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Constitutional Law - Civil Rights

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Van Dusen explains some of the problems involved in section 1404(a) but due to the infrequent litigation in the area, it may be in the far distant future before these remaining problems are answered.

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CONSTITUTIONAL LAW—Civil Rights—Public Accommodations Under the Civil Rights Act of 1964.

Heart of Atlanta Motel, Inc. v. United States, 85 Sup. Ct. 348 (1964).

On June 19, 1963, the late President Kennedy called for civil rights legislation in a message to Congress to which he attached a proposed bill. Its stated purpose was:

> . . . to promote the general welfare, by eliminating discrimination based on race, color, religion, or national origin in . . . public accommodations through the exercise by Congress of the powers conferred upon it . . . to enforce the provisions of the Fourteenth and Fifteenth Amendments, to regulate commerce among the several states, and to make laws necessary and proper to execute the powers conferred upon it by the Constitution.[1]

After a year of deliberation, Congress enacted the Civil Rights Act of 1964.[2]

TITLE II OF THE ACT — INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION[3] was attacked by the Heart of Atlanta Motel, Inc., as being unconstitutional. Plaintiff was seeking a declaratory judgment and injunctive relief. The United States counterclaimed for the Act's enforcement. The District Court[4] upheld the constitutionality of the public accommodations section and issued a permanent injunction on the counterclaim. The case came

1. Heart of Atlanta Motel, Inc. v. United States, 85 Sup. Ct. 348, 351 (1964).

2. P.L. 88-352; 78 Stat. 241.

3. 42 U.S.C.A. §§ 2000a to 2000a-6.

4. Heart of Atlanta Motel, Inc. v. United States, 231 F. Supp. 393 (N.D. Ga. 1964); under § 206(b) of the Act, the Attorney General made a request that a court of three judges be convened to hear and determine the case.

to the Supreme Court on admissions and stipulated facts.[5] Prior to the passage of the Act, the motel had followed a practice of refusing to rent rooms to Negroes, and it alleged that it intended to continue to do so. Justice Clark delivered the opinion of the Court[6] which held that Title II of the Act[7] was within the power of the commerce clause[8] and that it did not violate the fifth amendment or the thirteenth amendment of the Constitution.

The initial problem faced by the Court was to overcome the established precedent of the *Civil Rights Cases*[9] which held the public accommodations section of the Civil Rights Act of 1875[10] unconstitutional. The *Civil Rights Cases* were distinguished by the fact that Congress, in enacting the legislation, did not rely upon the commerce clause.[11] Therefore, the *Civil Rights Cases* were not relevant in the decision of this case.

The Court did not elaborate on the question of how discrimination in public accommodations obstructs and burdens interstate commerce, but it was stated that "the voluminous testimony presents overwhelming evidence that discrimination by hotels and motels impedes interstate travel."[12] However, the Government's brief expresses a more elaborate coverage of the effect of discrimination in public accommodations on interstate commerce.[13] Their argument can be summed up in that discrimination in public accommodations impedes interstate commerce by (1) depriving the market place of a consumer, and (2) causing protests and demonstrations by discontented Negroes, the effect of which results in fewer consumers and travelers engaging in interstate commerce.

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5. Appellant owns and operates a motel of 216 rooms which are available to transient guests in an area which s assessible to interstate and state highways. Seventy-five per cent of the motel's guests are from out of state.

6. Heart of Atlanta Motel, Inc. v. United States, 85 Sup. Ct. 348 (1964).

7. See statute cited note 3 *supra.*

8. U.S. Const. Art. 1, §8, cl. 3.

9. 109 U.S. 3 (1883).

10. 18 Stat. 335, 336.

11. See note 8 *supra.* The Court, in the Civil Rights Cases stated: "Of course, these remarks [as to lack of congressional power] do not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such power to the States, as in the regulation of commerce with foreign nations, among the several States, and with the Indian tribes. . . . In these cases Congress has power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereof." 109 U.S. 3, 18.

