SUPREME COURT OF THE UNITED STATES

No. 543. --October Term, 1964.

Nicholas deB. Katzenbach, As Acting Attorney General of the United States, et al., Appellants, v. Ollie McClung, Sr., et al.	)	Appeal from the United States District Court for the Northern District of Alabama.

[December , 1964.]

MR. JUSTICE CLARK delivered the opinion of the Court.

This case was argued with No. 515, Heart of Atlanta Motel v. United States, et al., decided this date, and in which we have upheld the constitutional validity of Title II of the Civil Rights Act of 1964 from an attack by hotels, motels and like establishments. This complaint for injunctive relief against appellants attacks the Act from the standpoint of a restaurant, known as Ollie's Barbecue and situated in Birmingham, Alabama. The Act places restaurants under its proscription if the restaurant's discriminatory practice is supported by state action, as defined therein, or if

it serves or appears to serve interstate travelers or a substantial portion of the food which it serves has moved in interstate commerce. The case was heard by a three-judge United States District Court and the injunction was issued restraining appellants from enforcing the Act against the restaurant. _____ F. Supp. _____. On direct appeal, 28 U. S. C. 1212, 1253, we noted probable jurisdiction. _____ U. S. _____. We now reverse the judgment.

1. The Motion to Dismiss.

The appellants moved in the District Court to dismiss the complaint for want of equity jurisdiction and that claim is pressed here. The ground is that no threat of enforcement against the appellees is present here nor is there any allegation of irreparable injury. It is true that ordinarily equity will not interfere in such cases. However, we might consider this complaint to be an application for a declaratory judgment under 28 U. S. C. § 2201 and § 2202. While in declaratory judgment actions, Rule 57 of the

Federal Rules of Civil Procedure permits declaratory relief even though another adequate remedy exists, it should not be granted where a special statutory proceeding has been provided. See Advisory Committee Notes on Rule 57. Title II provides a statutory proceeding for the determination of rights and duties thereunder. § 201. Courts should, therefore, ordinarily exercise their discretion in such cases against the exercise of jurisdiction.

The present case, however, is in a unique position. The interference with governmental action has occurred and the constitutional question is before us in the companion case of Heart of Atlanta Motel as well as in this case. It is important that a decision on the constitutionality of the Act as applied in these cases be announced as quickly as possible. For these reasons, we have concluded, with the above caveat, that the denial of discretionary declaratory relief is not required here.

2. The Facts.

Ollie's Barbecue is a family operated restaurant

specializing in barbecued meats and homemade pies, with a capacity for some 220 customers. It is located on a state highway some eleven blocks from an interstate one and at a somewhat greater distance from the railroad and bus stations. The restaurant caters to a family and white collar trade with a take-out service for Negroes. It employs 36 persons, two-thirds of whom are Negroes.

In the twelve months preceding the passage of the Act, the restaurant purchased locally approximately $150,000 worth of food, 55% of which was meat ($69,783). The meat It was bought from the local branch of a packing concern and all of it came from without the State. The District Court found that a substantial portion of the food served in the restaurant had moved in interstate commerce.

The restaurant has refused to serve Negroes in its dining accommodations since its original opening in 1927. The District Court found that, if The Restaurant it was required to abandon do so, its racial discrimination policy the restaurant would lose a substantial amount of business and that, since July 2, 1964, it had been operating in violation of the Act.

On the merits, the District Court held that the Act could not be applied under the Fourteenth Amendment because it was conceded that the State of Alabama was not involved in the refusal of the restaurant to serve Negroes. It was also admitted that the Thirteenth Amendment was neither authority for nor prohibitory of the Act. As to the Commerce Clause, the Court found that it was "an express grant of power to Congress to regulate interstate commerce which consists of the movement of persons, goods or information from one State to another"; and ~~it found that the Clause was also a grant of power~~ FURTHER THAT THIS POWER EMBRACED THE RIGHT "to regulate intrastate activities, but only to the extent that action on its part is necessary or appropriate to the effective execution of its expressly granted power to regulate interstate commerce." There must be, it said, a close and substantial relation between local activities and interstate commerce which requires control of the former in the protection of the latter. The court concluded, however, that the Congress, rather than finding facts sufficient to meet this rule, legislated a conclusive presumption that the

restaurant business did affect interstate commerce, if it serves or offers to serve interstate travelers or a substantial portion of the food which it serves had moved in commerce. It found no rational connection between the substantial amounts of food purchased in interstate commerce and served in the restaurant and the conclusion of Congress that interstate commerce was affected thereby. It, therefore, struck down the Act and issued the restraints prayed for.

