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Federalism, Efficiency, and Civil Rights Enforcement

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Abstract

This article systematically compares the efficiency of federal, state, and local civil rights agencies in enforcing national fair housing policy over time, with special attention to the South. State and local agencies processed Fair Housing Act complaints more efficiently than the U.S. Department of Housing and Urban Development (HUD), southern agencies outperformed HUD, and the probability that a racial discrimination complaint resulted in a favorable outcome for the alleged victim was the same for complaints originating within and outside the South. These findings suggest that the fair housing enforcement model may provide useful concepts for sharing power in other policy areas in the American federal system.

Keywords

federalism, civil rights, housing discrimination, HUD

Race remains a prominent fault line in American politics. Since the Supreme Court's landmark ruling in *Brown v. Board of Education* (1954), political scientists have therefore devoted considerable attention to school desegregation policy and its implementation (Bullock and Rodgers 1976; Gatlin, Giles, and Cataldo 1978; Green and Cowden 1992; Rossell and Crain 1982). Yet far less attention has been paid to fair housing policy and its enforcement. This is peculiar since housing discrimination is an important issue, and the passage of the Fair Housing Act of 1968 constituted one of the most critical civil rights breakthroughs of the 1960s. Housing segregation is also directly related to school segregation. Schools would not be segregated if housing were not segregated (Massey and Denton 1993; Orfield 1978).

Residential discrimination and segregation have been chronic problems in the United States (Lamb 2005; Massey and Denton 1993). Though modest progress has been made in combating them, they remain problems in the twenty-first century (Briggs 2005; Crowder, South, and Chavez 2006; Logan, Stults, and Farley 2004). Moreover, the willingness and ability of states and localities to enact and enforce fair housing laws have long been in question, especially since the 1960s, when the issue of school desegregation loomed large in national politics (Carmines and Stimson 1989; Klarman 2004; Orfield 1978; Rosenberg 2008).

State and local governments have nevertheless played an increasing role in implementing national policies since the 1960s (Scheberle 2004; Walker 2000). Against this background, we examine their willingness and ability to

enforce national fair housing standards. After describing the enforcement of the Fair Housing Act of 1968 and the Fair Housing Amendments Act of 1988 (both known as Title VIII), we explore the enforcement performance of federal, state, and local civil rights agencies by relying on a large, unique database obtained from the U.S. Department of Housing and Urban Development (HUD), which includes the entire universe of Title VIII complaints processed between 1989 and 2004 (HUD 2005). This is an unusual approach since research rarely compares how well federal, state, and local governments enforce the same policy over an extended period.

Specifically, we explore the efficiency of state and local fair housing enforcement relative to that of HUD. Before laying out our hypotheses and research design, we provide an overview of federal, state, and local enforcement of Title VIII. We then develop three measures of efficiency based on the length of time it takes each agency to resolve Title VIII complaints. In view of the history of civil rights policy and enforcement in the United States (Grofman, Handley, and Niemi 1992; Klarman 2004; Rosenberg 2008), we would expect HUD to carry out fair housing enforcement more efficiently than state and local civil

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rights agencies because of the federal government's concern for civil rights protections over the past half century. We would especially expect HUD to outperform state and local agencies in the South given past southern resistance to civil rights enforcement.

Yet our measures of efficiency provide unexpected results. First, state and local civil rights agencies generally enforce Title VIII more efficiently than HUD. It takes HUD longer, for example, to conciliate and close Title VIII complaints. At the same time, complaints handled by state and local agencies produce outcomes just as favorable to complainants as complaints processed by HUD. Second and more striking is the fact that southern state and local agencies outperform HUD.¹ Third, the likelihood that a complaint will result in a favorable outcome for the supposed victim is only slightly diminished if processed by a southern state or local civil rights agency. Finally, the probability that a claim of racial discrimination will result in a favorable outcome is the same in the South as in the nation at large. In other words, the efficiency of state and local agencies in the South does not result from their routinely deciding against discrimination complaints. These are surprising findings given the unique history of the South, which has produced more regressive racial politics than other regions of the country (Grofman, Handley, and Niemi 1992; Klarman 2004).

These findings also suggest that cooperative federalism is alive and well in America. The theoretical literature on American federalism has produced two major models of intergovernmental relations. According to the creative federalism model (Beer 1993), the national government takes a vigorous lead in devising programs and overseeing their implementation. The cooperative federalism model, by contrast, argues that cooperative relations between different levels of government are critical in dealing with policy problems (Elazar 1962, 1972; Grodzins 1966). Like other studies (Bradford and Oates 1971; Chubb 1985; Hedge and Scicchitano 1994), our research indicates that interdependence in the federal system makes state and local governments responsive to federal direction and cooperative in pursuing common policy goals. Fair housing enforcement therefore provides a good example of three different levels of government working together to administer national policy.

During the Reagan years, New Federalism notably increased the number of state and local agencies that could demonstrate "substantial equivalency" (see below) to assist HUD in Title VIII enforcement. This period has been characterized as one of state resurgence (Walker 2000), with the states dramatically increasing their policy capabilities. This resurgence is reflected in our database. Since the mid-1990s, HUD has processed only about one-third of all Title VIII complaints, the remainder being

handled by state and local entities (HUD 2005). This trend highlights the cooperative, intergovernmental nature of Title VIII enforcement, and as this study reveals, state and local agencies are efficiently enforcing the 1968 and 1988 Fair Housing Acts.

