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.
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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.
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[November —, 1964.]

Mr. Justice Black, concurring.

In the first of these two cases the Heart of Atlanta Motel, a large motel in downtown Atlanta, Georgia, appeals from an order of a three-judge United States District Court for the Northern District of Georgia enjoining it from continuing to violate Title II of the Civil Rights Act of 1964[1] by refusing to accept Negroes as lodgers solely because of their race. In the second case the Acting Attorney General of the United States and a United States Attorney appeal from a judgment of a three-judge United States District Court for the Northern District of Alabama holding that Title II cannot constitutionally be applied to Ollie's Barbecue, a restaurant in Birmingham, Alabama, which serves few if any interstate travelers but which buys a substantial quantity of food which has moved in interstate commerce. It is undisputed that

[1] 78 Stat. 241, — U. S. C. §— (Supp. — 1964); Title II is found at 78 Stat. ———, — U. S. C. §§——— (Supp. — 1964).

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

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From: Goldberg, J.

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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.

The primary purpose of the Civil Rights Act of 1964, however, as the Court recognizes, is the vindication of human dignity and not 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

both establishments had and intended to continue a policy against serving Negroes. Both claimed that Congress had exceeded its constitutional powers in attempting to compel them to use their privately owned businesses to serve customers whom they did not want to serve.

The most immediately relevant parts of Title II of the Act, which, if valid, subject this motel and restaurant to its requirements are set out below.[2] The language of that Title shows that Congress in passing it intended to exercise—at least in part—power granted in the Constitu-

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[2] Section 201 of the Act, 78 Stat. 241, 243, — U. S. C. § — (Supp. — 1964) provides in part:

"(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;

. . . . .

"(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; . . . .

> 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.* The cases cited in the Court's opinions

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*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)—the so-called "state action" provision—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 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

tion by Art. I, § 8, "To regulate Commerce . . . among the several States . . . ." Thus § 201 (b) of Title II by its terms is limited in application to a motel or restaurant of which the "operations affect [interstate] commerce, or if discrimination or segregation by it is supported by State action." [3] The "State action" provision need not concern us here since there is no contention that Georgia or Alabama has at this time given any support whatever to these establishments' racially discriminatory practices. The basic constitutional question decided by the courts below and which this Court must now decide is whether Congress exceeded its powers to regulate interstate commerce and pass all laws necessary and proper to such regulation in subjecting either this motel or this restaurant to Title II's commands that applicants for food and lodging be served without regard to their color. And if the regulation is otherwise within the congressional commerce power, the motel and the restaurant proprietors further contend that it would be a denial of due process under the Fifth Amendment to compel them to serve Negroes against their will.[4] I agree that all these constitutional contentions must be rejected.

I.

It requires no novel or strained interpretation of the Commerce Clause to sustain Title II as applied in either of these cases. At least since *Gibbons* v. *Ogden*, 9 Wheat.

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[3] This last definitional clause of § 201 (b) together with § 202 show a congressional purpose also to rely in part on § 1 of the Fourteenth Amendment, which forbids any State to deny due process or equal protection of the laws. There is no contention in these cases that Congress relied on the fifth section of the Fourteenth Amendment granting it "power to enforce, by appropriate legislation, the provisions of" the Amendment.

[4] The motel also argues that the law violates the Thirteenth Amendment's prohibition of slavery or involuntary servitude and takes private property for public use without just compensation, in violation of the Fifth Amendment.

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, the Court considers that it is unnecessary to consider whether it is additionally supportable by Congress' exertion of its power under § 5 of the Fourteenth Amendment.

In my concurring opinion in *Bell* v. *Maryland*, 378 U. S. 226, 317, however, I expressed my conviction that "Congress [has] authority under § 5 of the Fourteenth Amendment, or under the Commerce Clause, Art. I, § 8, to implement the rights protected by § 1 of the Fourteenth Amendment. In the give-and-take of the legislative process, Congress can fashion a law drawing the guidelines necessary and appropriate to facilitate practical administration and to distinguish between genuinely public and private accommodations." The challenged Act is just such a law and, in my view, Congress clearly had authority both under § 5 of the Fourteenth Amendment and the Commerce Clause to enact the Civil Rights Act of 1964.

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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.

