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CIVIL RIGHTS—PUBLIC ACCOMMODATIONS

1580

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1732

A BILL TO ELIMINATE DISCRIMINATION IN PUBLIC ACCOMMODATIONS AFFECTING INTERSTATE COMMERCE

PART 3 (APPENDIX)

Serial 40

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CIVIL RIGHTS—PUBLIC ACCOMMODATIONS

APPENDIX

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,
COMMITTEE ON FEDERAL LEGISLATION,
August 23, 1963.

Memorandum to Members of the Senate Committees on Commerce and the Judiciary and the House Committee on the Judiciary:

Enclosed is a copy of the report of the committee on Federal legislation of the association on proposed Federal civil rights laws relating to public accommodations.

It is contemplated that this report, along with a report on other aspects of the proposed civil rights law now pending in Congress, will be published in due course in our Federal Legislation Bulletin and sent to all Members of Congress in accordance with our customary practice.

We are sending this copy of the report to you in advance of such publication, because the public accommodations legislation is before your committees, and we thought that you might find it helpful to have the report at this time.

Sincerely yours,

FRED N. FISHMAN, *Chairman.*

REPORT ON PROPOSED FEDERAL CIVIL RIGHTS LAWS RELATING TO PUBLIC ACCOMMODATIONS

INTRODUCTION

This report is addressed to certain bills presently before Congress to eliminate discrimination in public accommodations, and to establish causes of action by private individuals and the Attorney General to prevent such discrimination.

We have considered principally the provisions comprising title II of the proposed Civil Rights Act of 1963, introduced by Senator Mansfield and others as S. 1731, 88th Congress, 1st session, and by Representative Celler as H.R. 7152, 88th Congress, 1st session. Senator Mansfield and others have also introduced substantially the same provisions as title II in a separate bill, S. 1732, the proposed Interstate Public Accommodations Act of 1963.[1] Other bills dealing with this problem have been introduced by a substantial number of other Senators and Representatives, including S. 1591 introduced by Senators Dodd and Cooper and others, and H.R. 6720 introduced by Representative Lindsay and by others in the same form. S. 1731 and H.R. 7152 were proposed by President Kennedy in a special message to Congress on June 19, 1963, which stated that the public accommodations provisions are designed "to guarantee all citizens equal access to the services and facilities of hotels, restaurants, places of amusement, and retail establishments" (New York Times, June 20, 1963, p. 16, col. 4).

Title II of S. 1731 invokes the powers of Congress under both the commerce clause and the 14th amendment of the Constitution, with chief reliance placed upon the commerce clause, and with the operative sections, as introduced, relying solely on the commerce clause. S. 1591 and H.R. 6720 are based upon the 14th amendment, and proposals have been made to amend title II to place greater operative reliance upon the 14th amendment.

Title II now provides that all persons shall be entitled "without discrimination or segregation on account of race, color, religion, or national origin, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages,

[1] Unless otherwise indicated the references to the proposed legislation in this report refer to title II of S. 1731, the full text of which is attached hereto as an appendix.

and accommodations" of enumerated kinds of "public establishments" if such establishments satisfy specified criteria with respect to activities or operations related to interstate commerce. The denial of or interference with the right to nondiscriminatory treatment is prohibited, and an aggrieved person, or the Attorney General for or in the name of the United States, may institute a civil action for injunctive relief in the Federal district courts.

In order for the Attroney General to institute suit, he must certify that he has received a written complaint from the aggrieved person and that in his judgment such person is unable to initiate and maintain appropriate legal proceedings because of lack of adequate financial means or effective representation or risk of economic or other injury. If local laws appear to forbid the discrimination complained of, the Attorney General is required to notify the appropriate State or local officials, and, upon their request, to afford them a reasonable time to act before he institutes an action. In the case of other complaints, the Attorney General is required, before instituting an action, to refer the matter to the Community Relations Service, contemplated by title IV of the bill, to attempt to secure compliance with the statute by voluntary procedures. Compliance with the provisions for action by local officials or the Community Relations Service is not required if the Attorney General certifies to the court that delay would adversely affect the interests of the United States or that compliance with such provisions would be fruitless.

SUMMARY

We support the proposed legislation and we believe it is validly founded on the commerce clause and also derives substantial constitutional support from the 14th amendment. We believe that Congress should rely on both constitutional provisions, since we regard the commerce clause and the 14th amendment as complementary and not competitive sources of congressional power.

THE COMMERCE CLAUSE

Article I, section 8, clause 3, of the Constitution confers upon Congress the power "To regulate commerce * * * among the several States * * *."

The commerce clause has repeatedly been held by the U.S. Supreme Court to empower Congress to reach and control activity which affects interstate commerce and to remove burdens on such commerce whether or not a particular activity or transaction embraced by the legislation is itself interstate in character. Even if an activity or transaction considered in isolation is both intrastate in character and insubstantial in its impact on interstate commerce, Congress may legislate with regard to the aggregate impact or burden on interstate commerce of all such activities or transactions. The power reaches not only activities which are purely "commercial" in nature, but, in furtherance of particular public policies, can be, and has been, used to reach noncommercial activities. In our opinion, under these principles, each fully supported by authority, the proposed public accommodations law would be a valid exercise of the power of Congress under the commerce clause.

