation alone just does not do the job. Right now, few agree to conciliate and fewer still actually reach a conciliation agreement. Less than 1 in 12 complaints filed with HUD—1 in 12—are successfully conciliated. And my own experience, as well as the experience of HUD, is that the current, toothless law discourages many, if not most, legitimate complainants from ever filing a complaint.

We focus, then, on one question. Not, should we improve enforcement; but, how do we improve enforcement?

Critics of the bill would try to improve enforcement by simply stressing conciliation—but I ask my colleagues to consider that idea closely. Conciliation, by its very definition, can have no final, binding authority. By its very nature, conciliation will always favor those who have the time and the money to drag out the process and then go into Federal court.

However, conciliation is obviously the most desirable solution to a fair housing complaint and, no matter how small the percentage of its success, it should be encouraged. My amendments will strengthen the conciliation process significantly.

But when conciliation does not work, and it is not going to a high percentage of the time, the very nature of the controversies involved in a fair housing complaint demands that both parties have access to a legal forum which can respond quickly and fairly.

Opponents of the committee bill are concerned that HUD is being set up as investigator, prosecutor and judge of a fair housing complaint. Although I believe the de novo review provided in the bill takes some of the wind out of that argument, it also concerns me. I will, therefore, introduce amendments to totally separate the administrative law judges from the investigative and prosecutive elements of HUD. In this way, I think we can eliminate concerns over the fundamental fairness of the process, insure the speediness which we all know we need, and get on with the business of giving this country a fair, workable Fair Housing Act.

□ 1200

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. SYNAR. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, I just wanted to make sure that procedurally everyone knows what is going on. The gentleman mentioned that he is going to offer amendments. Was he going to offer a substitute amendment for the Sensenbrenner-Volkmer amendment?

Mr. SYNAR. Depending on the choice of the Congressmen from Wisconsin and Missouri, we plan to offer amendments if they go section by section; but, if they offer their amendments en bloc, we will then offer amendments as a substitute for their amendments.

Mr. VOLKMER. I thank the gentleman.

Mr. HYDE. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Chairman, the intent of this legislation, which is to prevent discrimination in housing based upon race, religion, color, national origin, sex, or physical handicap, is certainly a worthy goal. When Congress enacted title VIII of the Civil Rights Act of 1968, it went on record as enunciating this as a rightful and necessary policy. There is no argument about the fact that we need to make this policy a workable reality. The debate here today is how to bring about this desired end in the best possible manner.

When H.R. 5200 is considered under the 5-minute rule, it is my intention to support the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER), and cosponsored by the gentleman from Missouri (Mr. VOLKMER). Their amendment recognizes that the creation of a new bureaucracy at HUD to deal with fair housing is an ill-advised approach. The aim of this legislation is to provide individuals who are discriminated against with respect to housing choices, a more effective range of legal remedies. Unfortunately, the mechanism chosen by the Judiciary Committee is likely to result in an imbalanced, inefficient, and potentially unfair system.

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. Even though there may be an amendment offered as suggested by the previous gentleman in the well, I do not think keeping it within the one agency can take away all of these arguments, that would put within the Department all of these powers. The approach is inconsistent with the "separation of functions" principle that is present in the Federal Administrative Procedures Act. As it now stands, this bill would give sweeping powers to the ALJ's at HUD, who are career civil servants and not ultimately responsible to any constituency, would permit the ALJ's to impose fines up to $10,000 in cases where he believes housing discrimination exists. This same provision authorizes ALJ's to issue injunctions, presumably directing the sale of a particular piece of property.

The Sensenbrenner-Volkmer amendment would strike this administrative enforcement section of H.R. 5200. This arbitrary and unresponsive approach would be replaced with a procedure allowing the Department of Justice to bring a court action on behalf of an aggrieved individual. This amendment would also strengthen the conciliatory process, which occurs at the initial stage when a complaint is filed. Sanctions could be imposed against persons who refuse to make a good faith effort to conciliate. Binding arbitration would also be allowed under the amendment.

To me, it makes eminently good sense to judge fair housing complaints in a court setting rather than inside a bureaucracy. It would not matter to me whether this was a fair housing bill, whether it dealt with any other subject matter; if it is a case that a court should have jurisdiction over, I think that we are violating the rights of all individuals when we force them to go into a bureaucratic agency in search of justice. Justice is not available there.

I think that it is a fact that should also be considered that many of our cities throughout the country are very concerned that their responsibility to zone property within their communities to require minimum building requirements without interferance would be barred by this legislation.

There are 515 U.S. district court judges, and 237 U.S. magistrates who will be utilized to expedite and settle litigation. HUD, on the other hand, has only seven ALJ's to cover the entire United States. This amendment would provide genuine relief to the actual victims of discrimination by awarding compensatory damages where a pattern of practice is found.

In summary, the Sensenbrenner-Volkmer amendment means a more balanced approach for both parties in a fair housing dispute. It also means a quicker and more professional resolution of these serious questions. I strongly urge the Members of the House to support the amendment at the appropriate time, and keep justice within the court system of this country.

Mr. EDWARDS of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, 12 years ago, this House debated the bill that was to become the Fair Housing Act. At that same moment, the streets of Washington were aflame, ignited by the anger and frustration many young blacks expressed following the wanton murder of Martin Luther King, Jr. It took that kind of tragedy to shock this country and the Congress into admitting the cruel unfairness of discrimination in housing. A simple proposition, but one that was met with bitter resistance. The consequence of that resistance was the creation of an imperfect system—one that established principles in which we can take great pride, but one that rested on a system of enforcement that was doomed to fail us.

There is a sense of déjà vu about our predicament today. Rioting in one of our great cities again has been sparked by a peoples' feeling that they have been shut out of the system. Again, the deeper seed of this tragedy is the continuing and pervasive economic and social exclusion of blacks from the good life America promises.

The ghetto of Miami is not unique. The patterns of discrimination that force blacks to live in decaying, cramped, and overpriced housing exist across the country. The fact is that, 12 years after the Fair Housing Act, there is constant and continuing defiance of the law. To be sure, most discrimination has gone underground, and is subtle enough to be undetected unless the home seeker is wary. But it is there, and it is the underlying cause of our increasingly separate and unequal housing supplies. That separation, in turn, is a root cause of

segregation in schools, in the market place, and so on.

So today we begin to try to fulfill the promise we made 12 years ago. I believe that the bill as reported by the Committee on the Judiciary will do just that. I firmly believe that the approach of my colleagues from Wisconsin and Missouri—albeit well intentioned—will not. In fact, the Sensenbrenner/Volkmer amendment does little more than tidy up the status quo. To the extent any so-called improvements are offered, they are either restatements of existing alternatives (such as reliance on arbitration or magistrates) or giveaways that merely confirm the belief that discrimination is not to be treated as a serious matter.

The message of that approach is clear—fair housing enforcement is not important.

Yes, the amendment says, administrative enforcement is all right for claims involving all matters of other disputes, but not civil rights.

Yes, the amendment says, victims may suffer damages, and they ought to be compensated, but let us put a lid of $500 on that.

Yes, victims ought to have access to relief, but if they cannot hire an attorney with $500, too bad.

Yes, victims ought to have their day in court, but let us not clutter the regular docket—let us give it to the magistrates.

The proponents of the Sensenbrenner/Volkmer approach argue that administrative enforcement is inherently unfair. I find it hard to accept the accuracy of this characterization precisely because the only time I have ever heard it used is with respect to civil rights enforcement.

I also find it incredulous because it flies in the face of reality—in over 20 States, fair housing laws are now being enforced with mechanisms that are substantially the same as that which H.R. 5200 would provide to the Federal Government and no one is complaining, not even the National Association of Realtors.

Furthermore, this position ignores the numerous and profound changes that have been made in this bill since it was first introduced. H.R. 5200 as reported by the Committee on the Judiciary is a compromise position. Limitations on authority have been agreed to which are unprecedented in administrative enforcement systems. They include the following:

First. The Secretary has no adjudicatory power. The ALJ's decision is the final administrative order.

Second. The ALJ may not issue any temporary cease and desist order.

Third. The ALJ's order is subject to review in the district court using a standard of de novo review of the record.

All these changes must be viewed in the context of the mechanisms already in place that assure the independence and impartiality of the ALJ's. This will be further strengthened by the amendments to be offered by my colleague from Oklahoma (Mr. SYNAR).

When the National Association of Realtors first began discussing this bill with us last year, their spokesmen expressed the belief that availability of temporary administrative orders and a substantial evidence standard on appeal were what made the bill so onerous. Those have both been eliminated. Yet their position continues. Is it, as the Washington Post succinctly put it, simply that they do not want an effective system at all?

The National Association of Realtors certainly does not speak for the vast majority of Americans. It also, I believe, does not speak for most real estate agents and brokers, who must resent the implication that all in their profession seek some advantage by violating the law. The National Association of Real Estate Brokers, for one, rejects this. In a letter to all the Members of the House, that organization stated:

> We are writing to urge your full support for H.R. 5200, the Fair Housing Amendments Act of 1980. In particular, we desire to correct the impression that may have been left in the wake of lobbying efforts by others in our profession, to the effect that all real estate agents, brokers, salesmen, or appraisers oppose fair housing and oppose the creation of an effective enforcement system.
>
> Administrative enforcement is a fair, effective, and necessary addition to the Fair Housing Act. We have noted its efficient and effective use by a number of state fair housing agencies. The opposition may, therefore, be based upon the conclusion that it will actually work. As professionals in the selling, brokering, and appraising of real property, who desire to abide by the law, and who seek no advantage by resorting to discriminatory practices, we welcome such a change. It will be good for our business and good for the country.

It has been said repeatedly that this bill seeks to fulfill the promise first made in 1968. Indeed, that is the case. We must not lose sight of the fundamental purpose of this bill—to make fair housing a reality. Precisely because this is a civil rights measure, it is incumbent upon us to set aside special interests, to view the policy and legal arguments with unbiased eyes. If you do this, I believe you will join me in concluding that H.R. 5200 should be adopted without crippling amendments.

And finally, Mr. Chairman, I have already alluded to the fact that many States already have in place laws that are substantially equivalent to H.R. 5200. A major goal of this legislation is to encourage the States to assume full responsibility for fair housing enforcement. The Department of Housing and Urban Development shares this goal, and has already begun to assist States and localities which desire to bring their laws and practices up to the Federal standard. This effort will intensify when H.R. 5200 is enacted. Technical and financial assistance to these uncertified agencies will enable them to achieve substantial equivalency and take over this responsibility.

Mr. Chairman, I yield 3 minutes to the very distinguished gentleman from Texas (Mr. GONZALEZ).

Mr. GONZALEZ. Mr. Chairman, it is incredible to me, who has had the honor of serving here since we went through the 10 days of debate on the Civil Rights Act of 1964, and more incredible in light of the involvement in the sorry, dreary history, that this last remnant of virulent malpractice survives as yet.

Going back to the very, very dark ages after the war, we had veterans who had served and had been maimed and came back, but simply because their name was Martinez, or they were identified as Mexican, they were denied under the restrictive covenants then in existence the right to acquire—forget about renting—property. Then, we had the sorry plight even then, predating the 1954 Supreme Court decision and the May 3, 1948, decision in the Supreme Court outlawing restrictive covenants based on race, color, or creed.

We, the people who come from this segment known as Mexican or Mexican-American, were the beneficiaries of the bravery of the freedom-loving blacks who were the only ones who were able to generate the moneys in St. Louis to go to the Supreme Court, a fight that was successfully concluded in 1948. So, we were able to win the Puente against Humphreys case in San Antonio, Tex., soon after that decision, the restrictive covenant decisions of Texas.

But, today here in this pending bill we have a unique refugee from the Civil Rights Act of 1964. It is a very modest bill after it was properly corrected in the original version. I am sorry to report there still is discrimination, particularly in housing, and therefore the need for this legislation.

It is cruel. It reflects economic situations that we must address ourselves to sooner or later as time will permit. Nevertheless, this bill I consider to be modest. The idea that the amendment known as the Sensenbrenner-Volkmer amendment is in any way anything other than a gutting of the main reason for this legislation just defies logic, because what the Sensenbrenner-Volkmer amendment does, as I read it, is to go back and leave the situation where it is, where the magistrates do have jurisdiction, if both parties voluntarily agree to go to arbitration—now, can you imagine a discriminator voluntarily going to the magistrate?

Mr. SENSENBRENNER. Mr. Chairman, will the gentleman yield?

Mr. GONZALEZ. Certainly, I yield.

Mr. SENSENBRENNER. Is the gentleman from Texas aware that if both parties do not voluntarily go to the magistrate, then the case goes into the Federal district court with a statutory priority to the head of the civil calendar, as in my amendment?

My time is up.

Mr. HYDE. Mr. Chairman, I yield 5 minutes to the gentleman from Michigan (Mr. SAWYER).

Mr. SAWYER. Mr. Chairman, I supported this bill in committee. I took a position against the Sensenbrenner

amendment—now the Volkmer-Sensenbrenner amendment—in committee.

I was assured that the compromise that had been worked out provided a backstop of a de novo review in the U.S. district court for the party that might aggrieved by the decision. I now read on page 10 in the committee report that this bill does not contemplate a de novo review in the Federal district court, and I have to say, with that particular interpretation, if that remains in the bill or if the bill maintains that interpretation, that I do not feel I can any longer support the bill, and I will at least strongly support the Sensenbrenner-Volkmer amendment.

I have had bad experiences with administrative law judges over the years, for several reasons. No. 1, they tend to be the creatures, no matter how you word it, of the agencies to which they are attached. This agency—in this case, HUD—is charged under the law with gathering the evidence for the complainant and presenting it to its own administrative law judge, who then can issue injunctive orders or levy fines up to $10,000. There is no de novo review apparently, at least as the report interprets it, and the report says that even the taking of additional evidence should be very sparingly exercised. It is not meant to be a broad appeal process to the Federal district judges.

The second great problem with administrative law judges, in addition to the in-house nature of the proceeding, is that we as human beings tend to want to make more complex anything we do, particularly if what we do is limited to just one narrow phase of one statute. The administrative law judges, uniformly tend to read more and more into their single statute. They tend to find more and more subtleties and make more and more extended interpretations so as to satisfy themselves that they are dealing with a very complex and intricate situation until, when we finally take one of them on appeal up to a general court of law, it is almost impossible for any normal judge to understand how they can be reading the things they are reading into these various statutes.

I think that is true in the workmen's compensation field, it is true in the unemployment insurance cases, and it is true, I am sure, in cases such as this. I have listened to the experts testify in busing cases, and one just cannot believe the philosophies and theories and mechanisms they have developed in their own expertise of thinking out what is evidence of some kind of a pattern of discrimination.

So, Mr. Chairman, I just want to say that while I did oppose the Sensenbrenner amendment, now that I have seen the interpretation placed on what I thought was a compromise, I am now inclined to strongly support the Sensenbrenner-Volkmer amendment.

Mr. EDWARDS of California. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. BINGHAM).

Mr. BINGHAM. Mr. Chairman, I thank the gentleman for yielding this time to me, and I rise in support of this legislation.

Mr. Chairman, I rise in support of H.R. 5200, the Fair Housing Act Amendments of 1980. These amendments will extend equal opportunity in housing to all Americans.

The Fair Housing Act would amend title VIII of the 1968 Civil Rights Act. Although the 1968 Civil Rights Act has helped to diminish many forms of discrimination, housing discrimination is still too prevalent because of the enforcement and substantive limitations of the 1968 law. The bill before us today would remedy these problems by providing a strong, workable enforcement mechanism, and by broadening the scope of the legislation to open housing options to handicapped persons and to preclude the evils of insurance redlining.

The extent of unlawful housing discrimination throughout the country is appalling. A recent nationwide study commissioned by HUD which used black and white "testers" to determine discrimination, revealed that blacks seeking rental housing have an 85-percent chance of experiencing discrimination at least once; blacks attempting to purchase a house have a 48-percent chance of experiencing discrimination. In a similar study in Dallas, Tex., it was shown that a dark-skinned Mexican-American has a 96-percent chance of facing discrimination while seeking a place to live. This discrimination is often very subtle. Some landlords and real estate agents, although they will show minorities their properties, will quote excessively high prices, downpayments, and long waiting periods and will conceal available housing in white neighborhoods.

The bill before us would provide an efficient enforcement mechanism which would encourage conciliation and cooperation in housing discrimination complaints. The present means for enforcing title VIII of the Civil Rights Act is through either voluntary conciliation or else lengthy and costly litigation. Few realtors will voluntarily conciliate with aggrieved persons, and few people seeking housing have the time or money to pursue a lengthy court suit. The HUD administrative enforcement process which would be provided by this bill can significantly ease these problems. The enforcement powers of HUD would serve as a major incentive for landlords and realtors to conciliate with aggrieved parties; they would likely prefer conciliation to the alternative of an administrative hearing presided over by an administrative law judge. Administrative law judges could order appropriate forms of relief including compensation payments, comparable housing relief, the award of a prevailing party's cost and fees, and the assessment of a civil penalty of up to $10,000. Because of the magnitude of these penalties, most cases should be resolved by conciliation, and only the most problematic would have to go through the administrative hearing process.

Critics of H.R. 5200 oppose granting HUD the power to investigate, judge and prosecute allegations of discrimination because they believe it grants too much power to one agency. The bill, however, insures separation of investigative and trial functions from the judicial function within the agency. The Secretary of HUD would be completely excluded from influencing the judgments of the administrative law judges whose decisions would not be subject to the review of any HUD employee. Also, appeals could be brought in Federal district courts if either party chose to challenge a decision. Other opponents assert that power would be taken away from local and State governments and be subsumed by HUD. This is far from the truth. Under most circumstances, HUD would automatically refer complaints to the 24 States and 80 localities who have HUD-certified "substantially equivalent" procedures and remedies for housing violations. For example, in New York City, complaints would be referred to the Human Rights Commission, and in other parts of New York, complaints would be referred to the certified State agency responsible for enforcing its fair housing law. If the local agency chooses not to accept the referral, it would go back to HUD.

The procedures provided in this bill would not replace or interfere with the fair housing operations of New York or the 24 other States which have them. In fact, it would indirectly help the functioning of these city and State agencies in several ways. It would be an additional encouragement to realtors to conciliate because they most likely would prefer conciliation on the local level as opposed to dealing with the Federal Government. The knowledge that HUD would step in if they are not doing a good job would encourage local governments to be more thorough and efficient. Finally, if the local agencies are backlogged with too many complaints, they could refer some cases back to HUD. This would expedite processing additional cases.