Our results are relevant to federalism theory. Elazar (1962, 325-30) indicates that efficiency is one of the four criteria that should be used in determining whether a policy should be implemented through cooperative arrangements, and given our findings, it appears that Congress wisely selected fair housing for a federal-state-local enforcement partnership. Not only are state and local agencies efficiently enforcing federal law in this area, they are actually outperforming HUD according to key indicators. Most strikingly, as with Elazar (1962), our study finds this to be the case in a policy arena where it would not be expected. Conventional wisdom would predict that southern state and local agencies would lag behind the federal government in civil rights enforcement (Elazar 1972, 6). We demonstrate, however, that the opposite is true—different levels of government can work together, cooperatively and efficiently, in policy areas where it might be *least* expected.

Elazar (1962) concludes that cooperation characterized the relationship between the federal and state governments throughout the nineteenth century and well into the twentieth century, as they shared responsibilities in myriad policy fields. Our findings show that this cooperative relationship still exists in the early twenty-first century in housing discrimination policy, where not only do federal and state governments share responsibility but local governments play a significant role as well. Given the increasing centralization of power in the hands of the federal government since Elazar wrote, it no longer appears that "virtually all of the activities of government" are cooperative undertakings (Elazar 1962, 1). Yet unless that trend is to continue, it may be useful to identify areas of policy where a proper sharing of responsibility is still possible and to seize those opportunities to strengthen American federalism for the future.

Intergovernmental Enforcement

The Fair Housing Act of 1968 (Title VIII of the Civil Rights Act of 1968) was passed by Congress following the assassination of Martin Luther King Jr. Its purposes were to fight housing discrimination and to reduce residential segregation (Massey and Denton 1993; Schwemm 2009; Yinger 1995). Title VIII prohibits discrimination on grounds of race, color, religion, gender, and national origin in the sale, rental, and financing of housing and in the operation of brokerage services. In 1988, Congress augmented Title VIII with the Fair Housing Amendments Act, strengthening its enforcement and adding

“family status” (families with children) and the handicapped to the groups protected by law. Individuals who think they have been discriminated against have two options for gaining relief under these two statutes: they may file a housing discrimination complaint with HUD, or they may file a private lawsuit. In this article, we focus on the processing and closing of all Title VIII complaints from 1989 through 2004.

HUD has been the principal federal agency responsible for fair housing enforcement since 1968. However, federal fair housing enforcement was always intended to be a cooperative intergovernmental undertaking (Lamb and Wilk forthcoming). Under both the 1968 and 1988 laws, responsibility for handling complaints is given to state and local governments if they have fair housing laws that are substantially equivalent to the federal legislation.² Complaints may be filed with HUD, but they are referred to the state or local jurisdiction involved if substantial equivalency has been established.³ Congress adopted this mandatory referral system because it understood the critical role that state and local governments could potentially play in federal civil rights enforcement (Schwemm 2009). Substantial equivalency entails certification by HUD’s secretary that a state or local housing discrimination law provides substantive rights, procedures, remedies, and availability of judicial review generally equal to that granted to HUD by Title VIII. These standards therefore require not only equal rights and remedies but also that a state or local agency has the administrative capacity to enforce its laws in a substantially equivalent manner. State and local agencies must undergo an evaluation of their current practices and past performance before being certified as substantially equivalent (Schwemm 2009).

The Fair Housing Act and the Fair Housing Amendments Act provide that the secretary of HUD work with state and local agencies in enforcing Title VIII and reimburse them for their assistance (Schwemm 2009). This is accomplished through HUD’s Fair Housing Assistance Program (FHAP). Under the FHAP program, state and local governments are presented with the option of passing fair housing laws that are substantially equivalent to Title VIII. If HUD certifies that these laws provide equivalent rights, procedures, remedies, and the availability of judicial review, FHAP funds are then paid to state and local entities to process Title VIII complaints.⁴ At least once every five years, state and local FHAP agencies are reviewed by HUD to ensure they are still qualified for certification.

The FHAP program grew rapidly during the Reagan presidency and has remained important since that time. By the end of the Reagan administration, 112 state and local agencies were certified for the FHAP program, and that number peaked at 122 soon thereafter (HUD 1995, 22).

Despite Congress’s 1988 requirement that FHAP agencies be recertified under stiffer enforcement standards, state and local governments responded to the call in growing numbers during the 1990s. By 2005, 89 percent of the nation’s population lived within the jurisdiction of a FHAP agency (HUD 2005, 43), 75 percent of all Title VIII complaints were closed by FHAP agencies by 2007 (HUD 2008, 49, 54), and thirty-nine states were certified under the program by 2009 (HUD 2009, 31).⁵ The eleven states having neither a state nor local FHAP agency in 2009 were Alabama, Alaska, Idaho, Mississippi, Montana, Nevada, New Hampshire, New Mexico, South Dakota, Wisconsin, and Wyoming.

Given this federal-state-local partnership, we first investigate how well FHAP agencies perform relative to HUD by measuring enforcement efficiency at all three levels of government. We then compare geographic and outcome components.⁶ Our findings lead us to argue that the mandate of substantial equivalency is an important requirement for state and local agencies to meet if they are to play a major role in enforcing federal civil rights policy. Indeed, substantial equivalency is one way to ensure that subnational agencies do not shirk their responsibilities.

Measures of Efficiency

HUD has long recognized the critical importance of processing Title VIII complaints in a timely manner. Among other things, “speedy processing encourages victims of discrimination to file complaints and increases the likelihood that violations will be punished” (HUD 2003, 36). For that reason HUD pledged in 2003 to reduce significantly the percentage of its fair housing complaints that were more than one hundred days old by the end of fiscal year 2008. Working cooperatively with state and local agencies, HUD provides financial incentives to these subnational governments to resolve complaints within one hundred days, and by HUD’s own standards, the ability of civil rights agencies to handle Title VIII complaints efficiently is based on how long it takes an agency to resolve a complaint after it is filed.