Effect of discrimination on interstate commerce.—Title II contains proposed legislative findings that discriminatory acts (*a*) make unavailable to Negro interstate travelers goods and services which are available to others; (*b*) make adequate lodgings for Negro interstate travelers difficult to obtain and inconvenient to reach; (*c*) require Negro interstate travelers to detour to find adequate eating places; (*d*) restrict the audiences of interstate entertainment industries and thus burden interstate commerce; (*e*) have led to the withholding of patronage from retail establishments by those affected by such acts and inhibit and restrict the normal distribution of goods in the interstate market; (*f*) drive conventions away from cities where discriminatory practices prevail; and (*g*) reduce the mobility of the national labor force and deter the interstate movement of industries.

We believe that these findings that discrimination in public accommodations burdens and obstructs interstate commerce are manifestly reasonable for Congress to make. Such findings help to lay the proper foundation for legislation intended to deal with the problem as found to exist by Congress and will be given great weight when the constitutionality of the proposed legislation is under attack. See *Block* v. *Hirsh* (256 U.S. 135, 154 (1921)); *Borden's Co.* v. *Baldwin* (293 U.S. 194, 209 (1934)); *Communist Party* v. *Subversive Activities Control Board* (367 U.S. 1, 94 (1961)).

Precedents under commerce clause support proposed legislation.—The validity of the proposed legislation as an exercise of the commerce power is clear from the decisions of the U.S. Supreme Court in *N.L.R.B.* v. *Jones & Laughlin Steel Corp.* (301 U.S. 1 (1936)), *United States* v. *Darby* (312 U.S. 100 (1941)) and numerous other cases.

In the *Jones & Laughlin* case, the Court sustained the constitutionality of the National Labor Relations Act under the commerce clause. The Court held that, irrespective of respondent's contention that its manufacturing activities represented a break in the "stream of commerce," Congress could legislate "to protect interstate commerce from the paralyzing consequences of industrial war" (301 U.S. at 41). The Court summarized the course of relevant authority as follows:

"The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for 'its protection and advancement' (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*Mobile County* v. *Kimball*, 102 U.S. 691, 696, 697); 'to foster protect, control and restrain.' *Second Employers' Liability Cases*, *supra* [223 U.S.] page 47. See *Texas & N.O. R. Co.* v. *Railway Clerks*, *supra* [281 U.S. 548]. That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' *Second Employers' Liability Cases*, page 51; *Schecter Corp.* v. *United States*, *supra* [295 U.S. 495]. Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *Schecter Corp.* v. *United States*, *supra*. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national what is local and create a completely centralized government (idem). The question is necessarily one of degree. As the Court said in *Chicago Board of Trade* v. *Olsen*, *supra* [262 U.S.] page 37, repeating what had been said in *Stafford* v. *Wallace*, *supra* [258 U.S. 495]: 'Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause and it is primarily for Congress to consider and decide the fact of the danger and meet it'" (301 U.S. at 36–37).

The Court noted that in *Chicago Board of Trade* v. *Olsen*, it had upheld the Grain Futures Act of 1922 "with respect to transactions on the Chicago Board of Trade, although these transactions were 'not in and of themselves interstate commerce.' Congress had found that they had become 'a constantly recurring burden and obstruction to that commerce.' *Chicago Board of Trade* v. *Olsen*, 262 U.S. 1, 32" (301 U.S. at 35–36).

In the *Jones & Laughlin* case, furthermore, the Court stressed the factor of experience in determining the scope of congressional power over interstate commerce:

"We have often said that interstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.

"Experience has abundantly demonstrated, that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances" (301 U.S. at 41–42).

This emphasis on the relevance of practical experience has clear pertinence to the present question.

Similarly, in *United States* v. *Darby*, the Supreme Court sustained provisions of the Fair Labor Standards Act barring from shipment in interstate commerce goods produced by employees whose wages and hours of employment did not conform to the requirements of the statute, and prescribing adherence to such requirements with respect to all employees engaged in the production of goods

for commerce. In upholding the prohibition on shipment of the proscribed goods in interstate commerce, the Court considered the nature of the commerce power:

"The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction and over which the courts are given no control. *McCray* v. *United States*, 195 U.S. 27; *Sonzinsky* v. *United States*, 300 U.S. 506, 513 and cases cited. 'The judicial cannot prescribe to the legislative department of the Government limitations upon the exercise of its acknowledged power.' *Veazie Bank* v. *Fenno*, 8 Wall. 533. Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the Commerce Clause" (312 U.S. at 115).

