[c. Nov. 1964]

No. 515 - October Term, 1964

Heart of Atlanta Motel, Inc.,	)	
	)	
Appellant,	)	On Appeal from the United
	)	States District Court for the
v.	)	Northern District of Georgia.
	)	
United States, et al.	)	

[December , 1964.]

MR. JUSTICE CLARK delivered the opinion of the Court.

This is a declaratory judgment action, 28 U. S. C. § 2201 and § 2202, attacking the constitutionality of Title II of the Civil Rights Act of 1964, 78 Stat. 241.* ~~[The appellant operates a motel in Atlanta, Georgia for transient guests. However, it refused to rent rooms to members of the Negro race both prior to the enactment of the Act as well as thereafter.]~~ In addition to declaratory relief the complaint sought an injunction restraining the enforcement of the Act and damages against respondents based on allegedly resulting ~~irreparable~~ injury in the event compliance was required. A three judge District Court, empaneled under 28 U. S. C. § 2282, as well as § 206 ~~(a)~~ (b) of the Act, sustained its validity and on the counterclaim of the respondents issued a permanent injunction restraining appellants from continuing to violate the Act which remains in effect on order of Mr. Justice Black. We affirm the judgment.

UNDER § 206(a) of the Act

* See Appendix A.

1. The Factual Background and Contentions of the Parties.

The case comes here on admissions and stipulated facts.

Appellant owns and operates the Heart of Atlanta Motel, which has 216 rooms available to transient guests. The motel is located on Courtland Street, two blocks from downtown Peachtree Street. It is readily accessible to Interstate Highways Nos. 75 and 85 and state highways Nos. 23 and 41. Appellant solicits patronage from outside the State of Georgia through various national advertising media, including magazines of national circulation; it maintains over 50 billboards and highway signs within the state, soliciting patronage for the motel; it accepts convention trade from outside the state and approximately 75% of its registered guests are from out of state. Prior to the Act the motel had followed a practice of refusing to rent rooms to Negroes, and it alleged that it intended to continue that policy. In an effort to perpetuate that policy this suit was filed.

The appellant contended that the Act exceeded the power of Congress to regulate commerce as granted it by Article I, Section 8,

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The appellant contends that Congress in passing this Act exceeded its power to regulate commerce under Article I, Section 8, Clause 3, of the Constitution of the United States; that the Act violates the Fifth Amendment because appellant is deprived of the right to choose its customers and operate its business as it wishes, resulting in a taking of its liberty and property without due process of law and a taking of its property without just compensation; and, finally, that by requiring appellant to rent available rooms to Negroes against its will, Congress is subjecting it to involuntary servitude in contravention of the Thirteenth Amendment.

The appellees counter that the unavailability to Negroes of adequate accomodations interferes significantly with interstate travel, and that Congress, under the Commerce Clause, has power to remove such obstructions and restraints; that the Fifth Amendment does not forbid reasonable regulation and that consequential damage does not constitute a "taking" within the meaning of that Amendment; that the Thirteenth Amendment claim fails because it is entirely frivolous to say that an amendment directed to the abolition of human bondage and the removal of wide-

spread disabilities associated with slavery places discrimination in public accomodations beyond the reach of both federal and state law.

~~human bondage, to which appellants claim that they were being the subject of, but the removal of all disabilities of servitude then imposed upon Negroes which branded them inferior human beings. The claim is therefore entirely frivilous.~~

At the trial the appellant offered no evidence, submitting the case on the pleadings, admissions and stipulation of facts; however, appellees proved up the refusal of the motel to accept Negro transients guests after the passage of the Act. The District Court sustained the constitutionality of the sections of the Act under attack (§ 201 (a), (b) (1) and (c) (1)), and issued a permanent injunction ~~was issued~~ on the counter-claim of the appellees. It restrained the appellant from "refusing to accept Negroes as guests in the motel by reason of their race or color" and "from making any distinction whatever upon the basis of race or color in the availability of the goods, services, facilities, privileges, advantages or accommodations offered or made available to guests of the motel, or to the general public, within or upon any of the premises of the Heart of Atlanta Motel, Inc."