12. See note 6 at 355 *supra.*

13. Appellee's brief p. 23-38.

The Supreme Court has held in previous decisions[14] that Congress has the power within the commerce clause to regulate the movement of people in interstate commerce. The Supreme Court in *Hoke v. United States,*[15] referring to the "intercourse" which Chief Justice Marshall used in *Gibbons v. Ogden*[16] to define commerce stated that it ". . . includes the transportation of persons and property."[17]

The Court met the contention that the Act's main purpose is to regulate moral wrongs rather than commerce by stating:

> That Congress was legislating against moral wrongs in many of these areas rendered its enactments no less valid. In framing Title II of this Act Congress was also dealing with what is considered a moral problem. But that fact does not detract from the overwhelming evidence of the disruptive effect that racial discrimination had had on commercial intercourse. It was this burden which empowered Congress to enact appropriate legislation, and, given this basis for the exercise of its power, Congress was not restricted by the fact that the particular obstruction to interstate commerce with which it was dealing was also deemed a moral and social wrong.[18]

Appellant contended that Title II of the Civil Rights Act of 1964 violates the fifth[19] and thirteenth[20] amendments of the United States Constitution. The Court rejected both of these contentions.

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14. Caminetti v. United States, 242 U.S. 470 (1916); Hoke v. United States, 227 U.S. 308 (1913); Passenger cases (Smith v. Turner), 7 How. 283, 12 L. Ed. 702 (1849).

15. 227 U.S. 308 (1913).

16. 9 Wheat. 1, 6 L. Ed. 23 (1824). The Chief Justice said:
"The subject to be regulated is commerce: and . . . to ascertain the extent the power it becomes necessary to settle the meaning of the word . . . it is intercourse . . . between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse." [At 189-190]

17. See note 15 at 320 *supra.*

18. See note 1 at 357-358 *supra;* Accord, Hoke v. United States, 227 U.S. 308 (1912), where the commerce clause was utilized to regulate prostitution; Brooks v. United States, 267 U.S. 432 (1925), criminal enterprises; Boynton v. Comm. of Virginia, 364 U.S. 454 (1960), racial discrimination in terminal restaurants; Compare, United States v. Darby, 312 U.S. 100 (1941) and N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, (1937), where the power of Congress over interstate commerce was held to extend to those intrastate activities which so affect interstate commerce as to make regulation of them appropriate means to the attainment of a legitimate end.

19. Appellant's Brief p. 51.

20. *Id.* at 54.

The Court, in rejecting the appellant's fifth amendment argument, pointed out that thirty-two states presently have public accommodation statutes,[21] which have been held valid under the due process clause of the fourteenth amendment.[22] Therefore, a similar regulation by the federal government is not a violation of the due process clause of the fifth amendment. The Court said: "The authority of the Federal Government over interstate commerce does not differ in extent or character from that retained by the states over intrastate commerce."[23] Nor did the Court give merit to the contention that the Act is a taking of property without just compensation.[24] The Court discarded the thirteenth amendment argument as not being "akin to African slavery."[25]

The majority opinion as expressed by Justice Clark, found no need to discuss the possibility that Title II of the Act may be upheld on the fourteenth amendment. The Court stated:

> This is not to say that the remaining authority upon which it acted was not adequate, the question upon which we do