The power of Congress to forbid the production of goods for commerce unless the prescribed labor standards were met was likewise upheld, and the Court stated:

"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. See *McCulloch* v. *Maryland*, 4 Wheat. 316, 421. Cf. *United States* v. *Ferger*, 250 U.S. 199.

* * * * * * *

"But it does not follow that Congress may not by appropriate legislation regulate intrastate activities where they have a substantial effect on interstate commerce. See *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U.S. 453, 466. A recent example is the National Labor Relations Act for the regulation of employer and employee relations in industries in which strikes, induced by unfair labor practices named in the act, tend to disturb or obstruct interstate commerce. See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 38, 40; *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 604, and cases cited. But long before the adoption of the National Labor Relations Act this Court had many times held that the power of Congress to regulate interstate commerce extends to the regulation through legislative action of activities intrastate which have a substantial effect on the commerce or the exercise of the congressional power over it" (312 U.S. at 118–20).

The aggregate impact on commerce of goods produced under prescribed conditions was deemed controlling rather than the volume of any one shipper or producer:

"Congress, to attain its objective in the suppression of nationwide competition in interstate commerce by goods produced under substandard labor conditions, has made no distinction as to the volume or amount of shipments in the commerce or of production for commerce by any particular shipper or producer. It recognized that in present-day industry, competition by a small part may affect the whole and that the total effect of the competition of many small producers may be great. See House Report No. 2182, 75th Congress 1st session, p. 7. The legislation aimed at a whole embraces all its parts (cf). *National Labor Relations Board* v. *Fainblatt*, *supra*, 606" (312 U.S. at 123).

Again, in *Wickard* v. *Filburn*, 317 U.S. 111 (1942), the Court upheld the marketing penalties imposed for noncompliance with the wheat marketing quotas of the Agricultural Adjustment Act of 1938, even with respect to production not intended for commerce but wholly for consumption on the farm. The Court stated that "even if appellee's [the farmer'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'" (317 U.S. at 125).

The Court's consideration in that case of the power of Congress to stimulate commerce is likewise pertinent with respect to the proposed findings in title II:

"The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon. This record leaves us in no doubt that Congress may properly have considered that wheat consumed on the farm where grown, if wholly outside the scheme of regulation, would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices" (317 U.S. at 128–129).

The Court further held that the fact 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 of many others similarly situated, is far from trivial. *Labor Board* v. *Fainblatt*, 306 U.S. 601, 606 *et seq*" (317 U.S. at 127–128).

Each of these decisions is replete with citations to additional authority supporting the power of Congress to regulate activities which themselves may be deemed intrastate in character but which burden or obstruct interstate commerce, and subsequent decisions reinforce this doctrine. *E.g.*, *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U.S. 219, 229–35 (1948); *United States* v. *Women's Sportswear Mfgr's Assn.*, 336 U.S. 460, 464 (1949); *United States* v. *South-Eastern Underwriters Assn.*, 322 U.S. 533, 539–53 (1944); *Polish Nat. Alliance* v. *N.L.R.B.*, 322 U.S. 643, 648 (1944). As tersely summarized in the *Women's Sportswear* case:

"If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze" (336 U.S. at 464).

As made clear by the *Darby* and *Wickard* v. *Filburn* decisions, Congress is not limited under the commerce clause by the size or impact on commerce of any particular enterprise subjected to regulation. It is the aggregate impact on commerce of the regulated activities which is determinative, irrespective of the extent of impact of any specific isolated activity. In *Wickard* v. *Filburn*, for example, the farmer planted only 23 acres and the amount of wheat at issue amounted to only 239 bushels. Similarly, in *Mabee* v. *White Plains Publishing Co.*, 327 U.S. 178 (1946), the Fair Labor Standards Act was applied to a newspaper with a circulation of about 9,000 copies of which only 45 were mailed out of the State in which the newspaper was printed.[2]

Use of commerce clause to eliminate social evils.—It is abundantly clear that Federal public accommodations legislation can be validly founded on the commerce clause even if the proposed legislation be regarded as directed in large measure at a social evil which might be the subject of State regulation under the police power. In the first place, the social evil has clear economic consequences of which the proposed legislation takes account. Furthermore, as stated in *Darby:*

"It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the States. *Seven Cases* v. *United States*, 239 U.S. 510, 513; *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146, 156; *United States* v. *Carolene Products Co.*, 304 U.S. 144, 147; *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377" (312 U.S. at 114–115).

Indeed, the commerce power has been relied upon to reach a variety of non-economic activities deemed to violate public policy. Most pertinent are cases upholding the barring of racial discrimination by interstate carriers and related public facilities; e.g., *Georgia* v. *United States*, 371 U.S. 9 (1962), aff'g 201 F. Supp. 813 (N.D. Ga. 1961); *Boynton* v. *Virginia*, 364 U.S. 454 (1960); *Henderson* v. *United States*, 339 U.S. 816 (1950); *Mitchell* v. *United States*, 313 U.S. 80 (1941). The Interstate Commerce Commission has dealt with the subject on numerous occasions, both in specific proceedings and through a general order forbidding such discrimination. Docket No. MC–C–335, paragraphs 180a(1), 180a(2) (1961). Indeed, the Commission's decisions on matters of racial discrimination date back to such cases as *Heard* v. *Georgia R. Co.*, 1 I.C.C. 719 (1888), and *Council* v. *Western & A.R. Co.*, 1 I.C.C. 638 (1887), and extend to such recent decisions as *N.A.A.C.P.* v. *St. Louis S.F. R. Co.*, 297 I.C.C. 335, 347–8 (1955).