1, decided in 1824 in an opinion by Chief Justice John Marshall, it has been uniformly accepted that the power of Congress to regulate commerce among the States is plenary, "complete in itself, may be exercised to the utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." 9 Wheat., at 196–197. Nor is "Commerce" as used in the Commerce Clause to be limited to a narrow, technical concept. It includes not only, as Congress has enumerated in the Act, "travel, trade, traffic, commerce, transportation, or communication," but also all other unitary transactions and activities that take place in more States than one. That some parts or segments of such unitary transactions may take place only in one State cannot, of course, take from Congress its plenary power to regulate them in the national interest.[5] The facilities and instrumentalities used to carry on this commerce, such as railroads, truck lines, ships, rivers, and even highways are also subject to congressional regulation, so far as is necessary to keep interstate traffic upon fair and equal terms. *The Daniel Ball*, 10 Wall. 557.

Furthermore, it has long been held that the Necessary and Proper Clause, Art. 1, § 8, adds to the commerce power of Congress the power to regulate local instrumentalities operating within a single state if their activities burden the flow of commerce among the States. Thus in the *Shreveport Case, Houston, E. & W. T. R. Co.* v. *United States*, 234 U. S. 342, 353–354, this Court recognized that Congress could not fully carry out its responsibility to protect interstate commerce were its constitutional power to regulate that commerce to be strictly limited to prescribing the rules for controlling the things actually moving in such commerce or the contracts, trans-

will put in body

[5] Compare *United States* v. *South-Eastern Underwriters Assn.*, 322 U. S. 533; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 35; *Swift & Co.* v. *United States*, 196 U. S. 375, 398.

actions, and other activities, immediately concerning them. Regulation of purely intrastate railroad rates is primarily a local problem for state rather than national control. But the *Shreveport Case* sustained the power of Congress under the Commerce Clause and the Necessary and Proper Clause to control purely intrastate rates, even though reasonable, where the effect of such rates was found to impose a discrimination injurious to interstate commerce. This holding that Congress had power under these clauses, not merely to enact laws governing interstate activities and transactions, but also to regulate even purely local activities and transactions where necessary to foster and protect interstate commerce, was amply supported by Mr. Justice (later Mr. Chief Justice) Hughes' reliance upon many prior holdings of this Court extending back to *Gibbons* v. *Ogden*, *supra*.[6] And since the *Shreveport Case* this Court has steadfastly followed, and indeed has emphasized time and time again, that Congress has ample power to protect interstate commerce from activities adversely and injuriously affecting it, which but for this adverse effect on interstate commerce would be beyond the power of Congress to regulate.[7]

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[6] "The genius and character of the whole government seems to be that its action is to be applied to all the external concerns of the Nation, and to those internal concerns which affect the States generally; but not to those which are within a particular State, *which do not affect other States, and with which it is not necessary to interfere.*" *Gibbons* v. *Ogden*, *supra*, 9 Wheat., at 195. (Emphasis supplied.)

[7] See, *e. g.*, *Labor Board* v. *Reliance Fuel Corp.*, 371 U. S. 224; *Lorain Journal Co.* v. *United States*, 342 U. S. 143; *United States* v. *Women's Sportswear Manufacturers Assn.*, 336 U. S. 460; *United States* v. *Sullivan*, 332 U. S. 689; *Wickard* v. *Filburn*, 317 U. S. 111; *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110; *United States* v. *Darby*, 312 U. S. 100; *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U. S. 334. See also *Southern R. Co.* v. *United States*, 222 U. S. 20.

Congress in § 201 declared that the "operation" of a motel of more than five rooms for rent or hire does adversely affect interstate commerce if it "provides lodging to transient guests . . ." and that restaurant "operation" affects such commerce if (1) "it serves or offers to serve interstate travelers" or (2) "a substantial portion of the food which it serves . . . has moved in commerce." Congress thus described the nature and extent of operations which it wished to regulate, excluding some establishments from the Act either for reasons of policy or because it believed its powers to regulate and protect interstate commerce did not extend so far. There can be no doubt that the operations of both the motel and the restaurant here fall squarely within the measure Congress chose to adopt in the Act and deemed adequate to show a constitutionally prohibitable adverse effect on commerce. The choice of policy is of course within the exclusive power of Congress; but whether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court. I agree that as applied to this motel and this restaurant the Act is a valid exercise of congressional power, in the case of the motel because the record amply demonstrates that its practice of discrimination tended directly to interfere with interstate travel, and in the case of the restaurant because Congress had ample basis for concluding that a widespread practice of racial discrimination by restaurants buying as substantial a quantity of goods shipped from other States as this restaurant buys could distort or impede interstate trade.