H.R. 5200 would also extend fair housing protection to handicapped persons. As the American Council of the Blind has stated "it would attempt to eliminate the insidious attitudinal barriers which keep handicapped persons isolated and outside the mainstream of American life." Property owners would not be required to modify dwellings, but handicapped tenants would be allowed to alter apartments at their own expense and would be required to restore it to its original condition. Most importantly, the law would forbid rental agents from denying apartments to handicapped persons because of prejudicial assumptions that our disabled citizenry pose a greater potential for liability.

These fair housing amendments also deal with important real estate financial transactions in which discrimination occurs which the 1968 law overlooked. By

making it illegal to discriminate on the basis of race, color, religion, sex, handicap, or national origin in appraising real estate, granting secondary mortgages, and providing hazard insurance, basic processes in housing finance, H.R. 5200 would make fair housing more attainable.

Several amendments have been proposed which would gut the essential features of H.R. 5200 and must therefore be rejected. One would eliminate the bill's administrative enforcement mechanism and perpetuate the ineffectual status quo by requiring victims of housing discrimination to rely on the Federal courts. It has been amply demonstrated that relying on the courts is too costly and time consuming for most victims of housing discrimination. As a result, few cases are ever brought to trial. Clearly, this amendment would undermine the central purpose of this bill, and I urge its defeat.

Another amendment would allow appraisers to use "all relevant factors" in deciding the value of property. This would permit appraisers to use race, religion, national origin, sex, or handicap in the determination of property values. By allowing appraisers to attach a value to the racial composition of a neighborhood, undervaluation of property might result, making financing difficult to obtain, and therefore contributing to the destructive phenomenon called redlining. Permitting appraisers to use these relevant factors in value assessments would thwart both the spirit and workability of the fair housing amendments, and I am confident the House will reject this amendment as well.

Mr. EDWARDS of California. Mr. Chairman, I yield the balance of my time, which, I believe, is about 2½ minutes, to the distinguished gentleman from Texas (Mr. LELAND).

Mr. LELAND. Mr. Chairman, 12 years ago, the 1968 Civil Rights Act was passed which attempted to outlaw discrimination in housing. However, several years after the passage of the Fair Housing Law, a major flaw surfaced which was the lack of an effective enforcement mechanism to assist victims of discrimination, especially the poor and minorities, whose only course of action is solely the courts, which are extremely expensive and involves much time.

Recent studies commissioned by HUD reveals that blacks seeking a rental unit have an 85-percent chance of encountering at least on instance of discrimination and a 48-percent chance of being discriminated against while looking for a home to purchase. Dark-skinned Mexican Americans, according to a similar study in Dallas, Tex., have at least a 96-percent chance of experiencing discrimination. Today, 12 years later, discrimination is still widespread in housing, though its forms are usually subtle, and sometimes difficult to detect.

It is, however, consequences of mainstream activity, bolstered by the law that ultimately supports racial prejudices and fears, and more often than not it is exploited for economic gains. Thus, as communities change from white to black, unscrupulous investors and property owners reap large profits. Spreading rumors of property devaluation, these investors exploit the basic racist fears of the white owner, these whites abandon their homes to speculators who then double the prices and sell to minorities, who desperately seek housing. And more often than not, limited cash of the minority buyer and the banks' practice of denying minorities loans as poor risks, force the buyer to secure a second mortgage at a very high rate of interest.

Realtors are opposed to discrimination, however, statistics certainly indicate to me that discrimination is still practiced. Some of the opponents desire to weaken the bill which would only perpetuate the status quo and the current system of handling only "practice and patterns" in housing discrimination cases. The appraisers clearly state that "all relevant factors" must be considered to give a full and accurate estimation of the property and of course we all know that in many cases the term "all relevant factors" refers primarily to the racial composition of the neighborhood.

The hazardous insurance industry argues that they are regulated by the States under the McCarren-Ferguson. I assert that State insurance antidiscriminatory laws lack coverage and authority to provide adequate detection and correction. If the realtors, appraisers, and the hazardous insurance industry are not accounted for under the current law, then fair housing will remain in its current state—as a promise, rather than a reality.

As long as we permit these unconstitutional practices, then we will continue to have segregated schools, thereby forcing the continuation of busing, the same trend follows as industry leaves the inner city environments and relocate to the suburbs, where minority workers do not have equal access to the social, political, and educational institutions. It is particularly interesting to note that much of the civil rights laws made in the sixties occurred during a violent and turbulent era of our history. Twelve years later, when demonstrations and early signs of tension is on the rise in our country, we are again faced with promulgating more effective civil rights laws with efforts aimed at minimizing discrimination and allowing greater accessibility to other institutions.

The enforcement mechanism to be used by HUD will be nothing new. We have administrative procedures in many other areas: To expel aliens, to act on labor complaints, to adjudicate utility rates, all of which can be appealed to the courts. So should housing complaints. This then would authorize HUD to use an administrative process to enforce fair housing under title VIII of the Civil Rights Act of 1968, thereby allowing fair housing to become that reality, rather than merely that promise.

Thank you.

Mr. HYDE. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland (Mr. MITCHELL).

Mr. MITCHELL of Maryland. Mr. Chairman, despite the legislative struggles in which disadvantaged persons have participated during the past decade, housing discrimination still persists in America. The Fair Housing Act Amendments of 1979 (H.R. 5200) adds the handicapped to the list of citizens who have been discriminated against. In addition, H.R. 5200 strengthens the original Fair Housing Act to empower the Department of Housing and Urban Development to act more effectively on behalf of those persons who filed complaints. Thus, the fair housing amendments should be treated as an integral component of our national fair housing policy.

Although it is difficult to assess the effect of discrimination in housing, its impact on the quality of life in our country is undeniable. Discriminatory practices in housing have attributed to the disparities between black and white Americans in health, education, unemployment, earnings, and income. These practices have created unnecessary barriers for a disproportionate number of Americans which serve to fragment the social fabric of our society.

While income, location, and price are primary factors which determine one's chance of being adequately housed, the chance of being inadequately housed is greater for poor blacks than poor whites, because of race. In fact, the chance of a black family being inadequately housed because of race is about one in four compared to less than one in five chances for their white counterpart. Similarly, the disparity exists between families where the head of a household is under 30. Given the successes in income and educational attainment for some blacks, this statistic is particularly alarming.

Discrimination based on race, sex, age, and household size, despite the economic and social gains made by a few, is consistently the experience of the majority of black Americans and other minorities. Consequently, there is ample evidence which calls for significant strengthening of existing housing discrimination law.

Enforcement is the key to present housing discrimination problems. Under existing law, HUD is mandated to insure that the practice of fair housing is implemented. However, it has no real enforcement powers. The only method which HUD is presently empowered to use to stop housing discrimination is conciliation. Former HUD Secretary Carla Hills stated that this method, though laudable in its intentions, is "an invitation to intransigence." The present instrumentalities—namely, the Federal magistrate system—would impose a crushing cost upon the aggrieved persons who are least able to bear the financial burden. Thus, the existing law, and some of the amendments to be offered during the course of this debate, would succeed only in eliminating the discrimination while the disease continues to eat away at the lives of millions of Americans.

The existing law is simply inadequate.

Since the vast majority of HUD's housing discrimination cases involve limited legal suits and relatively small financial losses, litigation through private suits or the Justice Department continues to be totally inadequate to meet the need. Accordingly, under the Fair Housing Act Amendments of 1979, equitable, speedy, and inexpensive remedies would be available through the HUD administrative mechanism.

HUD also would be empowered under this legislation to receive and investigate complaints, conduct hearings, and issue orders to remedy housing discrimination—including temporary relief. This would facilitate the Justice Department's role in enforcing the fair housing laws. Judicial review of these orders would still be available through a court of law which recognizes appeals.

The bill provides that the Secretary of HUD and the person who has made a discrimination complaint may choose between the administrative and judicial forums. This feature will substantially minimize the role of the Federal Government in State affairs where there is a substantially equivalent method for resolving fair housing complaints. Thus, there is no possibility of administrative overlap and unnecessary duplication of effort. Another major procedural change, as provided in H.R. 5200, is the lengthening of the statute of limitations from 180 days to 3 years the changes in the basis for awarding attorney's fees and costs.

The role of the Attorney General is clarified in the Fair Housing Act Amendments of 1979. The Justice Department, for example, would have the authority to bring suits at the request of the Secretary of HUD—where there has been a finding of reasonable cause, upon violation of an administrative order or to collect a civil penalty imposed by the Secretary. Up until now, a pattern or practice of discrimination had to be proved by the Justice Department. This legislation would remove this limitation and permit the Attorney General to seek monetary damages in this class of cases.

A major problem with the enforcement of fair housing legislation is that discrimination become less obvious, and thus harder to detect. One of the methods used to escape from fair housing laws is in the dispensation of property insurance or property financing. Insurance discrimination is a serious national problem. Despite claims that insurance underwriting is based upon objective data, the decision as to whether or not a family receives adequate homeowners insurance is still based upon subjectivity and unfairly discriminatory factors.

This legislation would make the unfair dispensation of property insurance a condition of discrimination. A few Members in this Chamber are of the opinion that "all relevant factors" should be used in determining the value of property. There is some moral ambiguity about this argument, since the only "relevant factors" in question are discriminatory—namely, the use of race, sex, color, creed, or handicap—in determining property values. Real estate appraisers cannot be exempted from their fair housing obligations any more than the Nation's property owners or lending institutions. Since the implementation of the Fair Housing Act of 1968, there has been no evidence whatever to indicate that excluding racial and other discriminatory factors causes property values to decline. There are many proven indicators which can and should be used by appraisers without resorting to antibellum practices which are neither constitutional nor helpful to the economy.

The major problem with housing discrimination in America is that everyone professes to oppose it. They claim that it is antithetical to the principles of affirmative action and the principles of civil liberties. Yet when the time comes to enforce these lofty altruisms, the proponents of fair housing dwindle both in stature and in number. For this and many other reasons, the goal of equal opportunity in housing must not be compromised. To the extent that we compromise the principles embodied in the current fair housing laws, we will witness further erosion of our housing policy. As long as any American does not share equally in the housing improvements in this country because of discriminatory practices, the Congress will have failed all of the American people.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I have mixed emotions about this bill.

When this Congress began, the bill before the subcommittee was H.R. 2540, introduced on March 1 of last year by Chairman DON EDWARDS and Congressman BOB DRINAN. While I applauded the motives behind it, I was dismayed to see some of what it contained. As an example of bureaucratic power it had few equals. As first considered, H.R. 2540 was quite extreme. Among other things, it contained the following:

First. A nonreviewable "cease and desist" power residing in the Secretary of HUD. As introduced, the Secretary, after an opportunity for hearing, would have the power to "order temporary or preliminary relief pending the final disposition of [the] charge." The importance of this provision was that the Secretary, Patricia Harris, could, on her own motion, enjoin a housing project at considerable cost to the developer, until an administrative proceeding, which she could control and manipulate, would be initiated and appealed through the Federal appellate court system. Many months, perhaps even years, could pass before this process becomes complete. In the meantime, the developer might go bankrupt. What an incredibly coercive power this would have been.

Supporters of this bill will still claim that "cease and desist" remains as an equitable power retained by the administrative law judge (ALJ). However, this very dangerous authority was dropped from the bill during subcommittee markup. In its place, we were able to forge substitute language which now requires that any action for such an injunction must go before a Federal court. This way, the Rules of Civil Procedure apply and a Federal judge, not HUD, and certainly not the Secretary of HUD, will determine whether temporary relief is indeed appropriate. I offered another amendment in full committee to specifically reference rule 65 of the Federal Rules of Civil Procedure. That rule requires that even in the event an injunction should issue, a surety bond must accompany it.

Second. Proposed section 811(a) of H.R. 2540 would have permitted the Secretary to modify, in whatever way she chose, any decision of the ALJ. During subcommittee markup we were able to insert language which affirmatively prohibited the Secretary from playing any role whatsoever in the administrative review process.

Third. As introduced, H.R. 2540 would have allowed the Secretary of HUD to issue subpenas and the like even if they were merely "related" to an ongoing investigation of housing discrimination. That seemingly insignificant change represented a substantial departure from the existing requirement that all such subpenas must be "reasonably necessary in furtherance of [any] investigation." When I first saw this language, my reaction was that such a power could open up the possibility for endless administrative witchhunts. At subcommittee, we returned the bill to existing law.

Fourth. Initial referral to certified State agencies was discretionary in the Secretary. If she chose to initiate an action in Washington, the State would have little alternative but to stand aside, regardless of the competency of its enforcement machinery, and watch the Federal Government deal with any claim of housing discrimination. Once again, in subcommittee we were able to change that provision in such a way as to make the Secretary's referral mandatory.

There were other portions of this bill which were a source of concern to me. For example, the administrative procedure contained in proposed sections 810 and 811 give me pause for alarm. While the administrative law judge's proceedings do come within the statutory coverage of the Administrative Procedure Act (APA) and carry with them certain due process rights guaranteed by that act, the administrative law judges are nevertheless employees of HUD and as such cannot help being institutionally biased in favor of HUD's point of view and its mission to homogenize all neighborhoods. They are not the objective dispassionate persons whom I want to see conducting "hearings" between rival parties. For this reason, I plan to support the amendment by the gentleman from Wisconsin (Mr. SENSENBRENNER) to strike the administrative remedy and instead refer all individual complaints to the Department of Justice for its ultimate review and consideration. I agree with him that this approach is far more fair than the potentiality for abuse under the administrative system.

I think another point needs your attention on the subject of the Sensenbrenner amendment.

Throughout the period during which this legislation has been considered, and that includes the last two Congresses, much has been said about the failures of title VIII of the 1968 Civil Rights Act.

We have been told that the Government is powerless to adequately respond to complaints as they have been received alleging housing discrimination. A better enforcement mechanism, we have been told, is absolutely necessary if we are to create an incentive to participate in a conciliation process. I quite agree, but hasten to add a Federal judge in Cleveland this week issued a judgment under the existing law hailed as a far reaching civil rights victory.

But do not fall victim to HUD's rhetoric and its attempt to characterize your vote on this amendment in terms of whether or not it "guts" the bill. If the Sensenbrenner amendment passes, the conciliation process will be buttressed by the threat of a referral to the Department of Justice. This is no gutting amendment. It may interest you to know, that as a matter of practice, Justice may then assign litigative responsibility back to HUD, maintaining control in the process. Any attempt to represent the Sensenbrenner amendment as a gutting amendment is just wrong. We must keep in mind that in voting on Mr. SENSENBRENNER's amendment, we are voting on an enforcement procedure only. Our vote on the bill itself will come later; you can be assured that it will not diminish its effectiveness with the passage of Mr. SENSENBRENNER's proposal.

At the appropriate time, I expect to offer another amendment which has been referred to as a gutting amendment. I have circulated a "dear colleague" letter in an effort to familiarize you with the merits of my proposal and I will discuss it more fully when amendments are considered. Suffice it to say that my amendment would permit appraisers, who owe a fiduciary obligation to their employers, in most cases lending institutions and/or the Federal Government, to consider all factors shown by documentation to be relevant to the appraisers' estimate of fair market value of real property. My amendment also includes a proviso that such factors shall not be used by the appraiser with the intent to discriminate against any person for the purpose of denying rights guaranteed by the bill. Please keep in mind that the purpose of this amendment is simply to protect lending institutions and the Federal Government, which on occasion has fallen victim to shoddy appraisal tactics, from accepting collateral which is not honestly accurately appraised. Surely we recall the FHA-insured housing scandals of the early seventies. Any factors shown by documentation to be relevant to fair market value should be included in a professional appraisal. That collateral is supposed to last for 20 to 30 years and the lending institution and its depositors are entitled to the facts as to its prospective value.

My colleague from Virginia (Mr. BUTLER) has drafted a number of amendments dealing with important aspects of this bill. I expect to support him in his efforts and Mr. SENSENBRENNER in his. Properly drafted, this bill can be a monumental step forward in the area of civil rights. If it emerges as a jurisdictional power grab by HUD, the entire legislation may well be doomed.

Mr. HYDE. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from the Virgin Islands (Mr. EVANS).

Mr. EVANS of the Virgin Islands. Mr. Chairman, I rise today in support of H.R. 5200, the Fair Housing Act Amendments of 1980, a bill which I have the honor and pleasure of cosponsoring, along with 56 of my colleagues.

Mr. Chairman, title 8 of the Civil Rights Act of 1968 prohibits housing discrimination based on race, color, national origin, religion, or sex. Unfortunately, however, this title of the Civil Rights Act has not been able to prevent housing discrimination, and this country has been the worse for that.

The major reason for this predicament and the reason that H.R. 5200 was introduced centers around the fact that this act lacks an effective means of enforcement to protect victims of housing discrimination. There exists a critical need for the creation within the Department of Housing and Urban Development of an administrative enforcement system subject to judicial review—and I shall refer to this later—to bring about conciliation of involved parties. There exists also a critical need for expeditious resolution of individual housing discrimination complaints, including a hearing and an adequate followup.

Furthermore, there exists a need for a long overdue examination of the Civil Rights Act of 1968 to include handicapped persons.

Additionally, I believe that the time has arrived for the U.S. Congress to prohibit discrimination in the home insurance industry and market.

Last, there should be better enforcement applied against redlining and racial steering, two practices which are still very, very common in the housing field.

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H.R. 5200 encompasses these critical needs within its provisions.

Mr. Chairman, the principle of discrimination in this country has been outlawed in several fields many times. In the area of housing, it was outlawed by the Fair Housing Act of 1968. Yet it persists. Housing is basic to many of our other problems. When you have unfair housing practices, you set the need for such things as busing, and then we have another issue there. If you did not have unfair housing practices, you would not have the problems you now have with segregated schools. It seems to me that if we come out and say that we are in favor of fair housing, and then we set about to emasculate the act so that it becomes impossible of enforcement, we are being hypocritical with ourselves. I am sure that we do not want to indulge in this practice.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. EVANS of the Virgin Islands. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Chairman, I want to commend the gentleman for his very fine and cogent statement, and I associate myself with his remarks.

Mr. EVANS of the Virgin Islands. I thank the gentleman.