Title VIII complaints are resolved either through conciliation, administrative closure, or a finding that a claim is not related to housing discrimination (HUD 1999, 15-16; 2008, 55). In the conciliation process, civil rights agencies serve as informal mediators between the complainant and the respondent, with the goal of reaching a resolution. Conciliations occur when a voluntary agreement is reached or when a Title VIII complaint is withdrawn because the parties reach a private agreement. It often takes more than one attempt by an agency before conciliation is actually achieved. In many cases, an attempt at conciliation fails, and the agency tries again. If the second attempt fails, a

third attempt is undertaken. This process continues until conciliation is reached or ultimately fails. Cases may also be closed if the appropriate civil rights agency determines there is enough evidence to suggest that housing discrimination did indeed occur. In this case, the agency reaches a cause determination, and adjudication proceeds either before an administrative law judge or in an appropriate court. When an investigation does not lead to conciliation, HUD, state, or local agencies decide if there is reasonable cause to think that Title VIII was violated. If no reasonable cause is found, additional action is not taken on a complaint. Finally, civil rights agencies may close complaints administratively, as when the respondent or complainant cannot be contacted or when a trial begins in a private lawsuit filed by a complainant.

We develop three indicators of efficiency. The first is the length of time it takes an agency to close complaints. Second is the number of days it takes to conciliate complaints. The final indicator measures how many failed conciliation attempts are made by agencies.

Data and Hypotheses

In examining cooperative intergovernmental relations in the late twentieth and early twenty-first centuries, we compare the efficiency of federal, state, and local civil rights agencies using a unique data set received from HUD through a request under the Freedom of Information Act (HUD 2005). This large database contains a wide variety of details on all Title VIII fair housing complaints processed by HUD and by state and local agencies from 1989 through 2004. Each individual complaint serves as the data set's unit of observation, with a number of details on each complaint available. These details include the dates a complaint was received and closed; the type of discrimination alleged; whether conciliation was attempted and, if so, the date(s) that conciliation was attempted and eventually achieved; the number of failed conciliation attempts before success was achieved; whether monetary relief was awarded and, if so, the amount; and the reason why a case was closed. Importantly for our analysis, the data set also specifies where a complaint was filed and whether it was processed by HUD, a state agency, or a local agency. This information allows us to determine, among other things, how long it takes complaints to be conciliated or closed and to compare the performance of local, state, and federal agencies over time.

In light of the federal government's intermittent tendency since the 1960s to expand civil rights protections, together with the historic inability or unwillingness of some state and local governments to enact and enforce strong civil rights laws (Bullock and Rodgers 1976;

Klarman 2004), we use our three measures of efficiency to test the following null hypotheses:

Hypothesis 1: The amount of time it takes state and local agencies to close Title VIII complaints is significantly greater than it is for HUD, especially in claims of racial discrimination.

Hypothesis 2: The amount of time it takes state and local agencies to conciliate Title VIII complaints is significantly greater than it is for HUD, especially in claims of racial discrimination.

Methods

Using the HUD database to test our hypotheses, each Title VIII complaint represents the unit of analysis. Cox proportional hazard models are used to compare the efficiency of federal, state, and local civil rights agencies, where days to close and days to conciliate serve as the dependent variable in their respective models.⁷ For each Title VIII complaint, variables are created that specify how many days it took for that complaint to be closed and conciliated, and the models treat the final event of closure and conciliation as a "failure."⁸ The three models incorporate the following independent variables to compare the efficiency of federal, state, and local civil rights agencies.

Main Independent Variable of Interest— Processing Responsibility

Three dummy variables are created to identify which level of civil rights agency processed each individual case. Complaints handled by HUD serve as the base category, while the *state agency* and *local agency* variables are coded as 1 if they were handled by each respective agency and 0 otherwise. This allows a direct comparison of efficiency between HUD and state and local civil rights agencies. However, another dummy variable must be incorporated to account for cases originally handled by state agencies but ultimately resolved by HUD. These returned claims are unlike other complaints since they are processed by more than one level of government at different times. Because these cases differ from those exclusively handled by state and local agencies, they are not coded the same as those exclusively processed by HUD or by a state or local agency.⁹ As such, a *returned* variable is created and coded as 1 if a complaint was resolved by HUD after initially being processed by a state or local agency.¹⁰

Control Variables

Type of discrimination. Knowing whether a complaint is processed by a federal, state, or local agency is critical,

yet the characteristics of the complaints might also determine how efficiently they are resolved. Title VIII, as amended in 1988, prohibits discrimination based on race, family status, disability, gender, national origin, religion, and color. A dummy variable is created for each of the seven categories to determine whether the citation of the *type of discrimination* alleged impacts how expeditiously complaints are processed. We would emphasize that the categories are not mutually exclusive since more than one type of discrimination may be alleged in a Title VIII complaint. Therefore, the dummy variable trap does not apply so all seven categories are included with no base category.

State and local interactions with racial discrimination. Comparing the efficiency of state and local agencies to HUD represents the overarching theme of this analysis in light of the historical resistance of some state and local governments to enforce civil rights legislation. Since our story is linked in large part to the history of segregation, we pay particular attention to the issue of race. We therefore explore whether state and local agencies are still more efficient than HUD when a complaint specifically entails an allegation of racial discrimination.

