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Constitutional Law - Discrimination in Public Accomodations

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The Court correctly held that the two provisions were complementary rather than inconsistent, and that the more general amendment did not repeal the nearly absolute terms of the import-export clause insofar as intoxicating liquors are concerned.[26]

Alex Williams Rankin

CONSTITUTIONAL LAW—DISCRIMINATION IN PUBLIC ACCOMMODATIONS

The constitutionality of the public accommodations section of the Civil Rights Act of 1964[1] as applied to a motel and a restaurant was attacked in two recent Supreme Court cases. In the first case, plaintiff, owner of a motel serving out-of-state guests but refusing to rent rooms to Negroes, asked for declaratory and injunctive relief and contended that in passing the act Congress exceeded its power to regulate commerce and that the act resulted in a taking of liberty and property without the due process of law guaranteed by the fifth amendment in that plaintiff was deprived of the right to choose his customers and operate his business as he wished. The defendant counterclaimed for enforcement. The district court sustained this section of the act and issued a permanent injunction restraining plaintiff from further violation of the act. On appeal, the Supreme Court affirmed. *Held,* there was a rational basis for Congress to conclude that discrimination in lodging establishments has such an adverse effect on interstate commerce as to make it a proper object of congressional regulation under the commerce clause. *Heart of Atlanta Motel v. United States,* 379 U.S. 241 (1964).

In the second case, plaintiff, operator of a family-owned restaurant catering to local family and white-collar trade, refused to serve Negroes. The restaurant did not serve transient guests, but forty-six percent of food purchased had been procured from out of state. Plaintiff asked for injunctive relief and attacked the constitutionality of the public accommodations section as applied to his restaurant on the ground that

26. Since judicial interpretation appears settled at the present, it seems that those states that wish to constitutionally tax foreign liquor should attempt to obtain congressional consent for such an imposition. Under the import-export clause, a statute by Congress would be sufficient.

1. 78 Stat. 243 (1964), 42 U.S.C. § 2000a (1965).

Congress did not have a rational basis for finding that racial discrimination in restaurants in which a substantial portion of the food served was procured from out of state imposed a burden upon interstate commerce. The district court granted injunctive relief on the ground that no connection was shown between food purchased in interstate commerce and sold in a restaurant and the congressional conclusion that discrimination in such restaurants would affect commerce. On appeal, the Supreme Court reversed. *Held,* Congress had a rational basis for concluding that discrimination in restaurants procuring a substantial amount of food in interstate commerce has a sufficient effect on interstate commerce to justify regulation by Congress under the commerce clause. *Katzenbach v. McClung,* 379 U.S. 294 (1964).

The only prior cases dealing with attempted congressional regulation of public accommodations were the *Civil Rights Cases,*[2] which arose under the Civil Rights Act of 1875.[3] This act was based upon the thirteenth and fourteenth amendments rather than the commerce power and was held invalid as the fourteenth amendment applies to state action only and not to individual activities. The Act of 1964, on the other hand, is based upon the power of Congress to regulate commerce between the states, and the power to make all laws necessary and proper for carrying into effect the powers vested in Congress by the Constitution. The use of the commerce clause as the legal basis for the act permits regulation of individual activities without the need for finding state action.

The pertinent provision of the Act of 1964 states that all persons shall be entitled to the full enjoyment of places of public accommodation without discrimination or segregation because of race.[4] Generally, a place of public accommodation comes within the meaning of the act if its operations affect commerce or if discrimination by it is supported by state action.[5] In par-

2. 109 U.S. 3 (1883).

3. Civil Rights Act of 1875, ch. 114, § 1, 18 Stat. 335.

4. 78 Stat. 243 (1964), 42 U.S.C. § 2000a(a) (1965): "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."