Mr. Chairman, it seems to me that the time has come for us to look the American public, both the majority and the minority, straight in the eye and mean what we say. I am reasonably sure that, should I put the question to the Members of this House, "Please put your hand up, which one of you is against fair housing," I am sure I would not see a hand. And yet we set about piece by piece to emasculate and dismember and completely destroy the enforcement qualities of this act. No law is any better than its ability to be enforced. This is not theoretical. We know that fair housing is not being enforced.

I have heard remarks about bureaucracy, and I suspect that those who claim that we do not want to put the administration of the Fair Housing Act into the hands of the bureaucrats of the Federal bureaucracy are trying to label the mechanism by which we enforce this with a term that has become anathema to us all. None of us like the term "bureaucracy" applied, so I consider it somewhat misleading and unfair to prejudice the passage by trying to label it as an act of the "bureaucracy." I think that we must study this on its very merits.

None of us can say truthfully that we are not aware of acts of housing discrimination. I have seen it in many forms. I personally have had the experience where I tried to get a piece of property for a friend of mine who happened to be Jewish, and it turned out that he was discriminated against. And I must confess at the time that I was naive enough to not recognize what was happening. I think I would now.

Mr. Chairman, we have to set about, if we mean to be honest with the American public, to tell them once and for all when this Congress passes a law which the majority wants, we intend that that law should be enforced and we intend to stop not what has become loopholes—these are not loopholes any more, they are portholes and archways through which the entire intent of the law is destroyed because people are able to find ways to get around it. And we sit here and argue about whether we should go to the courts first or whether we should have an administrative law judge first.

In the first place, there is not a single one of us in this Chamber who does not recognize the expense of taking routine matters to court. It is only a very small percentage, especially of the poor minorities, who would be able to accept the cost, where the majority would just say, "Well, I will drop it, I am going to lose anyhow."

My friends and colleagues, we have a situation which we must face up to. We have racial discrimination, we have discrimination based on other factors in housing. The amendment as proposed would destroy the intent of this act and, therefore, we should vote against it.

Mr. Chairman, I would like to yield at this time to my friend and colleague, the gentleman from New York (Mr. FISH).

Mr. FISH. I thank my colleague from the Virgin Islands very much for yielding and I, too, would like to be associated with his remarks, because I know they came from the heart as well as from learning.

Misleading statements have been made that H.R. 5200 does not provide for compensation for the victim of discrimination.

What is overlooked is that the administrative law judge route is a conscious election of remedies by the complainant. He can elect alternatively under H.R. 5200 to file his own private action at his expense or at the expense of a public interest firm. If he does elect this course, the complainant may receive compensatory and/or punitive damages in Federal court.

It is important to keep in mind the administrative remedy is intended for minor cases where injunctive relief is appropriate.

Furthermore, if the private action is of sufficient importance, the Attorney General of the United States may intervene at his cost. Again, the complainant can recover damages.

Mr. Chairman, we also have heard that magistrates, because of their number, will be more effective than administrative law judges. The Magistrates Act cannot be changed by an amendment to the Fair Housing Act. An individual must file suit at his own cost, and the respondent must agree to appear before the magistrate. We are then told if the respondent does not agree, the case must go to Federal court. This puts us back where we have been for a dozen years. The average time cases take in Federal court is 20 months. It is precisely this costly, protracted remedy that has proven ineffective.

Mr. SENSENBRENNER. Mr. Chairman, will the gentleman yield?

Mr. EVANS of the Virgin Islands. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, under the Sensenbrenner-Volkmer amendment, the election of remedies procedure is eliminated.

Section 812 of the bill, relating to private enforcements, specifically prohibits anybody who has filed a complaint with the Secretary of Housing and Urban Development, and said complaint has gone to hearing, from being able to commence a private suit in the Federal district court or in any other court to recover damages against someone who is guilty of illegal discrimination.

Administrative law judges are constitutionally restricted from awarding compensatory and punitive damages, something that Federal district courts are not restricted.

The remedies are unlimited, as far as the Federal district court is concerned. They are severely limited, as far as the administrative law judge is concerned, and that is why going into court is essential to provide for not only reimbursement of victims, but also reimbursement of innocent third parties who have had nothing to do with the transaction.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. EVANS of the Virgin Islands. I yield to the gentleman from Illinois.

Mr. RAILSBACK. Mr. Chairman, I want to make it very clear—and I believe there now may be a misunderstanding because of the statements of the gentleman from Wisconsin—the only time that a person is not permitted to elect to go into court is if that person and not HUD, but that person, has actually initiated a complaint by the administrative law judge.

Now, even then, if the private person wants to go into court, he or she is permitted to do so unless the hearing has actually commenced. So what better option do you have? It is strictly dependent upon the option or the election of the individual. They can have either remedy.

Mr. EVANS of the Virgin Islands. Mr. Chairman, I would like at this time to exhort my colleagues to support H.R. 5200. It seems to me that we would be solving several problems or attacking several problems at the same time. Perhaps we would have fewer ghettos if we had full enforcement.

● Mr. DIXON. Mr. Chairman, I rise in favor of H.R. 5200.

The question we must answer is whether we will continue to live with a system of law that guarantees equal justice but a system of enforcement only for the rich.

Title VIII of the Civil Rights Act lacks adequate enforcement power for the victims of discrimination. Housing discrimination remedies are weaker than in any other area of discrimination, and our commitment to fair housing is mute without enforcement.

H.R. 5200 would give the Secretary of HUD discretionary authority to refer complaints not simply to a State that has a strong law on paper but one that has an effective law in practice. There are at least 20 States that have been certified by HUD as having "substantial equivalency status," which means these States have cease and desist authority to obtain temporary relief and adequate resources to carry them out. A true remedy in a housing discrimination case is an expeditious remedy for all parties involved.

We are all well aware of the civil rights legislation that has been passed—yet, H.R. 5200 will complete the effort begun in the 1960's by providing effective procedures for achieving equal housing opportunities. This legislation will provide a system of fair, effective, and efficient justice.

A nationwide study of the housing market recently conducted by the U.S. Commission on Civil Rights showed that a black person has a 62 percent chance of encountering discrimination on a home buying search, and a 75 percent chance in a search for rental housing; discrimination in housing still exists.

Unfortunately, I am only too well aware of the problems that have been perpetuated by segregated neighborhoods. Adverse affects are seen in: Mortgage redlining which causes refusals to finance or insure dwellings because of the racial composition of the neighborhood; discrimination in providing hazard insurance; discrimination in the making of appraisals, busing to achieve integration in schools, limited access to jobs—to name but a few.

If we sincerely believe in the concept of equality, then I see no reason why we cannot utilize administrative law judges, under the guidelines of the present Administrative Procedure Act, to join with our Federal court judges in upholding the principles of equality and social justice. Why should public protection from discrimination in housing be different than public protection from stock manipulation, commodities, or the like?

As we embark upon the 1980's, let it be said that the 96th Congress had the courage and wisdom to enact the means to achieve fair housing. If we are to extinguish the flames of racial intolerance and hatred, which have recently engulfed one of our major cities, we must acknowledge the importance of fair housing. Housing discrimination has only worked to isolate and polarize our country. It weakens our society, and should not be encouraged by protecting landlords, or sellers, who discriminate.

Let it not be said that this Congress was not prepared to take a positive stand. I urge my colleagues who believe in equity, fairness and due process of law to join me in supporting H.R. 5200.

It is ironic that the original fair housing legislation was passed by this body in the aftermath of riots ignited by the assassination of Dr. Martin Luther King. We must not wait longer for the tensions of discrimination to again make cities battlegrounds. Our country and this Congress has made a commitment to fair housing, and this legislation is necessary if we are to keep it.

I urge my colleagues to pass this important legislation, and to oppose the weakening amendments which will be offered.●

● Mr. STOKES. Mr. Chairman, I rise in support of the Fair Housing Act Amendments of 1980 and applaud the leadership and direction of my distinguished colleague from California (Mr. EDWARDS) in this effort.

I ask this body to recognize its obligation to pass this legislation. The 13th amendment of the Constitution has entrusted Congress with the power and responsibility to remedy the "badges and incidents" of slavery. In the words of Supreme Court Justice Stewart:

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

This Congress is now provided the opportunity to fulfill its constitutional duty by burying this relic and ensuring that equal housing opportunities become a reality.

This bill is not an attempt to modify current law. It is an attempt to realize the intent of the law and provide viable methods to enforce that law. The protected class would be expanded to include handicapped individuals and affected industries would be clarified. In

other respects, however, the text of the law would remain essentially unchanged. H.R. 5200 still preserves the rights of States and local agencies and encourages the process of conciliation. Yet, evidence reveals that these avenues alone are not enough.

According to a recent study conducted by the Department of Housing and Urban Development, a black American has a 48 percent chance of encountering discrimination when purchasing a home. The chance is increased to 85 percent when a black family seeks rental housing. And certainly other minorities are not unaffected. Hispanics, Asians, Native Americans, the disabled, and women continue to be denied the fundamental right to equal access to housing.

Title VIII of the 1968 Civil Rights Act established a clear national policy prohibiting discrimination in housing. Yet, this policy is, and will remain, ineffectual until we provide the proper mechanisms for enforcement. As long as victims of discrimination are forced to compromise fundamental rights, the law is, in effect, barren.

The administrative hearing process as prescribed in this bill is effective, efficient and just. This system was first established nearly 50 years ago and is now in use in 17 Federal agencies. The provisions in the Administrative Procedure Act have served consistently well in guaranteeing an impartial hearing. The hearings are fully separated from political considerations and from established policies which an agency may have. This bill offers additional protections for both parties with a de novo judicial review of the administrative law judge's findings.

Finally, it is the expressed intent of H.R. 5200 that the administrative law procedure be used only as a last resort after local remedies and conciliation are exhausted.

But when an administrative law judge does determine a complaint to be well-founded, the authority is given to provide full relief from the effects of improper actions. Authorized remedies are not limited to civil penalties. The legislation before us permits financial remedies which include civil penalties and monetary damages. In addition, it allows injunctive relief such as ordering rental of a unit, or granting of a loan to the complaintant. This broad range of enforcement possibilities is essential if this new complaint mechanism is to be fully effective. A victim should, and indeed must be able to expect immediate and tangible relief.

This legislation will not eliminate discrimination in housing. It simply provides the proper mechanisms to begin the struggle towards abolishing this insidious practice. If we do not provide adequate means to enforce the law, we will continue to deny Americans this essence of civil freedom. If we do not pass this measure, we will fall short of our responsibility to bury this relic of slavery.

If we truly intend to eliminate housing discrimination, if we intend to fulfill our constitutional duty to provide all Americans with equal civil freedoms, then we must pass H.R. 5200.●

● Mr. CORRADA. Mr. Chairman, I rise in support of H.R. 5200, the Fair Housing Act Amendments of 1980.

As a Hispanic, a minority to which this bill is so important, I wish to commend Chairman RODINO for his leadership and my colleagues DON EDWARDS and TOM RAILSBACK for their work on a bill that went through almost 4 years of hearings.

H.R. 5200 is, in my opinion, a well-balanced bill which will speed up considerably the process of justice to the millions of Hispanics, blacks, handicapped, and other Americans and residents of this country who are denied housing because of their race, religion, color, national origin, or sex. With your permission, Mr. Chairman, I would like to quote from a letter written by Secretary Landrieu to Chairman RODINO expressing the administration's support of the bill:

> H.R. 5200 is perhaps the most important civil rights bill to reach the House floor in over a decade, and it has the firm backing of this Administration.
>
> Because the right to equal opportunity in housing is not backed up with an effective administrative enforcement mechanism, HUD has often been unsuccessful in enforcing individual rights under the fair housing law. Under existing law, HUD may only investigate charges of discrimination and attempt conciliation in the more than 3,000 complaints it receives each year. If conciliation fails, as it frequently does because of the voluntary nature of the procedure, the individual's only recourse is to file a lawsuit on his own behalf. Because of the cost and delay involved, individuals usually decide to forego vindicating their rights, and look elsewhere for housing. This makes HUD powerless to redress violations against the law it is required to enforce. And the Attorney General may only act if a case involves a pattern or practice of discrimination.

These are powerful and convincing reasons to vote for this bill which essentially provides more effective enforcement mechanisms by putting in place a mechanism within HUD presided over by administrative law judges for enforcement of fair housing laws. It also provides for the investigation of alleged discriminatory housing practices at the initiative of HUD or an aggrieved party.

The provision of time limits for each step in the process that would be established and the administrative law judges to resolve such practices is a vitally needed step in the administration's arsenal of civil rights and fair housing laws.●

● Mr. BROWN of California. Mr. Chairman, overt racial discrimination remains in one major sector of American life—that of housing. Congress and the courts have acted to eliminate discrimination in education, voting, and employment, but many minorities are not free to live where they choose.

The basic purpose of this legislation is to permit people who have the ability to do so to buy any house offered to the public if they can afford to buy it. It would not overcome the economic problem of those who could not afford to purchase the house of their choice.

Mr. Chairman, the words I have just spoken are appropriate for today, but the truth of the matter is that they were originally spoken on the floor of the Senate 12 years ago by then Senator Mondale when considering the fair housing provisions of the 1968 Civil Rights Act.

Despite 12 years of Federal law prohibiting discrimination in the sale or rental of housing, discrimination continues to persist against racial minorities, handicapped persons and others. Studies by the Department of Housing and Urban Development show that, in 1980, a black seeking a rental unit has an 85-percent chance of encountering discrimination. A Hispanic in Dallas has between a 65- and 95-percent chance of encountering discrimination, depending on whether has skin tone is light or dark. These facts are disturbing.

The 1968 Civil Rights Act was intended to specifically address this kind of overt discrimination. Now, we find that discrimination exists in areas beyond the sale or rental of housing, like mortgages and home insurance.

Why is this problem so pervasive if this law has been on the books for so long? One answer comes from the U.S. Commission on Civil Rights. In its annual report, the commissions concluded, among other things:

Title VIII is a weak law that does not provide effective enforcement mechanisms for insuring fair housing; and

HUD, which is charged with the overall administration of the law, lack enforcement authority.

So, 12 years ago, we enacted a law in direct response to a showing of discrimination in housing and, more significantly, in response to the rioting in major urban areas, and then failed to give the appropriate agency any enforcement authority.

Now, more than ever, the time has come for an effective fair housing bill. Projected demand for housing will far exceed the available supply in the next decade. If the patterns of discrimination that now exist continue into the 1980's, any gains we have made over the last decade will be lost.

And, if our social indicators are still correct, the rioting in Miami should be a warning to the Members of this body of the critical situation in our Nation's black communities.

I urge my colleagues to give their wholehearted support to this legislation and to oppose any amendments that would weaken its effect.●

● Mr. RANGEL. Mr. Chairman, I would like to take this occasion to urge my support for the approval of the Fair Housing Act Amendments of 1980 (H.R. 5200). Its passage would secure a foundation for the struggle for equal opportunity that we must dedicate ourselves to in the next decade.

Recent studies have shown that housing discrimination is still a major problem in the United States; one report commissioned by the Department of Housing and Urban Development (HUD) found that blacks seeking rental housing have an 85-percent chance of encountering some form of discrimination, either explicit or implied.

Despite the current Federal fair housing laws, title VIII of the Civil Rights

Act of 1968, equal housing opportunity exists as an empty promise to many, and a tangible reality to extremely few. In 1977, only about 3,400 complaints were filed with HUD, despite the evidence that instances of housing discrimination were far more widespread. Only 277 cases were successfully arbitrated, and in only one-fourth of those cases was the contested housing obtained by the victim of discrimination.

The passage of H.R. 5200 is essential if we are to end this insidious practice of discrimination in the present housing market. The critical flaw in the 1968 legislation is that it does not provide an effective enforcement mechanism; the Justice Department can only provide remedies in cases of widespread abuse, and HUD can only urge the parties to agree, without legitimate administrative authority to back up its conciliation efforts. Very few of those involved in the process, both the alleged discriminators and the victims themselves, put much faith in HUD and its power to institute fair practices.

Obviously legislation is desperately needed that will improve the efficiency of HUD without bogging down the system in cumbersome bureaucracy.

H.R. 5200 would strengthen the fair housing section in three key areas: First, it provides HUD with the authority to enforce conciliation agreements by creating an independent administrative system, subject to judicial review, to hear individual housing discrimination cases; second, it clarifies the coverage of the act by allowing the Department of Justice to broaden its responsibility and bring individual cases rather than just group cases to court; and third, it extends the coverage of the law to the handicapped, an important and often overlooked minority which suffers much from discrimination in housing.

With the implementation of these three major provisions we can assure that the victims of this practice are protected by the law and that both sides respect the enforcement of the law. H.R. 5200 will enable the Government to bring about the reality of fair housing promptly and effectively, reducing the expense for all those involved, and especially for the individual victim of discrimination. It is critical that this piece of legislation be approved, for anything less will perpetuate the problems so many encounter when they simply seek a place to live and are turned away on account of an outright injustice.●

● Mr. DODD. Mr. Chairman, I rise in strong support of this most needed legislation. Fair housing was a major civil rights issue in the past decade. The social legislation of the 60's was incomplete until passage of title VIII of the Civil Rights Act of 1968, commonly referred to as the Fair Housing Act. As you know, this significant piece of legislation made it illegal to discriminate on the basis of race, color, religion, sex, or national origin in the selling or renting of housing. Title VIII represented an important step in the Nation's quest for equal opportunity and freedom of choice for all Americans.

However, there were two glaring omissions in the current Fair Housing Act—the lack of administrative enforcement powers and the exclusion of handicapped from the protections of the act. H.R. 5200, The Fair Housing Amendments of 1979, would rectify the weaknesses that exist in the current law by providing an administrative process to enforce fair housing laws and prohibit the discrimination of handicapped individuals.

The problems of our Nation's 35 million handicapped citizens have only recently received increased attention from the Federal, State, and local governments and the public. Significant progress has been made to help handicapped individuals realize their full potential. The Federal Government has promoted deinstitutionalization of the handicapped for about the last 10 years. Through vocational rehabilitation, prohibitions against discrimination of the handicapped contained in the Rehabilitation Act, and through the Education of All Handicapped Children Act, the Federal Government has sought to better prepare the handicapped to live independent lives.

The goal of independent living, however, can never be achieved until statutory protections against the discrimination of the handicapped in housing are enacted. This bill provides these needed protections and one of the major difficulties that the handicapped have experienced, the reluctance on the part of realtors, homeowners rental agents, and so forth, to treat the handicapped on an equal basis and the tendency to prejudge a handicap as a barrier to housing that is to be rented or sold will be eliminated.