The Supreme Court has also consistently sustained under the commerce clause statutes having major social objectives. It has upheld legislation forbidding the interstate transportation of lottery tickets as an aid to local enforcement of gambling prohibitions. *Lottery* cases, 188 U.S. 321 (1903). Regulation

[2] It has been suggested in some quarters that public accommodations having a gross annual income below a specified amount be excluded from the proposed legislation. We do not favor such an exclusion. The impact on commerce of relatively small businesses may well vary more with the location and community involved than the actual dollar volume. For example, there may be stops along interstate bus and automobile routes where only small lunch counters or motels are available. The applicability of title II would in all cases depend on the applicability of the statutory criteria which refer to activity or operations related to interstate commerce, and in an enforcement action by the Attorney General he would have to certify under sec. 204(a)(2)(ii) of title II that "the purposes of this title will be materially furthered by the filing of an action."

designed to insure pure food and drugs has been sustained. *Hipolite Egg Co.* v. *United States*, 220 U.S. 45 (1911). The banning of transportation of women in interstate commerce for purposes of prostitution has been upheld. *Hoke* v. *United States*, 227 U.S. 308 (1913). The prohibition of interstate transportation of women for immoral purposes has been upheld even where commercial postitution is not involved. *Caminetti* v. *United States*, 242 U.S. 470 (1917). Thus, it is apparent that there is no pertinent distinction under the commerce clause between "economic" and "social" legislation.

Effect on commerce clause jurisdiction of 5th and 10th amendments.—The proposed legislation would violate neither the 5th nor 10th amendment to the Constitution. It is beyond challenge at this date that reasonable regulation to meet a public evil does not violate the due process clause. "The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people." *Nebbia* v. *New York*, 291 U.S. 502, 538–39 (1934). See *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 43–44 (1936); *Chicago Board of Trade* v. *Olsen*, 262 U.S. 1, 40–41 (1923).

In *Wickard* v. *Filburn*, the Court rejected the contention that the legislation involved violated the fifth amendment by limiting the use of private property. "It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others" (317 U.S. at 129).

President Kennedy's message to Congress referred to some 30 States, the District of Columbia, and numerous cities "covering some two-thirds of this country and well over two-thirds of its people" which have already enacted "laws of varying effectiveness" against discrimination in places of public accommodation (the New York Times, June 20, 1963, p. 16, cols. 3–4). It is clear that State and local antidiscrimination laws do not violate the due process clause of the 14th amendment. *Railway Mail Assoc.* v. *Corsi*, 326 U.S. 88 (1945) (New York law prohibiting racial discrimination by labor union upheld against due process clause challenge). See also *Bolden* v. *Grand Rapids Operating Corp.*, 239 Mich. 318, 214 N.W. 241 (1927); *Pickett* v. *Kuchan*, 323 Ill. 188, 153 N.E. 667 (1926); *People* v. *King*, 110 N.Y. 418, 18 N.E. 245 (1888) (cases involving public accommodations laws). Patently, Federal legislation based upon the commerce clause is no more subject to attack under the due process clause of the 5th amendment than are such State enactments under the 14th amendment. As observed by the Supreme Court in *United States* v. *Rock Royal Co-operative*, 307 U.S. 533, 569–70 (1939):

"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."

Any argument against the validity of the proposed legislation based upon the 10th amendment is similarly without merit, as shown in the *Darby* case:

"Our conclusion is unaffected by the 10th amendment which provides: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the National and State Governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new National Government might seek to exercise powers not granted, and that the States might not be able to exercise fully their reserve powers. * * *

"From the beginning and for many years the amendment has been construed as not depriving the National Government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end" (312 U.S. at 123–24).

We believe that the proposed legislation is well within the granted power of Congress and is a wholly appropriate means to deal with a national problem of great importance.

THE 14TH AMENDMENT

The equal protection clause in section 1 of the 14th amendment provides that: "No State * * * shall deny to any person within its jurisdiction the equal protection of the laws." This prohibition may be enforced by Congress by appropriate legislation under the provisions of section 5 of the amendment.

The findings in title II of S. 1731 rely on the 14th amendment, as well as the commerce clause, in section 201 (h) and (i), which provide:

"(h) The discriminatory practices described above are in all cases encouraged, fostered, or tolerated in some degree by the governmental authorities of the States in which they occur, which license or protect the businesses involved by means of laws and ordinances and the activities of their executive and judicial officers. Such discriminatory practices, particularly when their cumulative effect throughout the Nation is considered, take on the character of action by the States and therefore fall within the ambit of the equal protection clause of the 14th amendment to the Constitution of the United States.

