HEART OF ATLANTA MOTEL v. UNITED STATES
SUPREME COURT OF THE UNITED STATES
379 U.S. 241
December 14, 1964

OPINION: MR. JUSTICE CLARK...This...action attack[s] the constitutionality of Title II of the Civil Rights Act of 1964....A three-judge court...sustained the validity of the Act...We affirm...

1. *The Factual Background and Contentions of the Parties.*

...[T]he Heart of Atlanta Motel...has 216 rooms available to transient guests..[and] is readily accessible to interstate...and state highways...Appellant solicits patronage from outside the State of Georgia through various national advertising media...; it maintains over 50 billboards and highway signs within the State...[and] accepts convention trade from outside Georgia...[A]pproximately 75% of its registered guests are from out of State. Prior to 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. In an effort to perpetuate that policy this suit was filed.

The appellant contends that Congress in passing this Act exceeded its power to regulate commerce under Art. I, §8, cl. 3...; that the Act violates the Fifth Amendment because appellant is deprived of the right to choose its customers and operate its business as it wishes, resulting in a taking of its liberty and property without due process of law and a taking of its property without just compensation; and,...that by requiring appellant to rent available rooms to Negroes against its will,

Congress is subjecting it to involuntary servitude in contravention of the Thirteenth Amendment.

...The District Court sustained the constitutionality of the sections of the Act under attack...and issued a permanent injunction...[that] restrained the appellant from "refusing to accept Negroes as guests in the motel by reason of their race or color" and from "making any distinction whatever upon the basis of race or color in the availability of the goods, services, facilities, privileges, advantages or accommodations offered or made available to the guests of the motel, or to the general public, within or upon any of the premises of the Heart of Atlanta Motel, Inc."

2. *The History of the Act.*

...In 1883 this Court struck down the public accommodations sections of the 1875 [Civil Rights] Act in the *Civil Rights Cases*. No major legislation in this field had been enacted by Congress for 82 years when the Civil Rights Act of 1957...followed by the Civil Rights Act of 1960...[O]n June 19, 1963,...President Kennedy called for civil rights legislation..."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." ...However, it was not until July 2, 1964, upon the recommendation of President Johnson, that the Civil Rights Act of 1964, here under attack, was finally passed...Since Title II is the only portion under attack here, we confine our consideration to those public accommodation provisions.

3. *Title II of the Act*.

This Title is divided into seven sections beginning with §201(a) which provides that:

> All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any <u>place of public accommodation</u>... without discrimination or segregation on the ground of race, color, religion, or national origin.

There are listed in §201(b) four classes of business establishments, each of which "serves the public" and "is a place of public accommodation" within the meaning of §201(a) "<u>if its operations affect commerce</u>, or if discrimination or segregation by it is supported by State action." The covered establishments are:

> (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
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> (2) any restaurant, cafeteria...;

(3) any motion picture house...;

(4) any establishment...which is physically located within the premises of any establishment otherwise covered by this subsection, or...within the premises of which is physically located any such covered establishment...

Section 201(c) defines the phrase "affect commerce" as applied to the above establishments. It first declares that "any inn, hotel, motel, or other establishment which provides lodging to transient guests" affects commerce per se. Restaurants, cafeterias, etc., in class two affect commerce only if they serve or offer to serve interstate travelers or if a substantial portion of the food which they serve or products which they sell have "moved in commerce." Motion picture houses and other places listed in class three affect commerce if they customarily present films, performances, etc., "which move in commerce." And the establishments listed in class four affect commerce if they are within, or include within their own premises, an establishment "the operations of which affect commerce." Private clubs are excepted under certain conditions.

Section 201(d) declares that "discrimination or segregation" is supported by state action when carried on under color of any law, statute, ordinance, regulation or any custom or usage required or enforced by officials of the State or any of its subdivisions.

In addition, §202 affirmatively declares that all persons "shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute...[etc.]...of a State or any agency or political subdivision thereof."...

4. Application of Title II to Heart of Atlanta Motel.

It is admitted that the operation of the motel brings it within the provisions of...the Act and that [the motel] refused to provide lodging for transient Negroes because of their race or color and that it intends to continue that policy unless restrained...The legislative history of the Act indicates that Congress based the Act on §5 and the Equal Protection Clause of the Fourteenth Amendment as well as its power to regulate interstate commerce under Art. I, §8, cl. 3, of the Constitution.