Mr. Chairman, often those of us in open society tend to think of our human and constitutional rights in abstract terms without any real understanding of how these rights impact our lives. Most of us have never suffered the indignity of being denied access to a public place or to a home. The human and constitutional rights of equality and fairness will now apply to the millions of handicapped individuals of this Nation.

The need today that we fulfill by expanding the coverage of Federal nondiscrimination policy to individuals with handicaps is so important. Although, H.R. 5200 will not eradicate discrimination against handicapped individuals it is another important step toward the establishment of full civil rights for this Nation's handicapped. I urge my colleague to support these important amendments to the Fair Housing Act.●

● Mr. HALL of Ohio. Mr. Chairman, I rise in support of H.R. 5200, the Fair Housing Amendments Act of 1980. I am pleased to have this opportunity to speak on behalf of the most important civil rights bill to be considered by this 96th Congress.

Some of our citizens may wonder why we are voting on a fair housing bill. The Civil Rights Act of 1968 already requires equality of housing opportunity for all Americans, and it establishes a clear national policy against housing discrimination. Since this law is on the books at this time, why is additional legislation necessary?

The answer is that the Civil Rights Act of 1968 does not provide an effective enforcement mechanism to make the promise of fair housing for all Americans a reality. Recent studies demonstrate that housing discrimination still is a major problem in the United States.

One recent nationwide survey, commissioned by the Department of Housing and Urban Development, found that blacks seeking a rental unit have an 85 percent chance of encountering at least one instance of discrimination. The chances of a black encountering discrimination when looking for a house to buy is nearly 50 percent, according to the same study. HUD estimates that more than 2 million instances of housing discrimination occur each year. In the entire country, however, not more than 4,000 complaints have ever been filed with HUD under the Civil Rights Act of 1968 in any year, despite the evidence that discrimination is widely practiced.

Perhaps because of the Civil Rights Act of 1968, discrimination is not as blatant as it used to be. Nevertheless, it does continue in subtle but effective forms. Some examples of housing practices that are currently unlawful, but which continue because of the absence of effective enforcement include:

Providing a member of a racial or ethnic minority with information different from that provided to others, which makes the dwelling less "available," for example, that the unit is not available, the agent is not authorized to sell or rent, and so forth.

"Steering," that is, suggesting that blacks seek housing only in black or integrated neighborhoods, and whites only in white neighborhoods;

Requiring different terms of sale or rental for minority groups, for example, higher interest rates, down payment, security or cleaning deposit, and so forth; and

"Redlining," that is, refusing to finance or insure a dwelling because of the racial composition of the neighborhood.

Under the present law, enforcement is very limited. HUD is given the power to hear and investigate complaints of housing discrimination. However, even if HUD finds that an individual has indeed been discriminated against, there is little HUD can do except to try to bring the two parties together for "conciliation." Many refuse to consider conciliation at all; fewer still agree to any kind of settlement that rectifies an act of discrimination. In the words of former HUD Secretary Carla Hills, "the present law, in relying upon conciliation, is an invitation to intransigence."

Another alternative presently available is for the victim to file suit in a Federal district court. Few victims of discrimination can afford the time and money and few private attorneys are interested in handling discrimination cases when they might be paid no more than whatever attorneys fees the judge orders the losing party to pay. It is also important to keep

in mind that, in fair housing cases, the average time between filing and disposition has been 21 months.

The third enforcement mechanism available under the 1968 act allows the Attorney General to bring suit in Federal courts in cases where a "pattern and practice" of discrimination is alleged. However, the Justice Department is not empowered to initiate suits on behalf of individuals claiming housing discrimination. Unless a particular case raises legal or factual issues of great national importance, it will not be taken by the Justice Department.

In summary, current law gives HUD the responsibility to receive and investigate housing discrimination complaints, but limits its enforcement powers to "conciliation." The Justice Department only can become involved in housing discrimination complaints that represent a "pattern or practice." Finally, the court route is adequate only for those discrimination victims who can afford to hire legal counsel and pay for alternate housing. The immediate problem—the inability to obtain housing—is not resolved expeditiously enough in the courts to help most persons who experience discrimination.

While we have the Civil Rights Act of 1968, it is not working effectively to end housing discrimination. As the House Judiciary Committee report on H.R. 5200, the Fair Housing Amendments Act of 1980, notes:

> The effects of housing discrimination on both the individual and the society are truly pervasive; because free access to housing is basic to the enjoyment of many other liberties and opportunities, discrimination against minorities, women, and the handicapped has far reaching consequences. To the individual it means economic hardship, loss of job opportunities, humiliation, and alienation. To the society, it has meant the creation of the massive problems we now face, including the trauma of school busing to compensate for segregated housing patterns.

The legislation before us would put teeth in the Civil Rights Act of 1968 by giving HUD the necessary administrative power to enforce the law. The Fair Housing Amendments Act of 1980 would create independent administrative law judges and an administrative court process to hear housing discrimination cases.

As under the current law, individual complaints of housing discriminaton would be filed with HUD. HUD then would be required to refer the complaint to a certified State or local fair housing agency if one exists in the jurisdiction. If there were no State or local agency, or if the agency did not act within 90 days, HUD would investigate and, where appropriate, attempt to work out a voluntary agreement between the parties through conciliation. If conciliation failed, HUD could file a complaint with an administrative law judge or refer the matter to the Attorney General for possible action in a Federal court.

The administrative law judge would hear the complaint presented by the gagrieved individual's private attorney or an attorney appointed by HUD. After the hearing, the judge would issue conclusions on whether discrimination had occurred. The judge could order any form of relief that is legally appropriate, including payment of compensation, the award of a prevailing party's costs and fees, and the assessment of a civil penalty of up to $10,000. If either party were dissatisfied with the decision, an appeal then could be made to a Federal district court within 30 days.

I should point out that H.R. 5200 in no way inhibits the right of an individual to file civil actions to remedy civil rights violations relating to housing, and it extends the statute of limitations on violations from 180 days to 2 years. Further, the Attorney Generals' existing authority to initiate civil actions involving a pattern or practice of housing discrimination would be maintained, and the Attorney General also would be permitted to bring suit upon referral of a case by HUD.

In addition to providing protection from discrimination in housing because of race, color, religion, sex, or national origin, the bill changes current law to prevent discrimination because of handicapped status. Therefore, it would be unlawful to refuse to rent or sell to a blind, deaf, retarded, or otherwise physically or mentally disabled person because of that person's disability.

This legislation will not end all housing discrimination or the problems associated with such discrimination. However, it will set up the procedures to make the fair housing pledge of the Civil Rights Act of 1968 meaningful for more of our citizens. It will provide action and justice where they have been lacking.

I think the New York Times gave the simplest and strongest argument in support of the Fair Housing Amendments Act of 1980 in its editorial of May 28, 1980:

> The 1968 law notwithstanding, housing discrimination is a fact of life. The new bill could change that.

In my opinion, this is reason enough to support this important legislation. I hope that my colleagues will join with me in voting in favor of H.R. 5200.●

● Mr. DERWINSKI. Mr. Chairman, I urge the House to approve the Sensenbrenner-Volkmer amendment to H.R. 5200. This will preserve the historic principle of keeping adjudication in the judicial branch, rather than giving HUD authority to make judicial rulings on fair housing.

The Sensenbrenner-Volkmer amendment will remove the clumsy HUD administrative machinery which would be set up under the committee bill. It will use congressionally mandated Federal magistrates to expedite procedures. It provides for the Attorney General to take private civil cases on behalf of individuals to the courts. It provides new conciliation and arbitration processes to resolve these cases. And the amendment allows HUD to seek "cease and desist" orders.

We must not give HUD authority to both fund fair housing cases and then prosecute the same cases. The judiciary should retain its traditional authority to decide if there has been wrongdoing in the area of fair housing.

The Sensenbrenner-Volkmer amendment will uphold proper legal procedures and protect individual rights. Further, it will prevent the expansion of administrative authority which the American people have clearly indicated they oppose.●

● Mr. LUNDINE. Mr. Chairman, I wish to express my support for H.R. 5200, the Fair Housing Act Amendments of 1980. The legislation amends title VIII of the Civil Rights Act of 1968 to correct a number of deficiencies in existing Federal fair housing law.

Twelve years after the enactment of the Fair Housing Act of 1968, discrimination in the sale and rental of housing remains a serious national problem. Recent studies provide ample evidence that housing discrimination, in both its overt and more subtle forms, can be found in every part of the country. One nationwide study, for example, found that black families seeking rental housing have a 72 percent chance of encountering at least one instance of discrimination if they contact four rental agents. Black families seeking to purchase a home were found to have nearly a 50 percent chance of experiencing racial discrimination. Studies conducted in New York City, Dallas and Los Angeles reveal similar patterns of discrimination against blacks, Hispanics, and other minorities.

The Department of Housing and Urban Development estimates that over 2 million instances of housing discrimination occur each year. Few of these are ever reported and even fewer ever result in any form of restitution to victims of discrimination. Under current law, HUD is permitted only to hear and investigate complaints of housing discrimination. If it finds that discrimination has occurred, it can only encourage the parties to settle their differences through conciliation. HUD has no power to require conciliation nor can it enforce any conciliation agreement.

This provides little incentive for victims of discrimination to file complaints with HUD and even less incentive for those charged with discrimination to cooperate. Of the 4,000 fair housing complaints filed with HUD last year, less than 300 resulted in any form of voluntary agreement.

The courts have also proven to be of limited help to victims of discrimination. Few of the people most likely to be subjected to discrimination—racial and ethnic minorities, single women, the elderly and handicapped—have the money to hire attorneys to take their case to court. The Justice Department has no authority to initiate discrimination cases on behalf of individual victims and is empowered to prosecute only those cases in which a definite "pattern or practice" of discrimination can be established.

It is easily understood why those who feel they have been victims of housing discrimination seldom seek redress. Deprived of both legal and administrative remedies, they have little choice but to acquiesce in an act of unlawful discrimination and hope they can find housing elsewhere.

The proposed amendments would remedy this situation by creating an ad-

ministrative enforcement system which could insure individual victims of housing discrimination that their complaints would be heard and acted upon with minimal cost and delay. Used in conjunction with appropriate court action, the system would strengthen HUD's capacity to enforce current fair housing laws, without compromising the rights of those against whom discrimination complaints are filed.

The measure would authorize HUD to investigate alleged acts of discrimination upon request of aggrieved parties. Upon finding "reasonable cause" to conclude that discrimination has occurred, HUD can attempt to resolve the situation through conciliation. Should conciliation fail, HUD could either bring the complaint before an administrative law judge or refer the matter to the Attorney General for possible action in a Federal district court.

The administrative judge would hear the complaint presented by a HUD attorney on behalf of the aggrieved party. The hearing process would insure both parties due process of law, including the right to counsel, to subpena evidence and to present and cross examine witnesses and evidence. Following the hearing the judge would issue a decision on whether an act of discrimination had occurred. The court would be empowered to award attorney's fees, to impose civil penalties of up to $10,000 and to order appropriate relief, including the provision of "equivalent" property for sale or rent to aggrieved parties. All decisions of the administrative judge could be appealed for de novo review by a Federal district court.

The administrative process provided in the legislation benefits from a simplicity that guarantees that complaints will be resolved quickly and at less cost than in a court proceeding. More importantly, by insuring that a judgment will, in fact, be rendered, it provides greater incentive for the parties in a complaint to reach a voluntary agreement through conciliation.

Mr. Chairman, I have studied at length the arguments of those who believe giving HUD this enforcement authority would be both unnecessary and unwise. I must say that I share their concern regarding an administrative process that would, in effect, place HUD in a position of investigating, prosecuting, and judging fair housing complaints. My specific concern in this regard is for the integrity of the administrative judges. I am not entirely satisfied that these judges will be completely free from HUD's influence in all cases.

This does not mean, however, that the entire enforcement mechanism should be striken from the bill as a number of my colleagues suggest. I believe that additional guarantees can be incorporated in the legislation to limit HUD's ability to influence fair housing judgments.

As currently proposed, HUD's administrative system would be subject to the restrictions imposed on all administrative enforcement systems by the Administrative Procedures Act. The legislation provides an additional safeguard by explicitly excluding all HUD officials from any action involving a judgment of an administrative judge. It further provides that all judgments be subject to de novo review—a broad appeal process which permits a Federal district court judge to independently decide the outcome of a case, based on the hearing record and any additional evidence.

To further guarantee the integrity of administrative judgments, I support the adoption of a number of perfecting amendments offered by my colleague from Oklahoma (Mr. SYNAR). One amendment explicitly removes administrative judges from the supervision or direction of anyone within HUD who performs either investigative or prosecutive functions and prohibits judges from consulting with such persons in an ex parte manner. It would also limit the authority of the HUD Secretary in both the appointment and removal of administrative judges, requiring that judges be selected from a list of persons deemed qualified by the Office of Personnel Management and that they be removed only for cause and only after a hearing before the Merit System Protection Board.

An additional amendment would strengthen the emphasis on conciliation in the legislation by requiring the Secretary to certify that conciliation had been attempted prior to the commencement of any administrative action. Additional opportunity for conciliation would be provided by a required 5-day delay in the issuing of administrative judgments, during which time a voluntary agreement would still be encouraged and recognized. A final amendment would limit HUD's authority regarding zoning and land use cases, requiring that the Secretary refer all such cases to the Attorney General.

I should add, Mr. Chairman, that the legislation contains another important limitation on HUD's administrative authority in the requirement that housing discrimination complaints be referred to certified fair housing agencies in the State or locality where a complaint originates. Currently, 22 States possess fair housing laws that have been certified as equivalent to the Federal statute. Another five States are in the process of certification. For these States, which include my own State of New York, fair housing complaints would be handled in much the same manner as they have been, with only minimal change effected by the legislation. HUD would be required to refer complaints to appropriate State and local agencies and could initiate administrative action on these complaints only if a State agency fails to take action.

I believe the guarantees incorporated in the legislation, together with those proposed in the Synar amendments, will provide HUD with needed enforcement authority without compromising the rights of those against whom fair housing complaints are filed. The enforcement mechanism provided by the legislation is the product of much debate and compromise, reflecting both Democratic and Republican concerns and viewpoints. I believe the legislation is worthy of support and urge its adoption.●

● Mr. SYMMS. Mr. Chairman, I am quite sure that most of the Members in this body have been denouncing the growth of the Federal bureaucracy and have been repudiating the continuing intrusion of big government into the lives of their constituents. I will also wager that most of the Members of this body have promised to do something for the little man, the taxpayer and the homeowner.

A vote for the Sensenbrenner/Volkmer amendment is a vote for sensible Government. Passage of this bill, as it presently stands, would be a dramatic intrusion of the Federal Government into local affairs. A vote against the Sensenbrenner/Volkmer amendment is a vote for the very thing that most Members have been denouncing in speeches back home.

HUD and the Carter White House have attempted to assure Members that its administrative court would not hear cases challenging local zoning regulations. Yet, absolutely nothing in this legislation would preclude HUD from bringing a zoning case before its in-house court.

HUD and the Carter White House are also telling us that this legislation would preclude the HUD court from hearing cases arising in States which now have HUD certified State agencies to handle discrimination cases. Twenty-two States have these agencies. Under H.R. 5200, HUD is required to refer any complaints arising in those 22 States to the State agency. This provision is lauded as proof that HUD would not interfere in cases arising in those 22 States.

However, as the saying goes "What you can't legislate, you regulate" has proven true once again. In the May 14, 1980 Federal Register, page 31880, HUD negates the supposed protections for certified States in H.R. 5200. These final regulations mandate that before a State agency becomes certified to receive discrimination cases it must sign an agreement eliminating the exclusive jurisdiction supposedly afforded certified States under H.R. 5200.

In addition to which, HUD and the Carter White House are pushing legislation which gives HUD a blank check. HUD becomes the complainant, judge, jury, and prosecutor under the bill as it is presently written. A true victim of discrimination wants two things: Prompt action and a place to live of his or her choosing. Section 811, which establishes the HUD Administrative Law Tribunal, provides neither.

First, the HUD administrative procedure takes time. HUD is given 9 months before the hearing begins. After that additional periods of time for review are required as well.

Second, by the time all of the HUD paperwork is completed, the HUD judge cannot provide relief quickly enough to satisfy the need for a place to live.

Third, normally, complainants could then obtain satisfaction by being awarded a fine, perhaps even punitive damages. Under H.R. 5200, the HUD judge can assess penalties but cannot award the aggrieved individual any of the damages—HUD keeps the profit.

The Sensenbrenner/Volkmer amendment provides a significant improvement in the current law. We should not allow citizens to be brought by HUD into the HUD court. Recourse to courts of law, not administrative tribunals run by bureaucrats, is the fairest method of settling housing cases.●

The CHAIRMAN. All time has expired.

Pursuant to the rule, the Clerk will now read the committee amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

H.R. 5200

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Fair Housing Amendments Act of 1980".

SHORT TITLE FOR 1968 ACT

SEC. 2. The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90–284, approved April 11, 1968) is amended by inserting immediately after the comma at the end of the enacting clause the following: "That this Act may be cited as the Civil Rights Act of 1968.".

SHORT TITLE FOR TITLE VIII

SEC. 3. Title VIII of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90–284, approved April 11, 1968) is amended by inserting immediately after the title's catchline the following new section:

"SHORT TITLE

"SEC. 800. This title may be referred to as the 'Fair Housing Act'.".

AMENDMENTS TO DEFINITIONS SECTION

SEC. 4. (a) Section 802(f) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90–284, approved April 11, 1968) is amended by striking out "section 804, 805, or 806" and inserting "this title" in lieu thereof.

(b) Section 802 of such Act is amended by adding at the end the following:

"(h) 'Handicap' means, with respect to a person, (1) a 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; but such term does not include any current impairment that consists of alcoholism or drug abuse, or any other impairment that would be a direct threat to the property or the safety of others.

"(i) 'Aggrieved person' includes any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur.".

Mr. EDWARDS of California (during the reading). Mr. Chairman, I ask unanimous consent that sections 1, 2, 3, and 4 be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

□ 1230

Mr. BUTLER. Mr. Chairman, reserving the right to object, for the purpose of clarification, the gentleman is asking us at this moment to submit any amendments which we might have to the first four sections. It is the gentleman's intention thereafter to go one section at a time until we have completed the bill, or how does the gentleman propose to proceed?