"(i) The burdens on and obstructions to commerce which are described above can best be removed by invoking the powers of Congress under the 14th amendment and the commerce clause of the Constitution of the United States to prohibit discrimination based on race, color, religion, or national origin in certain public establishments."

S. 1591 and H.R. 6720 are based exclusively on the 14th amendment. S. 1591 provides relief against discrimination in public accommodations "conducted under a State license," and H.R. 6720 provides relief against discrimination in businesses "authorized by a State."

Consideration of a 14th amendment basis for public accommodations legislation must begin with the *Civil Rights* cases, (109 U.S. 3 (1883)). The Supreme Court there held that sections 1 and 2 of the Civil Rights Act of 1875, which purported to prohibit discrimination in "inns, public conveyances on land or water, theaters, and other places of public amusement," were unconstitutional because directed at individual rather than State action:

"It is State action of a particular character that is prohibited (by the 14th amendment). Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws" (109 U.S. at 11).

It is hardly likely that the "State action" requirement of the *Civil Rights* cases will be overruled, particularly in view of such recent pronouncements by the Court as in *Burton* v. *Wilmington Pkg. Auth.*, 365 U.S. 715, 722 (1961):

"It was clear, as it always has been since the *Civil Rights* cases, *supra*, that 'Individual invasion of individual rights is not the subject matter of the amendment' * * *."

The principle of the *Civil Rights* cases, however, does not prevent application of the proposed legislation to the areas of discriminatory activity which are already subject to the congressional power granted by the 14th amendment; namely, activity which is not purely "individual invasion of individual rights" but involves the State sufficiently to bring the amendment into play. Indeed, the majority of the Court in the *Civil Rights* cases addressed itself only to the lack of any requirement of State action under the 1875 act and did not consider what degree of State participation is required to support the applicability of the 14th amendment, stating:

"It is not necessary for us to state, if we could, what legislation would be proper for Congress to adopt. It is sufficient for us to examine whether the law in question is of that character.

"An inspection of the law shows that it makes no reference whatever to any supposed or apprehended violation of the 14th amendment on the part of the States" (109 U.S. at 13-14).

The concept of "State action" under the 14th amendment has undergone considerable expansion in recent years. Thus, the prohibitions of the 14th amendment extend to State judicial enforcement of racially restrictive covenants among private persons. *Shelley* v. *Kraemer*, 334 U.S. 1 (1948). The enforcement of State trespass statutes against Negroes for refusing to leave a lunch counter has been held to be barred by the 14th amendment where there is a local segregation ordinance. Even if the exclusion is based on the store manager's own decision, the equal protection clause is applicable because the existence of the ordinance is deemed to remove his decision from the sphere of private choice. *Peterson* v. *Greenville*, 373 U.S. 244 (1963). Where local officials in the absence of an ordinance publicly state that Negroes would not be permitted to seek desegregated lunch counter service, the situation is considered the same from the standpoint of the 14th amendment as if there were such an ordinance. *Lombard* v. *Louisiana*, 373 U.S. 267 (1963). Lessees operating

restaurants in a municipal airport and in an automobile parking building operated by a State agency have also been held subject to the 14th amendment. *Turner* v. *Memphis*, 369 U.S. 350 (1962); *Burton* v. *Wilmington Pkg. Auth.*, 365 U.S. 715 (1961). In these and other situations, the application of the 14th amendment is no longer in doubt, and such decisions suggest that there may well be further expansion of what constitutes "State action" under the amendment when other factual situations come before the Court.

The reliance upon the granting of a State license or authorization in S. 1591 and H.R. 6720 for 14th amendment coverage may rest in part upon a portion of the dissenting opinion of the first Mr. Justice Harlan in the *Civil Rights* cases. In the course of his discussion of discriminatory treatment in places of public amusement as a vestige of slavery which could be barred by Congress under the 13th amendment, he stated:

"The authority to establish and maintain them comes from the public. The colored race is a part of that public. The local government granting the license represents them as well as all other races within its jurisdiction. A license from the public to establish a place of public amusement imports, in law, equality of right, at such places, among all the members of that public. This must be so, unless it be—which I deny—that the common municipal government of all the people may, in the exertion of its powers, conferred for the benefit of all, discriminate or authorize discrimination against a particular race, solely because of its former condition of servitude." 109 U.S. 41.

Similarly, in his discussion of the 14th amendment, he wrote:

"What I affirm is that no State, nor the officers of any State, nor any corporation or individual wielding power under State authority for the public benefit or the public convenience, can, consistently either with the freedom established by the fundamental law, or with that equality of civil rights which now belongs to every citizen, discriminate against freemen or citizens, in those rights, because of their race, or because they once labored under the disabilities of slavery imposed upon them as a race." 109 U.S. 59.

