Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE TOM C. CLARK

8-28-64

Let me see whatever papers are on file with Clerk now

MR. JUSTICE:

I made inquiry of the Clerk of the Court about the Atlanta motel case which I understand has been set down for argument Oct. 5th. He tells me:

Jurisdictional statement will be filed Sept. 21st

Govt's response " Sept. 28th.

These two documents will be treated as briefs on the merits. He tells me that at the direction of the Chief Justice he wrote the Natl Council of Attorneys General, apprising them of the time schedule and suggesting the Ass'n might wish to call it to the attention of the Attorneys General who would want to make their views known. He anticipates other briefs will be forthcoming because of this.

Mr. Davis tells me that the Oct. 5th case will involve only the Heart of Atlanta Motel v. U. S., etc.; not the Pickrick Corp. v. Willis case. AOD

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Clark
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Goldberg

From: Black, J.

Circulated: AUG 10 1964

Recirculated:

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

Heart of Atlanta Motel, Inc., Appellant,
v.
The United States of America and Robert F. Kennedy, as the Attorney General of the United States of America, Appellee,

The Pickrick, a Corporation, and Lester G. Maddox, Appellants,
v.
George Willis, Jr., Woodrow T. Lewis, Albert L. Dunn, and Robert F. Kennedy, Attorney General, Appellees.

On Applications for Stays of Interlocutory Injunctions.

[August 10, 1964.]

MR. JUSTICE BLACK.

These are applications to stay orders of a three-judge United States District Court for the Northern District of Georgia which enjoined an Atlanta, Georgia motel and a separately owned Atlanta, Georgia restaurant from refusing to accept Negroes as guests and customers solely because of their race or color.

The court found, and it is not disputed, that the motel and restaurant have refused, and unless enjoined intend to continue to refuse, to supply Negroes with food or lodging solely because of their color. This refusal plainly violates Title II of the Civil Rights Act of 1964* and can be enjoined unless Congress in passing that act went

*Pub. Law 88-352, 78 Stat. 241, approved July 2, 1964.

beyond its powers under the Constitution. There is, of course, power in this Court to hold the Civil Rights Act unconstitutional. That power has been uniformly recognized and acted upon at least since *Marbury* v. *Madison,* 1 Cranch 137, decided in 1803. And there is also judicial power to enjoin the enforcement of an act of Congress pending final determination of constitutionality where such an injunction is necessary in order to prevent irreparable damage. See 28 U. S. C. § 2282. But such a temporary injunction against enforcement is in reality a suspension of an act, delaying the date selected by Congress to put its chosen policies into effect. Thus judicial power to stay an act of Congress, like judicial power to hold that act unconstitutional, is an awesome responsibility calling for the utmost circumspection in its exercise. This factor is all the more important where, as here, a single member of the Court is asked to delay the will of Congress to put its policies into effect at the time it desires.

Moreover, the constitutionally chosen policies of the Act challenged in these cases are not the result of sudden, impulsive legislative action, but represent the culmination of one of the most thorough debates in the history of Congress. In passing the act, Congress relied on as constitutional support for the legislation: (1) the Commerce Clause of Article I of the Constitution, which grants Congress power to regulate all commerce among the states—a very broad power to regulate commerce itself as well as conduct which affects that commerce; and (2) the Fourteenth Amendment, which in Section 1 forbids any State to "deny to any person within its jurisdiction the equal protection of the laws," and in Section 5 provides that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Without specifically addressing myself, as a single Justice, to the validity of the particular provisions of the Civil Rights law under attack here, either as written or as applied, I believe that the broad grants of power to

Congress in the Commerce Clause and the Fourteenth Amendment are enough to show that Congress does have at least general constitutional authority to control commerce among the states and to enforce the Fourteenth Amendment's policy against racial discrimination. Under these circumstances, a judicial restraint of the enforcement of one of the most important sections of the Civil Rights Act would, in my judgment, be unjustifiable. I agree with appellants, however, and with the Solicitor General as to the wisdom of having the specific constitutional issues here involved decided at as early a date as orderly procedure will permit. For that reason I would welcome motions to the Court to expedite both cases in the hope that they could be made ready for final argument the first week we meet in October.

The applications for stays are denied.