2. The History of the Act.

It was on June 19, 1963, that the late President Kennedy called for civil rights legislation in a message to Congress to which he attached a proposed bill. Its stated purpose was

> "to promote the general welfare, by eliminating discrimination based on race, color, religion, or national origin in . . . public accommodations through the exercise by Congress of the powers conferred upon it . . . to enforce the provisions of the Fourteenth and Fifteenth Amendments, to regulate commerce among the several states, and to make laws necessary and proper to execute the powers conferred upon it by the Constitution."

Bills were introduced in each House of the Congress, embodying the President's suggestion, the one in the Senate being S. 1732 and that in the House, H. R. 7152. However, it was not until July 2, 1964, some seven months after President Kennedy's death, that President Johnson secured the passage of the Civil Rights Bill of 1964, here under attack.

After extended hearings each of these bills was favorably reported to its respective houses, H. R. 7152 on November 20, 1963, H. R. Report No. 914, 88th Cong., 1st Sess., and S. 1732 on Feb. 10, 1964, S. Report No. 872, 88th Cong., 2d Sess. Although each bill originally

incorporated extensive findings of fact these were eliminated from the bills as they were reported. The House passed its bill in January, 1964, and sent it to the Senate. Through a bipartisan coalition of Senators Humphrey and Dirkeen, together with other Senators, a substitute was worked out in informal conferences. This substitute was adopted by the Senate and sent to the House where it was adopted without change. This expedited procedure prevented the usual report on the substitute bill in the Senate as well as a Conference Committee report ordinarily filed in such matters. Our only frame of reference as to the legislative history of the Act is, therefore, the hearings, reports, and debates on the respective bills in each house, the Reports on each and the debates thereon.

The Act as finally adopted was most comprehensive, undertaking to prevent through peaceful and voluntary settlement discrimination in voting, as well as in places of accomodation and public facilities, federally secured programs and in employment. Since Title II is the only portion under attack here, we confine our consideration to those public accomodation provisions.

3. Title II of the Act.

It appears clear from the legislative sources that the grand design of Title II of the Act was the protection at the point of their destination of persons and goods moving in interstate commerce through the elimination of racial and religious discrimination.

This title is divided into seven sections beginning with §201(a) which provides that:

> "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."

There are listed in §201(b) four classes of business establishments, each of "which serves the public" and "is a place of public accommodation" within the meaning of §201(a) "if its operations affect commerce, or if discrimination or segregation by it is supported by State action." The covered establishments are:

> "(1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence";
>
> "(2) Any restaurant, cafeteria . . . [not here involved];

(3) Any motion picture house, etc. [not here involved];

(4) Any establishment . . . which is physically located within the premises of any establishment otherwise covered by this subsection . . . or within the premises of which is located any such covered establishment . . .[not here involved].

Section 201 (c) defines the phrase "affect commerce" as applied to the above establishments. It first declares that "any inn, hotel, motel, or other establishment which provides lodging to transient guests" affects commerce per se. Restaurants, cafeterias, etc., in the second class affect commerce only if they serve or offer to serve interstate travelers or a substantial portion of the food which they serve or products which they sell have moved in commerce." Motion picture houses and other places listed in class three affect commerce if they customarily present films, performances, etc. "which move in commerce." And the establishments listed in class (4) affect commerce if they are within, or include within their own premises, an establishment "the operationsof which affect commerce." Private clubs are excepted under certain conditions. See §201(e).

Section 201(d) declares that "discrimination or segregation" is supported by state action when carried on under color of any law, statute, ordinance, regulation or any custom or usage required or enforced by officials of the state or any of its subdivisions."

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In addition, § 202 affirmatively declares that all persons "shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof."

Finally § 203 prohibits the withholding or denial, etc., of any right or privilege secured by § 201 and § 202 or the intimidation, threatening or coercion of any person with the purpose of interfering with any such right or the punishing, etc., of any person for exercising or attempting to exercise any such right.