Issues. Like type of discrimination, the issues presented in Title VIII complaints may affect the likelihood of complaints being efficiently processed. Issues presented in Title VIII complaints include alleged discrimination based on terms and conditions associated with renting or buying, advertising, financing, refusals to rent or sell, coercion, false representation of facts, and “other.” Dummy variables have been created to take into account the seven most commonly cited issues along with a variable accounting for the “other” category. Again, the dummy variable trap does not apply because complainants may cite more than one issue in complaints.

Segregated area. Confirming conventional wisdom, research shows that a number of areas in the United States have experienced more racial segregation in housing than others (Farley and Frey 1992, 1994; Massey and Denton 1993). Because of the reluctance of many of these areas to enforce civil rights laws in the past, it could be expected that state and local agencies in these regions would perform less efficiently than agencies in other parts of the nation. We hypothesize that complaints raised in segregated areas would have an equally negative impact on efficiency regardless of the level of government.¹¹ A segregation measure developed by Farley and Frey (1992) is utilized to capture the degree to which operating within a segregated area affects the efficiency of Title VIII processing. Their index of dissimilarity gauges the degree of spatial separation between racial groups. According to the measure of Massey and Denton (1988, 601, 605), metropolitan areas are scored on a scale of 0 (*no segregation*)

to 1.00 (*complete segregation*). Metropolitan areas with a score of .60 are regarded as highly segregated. Following suit, the segregated area variable is coded 1 for cases where a Title VIII complaint originated in counties that score .60 or higher on the Massey and Denton index, while all others are coded 0. This variable is expected to achieve significance and to have a negative impact on the probability that a case is closed or conciliated, in addition to a negative impact on the ability to avoid a failed conciliation.

South. We might also expect that housing complaints would take longer to process in the South—regardless of whether handled by states, localities, or HUD—because of the region’s traditional resistance to civil rights laws. To control for region, a southern dummy variable is coded 1 for complaints processed in one of the eleven states that seceded prior to the Civil War.

Pattern or practice. Another variable is included that identifies complaints dealing with a pattern or practice of discrimination. Title VIII permits the Department of Justice (DOJ) to file suit against any persons or group of persons involved in a pattern or continuing practice of housing discrimination and in cases presenting questions of “general public importance” (Schwemm 2009). The Fair Housing Act does not clearly define a pattern or practice of housing discrimination, but HUD may receive complaints claiming that discriminatory acts are a standard practice rather than being isolated in nature. HUD may then refer Title VIII complaints to DOJ if it believes a pattern or practice of discrimination has in fact occurred, but pattern or practice suits by DOJ are relatively infrequent. Still, a dummy variable is included to denote which cases are pattern or practice since it is expected that these types of cases will require a substantially greater amount of time to resolve. Finally, the fixed-effects approach is taken by including dummy variables that capture the year each complaint was filed. The baseline year is 1989.

Table 1 compares the ability of civil rights agencies at different levels of government to close and conciliate complaints in a timely manner. The two columns in Table 1 present the hazard ratios for each independent variable regressed on the number of days it takes each complaint to be closed and conciliated, respectively. We add an important note relating to the interpretation of the coefficients: the hazard ratios tell us how much more or less likely a closure is to occur by switching the value of each variable from 0 to 1 while holding all the other variables constant. A coefficient greater than 1 indicates that the change from 0 to 1 for each independent variable increases the probability that a complaint is closed or conciliated at any given time. Each coefficient is then subtracted from 1 to obtain the exact probability. Coefficients that are less than 1 indicate that switching the value of the independent variable from 0 to 1 decreases the probability of a closure

Table 1. Relationship between Processing Agency and Length of Time to Reach Closure and Conciliation, 1989-2004

	Dependent variable: Days to close— Hazard ratio (SE)	Dependent variable: Days to conciliate— Hazard ratio (SE)
Responsibility ^a		
State agency	0.804* (.013)	1.266* (.031)
Local agency	1.065 (.024)	1.720* (.052)
Race × State Agency	1.080* (.026)	1.169* (.042)
Race × Local Agency	1.039 (.035)	1.012 (.045)
Returned	0.710* (.011)	0.854* (.021)
Discrimination type		
Race	0.717* (.013)	0.762* (.019)
Disability	1.086* (.018)	1.010 (.023)
Family status	1.326* (.020)	1.161* (.025)
Gender	0.887* (.016)	0.978 (.024)
Color	1.019 (.025)	1.110 (.039)
National origin	0.844* (.016)	0.859* (.023)
Religion	0.646* (.027)	0.723* (.043)
Segregated area	0.974 (.010)	0.965 (.014)
South	0.919* (.012)	1.170* (.021)
Pattern or practice	0.768 (.081)	0.371 (.118)
N	118,960	52,523
LR $\chi^2(38)$	7,894.51	2,833.42

Coefficients for issues and years omitted.

^aHUD serves as the reference category.

* $p < .001$.

or conciliation at any particular time. These coefficients can be subtracted from 1 to obtain this exact probability.

Results

The first column of Table 1 indicates that state agencies fail to achieve HUD's level of efficiency in terms of the number of days taken to close Title VIII complaints. At

any given time, the likelihood of a case being closed is 20 percent lower if it is handled by a state agency instead of by HUD. However, the local agency coefficient is unexpectedly positive although not significant ($\alpha = .001$).¹² The agency interactions with race also yield unexpected findings. State agencies are actually more efficient than HUD in closing complaints of racial discrimination, but the difference between HUD and local agencies fails to achieve significance.