5. *Ibid., id.* at (b): "Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce, or if discrimination or segregation by it is supported by state action."

ticular, a lodging establishment is included if it serves transient guests,[6] and a restaurant is included if it serves interstate travelers or if a substantial portion of the food it serves has moved in commerce.[7]

In the *Civil Rights Cases*,[8] Justice Bradley stated that "no one will contend that the power to pass it [the Act of 1875] was contained in the Constitution before the adoption of the last three amendments"[9] (thirteenth, fourteenth and fifteenth), yet, less than a century later, the commerce clause was relied upon to support legislation similar to that attempted in 1875. This was possible because the commerce clause has been expanded, through judicial interpretation, to embrace almost all activities which exert some influence on interstate commerce.[10] The courts will not uphold regulation of purely local activities,[11] that is, those completely within a particular state that do not affect other states.[12] However, the activity governed need not be substantial, since a large number of small effects will exert a great influence,[13] nor is it necessary that the activity have a direct connection with commerce.[14] Guided by these principles, the Court has held that the amount of wheat a farmer may grow for his own consumption,[15] the activities of a night-

6. *Ibid.*, *id.* at (b) (1): "[A]ny inn, hotel, motel, or other establishment which provides lodging to transient guests."

7. *Ibid.*, *id.* at (c) (2): "[I]t serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce."

8. 109 U.S. 3 (1883).

9. *Id.* at 10.

10. See United States v. Women's Sportswear Mfg. Ass'n, 336 U.S. 460 (1949); Wickard v. Filburn, 317 U.S. 111 (1942); United States v. Darby, 312 U.S. 100 (1941); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); Caminetti v. United States, 242 U.S. 470 (1917); Champion v. Ames, 188 U.S. 321 (1903).

11. See Wickard v. Filburn, 317 U.S. 111 (1942); Houston, E. & W. Texas Ry. v. United States, 234 U.S. 342 (1914); Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824).

12. See Houston, E. & W. Texas Ry. v. United States, 234 U.S. 342 (1914); Wabash, St. Louis & Pac. Ry. v. Illinois, 118 U.S. 557 (1886); The Daniel Ball, 77 U.S. (10 Wall.) 557 (1870); Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824).

13. Wickard v. Filburn, 317 U.S. 111, 127 (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 federal regulation where as here, his contribution, taken together with that or many other similarly situated, is far from trivial."

14. *Id.* at 125: "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, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect'."

15. See Wickard v. Filburn, 317 U.S. 111 (1942). Appellee marketed wheat in excess of his marketing quota and the Court held that he must pay the penalty prescribed by the Agricultural Adjustment Act even though the amount of excess

watchman of a manufacturing plant,[16] and the services of an independent window washing company for an industrial concern[17] had sufficient influence upon interstate commerce to bring them within the scope of regulation. Moreover, the movement of persons from one state to another,[18] including noncommercial movement,[19] has been held to be encompassed within the commerce power. In addition, activity which is not in itself commerce has been regulated when it produces an effect on commerce, regardless of the source of the effect.[20]

In *Heart of Atlanta*,[21] the motel was subject to the Civil Rights Act under the provision that a motel which discriminates among transient guests adversely affects interstate commerce.[22] The court in rebutting the argument that the act violated the requirement of due process, relied upon congressional findings that such discrimination had the effect of "discouraging travel on the part of a substantial portion of the Negro community,"[23] and that this effect also extended to air travel. The contention that Congress was legislating against a social and moral wrong was given no weight, since the Court will not inquire into the motives behind legislation once it is found that Congress has the power to regulate. There is support in the jurisprudence for this rule, for previously legislation which standing alone would have been invalid has been upheld when the activity to be regulated was found to have an effect on interstate commerce.[24]

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wheat was trivial. The Court reasoned that by growing the excess the appellee would purchase less wheat and further that many such insignificant amounts would, when taken together, produce a great effect on the wheat market.

16. See Walton v. Southern Package Corp., 320 U.S. 540, 543 (1944). Here a night watchman was employed by a manufacturer of lumber shipped in interstate commerce. Although not directly concerned with the manufacturing process the court said that he had that "close and immediate tie with the process of production for commerce," so as to bring him under the provisions of the Fair Labor Standards Act.