The remaining sections of the Title are remedial ones for violations of any of the previous sections. Remedies are limited to civil actions, including injunctive relief. The Attorney General may bring suit where he has "reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full enjoyment of any of the rights secured by this title."

Thirty days written notice before filing any such action must be given to the appropriate authorities of a state or subdivision the law of which prohibits the act complained of and which has established an authority which may grant relief therefrom. § 204(c). In states where such condition does not exist the court after a case is filed may refer it to the Community Relations Service which is established under Title X of the Act. § 204(d). This title establishes such service in the Department of Commerce, provides for a Director thereof to be appointed by the President with the advice and consent of the Senate and grants it certain power, including the holding of hearings, with reference to matters coming to its attention by reference from the court or between communities and persons involved in disputes arising under the Act.

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4. Application of Title II to Heart of Atlanta Motel.

It is admitted that the operation of the motel brings it within the provisions of § 201 (a) of the Act; that the motel refused to provide lodging for transcient Negroes because of their race or color and that it intends to continue that policy unless restrained;

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The sole question posed is, therefore, the constitutionality of the Civil Rights Act of 1964 as applied to these facts. Although the legislative history of the Act indicates that Congress based the Act on ~~Section~~ § 5 and ~~the~~ Equal Protection Clause~~s~~ of the Fourteenth Amendment as well as its power to regulate interstate commerce under Art~~icle~~ I, ~~Section~~ 8, ~~Clause~~ 3, of the Constitution, our detailed study of the entire proceedings points conclusively to the fact that Congress placed chief reliance upon its power "to regulate commerce . . . among the several states." This study, made in the light of our prior cases, has brought us to the conclusion that Congress possessed ample power in this regard, and we have therefore not considered the other grounds relied upon. This is not to say that the remaining authority upon which it acted was not ample, a question upon which we do not pass, but merely that since ~~it~~ the commerce power is sufficient for our decision here we have considered it alone.

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5. The Civil Rights Cases, 109 U. S. 3 (1883), and their Application.

In the light of this ground for our decision it might be well at the outset to discuss the Civil Rights Cases, supra, which declared unconstitutional provisions of the Civil Rights Act of 1875, 18 Stat. 335, 336, which were similar to Title II. These cases have been often cited as conclusive authority that the Act here is likewise unconstitutional. We think, however, that the cases are inapposite. It is true that in the 1875 Act the Congress prohibited discrimination in "inns, public conveyances on land or water, theaters, and other public places of amusement" but the Court did not have before it the issue here presented. There the power exercised by the Congress was the Equal Protection Clause of the Fourteenth Amendment

and, as the Court noted, the statute was "not conceived in any such view" as an exercise of the commerce power. This led to the Court's observation that "no one will contend that the power to pass it was contained in the Constitution before adoption of the last three Amendments" (13th, 14th, and 15th Amendments). And, as if to make certain its ground of decision, the Court included in its opinion this significant statement: at p. 18:

> "Of course, these remarks do not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such power to the states, as in the regulation of commerce with foreign nations, among the several states and with the Indian Tribes . . . . In these cases, Congress has power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereto." ~~At p. 18.~~

The fact that the Civil Rights Cases are inapposite here was made perfectly clear by this Court in Butts v. Merchants & Miners Trans. Co., 230 U. S. 126 (1913), where it was contended that the 1875 Act was constitutional when applied to a vessel engaged in commerce and under the exclusive admiralty jurisdiction of the United States. The Court held that the Civil Rights Cases received "no support from the power

of Congress to regulate interstate commerce because, as is shown by the preamble and by thei r terms, they were not enacted in the exertion of that power . . ." At 132. Perhaps the reason that the Congress did not so rely was because our populace had not reached its present mobility now present, nor were facilities, goods, and services circulating as readily ~~movable~~ moving in interstate commerce as they are today. It is said that the 1875 Act should have been tested against the commerce power despite the fact that ~~it was~~ the Congress did not predicate ~~upon~~ it thereon. But this overlooks the fact that the hearings, debate and reports on the 1875 Act were devoid of any indication that discrimination was burdening or ~~placing obstruction~~ obstructing to the free flow of commerce which would have been a necessary ingredient for the Court to consider the constitutionality of that Act under the commerce clause. We, therefore, conclude that the Civil Rights Cases have no relevance to the ~~EE~~ decision here where the Act not only explicitly relies upon the commerce power but the record is replete with obstructions and restraints ~~because of~~ resulting from the discrimination found to be existing. We now pass to that phase of the case.