Mr. Justice Douglas substantially reiterated this position with respect to the 14th amendment in two recent concurring opinions. *Lombard* v. *Louisiana*, 373 U.S. 267, 274 (1963); *Garner* v. *Louisiana*, 368 U.S. 157, 184 (1961). In *Garner*, Mr. Justice Douglas also adverted to the pattern of segregation pursuant to Louisiana custom:

"Though there may have been no State law or municipal ordinance that *in terms* required segregation of the races in restaurants, it is plain that the proprietors in the instant cases were segregating blacks from whites pursuant to Louisiana's custom. Segregation is basic to the structure of Louisiana as a community; the custom that maintains it is at least as powerful as any law. If these proprietors also choose segregation, their preference does not make the action 'private,' rather than 'State,' action. If it did, a minuscule of private prejudice would convert State into private action. Moreover, where the segregation policy is the policy of a State, it matters not that the agency to enforce it is a private enterprise." 368 U.S. 161. [Emphasis in opinion.]

In view of the *Lombard* decision, it would appear that the practice of segregating public accommodations in many communities to conform to the position taken by local officials would infringe the 14th amendment even in the absence of local laws requiring segregation. The combination of various circumstances, perhaps including elements of local licensing, regulation, official attitude and custom, might in other instances also support the application of the strictures of the 14th amendment. Licensing alone, however, has not thus far been judicially adopted as a basis for invoking the 14th amendment. Moreover, legislation referable to a licensing requirement alone could produce arbitrary variations between communities depending upon the nature and extent of local licensing laws and might exclude various types of public accommodations entirely if licensing of them is abolished or nonexistent in the locality. However, there is no necessity to have the reliance on the 14th amendment so limited.

Over 90 years ago Congress exercised its power under the 14th amendment to provide relief against deprivation of constitutional rights "under color of any statute, ordinance, regulation, custom, or usage of any State or Territory * * *" 42 U.S.C. 1983 (originally sec. 1 of the Ku Klux Act of April 20, 1870). See *Monroe* v. *Pape*, 365 U.S. 167 (1961). Congress has also employed similar language in imposing criminal penalties for the deprivation of constitutional rights. 18 U.S.C. 242. The Court in the *Civil Rights* cases adverted with apparent approval to the substantially similar version of this penal statute

then in effect as illustrative of an act which was properly directed against "State action" under the 14th amendment. The Court said:

"This law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified. In the Revised Statutes, it is true, a very important clause, to wit, the words 'any law, statute, ordinance, regulation or custom to the contrary notwithstanding,' which gave the declaratory section its point and effect, are omitted; but the penal part, by which the declaration is enforced, and which is really the effective part of the law, retains the reference to State laws, by making the penalty apply only to those who should subject parties to a deprivation of their rights under color of any statute, ordinance, custom, etc., of any State or Territory; thus preserving the corrective character of the legislation." 109 U.S. 16–17.

Title II of S. 1731 might be amended in similar terms, as has been suggested by some proponents of increased reliance on the 14th amendment, by providing for preventative relief against discrimination in specified kinds of public establishments by any persons acting under color of any law, statute, ordinance, regulation or custom or usage having the force of law, of any State or Territory.[8]

USE OF MULTIPLE CONSTITUTIONAL SUPPORT

We believe that reliance on both the commerce clause and the 14th amendment in the proposed legislation would be highly advisable. The broadest coverage and the most secure constitutional support can be derived from reliance upon all pertinent sources of power. Much legislation is expressly founded on more than one power of Congress, and the Supreme Court has relied on multiple constitutional support in upholding the validity of various statutes, *e.g. Board of Trustees* v. *United States*, 289 U.S. 48 (1933) (Tariff Act of 1922 upheld under power to raise revenues and power to regulate commerce with foreign nations); *Ashwander* v. *T.V.A.*, 297 U.S. 288 (1936) (Tennessee Valley Authority Act upheld on bases of war, commerce, and navigation powers). See also *United States* v. *Manning*, 215 F. Supp. 272 (W.D. La. 1963) (voting registration provisions of Civil Rights Act of 1960 upheld under 14th and 15th amendments). Similarly, in the elimination of discriminatory treatment in public accommodations, the sources of congressional power provided by the Commerce Clause and the 14th amendment are fully compatible, and we believe that both should be invoked by Congress.

POLICY CONSIDERATIONS AND RECOMMENDATION

The course of recent events makes it plain that the demands of the Negro for just treatment are being insistently pressed and that, 100 years after the Emancipation Proclamation, the patients of the Negro with inequality and injustice is at an end. Legislation and judicial decisions have, in recent years, begun to afford redress in numerous respects, but discriminatory treatment in public accommodations open to others remains a continual affront.