The second column of Table 1 portrays state and local FHAP agencies in an even more positive light in terms of days required to conciliate Title VIII complaints. Here, state and local agencies are actually more efficient than HUD, thus rejecting hypothesis 2. The hazard ratio indicates that the probability of a conciliation being successfully completed increases by 27 percent if conciliated by a state agency as opposed to the federal agency. States are even more efficient than HUD in processing claims of racial discrimination. Local agencies appear to be even more efficient in processing general fair housing complaints. A complaint processed by a local agency instead of the federal government increases the likelihood of a successful conciliation at any given time by almost 72 percent. However, there is no difference between HUD and local agencies in the length of time it takes to conciliate complaints based on race.

To summarize, the first column of Table 1 yields mixed results for hypothesis 1 regarding state agencies. It takes states significantly longer to close cases than HUD. However, states are more efficient than HUD in closing claims of racial discrimination. By contrast, local agencies operate as efficiently as HUD when closing cases and actually outperform HUD in successfully conciliating complaints. There is no significant difference on either indicator between localities and HUD when it comes to processing claims of racial discrimination.

The ability to avoid failed conciliation represents the third indicator of efficiency. Reaching conciliation on the first attempt, a critical indicator, suggests that state agencies use their resources in a more efficient manner. A negative binomial event count model is employed to examine the levels of efficiency of each type of agency.¹³ Once more, each individual complaint serves as the unit of analysis. The number of failed conciliation attempts that a Title VIII complaint endures prior to eventual conciliation is calculated and serves as the dependent variable. The same independent variables used in the Cox models are used here.

Table 2 presents the raw coefficients along with the percent change in Y (the number of failed conciliation attempts) for a one unit change in each independent variable (0 to 1 for the main independent variables of interest).¹⁴ Another note is required concerning interpretation. Given

Table 2. Relationship between Processing Agency and Number of Failed Conciliations Required Before Success Is Achieved, 1989-2004

	Dependent variable: Number of failed conciliations	
	β (SE)	<i>prchange</i>
Responsibility ^a		
State agency	-1.101* (.014)	-66.7
Local agency	-.507* (.019)	-39.8
Race \times State Agency	.081* (.020)	8.4
Race \times Local Agency	-.032 (.026)	
Returned	-.013 (.013)	
Discrimination type		
Race	-.117* (.014)	-11.0
Disability	.127* (.013)	13.5
Family status	.200* (.013)	22.1
Gender	-.086* (.014)	-8.3
Color	-.042 (.022)	
National origin	-.039 (.015)	
Religion	-.237* (.029)	-21.1
Segregated area	-.027 (.009)	
South	.194* (.010)	21.4
Pattern or practice	-.256 (.083)	
N		125,381
LR $\chi^2(38)$		28,606.40

Coefficients for issues and years omitted. Negative signs indicate more time is required to reach a failure. In these cases, closures and conciliations are instances of "failures."

^aHUD serves as the reference category.

* $p < .001$.

the nature of the dependent variable, a negative sign actually indicates that the relevant agency is outperforming HUD. This is because the *prchange* tells us the variable's impact on the number of failed conciliation attempts. Obviously, fewer failed attempts indicate more efficient behavior so negative signs indicate higher levels of efficiency in Table 2.

When considering all levels of governmental agencies, Table 2 indicates that state agencies perform most

efficiently while HUD is least efficient. The *prchange* coefficients indicate that, all else equal, state agencies decrease the number of failed conciliations by 67 percent compared to HUD, while local agencies decrease failed attempts by 40 percent compared to the federal agency. Once more, these findings indicate that state and local agencies process Title VIII complaints more efficiently than HUD and that they are blossoming under this cooperative federalism arrangement.

The results are different for claims of racial discrimination: there is no significant difference between the efficiency of local agencies and HUD. State agencies are less efficient than HUD at avoiding failed conciliations, but the magnitude of the effect is rather small compared to how much more efficient state agencies are at processing complaints generally.

The Efficiency of Southern Agencies

The above findings suggest that, in many ways, state and local FHAP agencies have operated more efficiently than HUD in processing Title VIII complaints. Given the region's history, it could be hypothesized that southern state and local agencies may operate less efficiently than HUD. In fact, the South dummy variable has the expected effect in two of the three models in Tables 1 and 2. Claims take longer to close and experience more failed attempts at conciliation if processed in the South, but southern agencies are more efficient at conciliating complaints. Based on these findings and the region's history, an examination of the performance of agencies in the South is the next logical step. A third hypothesis is now formulated:

Hypothesis 3: State and local civil rights agencies in the South are generally less efficient in enforcing Title VIII than the federal government.

To test this hypothesis, our models are applied separately to complaints processed in the South and those processed outside the South. The first two columns of Table 3 display the results of the Cox proportional hazard models for the number of days to close and conciliate complaints, respectively. The third column presents the results of the negative binomial model used to assess efficiency in avoiding failed conciliations. That is, the top columns in Table 3 only include those complaints made in the South. The bottom portion of Table 3 displays the same results for complaints processed outside the South. For clarity of presentation, only the coefficients for state agency, local agency, race, and the interactions between race and level of government agency are included.