The basic holding in Heart of Atlanta Motel, supra, answers many of the contentions made by the appellees.[1/] There we outlined the overall purpose and operational plan of Title II and found it a valid exercise of the power to regulate interstate commerce as applied to hotels and motels. In this case we consider its application to restaurants which serve the general public or receive a substantial portion of the food served from other States.

1/ That opinion disposes of the challenges here that are based on the Fifth, Ninth, Tenth and Thirteenth Amendments; and, as well, the inappositeness of the Civil Rights Cases, 109 U. S. 3 (1883).

3. The Act As Applied.

Section 201(a) of Title II commands that all persons shall be entitled to the full and equal enjoyment of the goods and services of any place of accommodation without discrimination or segregation on the ground of race, color, religion or national origin; and § 201(b) defines the establishments which are places of public accommodation if their operations affect commerce or segregation by them is supported by state action; §§ 201(b)(2) and (c) place any "restaurant . . . principally engaged in selling food for consumption on the premises" under the Act "if . . . it serves or offers to serve interstate travelers or a substantial portion of the food which it serves . . . has moved in commerce."

Ollie's Barbecue admits that it is covered by these provisions of the Act. The Government admits that the discrimination at the restaurant was not supported by the State of Alabama. There is no proof that interstate travelers frequented the restaurant. The sole question, therefore, narrows down to whether Title II, as applied to a restaurant

receiving about $70,000 worth of the food which it sells from interstate commerce, is a valid exercise of the power of Congress to regulate that commerce. We conclude that Congress had ample basis upon which to find that racial discrimination in restaurants which purchase from outside the State a substantial portion of the food served does place substantial burdens upon interstate commerce. And, even though they are not themselves in interstate commerce, the Act is an appropriate regulation of such restaurants under the Commerce Clause to relieve those burdens and obstructions found to exist in interstate commerce and to foster, encourage and promote it.

4. Evidence Supporting Conclusion of Congress that Racial Discrimination in Restaurants Burdens Interstate Commerce.

The record before Congress is replete with testimony of both the direct and indirect burden placed on interstate commerce by racial discrimination in restaurants. On the former, a schedule of per capita spending of Negroes in restaurants, theaters and like establishments indicated less

spending, after discounting income differences, in areas practicing discrimination. The condition was especially aggravated in the South and was attributed to discrimination. See Senate Commerce Hearings at 695. This direct link between discrimination and commerce is the result of a reduction in the number of potential customers caused by a refusal of Negro patronage, which reduces the quantity of goods purchased through interstate channels. This "artificial restriction on the market" inferferes with the flow of merchandise. Senate Commerce Hearings at 18-19; testimony of Senator Magnuson, 110 Cong. Rec. 7174. Not only is it axiomatic that established restaurants sell less but many new businesses are not opened because of the lean market resulting from the exclusionary practice.

Viewed in isolation, the volume of food purchased by Ollie's Barbecue from out-of-state sources would have little effect upon the total foodstuff moving in interstate commerce. But the $70,000 volume purchase by this one

establishment is not conclusive. As we said in Labor Board v. Reliance Fuel Corp., 371 U.S. 224, 226: "Appropriate for judgment is [also] the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce." The evidence is that racial discrimination in restaurants is widespread, not confined to a single State or region but a nationwide problem. Testimony of _____ Wilkins. Moreover, discriminatory practices in one restaurant quickly spread to other restaurants. And, in this day of "have money, will travel," one city's discriminatory practicd quickly spreads to others. Therefore, when it created the individual restaurant's link to interstate commerce through the receipt of interstate goods in substantial proportions, it was entirely appropriate that Congress judge the importance of that link as part of a complex and interrelated national pattern. As our late Brother Jackson said for the Court in Wickard v. Filburn, 317 U.S. 111 ( ):

> That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with many others similarly situated, is far from trivial. At pp. 127-128.