We thoroughly endorse the moral and social objectives of the proposed legislation. It is a primary, ancient and honorable function of the law to provide the instruments for the peaceful and just resolution of disputes among men. We believe that it is the responsibility of the bar to support the provision of adequate legal remedies to that end and to encourage the respect for legal processes which can only be fostered among the affected groups by providing vehicles of relief against injustice. In our opinion the proposed legislation would fill the serious need for a means under law to redress a major grievance of the Negro. We approve the individual right of action provided by the bill, but in view of the frequent obstacles to suit by private litigants for relief against discriminatory treatment, we believe that an active, affirmative role by the Federal Government is necessary. Hence, we endorse the provisions in the proposed legislation

[8] Such a provision in the proposed legislation would to some extent parallel the provisions of 42 U.S.C. 1983, supra, but would give the Attorney General a cause of action not afforded by that section.

which, while encouraging local initiative and responsibility, empower the Attorney General to institute enforcement actions.

We strongly recommend enactment of the proposed legislation.

Respectfully submitted.

Committee on Federal Legislation: Fred N. Fishman, Chairman, Sidney H. Asch, Eastman Birkett, George H. Cain, Joseph Calderon, Donald J. Cohn, Louis A. Craco, Benjamin F. Crane, Nanette Dembitz, Arthur J. Dillon, Barry H. Garfinkel, Elliot H. Goodwin, Sedgwick W. Green, H. Melville Hicks, Jr., Robert M. Kaufman, Ida Klaus, Leonard M. Leiman, George Minkin, Gerald E. Paley, Albert J. Rosenthal, Peter G. Schmidt, Henry I. Stimson.

AUGUST 19, 1963.

APPENDIX

[S. 1731, 88th Cong., 1st sess.]

TITLE II—INJUNCTIVE RELIEF AGAINST DISCRIMINATION IN PUBLIC ACCOMMODATIONS

FINDINGS

SEC. 201. (a) The American people have become increasingly mobile during the last generation, and millions of American citizens travel each year from State to State by rail, air, bus, automobile, and other means. A substantial number of such travelers are members of minority racial and religious groups. These citizens, particularly Negroes, are subjected in many places to discrimination and segregation, and they are frequently unable to obtain the goods and services available to other interstate travelers.

(b) Negroes and members of other minority groups who travel interstate are frequently unable to obtain adequate lodging accommodations during their travels, with the result that they may be compelled to stay at hotels or motels of poor and inferior quality, travel great distances from their normal routes to find adequate accommodations, or make detailed arrangements for lodging far in advance of scheduled interstate travel.

(c) Negroes and members of other minority groups who travel interstate are frequently unable to obtain food service at convenient places along their routes, with the result that many are dissuaded from traveling interstate, while others must travel considerable distances from their intended routes in order to obtain adequate food service.

(d) Goods, services, and persons in the amusement and entertainment industries commonly move in interstate commerce, and the entire American people benefit from the increased cultural and recreational opportunities afforded thereby. Practices of audience discrimination and segregation artificially restrict the number of persons to whom the interstate amusement and entertainment industries may offer their goods and services. The burdens imposed on interstate commerce by such practices and the obstructions to the free flow of commerce which result therefrom are serious and substantial.

(e) Retail establishments in all States of the Union purchase a wide variety and a large volume of goods from business concerns located in other States and in foreign nations. Discriminatory practices in such establishments, which in some instances have led to the withholding of patronage by those affected by such practices, inhibit and restrict the normal distribution of goods in the interstate market.

(f) Fraternal, religious, scientific, and other organizations engaged in interstate operations are frequently dissuaded from holding conventions in cities which they would otherwise select because the public facilities in such cities are either not open to all members of racial or religious minority groups or are available only on a segregated basis.

(g) Busines organizations are frequently hampered in obtaining the services of skilled workers and persons in the professions who are likely to encounter discrimination based on race, creed, color, or national origin in restaurants, retail stores, and places of amusement in the area where their services are needed. Business organizations which seek to avoid subjecting their employees to such discrimination and to avoid the strife resulting therefrom are restricted in the choice of location for their offices and plants. Such discrimination thus reduces the mobility of the national labor force and prevents the most effective alloca-

tion of national resources, including the interstate movement of industries, particularly in some of the areas of the Nation most in need of industrial and commercial expansion and development.

(h) The discriminatory practices described above are in all cases encouraged, fostered, or tolerated in some degree by the governmental authorities of the States in which they occur, which license or protect the businesses involved by means of laws and ordinances and the activities of their executive and judicial officers. Such discriminatory practices, particularly when their cumulative effect throughout the Nation is considered, take on the character of action by the States and therefore fall within the ambit of the equal protection clause of the 14th amendment to the Constitution of the United States.

(i) The burdens on and obstructions to commerce which are described above can best be removed by invoking the powers of Congress under the 14th amendment and the commerce clause of the Constitution of the United States to prohibit discrimination based on race, color, religion, or national origin in certain public establishments.