6. The Basis of Congressional Action.

While the Act as adopted carried no Congressional findings the record of its passage through each House is replete with evidence of the burdens that discrimination by race or color places upon interstate commerce. See Hearings before Senate Committee on Commerce on S. 1732, 88th Cong., 1st Sess.; S. Rep. No. 872, supra; Hearings before Senate Committee on the Judiciary on S. 1731, 88th Cong., 1st Sess.; Hearings before House Subcommittee No. 5 on miscellaneous proposals regarding Civil Rights, 88th Cong., 1st Sess., ser. 4; H. R. Rep. No. 914, supra. This testimony included the fact that our people have become increasingly more mobile with millions of them of all races traveling from state to state; that Negroes in particular have been the subject of discrimination in transient accomodations, having to travel great distances to secure the same; that often they have been unable to obtain any accomodations whatever and have had to call upon friends to put them up over night, S. Rep. No. 872, at 14-22; and that these conditions had become so acute as to require the listing of available lodging for Negroes in a special guidebook which was itself "dramatic testimony of the difficulties" Negroes encounter in travel, Senate Commerce Hearings, at 692-94. These exclusionary practices were found to be nationwide, the Under-Secretary of Commerce testifying that there is "no question that this discrimination in the North still exists to a large degree" and in the West and Midwest

as well. Senate Commerce Hearings, at 735. This testimony indicated a qualitative as well as a quantitive effect on interstate travel by Negroes. The former was the obvious impairment of the Negro traveler's pleasure and convenience that results when he ~~constantly must be~~ continually is uncertain of finding lodging. As for the latter, there was evidence ~~that~~ that this uncertainty stemming from racial ~~segregation~~ discrimination has the effect of discouraging travel on the part of a substantial number of the Negro community. Senate Commerce Hearings, at 744. This conclusion was the not only ~~that~~ of the Under-Secretary of Commerce but also ~~that~~ of the Administrator of the Federal Aviation Agency who wrote the

Chairman of the Senate Commerce Committee that it was his "belief that air commerce is adversely affected by the denial to a substantial segment of the travelling public of adequate and desegregated public accommodations." [Senate Commerce Hearings, at 12-13.]

In addition the testimony indicated that business organizations are hampered in obtaining services from Negroes because of the discrimination, thus restricting the national labor force and preventing the allocation of national resources,

including the interstate movement of industries and the commercial expansion of business enterprises. It was also pointed out that conventions -- both for business and pleasure -- could not be held in some areas because of the discrimination in transient lodging accommodations. Senate Commerce Report at 17; Senate Commerce Hearings, at 696-697; Additional Views of Congressman McCullough, et al., ~~at p. 12~~ [attached to Report of House Judiciary Committee on H.R. 7152]. We shall not burden this opinion with further details since the voluminous testimony presents overwhelming evidence that discrimination by hotels and motels impedes interstate travel.

7. The Power of Congress Over Interstate Travel.

The power of Congress to deal with these obstructions depends on the meaning of the commerce clause. Its meaning was first enunciated 140 years ago by the great Chief Justice John Marshall in Gibbons v. Ogden, ~~9 Wheat. 1~~ (1824) in these words:

> "The subject to be regulated is commerce; and . . . to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities . . . but it is something more, it is intercourse . . . between

nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. [At 189.]

. . . .

"To what commerce does this power extend? The Constitution informs us, to commerce "with foreign nations, and among the several states, and with the Indian Tribes."