The results presented in Table 3 are striking. The efficiency of southern state and local civil rights agencies

Table 3. Efficiency of State and Local Agencies Compared to HUD within and outside the South, 1989-2004

	Dependent variable: Days to close—Hazard ratio (SE)	Dependent variable: Days to conciliate—Hazard ratio (SE)	Dependent variable: Number of failed conciliations	
			β (SE)	<i>prchange</i>
South				
Responsibility ^a				
State agency	1.163* (.046)	1.929* (.102)	-.418* (.032)	-34.1
Local agency	1.469* (.058)	1.887* (.099)	-.459* (.032)	-36.8
Race × State Agency	1.114* (.059)	1.319* (.092)	-.046 (.039)	
Race × Local Agency	1.178* (.066)	1.185 (.088)	.012 (.044)	
Race	0.706* (.027)	0.668* (.035)	-.006 (.028)	
N	29,736	13,636		31,965
LR $\chi^2(38)$	1,870.38	1,750.42		9,810.68
Non-South				
Responsibility ^a				
State agency	0.746* (.013)	1.209* (.033)	-1.254* (.016)	-71.5
Local agency	0.903* (.027)	1.732* (.067)	-.404* (.023)	-33.2
Race × State Agency	1.018 (.028)	1.052 (.045)	.031 (.023)	
Race × Local Agency	0.951 (.042)	0.903 (.051)	-.127* (.033)	-12.0
Race	0.744* (.015)	0.804* (.023)	-.106* (.016)	-10.1
N	89,224	38,887		93,416
LR $\chi^2(38)$	6,531.65	1,983.11		21,370.50

Coefficients for control variables omitted for sake of clarity. Robust standard errors in parentheses. *Prchange* indicates probability of a favorable outcome if independent variable increases from 0 to 1, all else equal.

^aHUD serves as the base category.

* $p < .001$.

surpasses HUD's efficiency across all three indicators. Southern state and local agencies are particularly more efficient than HUD in terms of days taken to reach conciliation. It should be stressed, though, that this specific analysis does not directly compare the efficiency of southern state and local agencies to those located outside the South. Instead, the findings indicate that, at least according to the first two indicators, the gap between the efficiency levels of southern state and local agencies and HUD is larger than that between non-southern agencies and HUD. Still, the fact that southern state agencies outperform HUD represents an important finding.

Perhaps the most surprising findings are revealed by the agency interactions with race. According to all three indicators, HUD is never more efficient than state or local agencies in handling claims of racial discrimination. Southern state agencies are more efficient than HUD based on the first two indicators, and southern local agencies are significantly more efficient than HUD in terms of days to close race-based complaints.

Favorable Outcomes in the South

The previous analysis reveals that state and local agencies in the South operate even more efficiently than their

counterparts outside of the South relative to HUD's performance in each region. Nevertheless, we do not yet reach the conclusion that southern civil rights agencies have demonstrated a level of enforcing fair housing policy on par with those agencies outside the South. This is because of the nature of our measures of efficiency. As described above, the length of time it takes complaints to be closed and conciliated and the ability to avoid failed conciliation attempts serve as the dependent variables. Just because southern agencies are acting more efficiently according to these definitions does not necessarily mean they are enforcing the Fair Housing Acts evenhandedly. They may appear to be functioning more efficiently simply because they unfairly and quickly dismiss claims of discrimination and thus are less willing than nonsouthern agencies to spend additional time to work on the behalf of complainants. Hence, while the above analysis shows that southern agencies operated efficiently between 1989 and 2004, it does not demonstrate that they have efficiently enforced Title VIII.

To assess the willingness of southern agencies to enforce the Fair Housing Act, we next explore whether agencies within the South are more or less likely to yield outcomes that are favorable to the complainant relative to HUD. A favorable outcome is one in which the complaint process produces a result that confirms the complainant's charge of discrimination. In contrast, an unfavorable outcome leaves complainants in essentially the same situation they were in prior to filing a claim. An unfavorable outcome, in other words, fails to produce a benefit for the complainant.

To determine which outcomes are favorable to the complainant, we focus on the five possible outcomes that can be reached once the Title VIII complaint process begins: administrative closures, irrelevant claims, conciliation, no cause determinations, and cause determinations (HUD 1996, 15-16; 1999, 12-13). Administrative closures occur when the alleged victim of discrimination or the respondent cannot be located or when the complainant refuses to move forward after initially filing the complaint.¹⁵ Irrelevant claims are those in which HUD finds that housing discrimination is not the relevant issue involving the alleged victim; instead, HUD finds that the dispute is related to something other than fair housing under Title VIII.¹⁶ Conciliation refers to the process by which the complainant and the respondent attempt to reach a settlement, with agency assistance. A complaint is considered conciliated once an agreement is reached between the parties involved. Where conciliation is not reached, the relevant civil rights agency—either HUD or a state or local FHAP agency—attempts to determine whether Title VIII was violated. The processing agency recommends that adjudication proceed either before an

administrative law judge or in an appropriate court when the agency finds reasonable cause to believe that Title VIII was violated. These are known as cause determinations. No cause determinations are those in which the agency fails to find evidence of a violation and thus no additional action is taken on a complaint.

Thinking back to the favorable outcome dependent variable, administrative closures, no cause determinations, and irrelevant claims are regarded as unfavorable outcomes since they do not improve the position of complainants. Conciliation and cause determinations, on the other hand, offer some sort of a benefit to the complainant and are therefore viewed as favorable outcomes. Favorable outcomes are coded as 1 and unfavorable outcomes as 0. To determine whether state and local agencies in the South are more or less likely to produce favorable outcomes than HUD, a logistic regression is applied to the South and non-South populations. Again, a fixed-effects approach is taken so that the year in which the complaint was filed is taken into account. The familiar control variables are once more included.