The Senate Commerce Committee made it quite clear that the fundamental object of Title II was to vindicate "the deprivation of personal dignity that surely accompanies denials of equal access to public establishments." At the same time, however, it noted that such an objective has been and could be readily achieved "by congressional action based on the commerce power of the Constitution." Our study of the legislative record, made in the light of prior cases, has brought us to the conclusion that Congress possessed ample power in this regard, and we have therefore not considered the other grounds relied upon. This is not to say that the remaining authority upon which it acted was not adequate, a question upon which we do not pass, but merely that since the commerce power is sufficient for our decision here we have considered it alone. Nor is §201(d) or §202, having to do with state action, involved here and we do not pass upon either of those sections.

5. The Civil Rights Cases (1883) and their Application.

In light of our ground for decision, it might be well at the outset to discuss the Civil Rights Cases which declared provisions of the Civil Rights Act of 1875 unconstitutional...Unlike Title II of the present legislation, the 1875 Act broadly proscribed discrimination in "inns, public conveyances on land or water, theaters, and other places of public amusement," **without limiting the categories** of affected businesses to those impinging upon **interstate commerce**. In contrast, the applicability of Title II is carefully limited to enterprises having a **direct and substantial** relation to the interstate flow of goods and people, except where state action is involved. Further, the fact that certain kinds of businesses may not in 1875 have been sufficiently involved in interstate commerce to warrant bringing them within the ambit of the commerce power is not necessarily dispositive of the same question today. Our populace had not reached its present mobility...**Although the principles which we apply today are those first formulated by Chief Justice Marshall in *Gibbons v. Ogden*[1]**, the conditions of transportation and commerce have changed dramatically, and we must apply those principles to the present state of commerce. The sheer increase in volume of interstate traffic alone would give discriminatory practices which inhibit travel a far larger impact upon the Nation's commerce than such practices had on the economy of another day...

Since the commerce power was not relied on by the Government and was without support in the record it is understandable that the Court narrowed its inquiry and excluded the Commerce Clause as a possible source of power. In any event, it is clear that such a limitation renders the opinion devoid of authority for the proposition that the Commerce Clause gives no power to Congress to regulate discriminatory practices now found substantially to affect interstate commerce. **We, therefore, conclude that the *Civil Rights Cases* have no relevance to the basis of decision here where the Act explicitly relies upon the commerce power, and where the record is filled with testimony of obstructions and restraints resulting from the discriminations found to be existing...**

6. The Basis of Congressional Action.

While the Act as adopted carried no congressional findings the record of its passage through each house is replete with evidence of the burdens that discrimination by race or color places upon interstate commerce. This testimony included the fact that our people have become increasingly mobile with millions of people of all races traveling from State to State; that Negroes in particular have been the subject of discrimination in transient accommodations, having to travel great distances to secure the same; that often they have been unable to obtain accommodations and have had to call upon friends to put them up overnight; and that these conditions had become so acute as to require the listing of available lodging for Negroes in a special guidebook which was itself "dramatic testimony to the difficulties" Negroes encounter in travel. These exclusionary practices were found to be nationwide...This testimony indicated a qualitative as well as quantitative effect on interstate travel by Negroes. The former was the obvious impairment of the Negro traveler's pleasure and

[1]Case 1-14 on this website.

convenience that resulted when he continually was uncertain of finding lodging. As for the latter, there was evidence that this uncertainty stemming from racial discrimination had the effect of discouraging travel on the part of a substantial portion of the Negro community...We shall not burden this opinion with further details since the voluminous testimony presents overwhelming evidence that discrimination by hotels and motels impedes interstate travel.

7. The Power of Congress Over Interstate Travel.

The power of Congress to deal with these obstructions depends on the meaning of the Commerce Clause. Its meaning was first enunciated 140 years ago by the great Chief Justice John Marshall in *Gibbons v. Ogden* in these words:

> The subject to be regulated is commerce; and...to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities...but it is something more: it is intercourse...between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse...
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> To what commerce does this power extend? The constitution informs us, to commerce 'with foreign nations, and among the several States, and with the Indian tribes.'
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> ...The word 'among' means intermingled...It may very properly be restricted to that commerce which concerns more States than one...The genius and character of the whole government seem to be, that its action is to be applied to all the... internal concerns [of the Nation] which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government...
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> We are now arrived at the inquiry -- What is this power?
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> It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution...If, as has always been understood, the sovereignty of Congress...is **plenary** as to those objects [specified in the Constitution], the power over commerce...is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure

them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments.

