The Act places restaurants under its proscription if its discriminatory practice is supported by state action, as defined therein, or if it serves or offers to serve interstate travelers or a substantial portion of the food which it serves has moved in interstate commerce.

No 543 Nicholas deB Katzenbach, Acting Attorney General et al appellants

v.

Ollie McClung Sr et al - appellees

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 ~~§ 201(b)(1)~~ hotels, motels and like establishments. This complaint for injunction attacks the Act from the standpoint of a restaurant, ~~§ 201(b)(2)~~, known as Ollie's Barbecue and situated in Birmingham Alabama. The case was heard by a three judge United States District Court and the appellants were enjoined from enforcing the Act against the restaurant. [— F Supp —.] On direct appeal, 28 USC 1252, 1253, we noted probable jurisdiction, — US —. We now reverse the judgment.

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 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). 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.

I. 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 the complaint to be an application for a declaratory judgment under 28 USC §2201 and §2202. ~~This is especially true where the enforcement of a statute is concerned and adequate remedy is available when and if the government proceeds thereunder.~~ 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. ~~does not permit a declaration "if a special statutory proceeding has been provided" [illegible] the 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 ~~already~~ 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.

since its original opening in 1947.

The restaurant has refused to serve Negroes in its dining accommodations. The District Court found that if it were required to do so 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 14th 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 13th 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 "to regulate intra-state 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 for 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 intrastate commerce was opposed thereby.

It, however, struck down the Act and issued the restraints prayed for.

The basic holding in Heart of Atlanta Motel, supra, answers most of the contentions made by the appellees. However, some questions arising out of the congressional test as to activities "affecting commerce" require comment. We believe that the District Court erred in concluding that [on the record before it the Congress had enacted a conclusive presumption in that regard.