21. The following states have enacted public accommodation laws: Alaska Stats. §§ 11.60.230-1160.240 (1962); Calif. Civil Code §§ 51-54 (1954); Colo. Rev. Stats. §§ 25-1-1 to 25-2-5 (1953); Conn. Gen. Stats. Ann. § 53-35 (1961); Del. Code Ann. Tit. 6, c. 45 (1963); Idaho Code, §§ 18-7301 through 18-7303 (1961); Ill. Ann. Stats. (Smith-Hurd ed.) c. 38, §§ 13-1 to 13-4 (1961), c. 43, § 133 (1944); Ind. Stats. Ann. (Burns' ed.) §§ 10-901 to 10-914 (1961); Iowa Code Ann. §§ 735.1-735.2 (1950); Kan. Gen. Stats. Ann. § 21-2424 (Supp. 1962); Maine Rev. Stats. c. 137, § 50 (1954); Md. Ann. Code, Art. 49B § 11 (1964); Mass. Ann. Laws, c. 140, §§ 5 and 8 (1957), v. 272, §§ 92A, 98 (1963); Mich. Stats. Ann. §§ 28.343 and 28.344 (1962); Minn. Stats. Ann. § 327.09 (1947); Mont. Rev. Codes Tit. 64, § 211 (1962); Neb. Rev. Stats. c. 20, §§ 101 and 102 (1954); N.H. Rev. Stats. Ann. c. 354, §§ 1,2,4 and 5 (1963); N.J. Stats. Ann. Tit. 10, §§ 1-2 to 1-7; Tit. 18, §§ 25-1 to 25-6 (1963); N.M. Stats. Ann. §§ 49-8-1 to 49-8-6 (1963); N.Y. Civil Rights Law (McKinney's ed.), Art. 4 §§ 40,41 (1946); Executive Law, Art. 15, §§ 290-301 (1964); Penal Law, Art. 46, §§ 513-515 (1944); N. Dak. Cont. Code, § 12-22-30 (1963); Ohio Rev. Code (Pages ed.), §§ 2901.35 and 2901.36 (1954); Oreg. Rev. Stats. §§ 30.670, 30.675, 30.680 (1963); Penn. Stats. Ann. Tit. 18, § 4654 (1963); R.I. Gen. Laws, §§ 11-24-1 to 11-24-6 (1956); S. Dak. Sess. Laws, c. 58 (1963); Vt. Stats. Ann. Tit. 13, §§ 1451, 1452 (1958); Wash. Rev. Code Ann. §§ 49.60.010 to 49.60.170, 9.91.010 (1962); Wis. Stats. Ann. § 942.04 (1958); Wyo. Stats. Ann. §§ 6-83.1, 6-83.2 (1963).

22. Bob-Lo Excursion Co. v. Michigan, 333 U.S. 28 (1948); The Court in *Heart of Atlanta* said: ". . . the constitutionality of each state statutes stands unquestioned" [at 359].

23. United States v. Rock Royal Co-op., Inc., 307 U.S. 533, 569 (1939).

24. The Court states that case law is to the contrary. See Legal Tender cases, 12 Wall 457, 20 L. Ed. 287 (1871); Omnia Commercial Co. v. United States, 261 U.S. 502 (1923); United States v. Central Eureka Mining Co., 357 U.S. 155 (1958).

25. Butler v. Perry, 240 U.S. 328 (1916).

> not pass, but merely that since the commerce power is sufficient for our decision here we have considered it alone.[26]

Justice Douglas in his concurring opinion was "somewhat reluctant . . . to rest solely on the Commerce Clause."[27] He contended that the fourteenth amendment could be upheld as appropriate to the end of enforcing Title II of the Act. In another concurring opinion[28] Justice Goldberg stated that the primary purpose of the Civil Rights Act was to protect the personal dignity of man, which necessitates equal access to public accommodations. And Congress clearly had the authority under the fifth and fourteenth amendments to enact the Civil Rights Act of 1964.

This case clearly resolves any doubt as to congressional power to regulate discrimination in public accommodations as it affects interstate commerce. In addition, it left open the question whether Congress could legislate against discrimination in public accommodations *per se*. Although the majority of the Court did not support this decision on the fourteenth amendment, their language indicates that absent the commerce power they may have done so. The concurring opinions of Justices Douglas and Goldberg would have supported the decision on both the commerce clause and the fourteenth amendment. In order to support the Civil Rights Act of 1964 entirely on the fourteenth amendment would have necessitated the overruling of the *Civil Rights Cases*. The effects of a decision supported exclusively by the fourteenth amendment would facilitate Congress to take greater strides in the movement to protect civil rights in the area of public accommodations. *Heart of Atlanta* is an intermediate step for such a decision.

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26. See note 1 at 354 *supra*.

27. *Id.* at 369.

28. *Id.* at 375-377.