Mr. EDWARDS of California. Mr. Chairman, if the gentleman will yield, I believe that when we come to sections 7 and 8, it would be more convenient to make the same request, because that has the enforcement machinery and is mentioned in both sections. Other than that, I think we should go section to section.

Mr. BUTLER. So after 4 will come 5.

Mr. EDWARDS of California. That is correct.

Mr. BUTLER. And after 5 will come 6 and after 6 will come No. 7 and then 8?

Mr. EDWARDS of California. That is correct.

Mr. BUTLER. I hope I can keep track of that.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California (Mr. EDWARDS)?

There was no objection.

The CHAIRMAN. Are there amendments?

AMENDMENTS OFFERED BY MR. BUTLER

Mr. BUTLER. Mr. Chairman, I offer amendments to section 4.

The Clerk read as follows:

Amendments offered by Mr. BUTLER: On page 3, strike out line 12 and all that follows through line 19.

On page 3, line 20, strike "(f)" and insert in lieu thereof "(h)".

On page 6, line 10, after the period, insert a closed quotation.

On page 6, line 9, strike out "handicapped.".

On page 6, strike line 11 and all that follows through line 7 on page 8.

On page 8, line 8, strike out "(e)" and insert in lieu thereof "(d)".

On page 8, line 20, strike out "handicap".

On page 31, strike line 1 and all that follows through line 8, and redesignate succeeding sections accordingly.

On page 31, strike lines 9 through line 5 on page 32 and redesignate succeeding sections accordingly.

Mr. BUTLER (during the reading). Mr. Chairman, I ask unanimous consent that these amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

(By unanimous consent, Mr. BUTLER was allowed to proceed for 5 additional minutes.)

Mr. BUTLER. Mr. Chairman, the Fair Housing Act, in its present form, prohibits discrimination in housing which is based on race, color, religion, sex, or national origin. H.R. 5200 would add handicapped persons to the protected classes.

This is a big step.

Those who are concerned about the need to improve the existing protections against racial and sex discrimination should bear in mind that this new class of protected persons will command a substantial, and perhaps disproportionate, amount of Federal resources committed to the fight against discrimination in housing.

The reason we can expect protecting the handicapped to be so expensive is the easily predictable and extensive explanations which will be required by Federal regulations, guidelines, and the like.

Regulations concerning the handicapped already exist for a number of housing related programs. For example, there are regulations which discuss standards for the design of publicly owned residential structures in order to insure that the handicapped will have ready access to them (24 CFR, part IV); which discuss standards and procedures relating to providing rent supplement payments (24 CFR part 215); which discuss school construction policies regarding the handicapped (41 CFR, parts 112–113); and which promulgate standards and procedures for providing housing insurance for handicapped persons (24 CFR, part 231).

There are also a number of Federal regulations, apart from housing, which involves the handicapped. Some of them define handicapped for purposes of eligibility under the Small Business Act (13 CFR, part 118); include handicapped among those eligible for certain student loans (20 CFR, sec. 1087ee); describe special learning programs for children with learning disabilities (20 CFR, sec. 1461); and define handicapped for eligibility under certain public contracts (41 CFR, sec. 48b). In all, there are some 20 different definitions of "handicapped" in the Code of Federal Regulations, only 8 of which relate to housing.

The definition of handicapped which has been settled upon for this bill is one of the options already available in existing Federal statutes. Specifically, section 4b of H.R. 5200 tracks section 504 of the Rehabilitation Act of 1973 by defining handicapped as meaning, with respect to persons:

(1) a 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 impairment.

Interestingly, this very same definition has recently come under attack following examination by those who will be obliged to interpret what it means. On March 6, 1980, the Federal Communications Commission (FCC) issued a report concerning the extent to which the handicapped, as defined in the Rehabilitation Act, should be included in its equal opportunity rules. Briefly, the Commission noted that:

The individuals covered are so diverse that case-by-case employer/employee resolutions will frequently be necessary if all are to be treated fairly. The definition, for example, encompasses individuals who have

suffered cosmetic disfigurement, and, at the same time, individuals suffering from mental illness such that the illness substantially limits their life activities. (See Commission report, page 11–12)

In addition, a Washington Post article reporting on the above findings of the FCC quoted an FCC official's description of the definition, as "one of the most absurd ever written by Congress or the bureaucracy."

This is also the definition adopted for use in H.R. 5200.

It is important to note, of course, that there are many protections for the handicapped in existing housing statutes. For example, under law already on the books, the Secretary of HUD is authorized to: make loans to public or private groups which provide housing and related facilities for the handicapped (12 U.S.C., sec. 1701(q)); carry out research on housing designs, structures, facilities and amenities which most appropriately meet the needs of the handicapped (12 U.S.C., sec. 1701(z)); and provide rent supplement payments for lower income persons who are handicapped (12 U.S.C., sec. 1701(s)).

Existing law also: prohibits discrimination, exclusions, or denial of benefits against qualified handicapped individuals by any program which receives Federal assistance (29 U.S.C., sec. 794); provides for special low-income housing projects for handicapped persons (42 U.S.C., sec 1438); permits the Secretary of Agriculture to grant financial assistance for farm housing for the handicapped (42 U.S.C., sec. 1471); provides criteria for loans to build housing for handicapped persons in rural areas (42 U.S.C., sec 1490(a)); and creates urban development action grants for housing which addresses the needs of the handicapped (42 U.S.C., sec. 5304).

In reality, the only housing for the handicapped not specifically addressed by existing law, and therefore the only real target of the proposed change, is the private housing industry, and it is fast drying up.

Add the potentiality of Federal regulation to the fragile health of the housing industry caused by today's economic problems, and you have a compounded chilling effect on housing starts and the jobs they create. It is an industry without any need for further Federal regulation.

Section 12 of H.R. 5200 provides some insight into what the regulators at HUD have in store for the housing industry. That section authorizes the Architectural and Transportations Barriers Compliance Board to provide a report, which the Congressional Budget Office estimates will cost $1 million, concerning:

(1) the extent to which architectural barriers and other obstacles are depriving handicapped persons of housing;

(2) the extent to which private, public or cooperative public and private efforts have increased the availability of housing for the handicapped in the private market; and

(3) *the cost of retrofitting existing units to make them suitable for the handicapped.* (Emphasis added.)

The inescapable result of studies like this is always increased Federal regulation.

Only three witnesses testified on that important aspect of H.R. 5200, which concerned discriminatory housing practices affecting the handicapped. Their testimony, however, was limited to explaining the problems attendant to the more familiar handicapped: the physically and developmentally disabled.

No attention was given in the hearings to those whose "handicap" is not so apparent but who have nevertheless been held by various courts to be entitled to the protection of other statutes. As proof of this claim, I need only cite a Federal district court decision in Pennsylvania which held that persons with a history of drug abuse, including present participants in methadone maintenance programs, are "handicapped" within the meaning of the Rehabilitation Act. *Davis* v. *Bucher*, 451 F. Supp. 791, 796 (1978). Remember that the definition in the Rehabilitation Act is identical to the definitions first considered by the committee.

Similarly, the Wisconsin court has held that asthma can be considered a handicap when it makes "achievement" unusually difficult. *Chicago* v. *State Department of Industry, Labor, and Human Relations*. 62 Wis. 2d 392.

In my judgment, the potential for regulatory disaster far outweighs the benefits to be derived from the inclusion of the handicapped in this bill. As I said earlier, H.R. 5200 undertakes to do too much with too little thought given to the possible consequences. It is my sincere hope that my colleagues in the House will conclude as I have that it would be unwise to add protection of the "handicapped" to this legislation at this time. It is enough for the present to develop an effective enforcement procedure.

We should recognize that what we are doing in strengthening the enforcement procedure we are shifting the balance.

Given the uncertainty of exactly what we mean by handicapped, we should not put individual Americans in the position of having to defend charges which are nil; to

Remove exemption of individuals;
Make HUD the enforcer;
Expand individual cause of action.

□ 1240

The potential for regulatory disaster far outweighs the benefits to be derived from including handicapped people in this legislation. In my judgment, what we are doing with this bill is improving enforcement procedure. Let us just stop there. That is enough. We should not expand it to take on entirely new areas of the handicapped.

I will tell my colleagues why I am really concerned about it, because in this legislation, and in a moment the gentleman from Texas (Mr. HALL) will offer an amendment which will hopefully put this back where we were with reference to such present exemptions, but bear in mind in this bill we are making the Department of HUD the enforcement officer. We are giving them all sorts of investigative authority.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. BUTLER. I yield to the gentleman from Illinois.

Mr. HYDE. The gentleman's position is making HUD the investigatory authority, not mine. But are not handicapped people discriminated against? Are they not?

Mr. BUTLER. Would the gentleman tell me exactly what handicapped people he is talking about?

Mr. HYDE. You know them when you see them.

Mr. BUTLER. I will now reclaim my time, because that is one of the problems. That is one of the problems. We do not know them when we see them. We do not know who they are. That is how when we passed the rehabilitation act, did we know then that we were talking about drug abusers? Did we know then that we were talking about alcoholics? Did we know we were talking about all of these people?

Mr. HYDE. If the gentleman will yield, that was taken out of the bill.

Mr. BUTLER. I will say to the gentleman you cannot take it out of the law. If the gentleman will understand me, we have made modifications under the law, and those modifications, which are here, are still in the law, and that problem is still there. That is what I am saying to the gentleman. We really cannot identify the handicapped from a loose definition of this nature. All we know, all we know is that when the regulators at HUD start getting in on this thing they are going to expand the definition.

Mr. DRINAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I urge rejection of this amendment.

Extensive testimony was received in both the 95th and 96th Congress on the need to expand the protection of title VIII to disabled persons. Besides receiving testimony from disabled citizens advocacy groups, such as the American Coalition of Citizens with Disabilities and the American Council of the Blind, many of the other witnesses, such as the Leadership Conference on Civil Rights and the National Low Income Housing Coalition, spoke in support of this provision.

Mr. Chairman, discrimination against disabled citizens is rooted in the same myths and misconceptions that have traditionally resulted in discrimination against historically recognized minorities as well as women, both of whom find protection in title VIII.

I would remind my colleagues that in 1976 regulations were signed implementing section 504 of the Rehabilitation Act of 1973 outlawing discrimination based on disability in federally assisted programs.

Mr. Chairman, in numerous ways in recent years laws and policies have been changed in order to foster the movement of handicapped into the mainstream of American life. Surely access to private housing is the key element in that endeavor. Job opportunities, vocational and educational services, special transportation, all of these are worthless if the disabled are unable to move so that they can obtain housing in the area where they are working.

It is also important, Mr. Chairman,

to remember that this is a very, very modest proposal. Not all handicapped persons are covered in this bill. The definition excludes, as the gentleman from Virginia has noted, all current alcohol and drug abusers, whether or not they constitute any danger, and anyone else whose impairment constitutes a direct threat to the safety or property of others.

Second, the coverage of the bill regarding handicapped persons makes it very clear that unreasonable disruption of accommodations in practice are not required. If the handicapped person cannot conform to existing reasonable rules, then there is no requirement to change them.

Again, Mr. Chairman, the point is clear. Most handicapped Americans can and want to move into the mainstream.

Third, to the extent special needs are present, the bill's coverage is very limited. Some physical handicaps are such that without changes in the premises the unit would not be acceptable. Alterations are permitted under the bill, but only if, first, they are not at the expense of the owner; second, when they do not materially decrease the marketability or value of the building; third, interfere with the use of the land; and fourth, in the case of a tenancy, the tenant may be asked upon vacating to fully restore the premises to their original condition.

Mr. Chairman, this bill makes a modest first step toward coverage of the handicapped. It is far less comprehensive than the original proposal in this bill. This is nonetheless a compromise that organizations representing the rights of handicapped believe is a forward and necessary step, and I urge approval of this particular provision and defeat of the amendment offered by the gentleman from Virginia.

Mr. McCLORY. Mr. Chairman, I move to strike the last word and rise in opposition to the amendment.

Mr. Chairman, I know that the problems of the handicapped are extremely difficult problems to deal with. I cannot help but feel in connection with housing, that to permit arbitrary discrimination against a handicapped person, and to not include the handicapped as those whom we want to protect against discrimination would not be right. While it is difficult to deal with, we do endeavor to deal with the problem in this legislation. It is one of the two major parts of this bill that we are working on here today.

In order to try to recognize that handicap is an element of discrimination, we have included it by definition, and we have then provided against utilizing of this as an excuse for refusing to rent or to sell to a person who is experiencing or suffering from a handicap.

It is true that we do not want to impose new financial burdens on the housing industry, and that is certainly not in any way the intent of this measure. In order to make sure that the owners of buildings are not to be subjected to additional expense, either when confronted with the problem of making a sale to a handicapped person or renting to a handicapped person, we have provided that the expense of any alterations that may be required must be borne by the handicapped person.

□ 1250

We have even gone to the extent of saying that if following the handicapped persons tenancy the property needs to be restored, the cost of restoring the property must be borne by the handicapped person. There is a strong feeling that if we pass this bill and we include handicap as one of the elements of discrimination which we are trying to guard against, it will encourage those who construct houses, and those who sell houses and rent houses, to take into account the rights of the handicapped to be good tenants or purchasers of homes.

There must be many handicapped persons who are war veterans, who have suffered wounds and physical conditions as a result of war service. For the most part, persons are handicapped without any fault of their own. So it is not just humanitarian, it is recognition of a fact of life, it seems to me.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I am happy to yield to my distinguished colleague from Illinois.

Mr. HYDE. I thank the gentleman for yielding.

I agree with the gentleman from Virginia that this does open up a very difficult area requiring a prolixity of regulations but the alternative is to deny handicapped people any right to nondiscrimination in housing. You balance those two situations, and you have to come down in favor of helping the handicapped to be treated like other people when it comes to housing.

The risk of overregulation is there. It will require some oversight and vigilance on the part of this Congress, something it is not well known to do, but, nevertheless, the greater evil would be to permit handicapped people to be excluded from the number of people that we are seeking to protect and to guarantee access to housing. So I am unwilling to exclude the handicapped, even given the difficulty of having to write regulations.

Mr. McCLORY. I thank the gentleman for his contribution, with which I agree.

I just want to add that the bill provides for a one-House veto of regulations, and that if there are regulations which are too burdensome or are unreasonable, this House would have the right to veto any such regulations of the Department.

Mr. Chairman, I yield back the remainder of my time.

Mr. MITCHELL of Maryland. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. Before stating my specific objections to the amendment, I want to clear up some things that the distinguished gentleman from Virginia said, which I think might be misleading. He warned minorities and women that if this feature of the legislation is retained, it would reduce the amount of money available for enforcing fair housing legislation for minorities and women. I am not at all sure that I agree with that, but as one minority—and I can speak only for myself—I would say that at no point would I as a member of a minority group be so selfish as to say that I will let another group continue to bear discrimination merely to protect my own group. I think that is wrong, and I think the vast majority of minorities and women would take the same position.

I do not believe that our funding would be cut, but if it is, I think we would take the position that discrimination against any group is wrong and, therefore, we would be willing to bear that sacrifice. That is point No. 1.

Point No. 2: The gentleman has indicated that it would be only the private sector who would bear the burden, if it is a burden, of this legislation. Just 3 weeks ago I addressed a graduating class for the Maryland School of the Blind. It is located in Baltimore County. I was amazed to see those young people who are either totally blind or suffer from a serious visual impairment perform so well. I was amazed to see their bright, acquisitive minds demonstrate themselves. One young woman, who was graduating, received a $750 scholarship to go to the University of Maryland School of Social Work. If the State is willing to bear a responsibility for meeting the educational needs of the handicapped, then why should not the private sector, acting out its social conscience, take on some responsibility? Unless it does, unless we turn down the gentleman's amendment, what we are saying to every handicapped person who wants to get out on his or her own to find housing is, OK, we can put you in public housing, but we can never put you in private housing. We will never guarantee that you will not be discriminated against in private housing. That is wrong.

What more can we do for the private sector? There are four protections accorded the private sector—four in this legislation. I do not know what more we can do to make it easier for the private sector to meet its responsibility vis-a-vis the handicapped. I would hope that this amendment would be defeated.

Of course, there are going to be problems. Of course, there are going to be regulations. But all of us who are so concerned about problems of implementation and the problems of regulation ought to do just one thing: Go to any institution in our districts and look at the handicapped and see if we do not, in the balance, feel that making them free from discrimination in housing is worth the risk of temporary bureaucratic legislation or regulation.

Let us defeat this amendment. It is wrong.

Certainly I never question the motivation of any Member in terms of offering an amendment. I do speak to the end result, and the end result, if the gentleman's amendment prevails, would be a perpetuation of discrimination against those who are handicapped.

Mr. Chairman, I yield back the remainder of my time.

Mr. SIMON. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I am reluctant to rise in opposition to the amendment after my two colleagues from Illinois (Mr. McCLORY and Mr. HYDE), and the gentleman from Massachusetts (Mr. DRINAN), and the gentleman from Maryland (Mr. MITCHELL) have spoken so eloquently. It is kind of like gilding the lily. But let me tell you that we are not only hurting those who are handicapped, we are hurting ourselves if we do not defeat this amendment.

Let me give you, if I may, a personal illustration. Back a few months ago in our office we decided to employ someone named Marilyn McAdams. Marilyn McAdams has completed most of her work for her doctorate. She is a very talented person from Carbondale, Ill., who is now functioning in a clerical position. Marilyn McAdams has to get around in a wheelchair, so we offered her a job, not out of sympathy but we wanted a talented person in our office, and she happens to fit those particular talents. But trying to get housing for someone in a wheelchair anywhere near Capitol Hill, is extremely difficult.

Mr. Chairman, it is a tough job, getting housing for someone in a wheelchair. As of right now she is on some waiting lists and the nearest we hope to get is that we can get her in housing this August.

Mr. BUTLER. Will the gentleman yield at that point?

Mr. SIMON. Let me just make two more points, and then I will be pleased to yield to my colleague from Virginia.

Since I have gone through this experience, I have looked around, and I have noticed how few people who are employees of the House and Senate are in wheelchairs around here. And there is a reason; we are touching one of the reasons today. She is not producing fully, given her potential, because she is held to a clerical job because of the housing situation.