Moreover, the record before the Congress was filled with testimony showing that racial discrimination in restaurants was a prolific source of disputes burdening and obstructing commerce. Current events make plain that these disputes -- largely arising over restaurants following discriminatory practices -- have become of incredible proportions. The testimony indicated that during one period covering barely over two months in 1963, there were 639 demonstrations in 174 cities in 32 States and the District of Columbia. Hearings, Committee on Judiciary, U.S. Senate, 88th Cong., 1st Sess. on S. 1731, p. 216. In the eleven-month period prior to April 1964, there were 2422 racial demonstrations, 850 of which arose from disputes about discrimination in places of public accommodation. 110 Cong. Rec. 7980. The Mayor

of Atlanta testified that "[f]ailure by Congress to take definite action at this time . . . would start the same old round of squabbles and demonstrations that we have had in the past." Report of the Committee on Commerce, U. S. Senate, on S. 1732, No. 872, 88th Cong., 2d Sess.

Our cases show that the most immediate impact on restaurants and lunch counters has come from sit-in demonstrations. During the past 18 months, _____ such cases have been filed here. These sit-ins prevent the conduct of business entirely and usually result in temporary closing. This results, of course, in the elimination of purchases of out-of-state supplies. But the testimony indicated much more showing "that discrimination in public accommodations and demonstrations protesting such discrimination have had serious consequences for general business conditions in numerous cities in recent years." Hearings before the Committee on Commerce, U. S. Senate, 88th Cong., 1st Sess., on S. 1732, Part 2, Ser. 27 at 699. Retail sales in Birmingham were off 30% during the protest riots and a

Negro boycott in the spring of 1963. The Federal Reserve Bank showed during a 4-week period of 1963 that department store sales were down 15% over the same period of 1962. During the same period, sales were up in cities suffering no such incidents. Atlanta suffered a somewhat similar experience [12% reduction] "after several months of intermittent demonstrations in 1960-1961. In Savannah, lunch counter demonstrations in downtown stores cut retail sales as much as 50% in some places." In the fall of 1962, Charlotte, North Carolina, was "hit by drives for desegregation of public accommodations" cutting business down from 20 to 40 percent. In Nashville, a seven-week boycott was 98% efficient. Senate Commerce Hearings at 700.

These general downturns in retail business, sparked largely by racial discrimination in eating places, if left unchecked, might well result in a serious disruption of the flow of interstate commerce. No sales means no purchases, which directly affects the movement of out-of-state supplies.

As Congressman McCulloch, one of the managers of the bill in the House, observed, "a local disturbance can affect the commerce of an entire State, region and the country." Additional Views of Congressman McCulloch, et al., Report of the House Judiciary Committee, 88th Cong., 1st Sess., No. 914, Part 2, on H. R. 7152 at p. 12.

During this rapidly expanding situation, Congress was not required to wait the total obstruction of commerce. As was said in Consolidated Edison Co. v. Labor Board, 305 U.S. 197 ( ):

> But it cannot be maintained that the exertion of federal power must await the disruption of that commerce. Congress was entitled to provide reasonable preventive measures and that was the object of the National Labor Relations Act. At p. 222.

5. The Power to Regulate Interstate Commerce Extends to Local Activities Whose Regulation is Appropriate to Protect that Commerce.

Article I, Section 8, Clause 3, confers upon Congress the power "To regulate commerce . . . among the several

States" and Clause 18 of the same Article grants it the power "To make all laws which shall be necessary and proper for carrying into execution the foregoing Powers . . ." This grant, as we have pointed out in Heart of Atlanta Motel "extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make the regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce." United States v. Wrightwood Dairy Co., 315 U.S. 110, 119 ( ). Much is said about a restaurant business being local but "even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce . . . ." Wickard v. Filburn, supra, at 125.

In the light of the Commerce Clause those activities that are beyond the reach of Congress are "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 exercising some of the general powers of the government." Gibbons v. Ogden, 9 Wheat. 1, 195 (1824). This rule is as good today as it was when Chief Justice Marshall laid it down almost a century and a half ago.

This Court has held time and time again that this power extends to activities of retail establishments, including restaurants, which directly or indirectly burden or obstruct interstate commerce. We have detailed the cases in Heart of Atlanta Motel, supra, and will not repeat them here.