Plenary: "full, complete — covering all matters"

In short, the determinative test of the exercise of power by the Congress under the Commerce Clause is simply whether the activity sought to be regulated is "commerce which concerns more States than one" and has a real and substantial relation to the national interest...

Before proceeding, let's try to clearly set the record straight. The only reason these issues are so difficult is that Congress was not given **plenary** powers in the Constitution. That is, their power, in general, is NOT full, complete and covering all matters. Although a line of cases has added "implied and inherent powers" to their arsenal, fundamentally Congress is limited by their **enumerated** (i.e., listed) powers granted in Article I, §8. So, when Justice Marshall says the **power to regulate** is "complete in itself, may be exercised to its utmost extent, and acknowledges no limitations," some folks with an agenda fail to add his limiting language; to wit, "**other than are prescribed in the constitution**...The sovereignty of Congress...is **plenary as to those objects specified in the Constitution.**" So, care is in order. The power of Congress "over commerce" **is not** plenary. It **is** plenary within its boundaries — within whatever "commerce among the several states" means.

Let us now turn to this facet of the problem. That the "intercourse" of which the Chief Justice spoke included the movement of persons through more States than one was settled as early as 1849, in the *Passenger Cases*, where Mr. Justice McLean stated: "That the transportation of passengers is a part of commerce is not now an open question." Again in 1913 Mr. Justice McKenna, speaking for the Court, said: "Commerce among the States, we have said, consists of intercourse and traffic between their citizens, and includes the transportation of persons and property." *Hoke v. United States*. And only four years later in 1917 in *Caminetti v. United States*, Mr. Justice Day held...:

> The transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the commerce clause of the Constitution, and the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question...

The same interest in protecting interstate commerce which led Congress to deal with segregation in interstate carriers and the white-slave traffic has prompted it to extend the exercise of its power...

> to gambling, *Lottery Case* (1903);
> to criminal enterprises, *Brooks v. United States* (1925);
> to deceptive practices in the sale of products, *Federal Trade Comm'n v. Mandel*

Bros., Inc. (1959);
to fraudulent security transactions, *Securities & Exchange Comm'n v. Ralston Purina Co.* (1953);
to misbranding of drugs, *Weeks v. United States* (1918);
to wages and hours, *United States v. Darby* (1941);
to members of labor unions, *Labor Board v. Jones & Laughlin Steel Corp.* (1937);
to crop control, *Wickard v. Filburn* (1942);
to discrimination against shippers, *United States v. Baltimore & Ohio R. Co.* (1948);
to the protection of small business from injurious price cutting, *Moore v. Mead's Fine Bread Co.* (1954);
to resale price maintenance, *Hudson Distributors, Inc. v. Eli Lilly & Co.* (1964);
to professional football, *Radovich v. National Football League* (1957); and
to racial discrimination by owners and managers of terminal restaurants, *Boynton v. Virginia* (1960).

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 it considered a moral problem. But that fact does not detract from the overwhelming evidence of the disruptive effect that racial discrimination has 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.

It is said that the operation of the motel here is of a purely local character. But, assuming this to be true, "if it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." *United States v. Women's Sportswear Mfrs. Assn*. As Chief Justice Stone put it in *United States v. Darby*:[2]

> The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which **so affect interstate commerce** or the exercise of the power of Congress over it as to make regulation of them **appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce.**

Thus the power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce. One need only examine the evidence which we have discussed above to see that Congress may -- as it has -- prohibit racial discrimination by motels serving travelers, however "local" their operations may appear.

Nor does the Act deprive appellant of liberty or property under the Fifth Amendment. The commerce

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[2]Case 1-17 on this website.

power invoked here by the Congress is a specific and plenary one authorized by the Constitution itself. The only questions are: (1) whether Congress had a rational basis for finding that racial discrimination by motels affected commerce, and (2) if it had such a basis, whether the means it selected to eliminate that evil are reasonable and appropriate. If they are, appellant has no "right" to select its guests as it sees fit, free from governmental regulation.

