He withdrew this — [for our files only]

SUPREME COURT OF THE UNITED STATES

Nos. 515 AND 543.—OCTOBER TERM, 1964.

Heart of Atlanta Motel, Inc., Appellant, v. United States et al.	On Appeal From the United States District Court for the Northern District of Georgia.
Nicholas deB. Katzenbach, Acting Attorney General, et al., Appellants, v. Ollie McClung, Sr., and Ollie McClung, Jr.	On Appeal From the United States District Court for the Northern District of Alabama.

[December —, 1964.]

MR. JUSTICE GOLDBERG, concurring.

I join in the opinions and judgments of the Court, since I agree "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," *Heart of Atlanta Motel, Inc.* v. *United States*, at 19. I also agree that there is no occasion here to define either the constitutional or statutory scope of the "state action" provision of § 201 (d), since this provision has not been invoked by the Government in either case in support of its claim, which has been asserted solely under § 201 (c).[1]

There is no need, however, to underemphasize the inescapable fact that the primary purpose of the Civil Rights Act of 1964 is the vindication of human dignity and not

[1] See my concurring opinion in *Bell* v. *Maryland*, 378 U. S. 226, 286, where I set forth my views on the scope of the Fourteenth Amendment.

mere economics. The Senate Commerce Committee made this quite clear:

> The primary purpose of . . . [the Civil Rights Act], then, is to solve this problem, the deprivation of personal dignity that surely accompanies denials of equal access to public establishments. Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color. It is equally the inability to explain to a child that regardless of education, civility, courtesy, and morality he will be denied the right to enjoy equal treatment, even though he be a citizen of the United States and may well be called upon to lay down his life to assure this Nation continues. [S. Rep. No. 872, 88th Cong., 2d Sess., 16.]

Moreover, that this is the primary purpose of the Act is emphasized by the fact that while § 201 (c) speaks only in terms of "affecting commerce," it is clear that Congress based this section not only on its power under the Commerce Clause but also on § 5 of the Fourteenth Amendment.[2] The cases cited in the Court's opinions

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[2] Hearings in Congress as well as statements by administration spokesmen show that the original bill, presented by the administration, was so based even though it contained no clause which resembled § 201 (d) or which even mentioned "state action." See, *e. g.*, Hearings before Senate Committees on Commerce on S. 1732, 88th Cong., 1st Sess., 203, 23, 27–28, 57, 74, 132–134, 145–168, 230, 247–248, 250, 252, 253, 256, 259; Hearings before Senate Judiciary Committee on S. 1731, 88th Cong., 1st Sess., 151, 152, 187; Hearings before House Committee on the Judiciary on H. R. 7152, 88th Cong., 1st Sess., 1396, 1410, 2693, 2699–2700; S. Rep. No. 872, 88th Cong., 1st Sess., 2. The later addition of § 201 (d) did not remove the dual Commerce Clause-Fourteenth Amendment support from the rest of the bill, for those who added this clause did not intend thereby to bifurcate

are conclusive that Congress could exercise its powers under the Commerce Clause to accomplish this purpose. As § 201 (c) is undoubtedly a valid exercise of the Commerce Clause power for the reasons stated in the opinion of the Court, it is unnecessary to consider whether it is additionally supportable by Congress' exertion of its power under § 5 of the Fourteenth Amendment.

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its constitutional basis. Section 201 (d) was added, first, in order to make certain that the Act would cover all or almost all of the situations as to which this Court might hold that § 1 of the Fourteenth Amendment applied. Senator Hart stated that not to do so would "embarrass Congress because . . . the reach of the administration bill would be less inclusive than the Court-established right." Hearings before Senate Commerce Committee, *supra*, at 256. See also *id.*, at 259–262. Second, the sponsors of § 201 (d) were trying to make more clear the Fourteenth Amendment basis of Title II. See, *e. g.*, Hearings before the House Committee, *supra*, at 1413–1416. There is no indication that they thought the inclusion of § 201 (d) would remove the Fourteenth Amendment foundation of the rest of the title. Third, the history of the bill after provisions similar to § 201 (d) were added contains references to the dual foundation of all Title II provisions before us. See *id.*, at 1396, 1410, 2693, 2699–2700; Cong. Rec., Feb. 4, 1964, 1846–1848.