"It has, we believe, been universally admitted, that these words comprehend every species of commercial intercourse. . . . No sort of trade can be carried on . . . to which this power does not extend. [193-194.]

. . . .

"The subject to which this power is next applied, is "to commerce "among the several states." The word "among" means intermingled . . . It may very properly be restricted to that commerce which concerns more states than one . . . . The genius and character of the whole government seems to be, that its action is to be applied to all the . . . internal concerns [of the nation] which affect the states generally; but not to those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government." [At. 194-195.]

. . . .

"We are now arrived at the inquiry, what is this power?

"It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution. If, as has always been understood, the sovereignty of Congress . . . is plenary as to those objects, the power over commerce . . . is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints upon which the people must often rely solely, in all representative governments." [At p. 197.]

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In short, what the Great Chief is saying: The determinative test of the exercise of power by the Congress under the commerce clause is simply whether the activity sought to be regulated is "commerce which concerns more than one state" and, therefore, has a real and substantial relation to the national interest. Let us now turn to this facet of the problem.

That the "intercourse" of which the Chief Justice speaks included the movement of persons through more states than one was settled as early as 1878 in Hall v. De Cuir, 95 U. S. 485. Louisiana required all persons travelling in the state to be carried in the same cabin regardless of race or color. Chief Justice Waite in an opinion for the Court struck down this requirement as being a burden on commerce. He found commerce "immense" in the River Mississippi which passed through or along the borders of ten different states and was therefore of national concern. If States were permitted to enforce their own rules regarding segregation, commerce "could not flourish in the midst of such embarrassments." At 489. And in 1916 in Caminetti v. United States, 242 U. S. 470, Mr. Justice Day held for the Court:

> "The transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the Commerce Clause of the Constitution, and the authority of Congress to keep the channels of commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question." [At p. 491.]

Nor does it make any difference whether the transportation is commercial in character, Id., at 484-486. In Morgan v. Commonwealth of Virginia, 328 U. S. 373 (1946), Mr. Justice Reed observed as to the modern movement of persons among the states:

> "The recent changes in transportation brought about by the coming of automobiles does not seem of great significance in the problem. Peoples of all races travel today more extensively than in 1878 when this Court first passed upon state regulation of racial segregation in commerce." It but emphasizes the soundness of this Court's early conclusion in Hall v. De Cuir, 95 U. S. 485." [At p. 383.]

Nor has the interest of Congress in the correction of moral and social wrongs in interstate commerce been limited to segregation in interstate common carriers and the white slave traffic; but it has extended the exercise of its power to gambling, Champion v. Ames, 188 U. S. 321; to criminal enterprises, Brooks v. United States, 267 U. S. 432; to fraud in the sale of products, FTC v. Mandel Bros., 359 U. S. 385; to fraudulent security transactions, SEC v. Ralston

The same interest in protecting interstate commerce which led Congress to deal with segregation in interstate carriers and the white slave traffic has prompted it to extend the exercise of its power to gambling, Lottery Case, 188 U.S. 321 (1903); to criminal enterprises, Brooks v. United States, 267 U.S. 432(1925); to deceptive practices in the sale of products, FTC (Federal Trade Comm'n) v. Mandel Bros., 359 U.S. 385(1959); to fraudulent security transactions, SEC (Securities & Exchange Comm'n) v. Ralston Purina Co., 346 U.S. 119(1953); to misbranding of drugs, Weeks v. United States, 245 U.S. 618(1918); to wages and hours, United States v. Darby, 312 U.S. 100(1941); to members of labor unions, NLRB (Labor Board) v. Jones & Laughlin Steel Corp., 301 U.S. 1(1937); to crop control, Wickard v. Filburn, 317 U.S. 111(1942); to discrimination against shippers, United States v. Baltimore & Ohio R. Co., 333 U.S. 169(1948); to small business, Moore v. Mead's Fine Bread Co., 348 U.S. 115(1954); to resale price maintenance, Schwegmann v. Calvert Corp., 341 U.S. 384(1951); Hudson Dist'rs, Inc. v. Eli Lilly & Co., 377 U.S. 386(1964); to professional football, Radovich v. Nat'l Football League, 352 U.S. 445(1957); and to racial discrimination by owners and managers of terminal restaurants, Boynton v. Virginia, 364 U.S. 454(1960).