There is nothing novel about such legislation. Thirty-two States now have it on their books either by statute or executive order and many cities provide such regulation. Some of these Acts go back fourscore years. It has been repeatedly held by this Court that such laws do not violate the Due Process Clause of the Fourteenth Amendment...As we have pointed out, 32 States now have such provisions and no case has been cited to us where the attack on a state statute has been successful, either in federal or state courts. Indeed, in some cases the Due Process and Equal Protection Clause objections have been specifically discarded in this Court. As a result the constitutionality of such state statutes stands unquestioned. "The authority of the Federal Government over interstate commerce does not differ," it was held in *United States v. Rock Royal Co-op., Inc.*, "in extent or character from that retained by the states over intrastate commerce."

It is doubtful if in the long run appellant will suffer economic loss as a result of the Act. Experience is to the contrary where discrimination is completely obliterated as to all public accommodations. But whether this be true or not is of no consequence since this Court has specifically held that the fact that a "member of the class which is regulated may suffer economic losses not shared by others ...has never been a barrier" to such legislation. Likewise...this Court has rejected the claim that the prohibition of racial discrimination in public accommodations interferes with personal liberty... Neither do we find any merit in the claim that the Act is a taking of property without just compensation...

We find no merit in the remainder of appellant's contentions, including that of "involuntary servitude." As we have seen, 32 States prohibit racial discrimination in public accommodations. These laws but codify the common-law innkeeper rule which long predated the Thirteenth Amendment. It is difficult to believe that the Amendment was intended to abrogate this principle. Indeed, the opinion of the Court in the *Civil Rights Cases* is to the contrary as we have seen, it having noted with approval the laws of "all the States" prohibiting discrimination. We could not say that the requirements of the Act in this regard are in any way "akin to African slavery."

We, therefore, conclude that the action of the Congress in the adoption of the Act as applied here to a motel which concededly serves interstate travelers is within the power granted it by the Commerce Clause of the Constitution...How obstructions in commerce may be removed...is within the sound and exclusive discretion of the Congress. It is subject only to one caveat -- that the means chosen by it must be reasonably adapted to the end permitted by the Constitution. We cannot say that its choice here was not so adapted. The Constitution requires no more. *Affirmed.*

CONCURRENCE:[3] MR. JUSTICE BLACK...In the second case the Acting Attorney General of the United States and a United States Attorney appeal from a judgment... holding that Title II cannot constitutionally be applied to Ollie's Barbecue, **a restaurant in Birmingham, Alabama, which serves few if any interstate travelers but which buys a substantial quantity of food which has moved in interstate commerce**. It is undisputed that both establishments had and intended to continue a policy against serving Negroes. Both claimed that Congress had exceeded its constitutional powers in attempting to compel them to use their privately owned businesses to serve customers whom they did not want to serve...

The basic constitutional question...is whether Congress exceeded its powers to regulate interstate commerce and pass all laws necessary and proper to such regulation in subjecting either this motel or this restaurant to Title II's commands that applicants for food and lodging be served without regard to their color. And if the regulation is otherwise within the congressional commerce power, the motel and the restaurant proprietors further contend that it would be a denial of due process under the Fifth Amendment to compel them to serve Negroes against their will. I agree that all these constitutional contentions must be rejected...

At least since *Gibbons v. Ogden* (decided in 1824)...it has been uniformly accepted that the power of Congress to regulate commerce among the States is plenary, "complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." Nor is "Commerce" as used in the Commerce Clause to be limited to a narrow, technical concept. It includes not only, as Congress has enumerated in the Act, "travel, trade, traffic, commerce, transportation, or communication," but also all other unitary transactions and activities that take place in more States than one. That some parts or segments of such unitary transactions may take place only in one State cannot, of course, take from Congress its plenary power to regulate them in the **national interest**. The facilities and instrumentalities used to carry on this commerce, such as railroads, truck lines, ships, rivers, and even highways are also subject to congressional regulation, so far as is necessary to keep interstate traffic upon fair and equal terms.