The Heart of Atlanta Motel is a large 216-room establishment strategically located in relation to Atlanta and interstate travelers. It advertises extensively by signs

along interstate highways and in various advertising media. As a result of these circumstances 75% of the motel guests are transient interstate travelers. It is thus an important facility for use by interstate travelers who travel on highways, since travelers in their own cars must find lodging places to make their journeys comfortably and safely.

The restaurant is located in a residential and industrial section of Birmingham, 11 blocks from the nearest interstate highway. Almost all, if not all, its patrons are local people rather than transients. It has seats for about 200 customers and annual gross sales of about $350,000. Most of its sales are of barbecued meat sandwiches and pies. Consequently, the main commodity it purchases is meat, of which during the 12 months before the District Court hearing it bought $69,683 worth (representing 46% of its total expenditures for supplies), which had been shipped into Alabama from outside the State. Plainly, 46% of the goods it sells is a "substantial" portion and amount. Congress concluded that restaurants which purchase a substantial quantity of goods from other States might well burden and disrupt the flow of interstate commerce if allowed to practice racial discrimination, because of the stifling and distorting effect that such discrimination on a wide scale might well have on the sale of goods shipped across state lines. Certainly this belief would not be irrational even had there not been a large body of evidence before the Congress to show the probability of this adverse effect.[8]

The foregoing facts are more than enough, in my judgment, to show that Congress acting within its discretion and judgment has power under the Commerce Clause and

[8] See, *e. g.*, Hearings Before the Committee on Commerce on S. 1732, U. S. Senate, 88th Cong., 1st Sess., Part 2, Ser. 27, pp. 18, 623–630., 695–700, 1384–1385.

the Necessary and Proper Clause to bar racial discrimination in the Heart of Atlanta Motel and Ollie's Barbecue. I recognize that every remote, possible, speculative effect on commerce should not be accepted as an adequate constitutional ground to uproot and throw into the discard all our traditional distinctions between what is purely local, and therefore controlled by state laws, and what affects the national interest and is therefore subject to control by federal laws. I recognize too that some isolated and remote lunch room which sells only to local people and buys almost all its supplies in the locality may possibly be beyond the reach of the power of Congress to regulate commerce, just as such an establishment is not covered by the present Act. But in deciding the constitutional power of Congress in cases like the two before us we do not consider the effect on interstate commerce of only one isolated, individual, local event, without regard to the fact that this single local event when added to many others of a similar nature may impose a burden on interstate commerce by reducing its volume or distorting its flow. *Labor Board* v. *Reliance Fuel Corp.*, 371 U. S. 224; *Wickard* v. *Filburn, supra*, at —; *United States* v. *Darby, supra*, at —; *Labor Board* v. *Fainblatt*, 306 U. S. 601; Cf. *Hotel Employees Local No. 255* v. *Leedom*, 358 U. S. 99. There are approximately 20,000,000 Negroes in our country.[9] Many of them are able to, and do, travel among the States in automobiles. Certainly it would seriously discourage such travel by them if, as evidence before the Congress indicated has been true in the past,[10] they should in the future continue to be unable to find a decent place along their way in which to lodge or eat. Cf. *Boynton* v. *Virginia*, 364 U. S. 454. And the flow of

[9] Bureau of the Census, 1963 Statistical Abstract of the United States, 29 (18,872,000 Negroes by 1960 census).

[10] See, *e. g.*, Sen. Rep. No. 872, 88th Cong., 2d Sess., 15–18.

interstate commerce may be impeded or distorted substantially if local sellers of interstate food are permitted to exclude all Negro consumers. Measuring, as this Court has so often held is required, by the aggregate effect of a great number of such acts of discrimination, I am of the opinion that Congress has constitutional power under the Commerce and Necessary and Proper Clauses to protect interstate commerce from the injuries bound to befall it from these discriminatory practices.

Long ago this Court, again speaking through Mr. Chief Justice Marshall, said:

> "Let the end be legitimate—within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *M'Culloch* v. *Maryland*, 4 Wheat. 316, 421.

