

spending, after discounting income differences, in areas where discrimination is widely practiced. The ^{is} condition — ~~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 link between discrimination and commerce was indicated in the reduction of the number of potential customers caused by a general refusal of Negro patronage, a reduction which, in turn, would reduce the quantity of goods purchased through interstate channels. 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; testimony of Senator Magnuson, 140 Cong. Rec. 7174. Based on such evidence Congress could have taken notice of the fact 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.

Hearings

Perhaps even more impressive in the record before

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 ^{assumed} of huge proportions. The testimony indicated that during one period covering barely more than two months in 1963, there were 639 demonstrations in 174 cities in 32 States and the District of Columbia. Hearings before the ~~XIX~~ Senate Judiciary Committee ^{on S. 1731} 88th Cong., 1st Sess. 216. In the eleven-month period prior to April, 1964, there were ~~24~~22 racial demonstrations, 850 of which arose from disputes about discrimination in places of public accommodation. 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 ____.

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. During the past 18 months, ____ such cases have been filed here. These sit-ins often prevent the conduct of bus-

Business entirely and usually result in temporary closings. This result^s, of course, in the elimination of purchases of out-of-state food, and therefore justified the Congress' decision to tie 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 have shipped it from out of State in ~~XXXXXXXXXXXXXXXXXXXX~~ would have little effect on the total foodstuff moving in interstate commerce. But the \$70,000 worth purchased by this one establishment is not conclusive. As we said in Labor Board v. Reliance Fuel Co., 371 U.S. 224, 226 (): "Appropriate for judgment is [also] the fact that the immediate situation is representative of many others throughout the country, ~~XXXXXX~~ the total incidence of which if left unchecked may well become far-reaching in its harm to commerce."

The evidence is ^{of discriminatory practices} that ~~discrimination~~ in restaurants was ~~XXXXXXXXXXXX~~ not confined to a single State or region; rather, it was ^{shown to be} widespread and presented a nationwide problem. Senate Commerce Hearings, at _____. Discrimination in one restaurant ~~XX~~ in one city, viewed in light of the national scope of the practice, is not unrelated to discrimination in distant localities. Thus, while Congress focussed on

not saying evidence was widespread?

the individual restaurant's link to interstate commerce through its purchases of food passing in that commerce, it was entirely appropriate that it judge the importance of this link as a 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 the federal regulation where, as here, his contribution, taken together with many others similarly situated, is far from trivial. [At 127-128.]

But even so, 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." 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. 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 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 not be limited solely to the purchase of interstate food; rather it would extend to the purchase of goods for resale generally. No ^{retail} sales, Congress could have found, means no ^{wholesale} purchases, ^{resulting in} 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.

With this situation spreading as it was, Congress was not required to await 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 222.]