Nor are the cases holding that interstate commerce ends when goods come to rest in the state of destination apposite here. That line of cases has been applied with reference to state taxation or regulation but not in the field of federal regulation. Federal power extends to those activities which though outside

the stream of interstate commerce still substantially affect it. Much reliance is placed upon United States v. Yellow Cab Co., 332 U. S. 218 (1947). One phase of the case had to do with services rendered by local taxicabs (in the normal course of their general taxi service) to people going between their homes and railroad stations preparatory to going upon or returning from interstate journeys. All the Court held was that this taxi service was not "a constituent part of the interstate movement" of passengers, (at p. 232), that is, the taxis were not themselves instrumentalities of interstate commerce. In this case we have an entirely different situation, somewhat analogous to an example used by the Court in Yellow Cab, supra, namely, that federal power would extend to an activity preventing transportation to and from railway stations where interstate journeys begin and end. At. 233. Here racial discrimination at the end of the journey is preventing the movement of supplies in interstate commerce.

4. Congress Has Exercised its Plenary Power to Regulate.

We conclude that Congress finding[1] a close relationship between racial discrimination and the free flow of commerce exercised its power to eliminate such obstructions. Rather than exerting its full power it restricted its use to those restaurants offering to serve or serving interstate customers or those in which a substantial portion of the food served had moved through interstate channels. We believe that sufficient showing has been made that this regulation is reasonably adapted to the promotion of the flow of interstate commerce. But even though this not be true, still this regulation would be valid for this Court has held on numerous occasions that federal power extended to the control of imported interstate goods, the distribution of which might be deleterious to the community. We have listed these cases in Heart of Atlanta Motel, supra. It is

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1. The absence of formal findings has no bearing upon the validity of a statute. See United States v. Carolene Products Co., 304 U. S. 144, 152 (19).

sufficient to say here that the restauranteur who racially discriminatee in his service and whose food or supplies come in substantial proportions from out of the state is using interstate commerce to perpetuate what Congress has found to be evil, i. e., racial discrimination in places of public accommodations. The power to regulate in such a case might be said not to depend so much upon the importation of the g food as upon the power of Congress to prohibit the use of the channels of interstate commerce as a tool to carry on the evil it has condemned. We have held that it may completely close the channels of interstate commerce to those using out-of-state goods to pursue an injurious practice; a fortiorari it can forbid the use of the goods in the practice itself.

Objection is made that there is no provision for determining--either administratively or judicially--that Ollie's Barbecue itself in carrying on racial discrimination affects commerce. The short answer is that Congress itself determined that racial discrimination in such establishments--when viewed in the light of the thousands of restaurants in the United States-- does create such a danger to interstate commerce.

With that fact established the only remaining question is whether the particular restaurant involved either serves or offers to serve interstate customers or receives goods from out of the state in substantial proportions to its total supply. In statutes such as the Act here Congress has left it to the courts to determine whether the intrastate activities have the prohibited effect on commerce [Sherman Act]; in others it has left such a determination to an administrative board [Interstate Commerce Act, Federal Trade Commission, National Labor Relations Board]; and often it makes that determination for itself [Safety Appliance Act, Railway Labor Act, Fair Labor Standards Act, FELA, Jones Act]. It has done the latter here. And as the Court said in United States v. Darby, supra,

> "In passing on the validity of legislation of the class last mentioned the only function of the courts is to determine whether the particular activity regulated or prohibited is within the reach of federal power." At 121.

The Fair Labor Standards Act is a parallel to the Act here. There the determination by the Congress that the payment of substandard

wages to employees engaged in the production of goods for interstate commerce is the basis for its action. Wages as such is not itself commerce, but may well obstruct and burden commerce to such an extent as to require ~~x~~ regulation. The Congress resolved that question, leaving only for determination whether particular goods were produced for commerce.

The power of the Congress in this field is broad and sweeping; where it keeps within its sphere and violates no express constitutional limitation it has been the rule of this Court, going back almost to the founding days of the Republic, not to interfere. The Civil Rights Act of 1964 we find to be plainly appropriate in the resolution of what the Congress found to be a national commercial problem of the first magnitude. We find it in no violation of any express limitations of the Constitution and we therefore declare it valid.

The judgment is therefore

Reversed.