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~~ against an attack by hotels, motels, and like establishments.

This complaint for injunctive relief against appellants attacks the constitutionality of the Act as applied to ~~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~~ aut

it serves or ~~appears~~ offers 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 an 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 grounds are that the Act authorizes only preventive relief; that there has been no threat of enforcement against the appellees and that they have alleged no irreparable injury. It is true that ordinarily equity will not interfere in such cases. However, we might consider this complaint as ~~though it were~~ an application for a declaratory judgment under 28 U.S.C. §§ 2201 and 2202. In this case, of course, direct appeal to this Court would still lie under 28 U.S.

C. § 1252. But although 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 Notes of Advisory Committee on Rule 57, 28 U.S.C. App. § 5178. Title II provides for such a statutory proceeding for the determination of rights and duties arising thereunder, §§ 204-207, and courts should, therefore, ordinarily refrain from exercising their jurisdiction in such cases.

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 in Birmingham, Alabama,

specializing in barbecued meats and homemade pies, with a capacity [seating] of 220 customers. It is located on a state highway eleven blocks from an interstate one and a somewhat greater distance from 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, [$69,783 or 46%] of which was meat that it bought from a local supplier who had procured it from outside the State. The District Court expressly 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, and since July 2, 1964, it has been operating in violation of the Act. [The court below concluded] that if it were required to serve Negroes it would lose a substantial amount of business.

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 neither for validating nor for invalidating the Act. ~~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 "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, had legislated a conclusive presumption that a

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.

This, the court held, it could not do because there was no demonstrable connection between food purchased in interstate commerce and sold in a restaurant and the conclusion of Congress that discrimination in the restaurant would affect that commerce.

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 insofar as it requires hotels and motels to serve transients without regard to their race or color. In this case we consider its application to restaurants which serve food a substantial portion of which has moved in commerce.

1/ That decision disposes of the challenges that the appellees base on the Fifth, Ninth, Tenth and Thirteenth Amendments, and on 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 public 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. Sections 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 concedes 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 food which has moved in commerce is a valid exercise of the power of Congress.

The Government has contended that Congress had ample basis upon which to find that racial discrimination at restaurants which receive from out of state a substantial portion of the food served does, in fact, impose commercial burdens of national magnitude upon interstate commerce. The appellee's major argument is directed to this premise; they urge that no such basis existed. It is to that question that we now turn.

4. Evidence of the Impact of Racial Discrimination ~~in Restaurants on Interstate Commerce~~.

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

spending, after discounting income differences, in areas where discrimination is widely practiced. The condition, which was especially aggravated in the South, and was attributed in the testimony of the Under Secretary of Commerce to racial segregation. See Hearings before the Senate Commerce Committee on S. 1732, 88th Cong., 1st Sess., 695. A direct relationship between discrimination and commerce was pointed out, based upon the reduction in the number of potential customers caused by a general refusal of Negro patronage. This reduction would, in turn, reduce the quantity of goods purchased through interstate channels. S. Rep. No. 872, at 19; Senate Commerce Hearings, at 207. Moreover, the Attorney General testified that this type of discrimination imposed "an artificial restriction on the market" and interfered with the flow of merchandise. Senate Commerce Hearings, at 18-19; see testimony of Senator Magnuson, 110 Cong. Rec. 7174. With this evidence before it, Congress had sufficient grounds for concluding that under these conditions, not only would established restaurants sell less, but many new businesses might not be opened due to the decrease in demand resulting from these exclusionary practices.

Perhaps more impressive

Back To here for now

Here

~~Congress~~ was the testimony showing that racial discrimination in restaurants was a prolific source of disputes indirectly burdening and obstructing commerce. Current events render plain the fact that these disputes--largely arising over restaurants following a policy of discriminatory practices--have ~~become of huge~~ assumed enormous proportions. The testimony indicated that during one period in 1963 covering ~~barely~~ slightly more than two months ~~in 1963~~, there were 639 demonstrations in 174 cities in 32 States and the District of Columbia. Hearings before the ~~Judiciary~~ Senate Judiciary Committee on S. 1731, 88th Cong., 1st Sess., 216. In the ~~eleven~~-month period prior to April, 1964, there were ~~2422~~ 2,422 racial demonstrations, 850 of which arose from disputes about discrimination in places of public accomodation. 110 Cong. Rec. 7980. The Mayor of Atlanta, Georgia, 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." S. Rep. No. 872, at 866.

Our cases show, as does the congressional record, that the most immediate impact upon restaurants and lunch counters has come in the form of sit-in demonstrations. Twenty-seven such cases have been filed here as of late, and we are advised that over 3000 are pending in the lower courts.