Let me give you one other illustration, and it does not directly bear on housing but it bears on this whole matter of utilization of handicapped people. I am sure my colleague, the gentleman from California (Mr. ROUSSELOT) will be interested in this. In the State of Arkansas under vocational rehabilitation they made access to an education available to a paraplegic who became a physician. That physician now has paid more in taxes than it cost for vocational rehabilitation for the first 20 years in the State of Arkansas.

Make opportunity available, and continue it in this legislation in a commonsense way. The handicapped people have to pay for any changes in the structure.

□ 1300

My colleague from Virginia (Mr. BUTLER) assumes in his amendment that those who administer the program will not use commonsense. I differ with that conclusion.

Mr. BUTLER. Mr. Chairman, will the gentleman yield?

Mr. SIMON. I yield to the gentleman from Virginia.

Mr. BUTLER. Would the gentleman say the weight of the evidence in our disagreement on that point is on my side or on the side of the gentleman from Illinois?

Mr. SIMON. The gentleman can find examples where people in the Federal bureaucracy do not use commonsense but I think we can find many more where they do.

Mr. BUTLER. Mr. Chairman, I think the gentleman and I have a basic disagreement. I would like to emphasize it. As the gentleman says the problem is, those people who write the regulations, do not use commonsense. I should think if I was looking for an agency that has more of those people, I would suggest that perhaps we have found one. I would have to suggest what those people do, most of them, is write regulations. That is the danger. That is the thing that frightens me about this because we are launching a very wide definition of what is handicap. When the regulators get through with that, when we impose those particular complaints with the American people, HUD can say that someone is handicapped who has no visible evidence of any kind of handicap but perhaps has a history of some modest kind of problem that perhaps is only apparent to the man. That man under the regulations would be a handicapped person. The person who denies him housing is exposed to all of the lawsuits we create, all of the lawsuits brought about by publicly paid attorneys, all of those problems.

Mr. Chairman, I think we have gotten to the point where we get so much abuse from our constituents about not being cautious when we legislate, complaints about launching permission to write regulations in such broad language, this is the time when we have to start drawing the line. This is where overregulation starts.

Mr. Chairman, I am totally sympathetic with the problems of this young lady and I would suggest to the gentleman I am not at all sure exactly what this bill is going to do for her. It is going to be difficult to say, for example, how the Federal Government will help her in this particular transaction.

The CHAIRMAN pro tempore (Mr. BENNETT). The time of the gentleman from Illinois (Mr. SIMON) has expired.

(By unanimous consent, Mr. SIMON was allowed to proceed for 1 additional minute.)

Mr. SIMON. I yield further to the gentleman from Virginia.

Mr. BUTLER. The gentleman does realize, of course, wherever there is a federally assisted program right now, we cannot discriminate against the handicapped, and right now when we have federally assisted programs they make provision for a certain number of things. We are talking about the physically handicapped, of course.

Mr. SIMON. Mr. Chairman, I must reclaim my time because I have about 30 seconds left.

I think the bill is written in such a way that commonsense is going to be used and second, I would assume those who write the regulations are going to read the dialog that you and I are partaking in here and the legislative intent, the report language, so that commonsense will be used. Finally we have the safeguard of the one-House legislative veto if the regulations are unreasonable.

Mr. Chairman, I think the legislation as drafted is sound and I hope the amendment of the gentleman from Virginia will be defeated.

Mr. BUTLER. Mr. Chairman, I thank the gentleman for yielding.

The CHAIRMAN pro tempore. The question is on the amendments offered by the gentleman from Virginia (Mr. BUTLER).

The question was taken; and on a division (demanded by Mr. BUTLER) there were—ayes 6, noes 9.

So the amendments were rejected.

The CHAIRMAN pro tempore. If there are no further amendments to section 4, the Clerk will read.

MODIFICATION OF OWNER-OCCUPIED EXEMPTION

SEC. 5. Section 803 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90–284, approved April 11, 1968) is amended—

(1) by inserting "and before the date of the enactment of the Fair Housing Amendments Act of 1980," immediately after "1968," in subsection (a)(2);

(2) by striking out "Nothing in section 804 (other than subsection (c))" in subsection (b) and inserting in lieu thereof the following: "Before the date of the enactment of the Fair Housing Amendments Act of 1980, nothing in section 804 (other than subsections (c) and (e))";

(3) by striking out "subsection (b)" and inserting in lieu thereof "subsections (b)" and (d)" in subsection (c); and

(4) by adding at the end the following:

"(d)(1) After the date of the enactment of the Fair Housing Amendments Act of 1980, subject to the provisions of section 807, the prohibitions set forth in section 804 of this title shall apply to all dwellings, except that the prohibitions set forth in subsections (a), (b), and (d) of section 804 shall not apply with respect to any room or unit in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as the owner's residence, but only if such room or unit is sold or rented—

"(A) without the use of any manner of the sales or rental facilities or the sale or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or any employee or agent of and such broker, agent, salesman, or person; and

"(B) without the publication, posting, or mailing of any advertisement or written notice in violation of section 804(c) of this title.

"(2) Nothing in this subsection shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title.".

Mr. EDWARDS of California (during the reading). Mr. Chairman, I ask unanimous consent that section 5 be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

AMENDMENT OFFERED BY MR. HALL OF TEXAS

Mr. HALL of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HALL of Texas: Page 4, strike out line line 9 and all that follows through line 17 on page 5 and insert in lieu thereof the following:

(2) by inserting "and (e)" after "subsection (c)" in subsection (b); and

(3) by adding at the end of subsection (a) the following new paragraph:

"(3) After the date of the enactment of the Fair Housing Amendments Act of 1980, to all dwellings except as exempted by subsection (b)."

Mr. HALL of Texas (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. HALL of Texas. Mr. Chairman, the purpose of this amendment is to restore the "old Mrs. Murphy" exemption and the exemption for the person who owns three houses or less, and leases two of them. As our distinguished colleague from Virginia (Mr. BUTLER) so ably notes in his supplement views which appear in the committee report:

The reasons for these two exceptions are clear: Private persons not engaged in the business of renting or selling houses are not themselves the causes of housing discrimination; they are not suited to extensive federal regulation and control; and they do not generally have the sophistication or the resources to understand fully what is expected of them.

Indeed, the two exemptions provided in existing law were carefully thought out with good honest reason; they were worked out in good faith to address legitimate circumstances and situations.

Before looking into those situations, it would be beneficial, I believe, to review the two exemptions which my amendment is designed to reinstate.

The single-family house sold or rented by the owner. This exemption permits the bona fide owner of as many as three single-family dwellings, whether or not he is the resident therein, to sell or rent, exercising his own preferences in so doing, as long as he does not use a real estate agency or salesman. An owner in these circumstances is limited to the sale of one home in which he is not the actual resident during any 2-year period. Further, a proviso makes absolutely clear that the extension of this exemption will be quickly withdrawn if the single-family homeowner in fact has any interest, however remote, in "more than three such single-family houses at any one time."

The text of this exemption reads as follows:

Nothing in section 804 (other than subsection (c), shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time . . .

As it presently reads, therefore, the law prevents a situation in which an individual could possess three homes, could sell one, could replace that house by purchasing another house, could again sell one, could purchase another house, and never own more than three houses at one time. There can be no more than one sale, carrying the exemption, in any 24-month period. The Fair Housing Act further blocks a trick transaction in which the owner of the house might have his wife as the owner of three houses, his progeny—no matter how numerous—the owners of three houses apiece, thus enabling, by participation in these trick transactions, the owner to really exercise control or dominion over a great number of houses. Existing law reads that when a "bona fide private owner does not own any interest in nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time * * *" only then will the exemption apply.

Mrs. Murphy exemption. The rental of rooms or units in a four-family owner-occupied dwelling where the owner has one of the units as his or her living quarters.

Mr. Chairman, I reemphasize, the reasons for these two exceptions were carefully thought out and, I might add, the 15-day hearing record, so far as I can surmise, does not have or carry a single reference as to why we must remove the exemptions and extend the law to these heretofore exempt persons.

The CHAIRMAN pro tempore. The time of the gentleman has expired.

(By unanimous consent, Mr. HALL of Texas was allowed to proceed for 3 additional minutes.)

Mr. HALL of Texas. Mr. Chairman, the language of H.R. 5200 would not exempt the owner of a single-family dwelling in the following situations, among others; which were considered by the Congress as deserving exemption when the 1968 Fair Housing Act was passed:

First. An owner, because of health reasons, is required to go to Arizona for a period of 2 years and wishes to rent his single family dwelling located in an eastern State. Under existing law, the owner is exempt from title VIII. Under H.R. 5200, the owner would not be exempt and would be subject to possible HUD administrative action initiated by an allegedly aggrieved person or by the Secretary.

Second. A serviceman or a foreign service officer departs overseas on an assignment of considerable duration. If he decides to rent his single-family house, under existing law the exemption applies. Under H.R. 5200, the serviceman or foreign service officer is no longer exempt from coverage of the fair housing title and could become subject to the HUD enforcement provisions.

Third. A widow owns and lives in a single-family dwelling on a farm which contains one other single-family dwelling, the tenant therein being her son. The son moves to another State. Under present law, the widow, should she decide to lease the vacant house, is exempt from the coverage of the Fair Housing Act. Under H.R. 5200, the widow cannot qualify for exemption because she does not reside in the vacant house which she owns and which is on the farm which she owns. She is open to possible investigation by HUD.

Fourth. An individual lives in his own single-family dwelling located on a 1-acre lot. He decides to build a guest house on the lot. Misfortune forces him to parcel the lot and sell or lease the house thereon. Under present law he is exempted from coverage of title VIII. Under H.R. 5200, he cannot qualify for exemption because he does not reside in the vacant house, of which he is the owner.

Twelve years ago the Congress looked at similar situations and clearly stated its intention to provide for a "clear-cut exemption in the case of single-family dwellings, especially when the owner rents or sells the dwelling without the assistance of a real estate salesman or agency." These examples remain pertinent and valid.

Today, as was the case 12 years ago and as will remain the case, hundreds of thousands of servicemen and servicewomen, and thousands of Foreign Service officers are away from home and want to lease their homes and not lose any rights to them, including their right to lease them to persons of their own choosing. They would not lease to a convicted felon, to a known alcoholic. The fact is that there are such things as individual rights, property rights and individual preferences of many kinds when it comes to selling or leasing one's property or homes.

Whether it be the case of a Mrs. Murphy who needs to rent out a portion of her dwelling space to secure income necessary for her subsistence, or whether it is a member of the Armed Forces who wishes to lease his home until such time as he can return to it, or whether it is a Mrs. Murphy, such as the case of the farmer's widow, who owns a second home rather than a 4-family dwelling and who wishes to exercise her personal preference, no matter what may be the irrationality of her preference, for the purpose of her own protection, these individuals, were not meant to be nor should they be subject to the fair housing provisions from which they are presently exempt.

They should not be potentially subject to Federal Government harassment. They should not be treated as common criminals opened to public embarrass-

ment and potentially subject to an economic death sentence to be administered by the very same agency which serves as investigator/prosecutor and judge, and all this without the benefit of jury. This is not my idea of fairness or due process and I urge my colleagues to restore the two exemptions as they presently exist in law.

□ 1310

Mr. EDWARDS of California. Mr. Chairman, I rise in opposition to the amendment.

As the gentleman points out, the amendment leaves substantially the same rule with regard to Mrs. Murphy's boarding house. If the owner lives in a unit of four or less, the owner still has the right to choose those who will share a dwelling with him or her. So, we really did not change that in the bill except, of course, where the owner uses a broker or advertises in a discriminatory manner.

What the amendment of the gentleman from Texas would do is exempt sales of single-family dwellings by the owner unless, of course, a real estate broker is used. The gentleman from Texas goes back to existing law.

Now, we are talking about a sale where there is no legitimate right of privacy, which there is in Mrs. Murphy's boarding house, and we are preserving that. What legitimate interest is protected by the Hall amendment? It would exempt almost all sales of single-family homes where brokers are not utilized. Since the owner will no longer be living there, there is no privacy interest.

The gentleman from Texas argues that the reason for this amendment is to avoid coverage of ordinary people, and to focus instead on commercial enterprises; that is, if the owner is not in the business of selling homes on a fairly large scale, then society has no interest in prohibiting his or her discriminatory uses.

The Committee on the Judiciary debated this amendment, considered the logic, the arguments of the gentleman from Texas, and by a vote of 8 to 21 the amendment was rejected.

Mr. BUTLER. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from Virginia.

Mr. BUTLER. Mr. Chairman, I appreciate the views of the chairman, and of course he knows that I disagree with him. But, the gentleman from Texas made one statement. He said that as far as he was able to determine, the hearing record is silent as to the reasons why we have removed this exemption. Is that not a fair statement, or can the gentleman cite for us some portion of the record where this substantial change in exemption is discussed?

Mr. EDWARDS of California. I think that is a relatively fair statement, yes. That is correct.

Mr. BUTLER. I thank the gentleman.

Mr. EDWARDS of California. Why should the large-scale owner be held to a different standard than the typical home seller? We are not talking about imposing any burdens on the seller. The seller's only responsibility—and this is a responsibility that all Americans should bear—is not to discriminate in the sale of a house on account of race, national origin, sex, or religion. Most Americans undoubtedly do that, and I think that we do them a disservice by assuming that there is a desire or need for the single home exemption.

Finally, the kind of transaction that would be exempted by the Hall amendment is a most common means by which homes are purchased. We are talking about millions of sales. The exemption suggested by Mr. HALL would leave a gaping hole in the public policy against discrimination in housing.

Mr. Chairman, I urge a "no" vote on the amendment.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield for one question?

Mr. EDWARDS of California. Yes.

Mr. HALL of Texas. If H.R. 5200 is passed in its present form, would the gentleman state whether or not, if a widow woman owned a duplex and lives in one side of the duplex, would she have the right herself or through a real estate broker to lease or rent the opposite side of the duplex?

Mr. EDWARDS of California. Yes; to anyone she desires.

Mr. HALL of Texas. Could she do that through a real estate broker?

Mr. EDWARDS of California. Yes, she would be required through a real estate broker not to discriminate. She can discriminate if she leases it herself.

Mr. HALL of Texas. Under the existing law? That still is the law.

Mr. EDWARDS of California. Under the present and existing law, if she lived in a dwelling with four or less units, then she can lease or sell to whomever she desires without regard to discrimination, yes.

□ 1320

Mr. MITCHELL of Maryland. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, the distinguished chairman of the subcommittee has set forth the substantive arguments against the gentlemen's amendment. I want to speak very briefly on another danger that I see for the whole effort of fair housing in the event that the gentleman's amendment should be agreed to—and obviously I hope that it will not.

I think what my colleagues have got to recognize is that there is still continued, unrelenting opposition to the implementation of fair housing.

According to a release of Friday, January 4, 1980:

The Department of Justice obtained a consent decree today forbidding the owner of a real estate firm in Kansas City, Missouri, from discriminating against black persons in the rental of apartments.

February 13, 1980:

The Department of Justice filed a civil suit today charging the City of New York with twice preventing the construction of low-income housing in all-white neighborhoods.

March 7, 1980:

The Department of Justice filed a civil suit today charging a city in Michigan of discrimination in the development of low-income integrated housing in an all-white Detroit suburb.

March 25, 1980:

The Department of Justice obtained a consent decree today forbidding a real estate firm in a city in Virginia from discriminating against black persons in the rental of apartments.

April 11, 1980:

The Department of Justice obtained a consent decree today forbidding the owner of some 200 apartment units in New Jersey to discriminate in renting to black persons.

April 23, 1980:

The Department of Justice filed a civil suit today charging the owner of two apartment complexes in Indiana with discriminating against blacks and women in the rental of apartments.

Mr. Chairman, this goes on day after day. If we read our mail from the Justice Department, we know there has been continued unrelenting pressure against providing fair housing opportunities to blacks and other minorities. My argument is that the gentleman's amendment, in addition to all of the substantive flaws that it has, will simply embolden folks such as these to continue to resist against what is basic in our society, an opportunity to live and rent and purchase where we want.

Mr. Chairman, I would urge speedy defeat of the gentleman's amendment. It is a bad amendment, bad in many senses, but bad especially in the sense that it will embolden those who are of a racist bent and have a racist attitude to continue their racist practices.

Mr. BUTLER. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

I would emphasize some points that have been made by the gentleman from Texas (Mr. HALL), and I do first, however, wish to congratulate him on advancing this amendment at this point.

I would not, Mr. Chairman, take issue at all with the gentleman from Maryland (Mr. MITCHELL), who suggests that racial discrimination is rampant in this country. I support the enforcement procedures of this bill, and I would tell the gentleman that the problem which was addressed in his argument is one which needs greater attention.

The problem which concerns me is this: Why are we removing these exemptions, the "little people" exemptions, from this legislation? We are not exempting them to make them free to discriminate. That is not our purpose, and that is not my concern.

I am concerned about "Mrs. Murphy," and I am concerned about the guy who owns one or two or three houses. I have in mind a particular friend of mine who has worked his way through the years as a painter. He has made a little money here and he has made a little money there, and the way he has provided for his retirement plan is that he has bought a house, he has bought a second house, and he has bought another house. Now he has three houses, and the

rental he expects to receive from them is going to be his retirement income.

I have in mind the man who dies and leaves a widow with a house, and she has to take in roomers. That is, of course, "Mrs. Murphy."

What are we going to do for those people when they are suddenly confronted by HUD?

We realize, too, that we have the request or the suggestion that we have retained in this bill, the broad language of the handicapped provision. For example, what are we going to do for those little people who are suddenly confronted by the awesome power of the Federal Government when the HUD enforcement officer comes around and says, "You denied quarters to persons because they were handicapped?" The idea is that if you look at the handicapped, you know they are handicapped because they look handicapped. That could be the reason asserted, but that is not the real reason, and that is the problem. Those people who deny housing do it for a reason, but that is not the real reason.

What are they going to do when they are confronted with the awesome power of HUD or the Legal Services Corporation?

We are gradually tipping the balance against the small people who are really struggling with just three houses, the small people like Mrs. Murphy, who is just struggling to rent four rooms. They are struggling, and when they are confronted with the awesome power of the Federal Government, what are they going to do? They are going to give up.

I do not think that is right. I do not think we ought to put them in that position.

As the gentleman from California said, there is no record supporting removing this exemption. In the absence of any record and in the presence of my real feeling that the balance is shifting against these little people, I would urge the gentleman from Maryland (Mr. MITCHELL) to reconsider, and I urge my friends to support this amendment.

