

Supreme Court of the United States  
Washington 25, D. C.

CHAMBERS OF  
JUSTICE POTTER STEWART

November 24, 1964

Re: No. 515 - Heart of Atlanta Motel, Inc.

*all incorporated*

Dear Tom,

I am in substantial agreement with your thorough and well-reasoned opinion in this case. There is, however, one small portion which gives me pause. As I read Part V of the opinion, on pages 8 and 9, there is an implication that the Court must confine itself, in scrutinizing Acts of Congress, to the particular part of the Constitution upon which Congress seemed to rely in enacting the legislation. This impression is strongest in your discussion of the Civil Rights Cases and the statement quoted from Butts. I had thought that, despite the language in Butts, an Act of Congress must be upheld wherever any provision of the Constitution can support congressional power to enact it (unless it violates a specific constitutional command). That was the approach the Court took in Perez v. Brownell, to cite just one example.

In order to give specificity to my thoughts, I enclose a draft suggesting the kind of language I have in mind to eliminate the implication which causes me concern in Part V. If you find such a change in emphasis unacceptable, I can, of course, write a short separate concurrence, but I'd much prefer to join your excellent opinion for the Court.

Sincerely yours,

*Potter*

Mr. Justice Clark