No 9 These sit-ins often result in temporary closings and on many occasions prevent the conduct of business entirely. Their effect ~~therefore~~ is to ~~XXXXXXXXX~~ decrease purchases of out-of-state food, thus justifying the legislative ~~and Congress who just-~~ ~~ified in receiving~~ decision to tie the coverage of the Civil Rights Act to the substantial use of that food.

Viewed in isolation, the volume of food purchased by Ollie's Barbecue from sources ~~which obtained it~~ supplied from out of state ~~might~~ appears insignificant when compared with the total foodstuffs moving in commerce. But, as our late Brother Jackson said for the Court in Wickard v. Filburn, 317 U.S. 111 (1942):

> 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 the federal regulation where, as here, his contribution, taken together with many others similarly situated, is far from trivial. [At 127-128.]

This principle takes on added significance in view of the further testimony ~~before the Congress. It was pointed out~~ that racial discrimination by one restaurant in a city encouraged the practice throughout the area because of the ~~fear of the~~ other proprietors' fear ~~who wants to serve all customers~~ of the competitive advantage ~~to be~~ gained by the segregated restaurant in increased white trade. Senate Commerce Hearing, at 206. Thus, had

Congress limited the coverage of the Act to those large restaurants which clearly cater to interstate patrons there would have existed a very real danger of injury to interstate commerce resulting from this competitive disadvantage. We ~~have already~~ noted in Heart of Atlanta Motel? that a number of witnesses attested the fact that racial discrimination XX was not merely a State or regional problem but was one of nationwide scope. Against this background, we must conclude that while the ~~focus of Congress legislative~~ focus of the legislation was on the individual restaurant's relation to interstate commerce, Congress ~~it~~ appropriately considered the importance of that connection with the knowledge that the discrimination and resulting threat of disturbances at one restaurant was but "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." Polish Alliance v. Labor Board, 322 U.S. 643~~(1944)~~, 648(1944).

But ~~even so,~~ the testimony indicated much more, showing that "discrimination in public accomodations and demonstrations protesting such discrimination have had serious consequences for general business conditions in numerous cities in recent years." Senate Commerce Hearings, 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 experienced a somewhat similar effect (12% reduction) "after several months of intermittent demonstrations in 1960-1961." Senate Commerce Hearings, at 699. 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 accomodations" cutting business down from 20% to 40% ~~per cent~~. In Nashville, a seven-week boycott was 98% effective. Senate Commerce Hearings, at 700.

These general downturns in retail business, sparked largely by racial demonstrations in eating places, if left unchecked, might well result in a serious disruption of the flow of interstate commerce. This impact, of course, ~~would~~ is not ~~be~~ limited solely to the purchase of interstate food; ~~rather it would~~ but extends to the purchase of goods for resale generally, having ~~No sales, Congress could have rationally meant~~ no purchases, and this would have an immediate and adverse effect on interstate commerce. 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,

H.R. Rep. No. 914, pt. 2, at 12.

In addition there was an impressive array of evidence stressing the less apparent effect of community unrest, caused by discrimination in public places, upon the convention trade, Sen. Rep. No. 848, at 17, and underscoring Further emphasis was placed on the reluctance of industry, professional personnel and skilled labor to move into areas of extreme racial tension. Sen. Rep. No. 848, at 18-19.

With this situation spreading as it was, Congress was not required to await the total dislocation of commerce. As was said in Consolidated Edison Co. v. Labor Board, 305 U.S. 197 (1938):

> 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 222.]

5. The Power of Congress to Regulate Local Activities.

Art. I, Sec. 8, Cl. 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 (1942). 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~~ The 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, [22 U.S. (9 Wheat.) 1, ~~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.~~

The appellees contend that Congress has arbitrarily created a conclusive presumption that all restaurants meeting the criteria set out in the Act "affect commerce." Stated another way, they object to the omission of ~~they argue that the failure of Congress~~ a provision for a case-by-case determination[1] ~~to provide for a case-by-case determination~~ ~~either~~ judicially or administratively[1] that racial discrimination in a particular restaurant affects commerce. ~~renders the Act invalid.~~

But Congress' action in framing this Act was not unprecedented. In United States v. Darby, 312 U.S. 100 (1941), this Court held constitutional the Fair Labor Standards Act.[2] There Congress determined that the payment of substandard wages to employees engaged in the production of ~~XXXXXXXXX~~ goods for commerce, while not itself commerce, so inhibited it as to be subject to federal regulation. The appellees in that case argued, as do the appellees here, that the Act was invalid because it included no provision for an independent inquiry regarding the affect on commerce of ~~as to whether~~ substandard wages in a particular business, ~~affected commerce.~~ (Brief for Appellee, ~~No. 88, Oct.~~ pp. 76-77,

[2] 52 Stat. 1060, 29 U.S.C. § 201 et seq.