Furthermore, it has long been held that the Necessary and Proper Clause, Art. I, §8, cl. 18, adds to the commerce power of Congress the power to regulate local instrumentalities operating within a single State if their activities **burden the flow of commerce among the States**. Thus in the *Shreveport Case*..., this Court recognized that Congress could not fully carry out its responsibility to protect interstate commerce were its constitutional power to regulate that commerce to be strictly limited to prescribing the rules for controlling the things actually moving in such commerce or the contracts, transactions, and other activities, immediately concerning them. Regulation of purely intrastate railroad rates is primarily a local problem for state rather than national control. But the *Shreveport Case* sustained the power of Congress under the Commerce Clause and the Necessary and Proper Clause to control purely intrastate rates, even though reasonable, where the effect of such rates was found to impose a discrimination injurious to interstate commerce. This holding that

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[3]Justice Black notes that his concurring opinion also applies to a companion case, *Katzenbach v. McClung*.

Congress had power under these clauses, not merely to enact laws governing interstate activities and transactions, but also to regulate even purely local activities and transactions where necessary to foster and protect interstate commerce, was amply supported by Mr. Justice..Hughes' reliance upon many prior holdings of this Court extending back to *Gibbons v. Ogden*. And since the *Shreveport Case* this Court has steadfastly followed, and indeed has emphasized..., that Congress has ample power to protect interstate commerce from activities adversely and injuriously affecting it, which but for this adverse effect on interstate commerce would be beyond the power of Congress to regulate.

Congress in §201 declared that the racially discriminatory "operations" of a motel of more than five rooms for rent or hire do adversely affect interstate commerce if it "provides lodging to transient guests..." and that a restaurant's "operations" affect such commerce if (1) "it serves or offers to serve interstate travelers" or (2) "a substantial portion of the food which it serves...has moved in [interstate] commerce." Congress thus described the nature and extent of operations which it wished to regulate, excluding some establishments from the Act either for reasons of policy or because it believed its powers to regulate and protect interstate commerce did not extend so far. There can be no doubt that the operations of both the motel and the restaurant here fall squarely within the measure Congress chose to adopt in the Act and deemed adequate to show a constitutionally prohibitable adverse effect on commerce. **The choice of policy is of course within the exclusive power of Congress; but whether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court. I agree that as applied to this motel and this restaurant the Act is a valid exercise of congressional power, in the case of the motel because the record amply demonstrates that its practice of discrimination tended directly to interfere with interstate travel, and in the case of the restaurant because Congress had ample basis for concluding that a widespread practice of racial discrimination by restaurants buying as substantial a quantity of goods shipped from other States as this restaurant buys could distort or impede interstate trade.**

The Heart of Atlanta Motel is...used by interstate travelers...The restaurant is located in a residential and industrial section of Birmingham, 11 blocks from the nearest interstate highway. Almost all, if not all, its patrons are local people rather than transients...The main commodity it purchases is meat, of which during the 12 months before the District Court hearing it bought $69,683 worth (representing 46% of its total expenditures for supplies), which had been shipped into Alabama from outside the State. Plainly, 46% of the goods it sells is a "substantial" portion and amount. Congress concluded that restaurants which purchase a substantial quantity of goods from other States might well burden and disrupt the flow of interstate commerce if allowed to practice racial discrimination, because of the stifling and distorting effect that such discrimination on a wide scale might well have on the sale of goods shipped across state lines. Certainly this belief would not be irrational even had there not been a large body of evidence before the Congress to show the probability of this adverse effect.

The foregoing facts are more than enough, in my judgment, to show that Congress acting within its discretion and judgment has power under the Commerce Clause and the Necessary and Proper

Clause to bar racial discrimination in the Heart of Atlanta Motel and Ollie's Barbecue. I recognize that every remote, possible, speculative effect on commerce should not be accepted as an adequate constitutional ground to uproot and throw into the discard all our traditional distinctions between what is purely local, and therefore controlled by state laws, and what affects the national interest and is therefore subject to control by federal laws. I recognize too that some isolated and remote lunchroom 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. But in deciding the constitutional power of Congress in cases like the two before us we do not consider the effect on interstate commerce of only one isolated, individual, local event, without regard to the fact that this single local event when added to many others of a similar nature may impose a burden on interstate commerce by reducing its volume or distorting its flow. There are approximately 20,000,000 Negroes in our country. Many of them are able to, and do, travel among the States in automobiles. Certainly it would seriously discourage such travel by them if, as evidence before the Congress indicated has been true in the past, they should in the future continue to be unable to find a decent place along their way in which to lodge or eat. And the flow of interstate commerce may be impeded or distorted substantially if **local sellers of interstate food** are permitted to exclude all Negro consumers. Measuring, as this Court has so often held is required, by the aggregate effect of a great number of such acts of discrimination, I am of the opinion that Congress has constitutional power under the Commerce and Necessary and Proper Clauses to protect interstate commerce from the injuries bound to befall it from these discriminatory practices...