Mr. MITCHELL of Maryland. Mr. Chairman, will the gentleman yield?

Mr. BUTLER. I am pleased to yield to the gentleman from Maryland.

Mr. MITCHELL of Maryland. Mr. Chairman, there is no doubt in my mind and there ought not be any doubt in the mind of any Member on this floor that the little people are presently protected. There are just a small number of units involved.

Let us look at the other side of the coin. Suppose we have a guy in real estate housing who has 1,000 units or 500 units and he does not want to accept black people. So he says, "Here is what I will do. I will break each one of my holdings down into six units," or some figure that he will set up. He says, "I will have a separate company for each one, and, therefore, by using that device, I can avoid compliance with the law and I can continue to discriminate against people."

That is the danger, and that is the emboldening process I see that I think is so very dangerous.

Again, Mr. Chairman, I reiterate that I would love to see this amendment defeated quickly, overwhelmingly, and effectively.

Mr. BUTLER. Mr. Chairman, if that is a serious suggestion, as advanced by the gentleman from Maryland, this is one reason we are talking about going back to the existing law. If there were such a situation of fragmentized ownership in order to get around this act, then it should have been in the record, and as far as I know, it is not in the record. It may be true in the gentleman's experience, but I was not aware of it.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield?

Mr. BUTLER. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, I would like to inquire of the gentleman from Maryland (Mr. MITCHELL) about the situation of the person who is trying to circumvent this amendment.

I am proposing to reinstate existing law, which reads as follows:

> For the purposes of subsection (b) a person shall be deemed to be in the business of selling or renting a dwelling if (1) he has in the preceding 12 months participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein.

The CHAIRMAN pro tempore. The time of the gentleman from Virginia (Mr. BUTLER) has expired.

(By unanimous consent, Mr. BUTLER was allowed to proceed for 2 additional minutes.)

Mr. HALL of Texas. So, Mr. Chairman, I believe if the person did what the gentleman from Maryland indicated a moment ago, if he did break the units down, into smaller units, he automatically comes under the provisions of this law and would be eliminated from any exemptions about which I am speaking.

Mr. MITCHELL of Maryland. Mr. Chairman, will the gentleman yield?

Mr. BUTLER. I yield to the gentleman from Maryland.

Mr. MITCHELL of Maryland. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I am not quite certain that I concur with the gentleman's interpretation, but that was really not the burden of my argument. My argument against the gentleman's amendment essentially rests on the premise; First, that there is racism in America; second, there is continued hard fighting against providing fair housing opportunities; and third, in the event that the gentleman's amendment should be agreed to—and I hope it is not—it will simply encourage those people who do not want to do the right things in this country.

Mr. Chairman, that is the thrust of my argument.

Mr. SEIBERLING. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to ask the author of the amendment a clarifying question, if I may.

As I understand it, the gentleman would provide an exemption for both sales and rentals of a building where the owner no longer occupies it. I can see the argument he made, that if an owner is temporarily leasing his home and renting it with the intention of returning, he may want to feel that he can rent it or refuse to rent it to anyone that he chooses, because this is his home and he does not have to have anyone living there that he does not want. I can understand that.

But when it gets down to the sale of that home, what possible interest has he left once he has determined he is going to move out?

I wonder if the gentleman could clarify whether his amendment is attempted to apply to sales of homes by the owners of those homes.

Mr. HALL of Texas. Mr. Chairman, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Texas.

Mr. HALL of Texas. Mr. Chairman, it is my position in these amendments that it should not be the purpose of this Congress to bring down all of the resources of HUD on a person who owns a house and who wishes to rent or sell that house.

□ 1310

In 1968, after much deliberation, the Congress saw fit to make an exemption which would cover what the gentleman from Ohio is speaking of now, and there has been nothing in the record in the 15 days of hearings, as I understand the testimony here today, that has shown any need to expand the coverage to eliminate these exemptions.

If a person owns a house and wishes to rent or sell that house individually, without going through a real estate agency—although they can still utilize attorneys, escrow agents, and abstract companies—I do not believe that all vestiges of the rights of ownership should be taken away from that person.

I am not saying that there might not be discrimination in this world, and we are going to have it when the gentleman and I are dead and gone. I think we both realize that. I want to do everything that I can to eliminate it, but I do not want to take away all of the rights and vestiges of ownership in doing that. I think if you tell a person that he cannot sell or rent his one house, we are going too far. I do not think that H.R. 5200 is meant to try to cure all of the ills of our community by removing the ex-

Mr. SEIBERLING. I think the gentleman makes a good argument in dealing with the rental by an owner of his own house. It seems to me that one of the perquisites of ownership is that he ca perquisites of ownership is that he can llet anybody in his house that he wants to and he can refuse to let anyone into his house, if only because he does not like the way he ties his tie or for any other reason, arbitrary or rational. But when we get to the sale of the house, where the owner is in the process of divesting himself of the ownership, the only exemption, it seems to me, that should be made is the exemption where he sells it himself. If he sells it himself, without the use of an agent, then it seems to me that perhaps he should not have to have the kind of legal sophistication that we can expect from a professional real estate

agent or from someone who owns and sells real estate as a regular business.

I want to ask the gentleman, would his amendment exempt owner sales, where the owner uses a professional real estate agent?

Mr. HALL of Texas. No, sir. It is only when he, when he sells it himself or rents it himself.

Mr. SEIBERLING. I see. In that case, I would like to ask the distinguished chairman of the subcommittee, whose position I generally have supported, as the gentleman knows, what real objection there is to this amendment?

Mr. EDWARDS of California. If the gentleman will yield, the gentleman from Ohio made the point very well, and that is that we are talking about millions of sales on a daily basis throughout the country where the owner is selling the house or renting the house himself. But there are no privacy considerations because, as the gentleman from Ohio pointed out, the owner is moving away or has already moved away, so there is no reason to exempt these millions of sales from the provisions of the law.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. SEIBERLING) has expired.

(By unanimous consent, Mr. SEIBERLING was allowed to proceed for 2 additional minutes.)

Mr. SEIBERLING. Mr. Chairman, I understand there is no privacy consideration when the owner is in the process of divesting himself. But the question is, Should that owner, who may not understand the niceties of the fair housing laws, be held to a standard that maybe is unrealistic? To that extent, it seems to me that the gentleman from Texas has a point. It seems to me, also, that it would make this bill a more salable commodity if we did not have in it something that is going to subject an ordinary citizen who is trying to sell his house on his own—maybe he is foolish, maybe he ought to have professional advice, but nevertheless he is trying to do it himself—to complex legal standards which may entail possible fines and other penalties.

So I still think that if all that the amendment offered by the gentleman from Texas does is to exempt the person who leases or sells his own home without employing a professional realtor, we would be well-advised to consider going along with it, because I do not really see that there are likely to be very many owner sales where there is no agent involved. Perhaps the gentleman can enlighten me as to what percentage of total sales of individual houses and housing units in this country are actually done by the owner versus a real estate agent?

Mr. HALL of Texas. I could not answer that question. Maybe the chairman of the committee could.

Mr. SEIBERLING. Could the chairman enlighten me on that?

Mr. EDWARDS of California. The estimate we have, if the gentleman will yield, is 20 percent.

Mr. SEIBERLING. Twenty percent. Well, that is a substantial number. But even so, we are balancing some equities here, and I think this bill would have a much better chance if we did not snare the little homeowner acting on his own behalf.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. HALL).

The amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

DISCRIMINATORY HOUSING PRACTICE AMENDMENTS

SEC. 6. (a) The catchline of section 804 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90–284, approved April 11, 1968), is amended by adding at the end the following: "AND OTHER PROHIBITED PRACTICES".

(b) Section 804 of such Act is amended by inserting ", 803(d)," immediately after "803(b)".

(c) Section 804 of such Act is amended by adding at the end the following:

"(f) For a person in the business of insuring against hazards to refuse to enter into, or discriminate in the terms, conditions, or privileges of, a contact of insurance against hazards to a dwelling because of the race, color, religion, sex, handicap, or national origin of persons owning, or residing in or near, the dwelling.

"(g)(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, a dwelling to any person because of a handicap of a prospective buyer or renter or of any person associated with such buyer or renter unless such handicap would prevent a prospective dwelling occupant from conforming to such rules, policies, and practices as are permitted by paragraph (2) of this subsection.

"(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of handicap. For purposes of this paragraph—

"(A) discrimination includes—

"(i) refusal to permit reasonable modifications of premises occupied, or to be occupied, by persons with a handicap which are necessary to afford such handicapped persons access to premises substantially equal to that of nonhandicapped persons, but in the case of a rental, only if the renter makes an agreement to restore the premises to the condition which existed before such modification, reasonable wear and tear excepted; and

"(ii) refusal to make reasonable accommodations in policies, practices, rules, services, or facilities, when such accommodations are necessary to afford handicapped persons enjoyment of dwellings substantially equal to that of nonhandicapped persons; and

"(B) discrimination does not include—

"(i) refusal to make alterations in premises at the expense of sellers, landlords, owners, brokers, building managers, or persons acting on their behalf;

"(ii) refusal to make modification of generally applicable rules, policies, practices, services, or facilities where such modification would result in unreasonable inconvenience to other affected persons; or

"(iii) refusal to allow architectural changes to, or modifications of, buildings which would materially decrease the marketability or value of a building or alter the manner in which a building or its environs has been, or is intended to be, used.".

(d) Subsections (c), (d), and (e) of section 804, and section 806 of such Act are each amended by inserting "handicap," immediately after "sex," each place it appears.

(e) Section 805 of such Act is amended to read as follows:

"DISCRIMINATION IN CERTAIN TRANSACTIONS THAT AFFECT HOUSING FINANCING

"SEC. 805. It shall be unlawful for any person whose business includes the making, purchasing, or insuring of loans, or selling, brokering, or appraising of real property, to deny or otherwise make unavailable a loan or other financial assistance which is for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of race, color, religion, sex, handicap, or national origin.".

(f) Section 807 of such Act is amended by adding at the end the following: "Nothing in this title shall prohibit a minimum lot size requirement for residences unless such requirement is imposed with intent to discriminate against a class protected by this title.".

Mr. EDWARDS of California (during the reading). Mr. Chairman, I ask unanimous consent that section 6 be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HYDE: On page 8, line 12, after "805.", insert "(a)".

On page 8, line 21, strike out the close quotation mark and the period which follows.

On page 8, immediately after line 21, insert the following:

"(b) Notwithstanding any other provisions of this title, it is not a violation of this title (Title 8 of the Fair Housing Act) for a person engaged in the business of furnishing appraisals of real property to take into consideration or to report to the person for whom the appraisal is being performed all factors shown by documentation to be relevant to the appraiser's estimate of the fair market value of the property; *provided*, That such factors are not used by the appraiser to discriminate against any person for the purpose of denying rights guaranteed by this title.

Mr. HYDE. Mr. Chairman, this amendment is designed to remedy a problem which we have had with this bill since its consideration began. In short, it is designed to permit appraisers of real estate to take into consideration in their appraisal all relevant and documentable factors which affect the fair market value of the property he or she is asked to examine.

During subcommittee consideration, we heard testimony from representatives of the Society of Real Estate Appraisers which indicated that this bill as drafted creates a conflict between the market value of the property and HUD's desire to eliminate all references in appraisals to race, ethnic origin, churches, quality of neighborhood, et cetera, even if relevant and even if documentable.

During the markup, the subcommittee agreed that appraisers should be allowed to make such references where documentary evidence exists to support their

use. Staff was instructed to draft report language to accomplish this end, but in the interim this proved to be impossible. As a result, I am offering this amendment for the purpose of allowing appraisers to use such references, as are supportable by documentation and are relevant to market value.

This amendment failed in full committee by a 12-to-17 vote, principally because 8 members voted against it by proxy. I trust the sentiment of the House will reflect a different view.

Incidentally, the gentleman from North Carolina (Mr. GUDGER) is also offering this as cosponsor.

If a factor does not impact on market value, if it cannot be documented, then it cannot be used in the appraisal report. Unless all factors impacting on market value are reported, there is a danger of a fictitious market value.

We are told that comparable sales ought to be enough. We are told by the regulators that words like church, synagogue, pride of ownership, prestigious neighborhood, declining neighborhood, poor schools, are of no value whatsoever and, actually, are racist and discriminatory.

□ 1340

Let me simply say, comparable sales are not the last word in appraisals. In many areas there are no comparable sales. There are sales that are distressed when people are transferred and must move. Deaths occur and homes are sold under less than ideal conditions.

What is important are the trends in a community, not necessarily comparable sales.

What is the first thing you want to know when you are going to move into a neighborhood? How are the schools, the quality of the schools? But no, that cannot be mentioned under existing rules. Appraisers are barred really from telling the truth.

We heard testimony about a home that was near a Jewish community center in Houston. It was within walking distance. That home was worth more solely because it was placed within walking distance of this Jewish community center; but without this amendment, the appraiser would be barred from putting that in the appraisal.

Now, I would like to point out, the appraiser has no stake in the sale. He is not the broker. He is not the owner. The appraiser is a professional person trying to do a professional job and all we are asking is that the appraiser be permitted to tell the truth as to what the value is and what the basis for that appraisal is, if it is relevant, if it is documentable, and if there is no attempt to discriminate.

Mr. JACOBS. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I would be happy to yield to my friend, the gentleman from Indiana.

Mr. JACOBS. Mr. Chairman, the gentleman from Illinois made some reference to the quality of the school. Is the gentleman's interpretation of the bill that an appraiser could not state the national scholastic average or some standing events of a neighborhood school?

Mr. HYDE. That is correct.

Mr. JACOBS. That is a provision of the bill?

Mr. HYDE. No, no. They are barred from mentioning that under existing law.

Mr. JACOBS. But I say, without referring to race, just simply saying that the scholastic average of the school is thus and so on a national average, is the gentleman quite certain that the bill prohibits that?

Mr. HYDE. If the house is located in a community that is served by good schools, by good quality schools, you could not say that.

Mr. JACOBS. But just specifically the fact of the average of that school's academic standing, I am asking for information.

Mr. HYDE. Well, I am suggesting that without this amendment, that language would be proscribed.

Mr. JACOBS. Maybe somebody could answer the question.

Mr. HYDE. Well, I thought I did. You cannot use that language. You cannot refer to the quality of the schools.

Mr. JACOBS. Would the gentleman cite the language in the bill, be kind enough to do that?

Mr. HYDE. It is by Federal regulation, by Federal Home Loan Bank Board regulations, Federal Home Loan Mortgage Corporation regulations, HUD regulations, a whole litany of things have been forbidden to be used.

Mr. JACOBS. I thought we were talking about the bill itself.

Mr. HYDE. I am trying to remedy the proscription in the law now by permitting appraisers to tell the truth so long as it is relevant, documentable, and not for purposes of discrimination.

Mr. RAILSBACK. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I will yield finally, to my friend, the gentleman from Illinois.

Mr. RAILSBACK. Mr. Chairman, I want to thank the gentleman for yielding.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. HYDE) has expired.

(At the request of Mr. RAILSBACK, and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. RAILSBACK. Mr. Chairman, would the gentleman yield?

Mr. HYDE. I yield.

Mr. RAILSBACK. Mr. Chairman, I wanted to make it very clear, and I think this is what the gentleman from Indiana was asking, there is nothing in the bill that really deals with the subject that is being dealt with by the gentleman in the well. The gentleman in the well is trying to deal with a problem that exists by reason of a court decision, as well as some activities by some of the regulatory agencies.

Mr. HYDE. That is correct.

Mr. RAILSBACK. This is a response to what the gentleman believes is the state of existing law, in which the gentleman may very well be right.

Mr. HYDE. That is correct.

Mr. RAILSBACK. But I wanted to make that very clear.

Mr. HYDE. May I point out that the Committee on the Judiciary of the other body has adopted a very similar amendment.

Mr. SYMMS. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to my friend, the gentleman from Idaho.

Mr. SYMMS. Mr. Chairman, I thank the gentleman very much for yielding. I would like to compliment the gentleman for offering this truth in appraisal amendment. I think it is necessary that it become part of this legislation.

Mr. Chairman, I rise in support of the Hyde amendment. This amendment would allow appraiser to do their important work honestly, thus benefiting all members of our society. I strongly believe that this amendment will protect all Americans.

Many times inflated appraisals have victimized low- and moderate-income minorities living in the inner cities—the very groups this legislation purports to protect. And they will continue to be cheated if the Hyde amendment is not passed. They will be assaulted by a most cruel foe—falsehood.

This amendment will protect these persons, as well as all others who make real estate transactions, by insuring that all Americans will have access to the accurate information needed to make a wise and prudent investment. When most people purchase a home, they more or less sign their lives away to the mortgage company. It is the biggest single investment most people ever make, and one they may be tied to for 30 years or more. How tragic it would be if we as lawmakers passed this legislation without amendment and therefore denied millions of families and individuals a complete appraisal picture. We have passed freedom of information laws. We should understand that every citizen must have access to trustworthy and truthful information. We must protect this vital right by passing the Hyde amendment.

Furthermore, keep in mind that this amendment will protect all Americans without increasing discrimination. This amendment will fight against discrimination in housing. The language of the amendment explicitly states that relevant factors can be reported by appraisers only if they are supported by documentation and they are not used to discriminate against anyone seeking a housing loan.

Thus, a vote for the Hyde amendment is a vote for nondiscriminatory housing as well as a vote for fairness and honesty in all market transactions. This amendment is a significant improvement to the original bill, and I therefore urge passage of the Hyde amendment. Thank you.

Mr. GUDGER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to my friend, the gentleman from North Carolina.

Mr. GUDGER. Mr. Chairman, I thank the gentleman for yielding. I want to commend the gentleman upon his amendment. I do think that it is neces-

sary that we make it quite clear that in all aspects of the law of the Fair Housing Act and in all litigation hereafter and in all matters where appraisals are involved, we are not going to change the current law as far as the professional appraiser is concerned.

I have tried, I guess, a hundred lawsuits involving fair market value. I find it incredible to believe that any departmental regulation or any other rule or regulatory decision of a regulatory body could restrict the power of an appraiser to render what he is employed to render, a fair market value opinion.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. HYDE) has again expired.

(At the request of Mr. GUDGER, and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. GUDGER. Mr. Chairman, if the gentleman will yield further, would the gentleman comment on comparable value?