United States v. Darby, 312 U.S. 100, Term 1940, at 76-77.] But the Court rejected the argument, observing that:

> [S]ometimes Congress itself has said that a particular activity affects the commerce, as it did in the present Act, the Safety Appliances Act and the Railway Labor Act. In passing on the validity of legislation of the class last mentioned the only function of courts is to determine whether particular activity regulated or prohibited is within the reach of the federal power. [At 120-121.]

Similarly, under the National Labor Relations Act, the Board is empowered to prevent unfair labor practices and resolve questions of representation affecting commerce. But the inquiry of the Board goes only to the extent of the employer's involvement in interstate commerce; it makes no case-by-case determination of whether an unfair labor practice in a particular shop might prompt a dispute which would curtail orders or shipments. Thus, in Labor Board v. Reliance Fuel Co., supra, we reversed a court of appeals decision setting aside a determination of the Board for ~~XXXXXXX~~ "lack of findings on the manner in which a labor dispute at Reliance affects or tends to affect commerce." Congress found, in passing that Act,

that the denial of certain ~~XXXX~~ rights to employees by some employers had the "necessary effect" of burdening or obstructing commerce." We held, therefore, that the jurisdictional test was met when the Board found that solely by virtue of its purchases from Gulf, Reliance's operations and the unfair labor practices there involved "affected commerce."

Here, as there, Congress has determined for itself that refusals of service to Negroes have imposed ~~XXXXXX~~ burdens both upon the interstate flow of food and upon the movement of products generally. Of course, the mere fact that Congress has said when particular activity shall be deemed to affect commerce does not preclude further examination by this Court. But where we find that the legislators, in light of the facts and testimony before them, have a rational basis for finding ~~XXXXXX~~ a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end. ~~Once that determination has been made, as we now make it here,~~ the only remaining question---one answered in the affirmative by the court below---is whether the particular restaurant either serves or offers to serve interstate travelers or serves food a substantial portion of which has moved

in interstate commerce.

The appellees urge that Congress, in passing the Fair Labor Standards Act and the National Labor Relations Act, made specific findings which were embodied in these statutes. Here, of course, Congress has included no formal findings. But the absence of such findings has no bearing on the validity of the statute. United States v. Carolene Products, 304 U.S. 144, 152 (1938). [illegible]

Confronted as we are with the facts laid before Congress, we must conclude that it had a rational basis for finding that racial discrimination in restaurants [illegible] had a direct and adverse affect on the free flow of food products in interstate commerce. Moreover, we find an adequate ground for this legislation in the evidence of the indirect but no less harmful effect on commerce resulting from the boycotts, demonstrations and general community unrest generated by racial discrimination in public eating places. Indeed, we think that

3/ 49 Stat. 449, as amended, 29 U.S.C. § 151 et seq.

Congress acted well within its power to protect and foster commerce in extending the coverage of Title II only to those restaurants offering to serve interstate travelers or serving food, a substantial portion of which has moved in interstate commerce.

More to come.

But even though this not be true, still this regulation would be valid for this Court has held that federal power extends to the control of imported interstate goods, the distribution of which might be deleterious to the community. McDermott v. Wisconsin, 228 U.S. 115 (1913); Sullivan v. United States, 332 U.S. 689 (1948). Nor is there any requirement that the goods must be in and of themselves harmful. It is sufficient if the manner in which they are used perpetuates some evil which Congress seeks to eliminate. In United States v. Darby, 312 U.S. 100 (1941), it was argued that lumber manufactured by underpaid employees did not come within the category of noxious goods theretofore denied the use of interstate channels, i.e., But the Court rejected the contention. Noting that Congress could follow its own conception of public policy concerning the restrictions that might be placed on interstate commerce, it held that it was free to exclude those articles "whose use in the states for which they are destined, it may conceive to be injurious to the public health, morals, and welfare...." (Emphasis supplied.) [At 114.] Moreover, the Court noted that the regulation was not forbidden merely because the motive of Congress was to restrict the use of certain articles within the states of destination; the motive and purpose of

behind the Act were matters solely for the legislative judgment and the methods chosen to achieve those purposes were entirely valid because they came within the plenary power granted Congress under the Commerce Clause.

This is not to say that Congress may arbitrarily place any restriction upon an establishment simply because it receives interstate goods. But where there is a functional relationship between the interstate shipment of goods and the perpetuation of the practice sought to be prohibited Congress acts within its power in conditioning the use of those channels in order to eliminate the practice.

It is sufficient to say that the restaurateur who racially discriminates in his service and whose food originates out-of-state is using interstate commerce to perpetuate what Congress has found to be evil. The power to regulate in such a case depends not so much upon the causal relationship between racial discrimination and its inhibiting affect on the interstate shipment of food as upon the power of Congress to deny the benefit of that commerce as a tool for carrying on the evil it has condemned.

Admittedly, in framing this Act Congress has not expressly prohibited the use of interstate facilities to restaurateurs practicing racial discrimination. But the obvious effect

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.