If we permit Congress to regulate commerce among the several states as long as a substantial amount of any goods connected to the legislation was purchased from one state and brought into another state, we might as well decide that federalism is dead. Why? Because it would be rare, indeed, to find **any** product without at least one or more of its component parts purchased out of state. If that is enough to bring "commerce among the several states" within the grant of power to Congress to regulate, then practically nothing is left for the states to "regulate."

Gibbons does not support the result because, in my estimation, this is a "stretch into the metaphysical" that "explains away the constitution," "leaving it a magnificent structure...to look at, but totally unfit for use." See *Gibbons*, the first case in your materials on this topic.

No, I see Ollie's Barbecue in the same stew as the Heart of Atlanta Motel. If we are going to base this legislation on the commerce clause at all and we all agree that Americans have the right of traveling from state to state, then it is clear that all travelers need shelter (motels) and food (barbecue, etc.). In like manner, if steamboats have the right to cruise common waters and to dock in one state's port without being burdened with that state's law forbidding docking without a state license, how is the "navigation" element of "commerce" any different from the "navigation of people in automobiles" from one state to or through the next?

Food, drink and shelter are necessities of travel. I would suggest that interstate travel and all aspects "necessary" thereto is enough to bring this legislation within the power of Congress regardless of whether or not any food served at a restaurant was purchased in another state.

While I agree with the results, I do not agree with majority or the concurrence of Justice Black as to their reasoning to reverse the conviction of the owner of Ollie's Barbecue and, quite frankly, I believe *Gibbons v. Ogden* supports my reasoning, but does not support the reasoning of the Court.

The restaurant and motel proprietors argue also, however, that Congress violated the Due Process Clause of the Fifth Amendment by requiring that they serve Negroes if they serve others. This argument comes down to this: that the broad power of Congress to enact laws deemed necessary and proper to regulate and protect interstate commerce is practically nullified by the negative constitutional commands that no person shall be deprived of "life, liberty, or property, without due process of law" and that private property shall not be "taken" for public use without just compensation. In the past this Court has consistently held that **regulation of the use of property** by the Federal Government or by the States does not violate either the Fifth or the Fourteenth Amendment. A regulation such as that found in Title II does not even come close to being a "taking" in the constitutional sense. And a more or less vague clause like the requirement for due process, originally meaning "according to the law of the land" would be a highly inappropriate provision on which to rely to invalidate a "law of the land" enacted by Congress under a clearly granted power like that to regulate interstate commerce. Moreover, it would be highly ironical to use the guarantee of

due process -- a guarantee which plays so important a part in the Fourteenth Amendment, an amendment adopted with the predominant aim of protecting Negroes from discrimination -- in order to strip Congress of power to protect Negroes from discrimination. For the foregoing reasons I concur in holding that the anti-racial-discrimination provisions of Title II of the Civil Rights Act of 1964 are valid as applied to this motel and this restaurant...

CONCURRENCE: MR. JUSTICE DOUGLAS[4]...Though I join the Court's opinions, I am somewhat reluctant...to rest solely on the Commerce Clause. My reluctance is not due to any conviction that Congress lacks power to regulate commerce in the interests of human rights. It is rather my belief that the right of people to be free of state action that discriminates against them because of race, like the "right of persons to move freely from State to State" (*Edwards v. California*), "occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines."

Hence I would prefer to rest on the assertion of legislative power contained in §5 of the Fourteenth Amendment which states: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article" [i.e., the equal protection of the laws] -- a power which the Court concedes was exercised at least in part in this Act.

A decision based on the Fourteenth Amendment would have a more settling effect, making unnecessary litigation over whether a particular restaurant or inn is within the commerce definitions of the Act or whether a particular customer is an interstate traveler. Under my construction, the Act would apply to all customers in all the enumerated places of public accommodation. And that construction would put an end to all obstructionist strategies and finally close one door on a bitter chapter in American history...

[4]Justice Douglas notes that his concurring opinion also applies to a companion case, *Katzenbach v. McClung*.