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to the protection of small business from injurious price cutting;

That Congress was legislating against moral wrongs in many of these areas rendered its enactments no less valid. In framing Title II of this Act Congress was also dealing with what it considered a moral problem. But that fact is irrelevant in view of the overwhelming evidence of the disruptive effect that racial discrimination has had on commercial intercourse. It was this burden which empowered Congress to enact appropriate legislation, and, given this basis for the exercise of its power, Congress was not restricted by the fact that the particular obstruction to interstate commerce with which it was dealing was also a moral and social wrong.

It is said that the operation of the motel here is of a purely local character. But, assuming this to be true, "if it is interstate commerce that feels the pinch, it does not matter how local the operation that applies the squeeze." United States v. Women's Sportswear Mfg. Assn., 336 U.S. 460, 464 (1949). See Labor Board v. Jones & Laughlin Steel Corp, supra. As Chief Justice Stone put it in United States v. Darby, supra:

> The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See McCulloch v. Maryland, 4 Wheat. 316, 421.

Thus the power of Congress to promote interstate commerce also includes the power to regulate the local incidents ~~XX~~ thereof, including local activities in both the states of origin and destination, which might have a substantial and harmful effect upon that commerce. One need only examine the evidence which we have discussed above to see that Congress may--as it has-- prohibit racial discrimination by motels serving travelers, however "local" their operations may appear.

Nor is there any merit in the contention that Title II is invalid because it requires motels to furnish lodging to Negroes traveling solely on interstate journies. To permit covered establishments to require proof of interstate status would perpetuate the very burden that the Act seeks to eliminate. Congress therefore had ample basis for extending coverage to include intrastate travelers. It is well settled that Congress may "choose [any] means reasonably adapted to the attainment of the permitted end," U.S. v. Darby, 312 U.S. 100, 121 (1941), and "necessary to effectuate its regulation of interstate commerce. See Shreveport Rate Cases, 234 U.S. 342(1914), It has acted well within that power in requiring that motels furnish accomodations to "transients." See Georgia v. United States, 201 F. Supp. 813, affirmed, 371 U.S. 9(1962).

Nor does the Act deprive appellant of liberty or property under the Fifth Amendment. The commerce power invoked here by the Congress is a specific and plenary one authorized by the Constitution itself. The only question is whether Congress acted arbitrarily and capriciously in finding that racial discrimination by motels affected commerce and whether the means used to eliminate such an evil are reasonable and appropriate. If they are appellant has no "right" to select its guests as it sees fit, free from governmental regulation.

~~Indeed~~, There is nothing novel about such legislation. Thirty-two states now have it on their books either by statute or executive order and many cities provide such regulation. Some of these acts go back four score years. It has been repeatedly held by this Court that such laws do not violate the due process clause of the Fourteenth Amendment.

Perhaps the first such holding was in the Civil Rights Cases, [redacted] themselves, where Mr. Justice Bradley for the Court inferentially found that innkeepers, "by the laws of all of the states, so far as we are aware, are bound to the extent of their facilities to furnish proper accommodations to all unobjectionable persons who in good faith apply

for them." At 25.

Since that time this Court has specifically approved such legislation against that attack. Colorado Anti-Discrimination Comm'n v. Continental Air Lines, Inc., 372 U.S. 714 (1963); Bob-Lo Excursion Co. v. Michigan, 333 U.S. 28 (1949); Railway Mail Assn. v. Corsi, 326 U.S. 88 (1945)." The authority of the Federal Government over interstate commerce does not differ," it was held in United States v. Rock Royal Coop., 307 U.S. 533 (1939), "in extent or character from that retained by the states over intrastate commerce." At 569-570. Also see Bowles v. Willingham, 321 U.S. 503 (1944).