17. Martino v. Michigan Window Cleaning Co., 327 U.S. 173 (1946). An independent window washing concern's activities were deemed to be necessary to the production of the goods produced in the plants serviced, so as to bring the window washers under the Fair Labor Standards Act.

18. See Morgan v. Virginia, 328 U.S. 373 (1946); Hoke v. United States, 227 U.S. 308 (1913); Passenger Cases, 48 U.S. (7 How.) 283 (1849).

19. See Caminetti v. United States, 242 U.S. 470 (1917).

20. See Martino v. Michigan Window Cleaning Co., 327 U.S. 173 (1946); Walton v. Southern Package Corp., 320 U.S. 540 (1944); United States v. Darby, 312 U.S. 100 (1941); Caminetti v. United States, 242 U.S. 470 (1917).

21. 379 U.S. 241 (1964).

22. 78 Stat. 243 (1964), 42 U.S.C. § 2000a(b)(1) (1965). See notes 5 and 6 *supra* and accompanying text.

23. 379 U.S. 241, 253 (1964).

24. See United States v. Darby, 312 U.S. 100 (1941); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); Caminetti v. United States, 242 U.S. 470 (1917); Champion v. Ames, 188 U.S. 321 (1903).

The Court concluded that Congress had a reasonable basis for finding that discrimination and segregation in lodging establishments had an adverse effect upon interstate commerce and that the means of regulation selected by Congress were reasonably adapted to the ends permitted by the Constitution.

The *McClung* case[25] challenged the provision of the act that a restaurant affects interstate commerce if a substantial portion of the food it serves has moved in interstate commerce[26] even though the restaurant does not serve interstate travelers. The report of the Senate Commerce Committee,[27] upon which the Court heavily relied, revealed that racial segregation and discrimination reduced spending by Negroes in segregated areas, and since this resulted in fewer purchases, interstate commerce was adversely affected. There was also testimony to the effect that such discrimination imposed an artificial restrictiion on the market and resulted in wide unrest and generally depressant effects on business conditions in segregated communities. Further, a claim was made that such discrimination had the effect of restricting interstate travel by Negroes, since they were not assured of service in restaurants. The activity of the restaurant in question seemingly had no direct effect on interstate commerce, as there was no showing that interstate travelers were customers. The Court reasoned, however, that since segregated conditions caused the restaurant to serve fewer customers, the restaurant would consequently buy less food in interstate commerce. By contrast, in the case of *Heart of Atlanta*, the Court stated that the public accommodations section of the Civil Rights Act "is carefully limited to enterprises having a direct and substantial relation to the interstate flow of goods and people."[28] Evidently the Court used the above testimony to try to establish a significant connection with interstate commerce in the case of the restaurant. The fact that the restaurant was a local activity alleged to have little effect when compared to the total volume of foodstuffs moving in commerce was held to be not relevant.[29]

The *McClung* case raises an interesting question as to what

25. Katzenbach v. McClung, 379 U.S. 294 (1964).
26. 78 Stat. 243 (1964), 42 U.S.C. § 2000a(c)(2) (1965). See notes 5 and 7 *supra*.
27. S. Rep. No. 872, 88th Cong., 2d Sess. 19 (1964).
28. 379 U.S. 241, 250 (1964).
29. The Court relied upon Wickard v. Filburn, 317 U.S. 111 (1942). See note 13 *supra*.

activities the act was meant to cover. The act states that a restaurant is included if a "substantial portion of the food which it serves" has moved in interstate commerce.[30] This suggests that the determination might be made on the percentage of interstate food each restaurant serves, regardless of total volume. The Court, however, does not make its interpretation clear. At times, it seems to consider that seventy thousand dollars worth of food is a substantial portion;[31] at others it implies that the determination should be on a percentage basis.[32] Other parts of the act manifest an intent not to regulate smaller concerns. For example, lodging establishments with fewer than five rooms are exempted, when the proprietor actually resides in the building.[33] It is not clear whether small or local restaurants would be covered, although Justice Black, in his concurring opinion in *Heart of Atlanta,* feels that they would not.[34]