Mr. HYDE. Well, comparable sales is certainly one very useful tool to determine the fair market value of a home; but it may be very misleading. It may not be the final one or even the determinational one, depending on the community.

In inner-city communities, many times there are not comparable sales. Sometimes comparable sales result from a transfer of a family, death in the family. They are useful, but they are not the sole and only factor to be used in giving an appraisal.

Mr. GUDGER. Let me ask the gentleman this. As to the determination of fair market value and as to the use of comparable sales in determining what is market value, is it possible to delete these considerations which the gentleman's amendment would allow to go into the full and fair market value appraisal?

Mr. HYDE. Well, it depends on the situation. If the house is in the center of a Chinese community, such as we have in Chicago, a very wonderful area, it seems to me the mortgagee ought to be able to know that the resale of that house, should a foreclosure be necessary, might be limited to a Chinese family.

These things are not done for purposes of discrimination. They are relevant. They are documentable, and they are not done to discriminate. They have an impact on the value of that house as collateral for a loan in the future.

Mr. GUDGER. Does not the gentleman's very amendment specify that no artificial values are to be considered and that nothing is to be done to the disadvantage of any group because of these ethnic considerations?

Mr. HYDE. Absolutely. It is just to forestall a malpractice liability for an appraiser who has to put a figure down, but is foreclosed from telling the truth as to how he arrived at that figure and what the prognosis is for the lending institution who is going to hold the title of that home as security.

Mr. GUDGER. One final question. Does the gentleman's amendment in any way preclude the appraiser from revealing any of these considerations which he has mentioned within his fair market value figure by breaking down how he arrives at that figure on these considerations?

Mr. HYDE. No.

Mr. EDWARDS of California. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I am afraid that even after everybody speaks on this amendment—and I hope there are not too many—because regardless of how many people try to explain this amendment, very few people are going to be able to understand it. It is a hard thing to understand. I do not think the appraisers themselves understand it very well.

First, let us remember that the appraisers, and they are a fine group of people, have been operating under this law for a substantial period of time. They are covered and they are doing very well. You do not hear any complaints from the banks or the savings and loans for whom the appraisers work, to whom the appraisers give their reports, that there is anything wrong with the law.

This bill does not create any new law insofar as the appraisers are concerned. It codifies the existing law. The way appraisers determine their values and write their reports is that they go out, they look at comparable sales prices, employment stability, marketing time, rent levels, vacancy rates, level of municipal services, and so forth. That is the way appraisers operate today. That is the way they should be operating.

□ 1350

If this amendment goes through, however, they will be able to include "all other factors."

Now, what does "all other factors" mean? It is a euphemism for race, r-a-c-e. The sole purpose of this amendment is to permit appraisers to include in their reports the racial composition of a neighborhood and to let that data affect their estimate of value.

They cannot do that now and they want to do it, and they should not be able to do it.

No other party in the real estate chain, financial institutions, brokers, sellers, landlords, and so forth, is permitted to let racial factors influence their decisionmaking. This is the very purpose, this is the very heart of fair housing.

Do my colleagues want to see in appraisals "A black family moved into the neighborhood"? That is what this amendment will permit. That is exactly what the appraisers want to do.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, the amendment simply says "if relevant." Now, what the gentleman cited, by definition, is irrelevant. "If documentable and not for purposes of discrimination," but surely there are such things in America as ethnic communities. I have many in my district, Polish communities, Lithuanian communities. Does that not have an affect? Is it not relevant on the resale value of a home if it is smack dab in the middle of one of those very strong, very prideful ethnic communities? I do not say it should be used to discriminate, but if it is a fact, if it is relevant to the future value, the resale value of their home, why not? We require the looking at ethnicity for affirmative action, but we forbid it when it comes to making appraisals. I do not understand that.

Mr. EDWARDS of California. I wonder if the gentleman from Illinois would like to see the clerk at the bank write across a loan application "The applicant is a black person." "The applicant is a brown person," or "is this" or "is that?" That is what we are talking about.

To get back to what I said earlier, I want to remind the body, Mr. Chairman, that I said it was going to be very difficult to understand this issue. It is a very difficult issue. The appraisers are doing very well now under current law. Yet they want to change the law. We do not want them to change the law. Their clients do not ask for a change in the law.

I ask for a "no" vote.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. Yes, I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Chairman, I as a lawyer and as a property owner have been through many appraisals and I have never seen an appraisal where the appraiser said that a neighborhood was mainly white, or black, or any other race, or was impacted, or some other factor dealing with race. Such factors are not mentioned because they are unnecessary and, therefore, irrelevant to determine the value of the property. The way an appraiser appraises property is to look at recent sales of other similar types of property in the general area and compare those particular properties with the property in question.

The CHAIRMAN. The time of the gentleman from California (Mr. EDWARDS) has expired.

(At the request of Mr. SEIBERLING and by unanimous consent, Mr. EDWARDS of California was allowed to proceed for 2 additional minutes.)

Mr. SEIBERLING. If the gentleman will continue to yield, the appraisers then figure out, on the basis of property price trends in that neighborhood, what the value of that particular property is. There is no reference and no need to refer to the racial character of the neighborhood, or the buyer, or the seller, or any other racial, national, religious, or similar factor. The appraisal is based on what comparable properties have sold for. Since it is not necessary to refer to such factors in order to make a sound appraisal, this amendment, by authorizing reference to such factors, would open up a huge breach in the fair housing law.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of California. Of course I yield to my friend, the gentleman from Illinois.

Mr. HYDE. If it is not relevant, then it does not belong in there, and this amendment will not protect it. The amendment says it has to be relevant. The gentleman, by definition, has made it irrelevant, so it is not protected.

Mr. SEIBERLING. All I am saying, if the gentleman would yield, is that it is not necessary to introduce this kind of a factor into an appraisal of the value of a piece of real estate. By introducing it through the device of this amendment we would be saying OK, folks, here is one that you can put in your appraisal as a signal to the world. It seems to me it would be a very serious breach of the fair housing principle.

Mr. EDWARDS of California. Mr. Chairman, if I may reclaim my time, race is an unreliable indicator of value, and appraisers agree. Here is a policy statement of the American Institute of Real Estate Appraisers:

> Racial, religious and ethnic factors are deemed unreliable predictors of value trends or price variance.

Also here is a statement of the Society of Real Estate Appraisers:

> The Society of Real Estate Appraisers does not teach that neighborhood stability or value are necessarily affected, positively or negatively, by the movement into or out of a neighborhood of a different racial, religious, or ethnic group.

The CHAIRMAN. The time of the gentleman from California (Mr. EDWARDS) has again expired.

(By unanimous consent, Mr. EDWARDS of California was allowed to proceed for 30 additional seconds.)

Mr. EDWARDS of California. Mr. Chairman, this amendment would open Pandora's box. I ask for a "no" vote.

Mr. LUNGREN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of this amendment because I think this amendment simply attempts to allow appraisers to utilize in their appraisal all relevant factors that ought to be considered in determining the value of the property they are requested to evaluate. Sometimes in listening to today's debate I think we are talking about a different amendment than the amendment that is being presented on the floor.

The amendment before us talks about the fact that you can use all those factors which are relevant and documentable, and then it also says, "Provided that such factors are not used by the appraisers to discriminate against any person for the purpose of denying rights guaranteed by this title."

The purpose of this amendment simply is to get rid of the abuse of regulation that has occurred in interpreting present law. If my colleagues will look at the large number of the "Dear Colleagues" that have been sent around, they will find a number of different arguments that have been presented.

But one that I think is extremely relevant is the assertion, as suggested in a letter from those who are against this particular amendment, that certain proven indicators of property value are sufficient for the purpose of determining property values fairly. Unfortunately, many of these indicators are no longer allowed to be utilized in the appraisal process. For instance, factors dealing with "employment stability," such as typical occupation of a resident of a neighborhood, or typical gross income of a neighborhood have been eliminated by the Farmers Home Loan Bank Board. "The quality of schools," has been eliminated as a factor by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. Remaining economic life and effective age of the property are concepts that have virtually been eliminated by the FHLMC. In other words, what has happened is that Federal agencies, in interpreting the law as the Congress wrote it a number of years ago, have gone far beyond that.

In another example of such regulatory excess the FHLBB has prohibited appraisers from using a number of words or phrases such as "church," "synagogue," "pride of ownership." It seems to me that this has been an abuse of the process and it certainly extends the law far beyond what anyone assumed it would be at the time it was passed.

So what this amendment seeks to do is really bring a little common sense into the application of the law. I repeat, that if my colleagues will look with precision at the specific amendment, they will see that it says that these have to be relevant factors, they have to be documentable, and it specifically provides that such factors cannot be used in a discriminatory fashion.

Now, what else can one do except to say that the appraisers are supposed to use those relevant figures, and they are not to use them to discriminate? Essentially what we are asking for is truth in appraisal.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I have not mentioned race. The opponents have brought the subject up. It is not in the amendment whatsoever. "Relevant factors" is in the amendment. If they say it is relevant, then it is relevant.

But, are not quality of schools relevant? You cannot however, mention them under the existing law now.

Are not the presence of churches or the nearness of synagogues maybe relevant to the future value of a piece of property? Is a house in Georgetown more valuable because it is in a prestigious neighborhood then, say, one in Cleveland Park?

Why not permit appraisers to tell the truth as long as the facts they are mentioning are relevant, no matter what they are, and documentable, and not interposed for the purposes of discrimination? That is all we are asking.

Mr. LUNGREN. If I can reclaim my time, I would like to direct my colleagues to a 1972 report on defaults to FHA insured home mortgages in Detroit. This report was an antigrowth of an investigation to determine why they had this high rate of default. The House Committee on Government Operations placed part of the blame on the fact that the appraisals were inflated and that, therefore, with inflated appraisals the people who obtained the houses were unable to continue the payments on them. The end result of all this was that the very legislation which was aimed at helping those of low and moderate incomes, particularly low and moderate minorities within inner cities, were hurt because the program itself was hurt.

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Essentially one of the things that leads to inflated appraisals is the fact that all relevant and documentable factors have not been taken into consideration. One of the reasons they are not taken into consideration is that the law does not allow them to be taken into consideration.

Mr. MITCHELL of Maryland. Mr. Chairman, will the gentleman yield for a question?

Mr. LUNGREN. I will be happy to yield to the gentleman.

Mr. MITCHELL of Maryland. I have to do this a little slowly. Paul Laurence Dunbar was a very famous black poet.

The CHAIRMAN. The time of the gentleman has expired.

(At the request of Mr. MITCHELL of Maryland, and by unanimous consent, Mr. LUNGREN was allowed to proceed for 3 additional minutes.)

Mr. MITCHELL of Maryland. If the gentleman will continue to yield, there are many all-black high schools around this Nation named Paul Laurence Dunbar High Schools. I think there are many whites who recognize the name of Paul Laurence Dunbar. An appraiser puts into the record: "In close proximity to your home is the Paul Laurence Dunbar High School." What, if any, reaction does the gentleman think that would cause for a prospective white buyer who might be familiar with the fact that Paul Laurence Dunbar is a black poet, and that, in general, high schools named after Paul Laurence Dunbar are black high schools? Does the gentleman think that would have a positive reaction on the part of a possible purchaser?

Mr. LUNGREN. I think the gentleman creates a strawman in this instance. Under the authority of this amendment it may not be necessary for them to mention the name of the school. We are talking about the factor of quality of school, and if it is utilized in such a way to actually accomplish discrimination, then under the terms of this amendment it would not be allowed.

Mr. MITCHELL of Maryland. Will the gentleman yield further?

Mr. LUNGREN. I will be happy to yield to the gentleman.

Mr. MITCHELL of Maryland. The gentleman makes my very precise point. It is not required that the name of the school be mentioned, nor is it precluded. Therefore, the gentleman will have injected the fact of race.

Mr. LUNGREN. First of all, it has to go through the hoops of determining whether it is relevant and it is documentable, and it seems to me it would be far easier to talk about the quality of

the school that is available as opposed to naming the school, and a reasonable interpretation would be that in naming the school there was a discriminatory purpose.

Mr. MITCHELL of Maryland. In the amendment supported by the gentleman, you do not have that guarantee.

Mr. BUTLER. Mr. Chairman, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from Virginia.

Mr. BUTLER. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the amendment and want to be identified with the remarks of the gentleman from California (Mr. LUNGREN).

Mrs. CHISHOLM. Mr. Chairman, I move to strike the requisite number of words.

Mr. EVANS of Indiana. Mr. Chairman, will the gentlewoman yield?

Mrs. CHISHOLM. I yield to the gentleman from Indiana.

● Mr. EVANS of Indiana. Mr. Chairman, everyone in this Chamber is in favor of fair housing—no one would argue against the ideal that our standards and procedures for those who are consumers and for those in the industry should be equitable.

In the past we have initiated Government policies with the honorable intention of eliminating discrimination and unfair practices in the housing-real estate marketplace. In most cases those Government policies have not only failed in their intended goals, but also have resulted in more Government intrusion into private business as well as compounded paperwork and redtape resulting in additional costs being passed along to the consumer.

I would have hoped that our past experiences with RESPA and with the alarming default rate for HUD housing that this body would have learned a lesson that we cannot mandate what can or cannot be considered, used and/or reported in dealing with a free market industry. There presently are very stringent guidelines and lengthy reports HUD requires from real estate appraisers. To mandate additional Government procedures should, in essence, require appraisers to ignore marketplace realities. The result would be fictitious and misleading market values.

I seriously doubt anyone in this Chamber would consider buying a home without knowing all the relevant information, and would not give any weight to market values that did not reflect a professional and complete appraisal. It is unrealistic and unfair to the American people and to private industry to force this on them. It will do no more than create false market values and add another expensive layer of bureaucratic paperwork for private industry.

I urge the adoption of this amendment.●

Mrs. CHISHOLM. Mr. Chairman, my good friend, the gentleman from Illinois (Mr. HYDE) indicated that the word "race" was injected into the debate by persons "on the other side of the aisle." I think we know well enough now that it is not always necessary to actually use the actual word, but there are certain what we call code words that evoke certain things in people's heads almost immediately.

Mr. Chairman, I rise in strong opposition to the amendment. This amendment represents another attempt to circumvent the spirit and intent of title VIII of the Civil Rights Act. What we have been attempting to accomplish since 1968 is to foster housing activities in which racial, ethnic and religious factors are irrelevant. It is inconceivable that we would now allow an integral part of the real estate chain, the appraiser, to take into consideration "all relevant factors" in determining the value of property. Passage of this amendment would effectively exclude appraisers from coverage under title VIII, contradicting court rulings holding that the fair housing law covers the activities of the appraisal industry, and foster potential discrimination by appraisers and other participants in the real estate chain.

The complex process of consumation of a housing sale involves a number of key participants who are responsible for a number of key decisions. Allowing the appraiser, an integral part of the process, to rely on racial or ethnic factors prohibited by title VIII, would break an essential link in the housing process and undermine the spirit and purpose of the fair housing law. Adoption of this language would only enhance perpetuation of racial stereotyping in the determination of real estate value.

I strongly urge my colleagues to reject the amendment.

Mr. HYDE. Mr. Chairman, will the gentlewoman yield to me?

Mrs. CHISHOLM. I yield to the gentleman from Illinois.

Mr. HYDE. I thank the gentlewoman for yielding. I just want to understand the gentlewoman's argument. Did she say that my amendment exempted appraisers from the purview of title VIII?

Mrs. CHISHOLM. It would exclude them from title VIII.

Mr. HYDE. I respectfully submit if she would read section 805 on page 8, they are specifically included; they are not exempted by my amendment.

Mrs. CHISHOLM. I disagree with the gentleman. I really disagree with him.

Mr. FISH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment proposed by my colleague, the gentleman from Illinois, which seeks to exempt the entire appraisal industry from the provisions of the Fair Housing Amendments of 1980.

In considering fair housing amendments, the Judiciary Committee made it clear that it wished to achieve greater specificity in substantive coverage, including clarification of the factors to be considered in making appraisals. The bill, and particularly section 805, makes it clear that no link in the real estate chain can engage in discrimination or consider race as a factor in any stage of selecting or evaluating a home. Existing law as embodied in a 1977 Federal district court decision which held appraisers subject to the provisions of the Fair Housing Act of 1968 is not and should not be changed in H.R. 5200.

There is a very sound reason for not adopting the amendment presently being considered. If we permit consideration of race as a factor in evaluating a home, regardless of the claim of "first amendment rights" and "fiduciary duties" of the appraisers, we are in fact legitimizing the inclusion of race as a factor in housing. Up and down the real estate chain, realtors, financial institutions, and insurers will know that appraisers will be basing their evaluation of property in part on racial considerations. This will infect the entire process of selecting, buying, selling, and financing homes in a discriminatory manner.

The appraisers claim that they are not part of the housing chain, and that their sole duty is to report the truth to the financial institutions. They assert that if that truth includes racial composition of a neighborhood, then it is their fiduciary duty to inform the banks of this fact. What the appraisers have not mentioned is what use this information is put to.

In a typical sequence of buying a home, the individual selects a home and requests financing. His selection is based on his own personal desire for a house in a particular neighborhood. As an individual, this decision is based on many factors, all of which he is free to consider. Following a decision to buy, the individual seeks financing at a local bank or lending institution. The bank, in turn, hires an appraiser to estimate the market value of the property. The appraiser's estimate is used by the lender in determining whether the property will provide sufficient collateral for the loan. If the appraisal is lower than the mortgage requested, and is based in part on racial and ethnic composition of the neighborhood, then the loan may be denied or given on less advantageous terms. We are all familiar with the results of such disinvestment by financial institutions—the decay and deterioration of neighborhoods. As it is clearly illegal for the lender to base its decision on racial factors, what then is the purpose and effect of considering racial and ethnic factors in the appraisal report? As I see it, either the report is useless, or the lender and every other participant in the real estate chain becomes immune from the requirements of the Fair Housing Act by hiding behind appraisal reports.

The American Institute of Real Estate Appraisers has enunciated a policy that "racial, religious, and ethnic factors are deemed unreliable predicators of value trends or price variance." Even more telling is the statement of the National Society of Real Estate Appraisers:

> Race, national origin, and religion have never been reliable indicators of value, but reliance on these factors is not just misleading and unnecessary; it is also anathema to the very concept of fair housing. We perceive the effort to sanction this reliance as an attempt to revert to the situation prior to the passage of the Fair Housing Act in 1968 when assumption about the negative impact of these factors created the problems of redlining.