It is doubtful if in the long run appellant will suffer economic loss as a result of the Act. Experience is to the contrary where discrimination is completely obliterated as to all public accommodations. But whether this be true or not is of no consequence since this Court has specifically held that the fact that a "member of the class which is regulated may suffer economic losses not shared by others . . . . has never been a barrier" to such legislation. Bowles v. Willingham, supra, at 518. Likewise in a long line of cases this Court has

rejected the claim that the prohibition of racial discrimination in public accommodations interferes with personal liberty. See District of Columbia v. John R. Thompson Co., 346 U. S. 100 (1953), and cases there cited, where we concluded that Congress had delegated law-making power to the District of Columbia "as broad as the police power of a state" "which included the power to adopt" "a law prohibiting discrimination against Negroes by the owners and managers of restaurants in the District of Columbia." At 110. Neither do we find any merit in the claim that the Act is a taking of property without just compensation. The cases are to the contrary. See Legal Tender Cases, 12 Wall. 457, 551 (1870); Omnia Commercial Co. v. United States, 261 U.S. 502 (1923); United States v. Central Eureka Mining Co., 357 U.S. 155 (1958).

We do not find no merit in the remainder of appellant's contentions, including that of "involuntary servitude." As we have seen, thirty-two states prohibit racial discrimination in public accommodations. These laws but codify the common-law innkeeper rule which long predated the Thirteenth Amendment. It is difficult to

believe that the Amendment was intended to abrogate this principle. Indeed, the opinion of the Court in The Civil Rights Cases is to the contrary as we have seen, it having noted with approval the laws of "all of the states" prohibiting discrimination. We could not say that the requirements of the Act in this regard are in any way "akin to African slavery." Butler v. Perry, 240 U.S. 328, 332 (1916).

We, therefore, conclude that the action of the Congress in the adoption of the Act as applied here is within the power granted it by the commerce clause of the Constitution, as interpreted by this Court for 140 years. It may be argued that Congress could have pursued other methods to eliminate the obstructions it found in interstate commerce caused by racial discrimination. But this is a matter of policy that rests entirely with the Congress not with the courts. How obstructions in commerce may be removed -- what means are to be employed -- are within the sound and exclusive discretion of the Congress. It is subject only to one caveat--that the means chosen by it must be reasonably adopted to the end permitted by the Constitution. We cannot say that its choice here was not so adopted. The Constitution requires no more.

Affirmed.

Appendix A.

FOOTNOTES

F. "Title II -- Injunctive Relief Against Discrimination in Places of Public Accommodation

SEC. 201. (a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A) (i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) The operations of an establishment affect commerce within the meaning of this title if (1) it is one of the establishments described in paragraph (1) of subsection (b); (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b), it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section,

"commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this title if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, ~~xxxx~~ or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) The provisions of this title shall not apply to a ~~bona~~ fide private club or other establishment not open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

in fact

L&S caps

SEC. 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

Same

SEC. 203. No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 201 or 202, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 201 or 202, or (c) punish or attempt to punish any person for ~~xxxxx~~ exercising or attempting to exercise any right or privilege secured by section 201 or 202.

same

SEC. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action. Upon application by the complainant

if he certifies that the case is of general public importance.

and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) In any action commenced pursuant to this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) In the case of an alleged act or practice prohibited by this title which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a): Provided, That the court may refer the matter to the Community Relations Service established by title X of this Act for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: Provided further, That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

SEC. 205. The Service is authorized to make a full investigation of any complaint referred to it by the court under section 204(d) and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

SEC. 206. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any

of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

SEC. 207. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this title shall be the exclusive means of enforcing the rights ~~hereby created~~, but nothing in this title shall preclude any individual or any State or local agency from asserting any right ~~created by~~ any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

based on this title

based on

2. The following states have enacted public accomodation laws:

[PRINTER: Insert attached section marked in red here.]

4. In 1963 the Governor of Kentucky issued an executive order requiring all governmental agencies involved in the supervision or licensing of businesses to take all lawful action necessary to prevent racial discrimination.