Although at first these two cases may seem to be an extension of the commerce power, the jurisprudence does not support this impression. It is true that a new area, public accommodations, has come under the regulation of Congress, but regulation of individual activities not in themselves commerce, but in some way associated with it, have been consistently upheld as a valid exercise of the commerce power. The Court previously has upheld legislation eliminating discrimination by employers against employees who were members of labor unions,[35] legislation establishing maximum hours and minimum wages,[36] regulation of the amount of wheat a man can grow,[37] and establishment of intrastate rates of interstate carriers.[38] Similarly, cases have eliminated discrimination in interstate transportation[39] and upheld

30. 78 Stat. 243 (1964), 42 U.S.C. § 2000a(c)(2) (1965).

31. 379 U.S. 294, 298 (1964): "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."

32. *Id.* at 304: "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."

33. 78 Stat. 243 (1964), 42 U.S.C. § 2000a(b)(1) (1965).

34. 379 U.S. 241, 275 (1964): "I recognize too that some isolated and remote lunch room which sells only to local people and buys almost all its supplies in the locality may possibly be beyond the reach of the power of Congress to regulate commerce, just as such an establishment is not covered by the present Act."

35. NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

36. United States v. Darby, 312 U.S. 100 (1941).

37. Wickard v. Filburn, 317 U.S. 111 (1942).

38. Houston, E. & W. Texas Ry. v. United States, 234 U.S. 342 (1914).

39. Morgan v. Virginia, 328 U.S. 373 (1946).

the validity of state anti-discrimination legislation.[40] It was but a short step for the Court, under the prior jurisprudence, to bring the regulation of public accommodations within the ambit of the commerce power.

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CONSTITUTIONAL LAW — RELIGIOUS BELIEF NECESSARY FOR CONSCIENTIOUS OBJECTOR EXEMPTION

Seeger claimed exemption as a conscientious objector under section 6(j) of the Universal Military Training and Service Act, which exempts from combatant duty in the Armed Forces of the United States those persons who by reason of their religious belief are conscientiously opposed to participation in war.[1] Seeger's conscientious objections were based on a belief in and devotion to goodness and virtue for their own sake, and a religious faith in a purely ethical creed. His local Selective Service Board found his beliefs to be sincere and honest but denied Seeger's claim because it was not based upon a "belief in a relation to a Supreme Being" as required by the act. In fact, Seeger was unwilling to assert or deny the existence of a Deity. He refused to submit to induction and was subsequently convicted in a federal district court.[2] The Court of Appeals for the Second Circuit reversed on the grounds that the statute limiting the conscientious objection to persons who believe in a Supreme Being violated the due process clause of the fifth amendment by creating an impermissible classification between internally derived and externally compelled beliefs as applied to one whose abhorrence of war was sincere and predicated on religious training and belief.[3] The Supreme Court granted certiorari[4] and affirmed the result, but did not pass on the con-

40. Bob-Lo Excursion Co. v. Michigan, 333 U.S. 28 (1948).

1. 72 Stat. 711 (1958), 50 U.S.C. § 456(J) (1964): "Nothing contained in this title . . . shall be construed to require any person to be subject to combatant training and service . . . who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views of a merely personal moral code."

2. United States v. Seeger, 216 F. Supp. 516 (S.D.N.Y. 1963).

3. United States v. Seeger, 326 F.2d 846 (2d Cir. 1964).

4. Certiorari was also granted in two other cases: United States v. Peter, 324 F.2d 173 (9th Cir. 1963); United States v. Jakobson, 325 F.2d 409 (2d Cir.