Table 4 displays the results. First, there is no difference between southern state agencies and HUD in producing outcomes favorable to alleged victims of housing discrimination. Second, however, southern local agencies are actually more likely than HUD to yield favorable outcomes, though the magnitude of the effect is not overly large. Third, state and local agencies outside of the South are less likely than HUD to produce favorable outcomes. Again, the difference between nonsouthern state and local agencies and HUD is not very large. Contrast this to how much more efficiently state and local agencies generally operate relative to HUD, as shown in Table 3. The likelihood that a complaint filed in the South would be closed any particular day is 16 percent more likely if handled by a state agency as opposed to HUD. The effect (47 percent) is even larger for local agencies. The levels of efficiency reached by state and local agencies compared to HUD are even greater in terms of days to conciliate. The likelihood that a complaint that reaches the conciliation process is successfully closed is 93 percent if handled by a state agency, as opposed to HUD, and 89 percent if handled by a local agency, as opposed to HUD. This shows that state agencies are significantly more efficient than HUD, even in the South. In comparison, the fact that complaints are 3 percent less likely to result in a favorable outcome if they originate in the South seems less worrisome.

Table 4 also highlights the effect that the race variable has on the probability of a favorable outcome in racial discrimination claims. Complaints based on race are less likely to result in a favorable outcome, regardless of whether they are processed in or outside of the

Table 4. Relationship between Complaints Processed in the South and the Probability of a Favorable Outcome, 1989-2004

	Dependent variable: Favorable outcome	
	Coefficient (SE)	<i>prchange</i>
South		
Responsibility ^a		
State agency	.035 (.038)	
Local agency	.265* (.038)	.06
Returned	-.608* (.037)	-.12
Discrimination type: Race	-.328* (.034)	-.07
Segregated area	-.008 (.025)	
Pattern or practice	1.880* (.346)	.44
N	31,965	
Non-South		
Responsibility ^a		
State agency	-.188* (.018)	-.04
Local agency	-.149* (.027)	-.03
Returned	-.283* (.021)	-.06
Discrimination type: Race	-.336* (.020)	-.07
Segregated area	-.026 (.055)	
Pattern or practice	1.887* (.165)	.44
N	93,416	

Coefficients for years, types of discrimination, and issues omitted. Robust standard errors in parentheses. *Prchange* indicates probability of a favorable outcome if independent variable increases from 0 to 1, all else equal. Dependent variable: 0 = administrative closure, no cause determination, and claims; 1 = cause determination, conciliation, monetary relief, or housing relief.

^aHUD serves as the base category.

* $p < .001$.

South. In fact, the magnitude is the same in both regions. The fact that the race coefficient does not have a larger negative impact in the South runs counter to expectations, given the history of southern resistance to the civil rights of African Americans.

Discussion and Conclusion

This article has examined the enforcement of federal law by agencies at all three levels of American government.

Specifically, we have investigated the efficiency of federal, state, and local civil rights agencies in processing Fair Housing Act complaints between 1989 and 2004 in the context of cooperative federalism (Elazar 1962, 1972; Grodzins 1966). Our results run counter to expectations and fail to support the hypothesis that Title VIII is most efficiently enforced by the federal government. Instead, state and local civil rights agencies constructively assist in the enforcement of federal fair housing policy because of their efficiency in conciliating and closing Title VIII complaints. This is also the case in claims specifically based on racial discrimination—even in the South. In fact, racial discrimination complaints are no less likely to result in a favorable outcome if processed in the South, suggesting that southern agencies do not quickly and unfairly dismiss these claims.

We argue that the requirement of substantial equivalency, which transformed Title VIII into a cooperative federalism program, helps to explain the performance of state and local civil rights agencies relative to HUD. First, requiring subnational governments to demonstrate they are willing and able to enforce national standards seems to ensure they will faithfully implement federal civil rights laws. Indeed, we would think that governments that take the time and make the effort to demonstrate substantial equivalency, and work to maintain it, could be expected to function relatively efficiently. By contrast, complaints handled by HUD may be more difficult to process since they come from areas lacking substantial equivalency, presumably states and localities less friendly to fair housing laws. Second, substantial equivalency creates a different type of principal-agent relationship that suggests why state and local agencies outperform HUD. HUD responds to the demands of executive and legislative principals who may or may not closely monitor how well HUD is enforcing Title VIII. State and local agencies, on the other hand, are more closely supervised by HUD, which issues regulations on gaining and maintaining substantial equivalency. Third, state and local FHAP agencies have financial incentives to conciliate and close complaints quickly and are restricted in the time they have to resolve complaints, while HUD lacks such motivation unless its principals exert pressure for improved enforcement.

At least three possible explanations could account for the performance of southern civil rights agencies. First, the federal government's disproportionate focus on racial discrimination in the South since the 1950s may have influenced changes in attitudes and practices in that region (see Elazar 1972, 10). Certainly the intense pressure on southern state and local entities to root out discriminatory voting practices appears to have achieved many of the desired results (Grofman, Handley, and Niemi 1992). General changes in civil rights attitudes and practices may be reflected in the efficient and evenhanded processing of housing

discrimination complaints in the South as well. Second, there may be a relationship between FHAP officials and leaders of civil rights organizations in the South. Southern civil rights groups may work closely, yet informally, with state and local FHAP officials, pushing in the same policy direction. By contrast, in the North and West, where civil rights have been a governmental priority for a longer time, perhaps civil rights groups are not as aggressive in their intergovernmental political activities, thinking that further improvements can be expected. A third possible explanation relates to shared demographic traits of persons who serve as FHAP officials and those who work for civil rights groups. To test this relationship, research might sample state and local FHAP officials nationwide and determine some of their major demographic traits. If so, we might be able to determine whether the FHAP agencies that are most efficient—or that most often decide in favor of complainants, for example—are heavily populated by minorities, women, Democrats, and members of liberal religious groups.

