

through interstate commerce - 8 -

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 designed to relieve those burdens and obstructions found to exist in interstate commerce and to foster, encourage and promote it.

re do this

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 where practicing discrimination ^{is widely practiced.} The condition was especially

aggravated in the South and was attributed to discrimination. ^{in the testimony of the US of C}

Hearings Before Senate Committee on Commerce on See, Senate Commerce Hearings, at 695. ^A This direct link S. 1732

between discrimination and commerce ^{was indicated} is the result of a ^{88th Cong. 1st Sess 695}

in the reduction in the number of potential customers caused by a

refusal of Negro patronage, which ^{a reduction which, in turn} reduces the quantity of goods purchased through interstate channels. This "arti-

ficial restriction on the market" ^{The AG also testified that this type} interferes with the flow of merchandise. ^{of discrimination} Senate Commerce Hearings at 18-19; testi-

mony of Senator Magnuson, 110 Cong. Rec. 7174. ^{Boardman} Not only ^{Such evidence} Congress could have taken note is it axiomatic that established restaurants sell less but ^{of the fact that under these} many new businesses are not opened because of the lean ^{conditions} 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

Give full cite first time
revise

They have
was evidence
flat conclusion

Such evidence
is axiomatic
that under these
conditions

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.

Charge

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 practiced quickly spreads to others.

No-

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 ():

Not sure I understand this!
Although Congress argued this provision the restaurant's link to I.C. through the receipt

cc

This entire section on "direct" vs. burden could be kept

own to a
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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.

As to the indirect burden of racial segregation on commerce

Moreover, the record before the Congress was filled with testimony showing that racial discrimination in restaurants was a prolific source of disputes, ^{indirectly} burdening and obstructing commerce. Current events make plain that these disputes

-- largely arising over restaurants following discriminatory practices -- have become of ^{huge} 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. Hear-

ings, 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

cite right

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 ^{as had evidence before Congress} 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 ^{often} 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 ^{food} supplies. ^{This justified tying coverage to movement of food.} 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

for emphasis
Bingo!

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.

This impact, of course, is not limited to the movement of food.