By this standard Congress acted within its power here. In view of the Commerce Clause it is not possible to deny that the aim of protecting interstate commerce from undue burdens is a legitimate end. In view of the Thirteenth, Fourteenth and Fifteenth Amendments, it is not possible to deny that the aim of protecting Negroes from discrimination is also a legitimate end.[11] The means

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[11] We have specifically upheld the power of Congress to use the commerce power to end racial discrimination. *Boynton* v. *Virginia*, 364 U. S. 454; *Henderson* v. *United States*, 339 U. S. 816; *Mitchell* v. *United States*, 313 U. S. 80; cf. *Bailey* v. *Patterson*, 369 U. S. 31; *Morgan* v. *Virginia*, 328 U. S. 373. Compare cases in which the commerce power has been used to advance other ends not entirely commercial: *e. g.*, *United States* v. *Darby*, 312 U. S. 100 (Fair Labor Standards Act); *United States* v. *Miller*, 307 U. S. 174 (Federal Firearms Act); *Gooch* v. *United States*, 297 U. S. 124 (Federal Kidnaping Act); *Brooks* v. *United States*, 267 U. S. 432 (Federal Stolen Car Act); *United States* v. *Simpson*, 252 U. S. 465 (Act forbidding

adopted to achieve these ends are also appropriate, plainly adopted to achieve them and not prohibited by the Constitution but consistent with both its letter and spirit.

II.

The restaurant and motel proprietors argue also, however, that Congress violated the Due Process Clause of the Fifth Amendment by requiring that they serve Negroes if they serve others. This argument comes down to this: that the broad power of Congress to enact laws deemed necessary and proper to regulate and protect interstate commerce is practically nullified by the negative constitutional commands that no person shall be "deprived of life, liberty, or property, without due process of law" and that private property shall not be "taken" for public use without just compensation. In the past this Court has consistently held that regulation of the use of property by the Federal Government or by the States does not violate either the Fifth or the Fourteenth Amendments. See, *e. g., Ferguson* v. *Skrupa,* 372 U. S. 726; *District of Columbia* v. *John R. Thompson Co.,* 346 U. S. 100; *Village of Euclid* v. *Ambler Realty Co.,* 272 U. S. 365; *Nebbia* v. *New York,* 291 U. S. 502. A regulation such as that found in Title II does not even come close to being a "taking" in the constitutional sense. Cf. *United States* v. *Central Eureka Mining Co.,* 357 U. S. 155. And a more or less vague clause like the requirement for due process, originally meaning "according to the law of the land" is a highly inappropriate provision to invalidate a "law of the land" enacted by Congress under

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shipment of liquor into a "dry" State); *Caminetti* v. *United States,* 242 U. S. 470 (Mann Act); *Hoke* v. *United States,* 227 U. S. 308 (Mann Act); *Hipolite Egg Co.* v. *United States,* 220 U. S. 45 (Pure Food and Drug Act); *Lottery Case,* 188 U. S. 321 (Act forbidding interstate shipment of lottery tickets).

a clearly granted power like that to regulate interstate commerce. Moreover, it would be highly ironical to use the guarantee of due process—a guarantee which plays so important a part in the Fourteenth Amendment, an amendment adopted with the predominant aim of protecting Negroes from discrimination—in order to strip Congress of power to protect Negroes from discrimination.[12]

III.

For the foregoing reasons I concur in holding that the anti-racial-discrimination provisions of Title II of the Civil Rights Act of 1964 are valid as applied to this motel and restaurant. I should add that nothing in the *Civil Rights Cases*, 109 U. S. 3, which invalidated the Civil Rights Act of 1875,[13] gives the slightest support to the argument that Congress is without power under the Commerce Clause to enact the present legislation, since in the *Civil Rights Cases* this Court expressly left undecided the validity of such antidiscrimination legislation if rested on the Commerce Clause. See 109 U. S., at 19; see also *Butts* v. *Merchants & Miners Transp. Co.*, 230 U. S. 126, 132. Nor does any view expressed in my dissenting opinion in *Bell* v. *Maryland*, 378 U. S. 226, 318, in which MR. JUSTICE HARLAN and MR. JUSTICE WHITE joined, affect this conclusion in the slightest, for that opinion stated only that the Fourteenth Amendment in and of itself, without implementation by a law passed by Congress, does not bar racial discrimination in privately owned places of business in the absence of state action. The opinion did not discuss the power of Congress under the Commerce and Necessary and Proper Clauses or under

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[12] The motel's argument that Title II violates the Thirteenth Amendment is so insubstantial that it requires no further discussion.

[13] 18 Stat. 335, 336.

section 5 of the Fourteenth Amendment to pass a law forbidding such discrimination. See 378 U. S., at 318, 326, 342–343 and n. 44. Because the Civil Rights Act of 1964 as applied here is wholly valid under the Commerce Clause and the Necessary and Proper Clause, there is no need to consider whether this Act is also constitutionally supportable under section 5 of the Fourteenth Amendment which grants Congress "power to enforce, by appropriate legislation, the provisions of this article."