The major implication of this study is that Congress could consider giving state and local civil rights agencies greater responsibilities to enforce national fair housing policy and develop incentives that encourage various levels of government to work cooperatively. Our results indicate that requiring subnational governments to demonstrate substantial equivalency could play a valuable role in assuring that state and local agencies remain capable of enforcing civil rights legislation. States, as policy innovators, should be allowed to perform that function. Civil rights enforcement would probably not be harmed, but federalism could well be fortified.

Since state and local governments have worked cooperatively with the federal government, further strengthening the FHAP program and giving greater responsibilities to state and local civil rights agencies would be a natural extension of fair housing developments ongoing for forty years. This could be accomplished by considering incentives to increase the number of states and localities that qualify for the FHAP program. More certified states and localities would mean that additional governments would pass laws substantially equivalent to Title VIII—a constructive goal that federal, state, and local governments should want to pursue. That said, it must be remembered that some states and localities deliberately evaded and delayed civil rights implementation for long periods of time during the twentieth century (Carmines and Stimson 1989; Grofman, Handley, and Niemi 1992; Klarman 2004; Peltason 1971; Rosenberg 2008). Obviously, states that do not efficiently and effectively enforce the Fair Housing Act should not be delegated responsibilities. This highlights the importance of the substantial equivalency requirement and the role of HUD in quality assurance when operating

in an environment of cooperative federalism. Requiring states to show a willingness and capacity to enforce federal policy prior to being given that authority could avoid situations where state and local agencies shirk their responsibilities. Future research should not only continue to explore variations in efficiency across state and local agencies but examine also the extent to which substantial equivalency can be adopted in other policies to strengthen cooperative federalism.¹⁷

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Notes

1. This does not mean that southern agencies are more efficient than nonsouthern agencies, only that state and local agencies outperform the U.S. Department of Housing and Urban Development (HUD) in the South.
2. Nearly half the states passed and implemented laws banning various types of housing discrimination between 1950 and 1968, and they were joined by a number of local governments (U.S. Commission on Civil Rights 1994, 92). It is not surprising, then, that Title VIII envisioned state and local agencies as playing an important role in enforcing federal fair housing law, though state and local laws prior to 1968 were typically far more narrow than Title VIII.
3. After HUD informs the state or local agency, the complaining party, and the respondent of the complaint referral, it takes no further action without the permission of the state or local agency unless HUD reactivates the complaint. A complaint may be reactivated if the state or local entity does not begin proceedings within thirty days of the referral, if it fails to deal with the complaint with reasonable promptness, or if it is decertified by HUD (Schwemm 2009).
4. In 2007, Fair Housing Assistance Program (FHAP) agencies were typically paid \$2400 for processing each Title VIII complaint and reaching a determination within 100 days.
5. Our analysis covers the period 1989 through 2004, and the number of state and local agencies certified by HUD occasionally changed throughout these years.
6. A great deal of variation exists in the number of local agencies in different states, and the number of local agencies is not

merely a proxy for a state's size and population. California has a state agency, for example, but no local agencies, while Iowa has a state agency and seven local agencies.

7. We make no theoretical assumptions about the distribution of the length of time for cases to be closed or conciliated.
8. Survival analysis treats an event that occurs as a failure, regardless of whether it can be described as positive or negative. In our case, a complaint being closed or conciliated is treated as a failure even though these outcomes demonstrate efficiency.
9. Returned claims often occur where HUD takes responsibility for a Title VIII complaint because the one-hundred-day limit imposed on FHAP agencies has passed, or where a state or local agency has been decertified before closing a complaint. According to HUD, many returned complaints take longer to resolve and frequently entail "a great number of witnesses or respondents, large volumes of evidence, or particularly complex evidence" (HUD 2008, 56). State and local FHAP agencies are much closer to and familiar with these cases, while HUD is in a far worse position to deal with these types of problems.
10. As a robustness check, the analysis was run with these returned complaints excluded, and the results were unaffected.
11. Since we do not find any theoretical reason to believe that the relationship between segregated area and the dependent variables would be influenced by the type of agency processing a claim, interactions between segregated area and level of government are not included. Instead, we only include the dummy, which captures whether a claim made in a segregated area influences the efficiency of the agency's processing ability, regardless of whether that agency is federal, state, or local.
12. The large sample size requires a high threshold of significance.
13. A negative binomial model is preferred to the Poisson since a likelihood-ratio test rejects the null hypothesis of no over-dispersion.
14. This second coefficient is referred to as *prchange*. Since all the main independent variables of interest are dummy variables with complaints handled by HUD serving as the base category, the *prchange* coefficient for state agency and local agency compares the expected number of failed attempts for each type of agency with the expected number by HUD.
15. Coding administrative closures as unfavorable outcomes may inflate the appearance of inefficiency by enforcement agencies if most administrative closures involve complainants who refuse to cooperate with those agencies. Losing track of a complainant, on the other hand, reflects negatively on an agency's efficiency. Unfortunately, HUD's data set does not allow us to distinguish between these two types of administrative closures, but rerunning the models in Tables 1 and 2, with administrative closures excluded, achieved nearly identical results.
16. Although a finding of an irrelevant claim may not demonstrate inefficiency by a government agency, the number of irrelevant claims is very small, and excluding them from the favorable outcome model had no effect on the results.
17. Other policy areas should be studied. State agencies have largely been successful in enforcing the Clean Air Act and other environmental laws (Wood 1991). Within this area, the concept of "primacy" seems to have played a significant role in their performance. Primacy parallels the notion of substantial equivalency in that state agencies, not the U.S. Environmental Protection Agency, are given the primary responsibility to enforce federal law if they prove they have the authority and capacity to do so (Scheberle 2004).

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