RIGHT TO NONDISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

SEC. 202. (a) All persons shall be entitled, without discrimination or segregation on account of race, color, religion, or national origin, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of the following public establishments:

(1) any hotel, motel, or other public place engaged in furnishing lodging to transient guests, including guests from other States or traveling in interstate commerce;

(2) any motion picture house, theater, sports arena, stadium, exhibition hall, or other public place of amusement or entertainment which customarily presents motion pictures, performing groups, athletic teams, exhibitions, or other sources of entertainment which move in interstate commerce; and

(3) any retail shop, department store, market, drugstore, gasoline station, or other public place which keeps goods for sale, any restaurant, lunchroom, lunch counter, soda fountain, or other public place engaged in selling food for consumption on the premises, and any other establishment where goods, services, facilities, privileges, advantages, or accommodations are held out to the public for sale, use, rent, or hire, if—

(i) the goods, services, facilities, privileges, advantages, or accommodations offered by any such place or establishment are provided to a substantial degree to interstate travelers,

(ii) a substantial portion of any goods held out to the public by any such place or establishment for sale, use, rent, or hire has moved in interstate commerce,

(iii) the activities or operations of such place or establishment otherwise substantially affect interstate travel or the interstate movement of goods in commerce, or

(iv) such place or establishment is an integral part of an establishment included under this subsection.

For the purpose of this subsection, the term "integral part" means physically located on the premises occupied by an establishment, or located contiguous to such premises and owned, operated, or controlled, directly or indirectly, by or for the benefit of, or leased from the persons or business entities which own, operate or control an establishment.

(b) The provisions of this title shall not apply to a bona fide private club or other establishment not open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (a).

PROHIBITION AGAINST DENIAL OF OR INTERFERENCE WITH THE RIGHT TO NONDISCRIMINATION

SEC. 203. No person, whether acting under color of law or otherwise, shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 202, or (b) interfere or attempt to interfere with any right or privilege secured by section 202, or (c) intimidate, threaten, or coerce any person with a purpose of interfering with any right or privilege secured by section 202, or (d) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege

secured by section 202, or (e) incite or aid or abet any person to do any of the foregoing.

CIVIL ACTION FOR PREVENTIVE RELIEF

SEC. 204. (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 203, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted (1) by the person aggrieved, or (2) by the Attorney General for or in the name of the United States if he certifies that he has received a written complaint from the person aggrieved and that in his judgment (i) the person aggrieved is unable to initiate and maintain appropriate legal proceedings and (ii) the purposes of this title will be materially furthered by the filing of an action.

(b) In any action commenced pursuant to this title by the person aggrieved, he shall if he prevails be allowed a reasonable attorney's fee as part of the costs.

(c) A person shall be deemed unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person is unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or when there is reason to believe that the institution of such litigation by him would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person, his family, or his property.

(d) In case of any complaint received by the Attorney General alleging a violation of section 203 in any jurisdiction where State or local laws or regulations appear to him to forbid the act or practice involved, the Attorney General shall notify the appropriate State and local officials and, upon request, afford them a reasonable time to act under such State or local laws or regulations before he institutes an action. In the case of any other complaint alleging a violation of section 203, the Attorney General shall, before instituting an action, refer the matter to the Community Relations Service established by title IV of this Act, which shall endeavor to secure compliance by voluntary procedures. No action shall be instituted by the Attorney General less than thirty days after such referral unless the Community Relations Service notifies him that its efforts have been unsuccessful. Compliance with the foregoing provisions of this subsection shall not be required if the Attorney General shall file with the court a certificate that the delay consequent upon compliance with such provisions in the particular case would adversely affect the interests of the United States, or that, in the particular case, compliance with such provisions would be fruitless.

JURISDICTION

SEC. 205. (a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) This title shall not preclude any individual or any State or local agency from pursuing any remedy that may be available under any Federal or State law, including any State statute or ordinance requiring nondiscrimination in public establishments or accommodations.

AMERICAN VEGETARIAN PARTY,
New York, N.Y., August 5, 1963.

Hon. JOHN O. PASTORE,
Chairman on the Committee of Civil Rights Legislation Hearings,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR PASTORE: I am availing myself of your invitation to submit the views of the American Vegetarian Party in the matter of this legislation bearing on the constitutional rights of 10 percent of our American citizens who have been denied their privileges accorded to their white fellow-citizens for so many decades that it will be a difficult matter no matter what legislation is passed to equate their sufferings and the indignities that have been imposed upon them with the law as finally enacted.

Nevertheless we all realize that our country must take a radical step and virtually a fundamental "declaration of independence" attitude which will

demonstrate to the world at large especially the emerging nations of Africa that we possess the civic and moral stamina to make up for the devastating delinquencies which certain sectors of our Nation have persisted in exhibiting their inhuman phobias and prejudices and even the so-called liberal northern sector are also guilty of an attitude toward their Negro fellow-citizens which is not to their credit when assayed from the standpoint of true Americanism and Jeffersonian humanitarianism that is consonant with our Bill of Rights, the Ten Commandments, the Christian religion and other vaunted principles which the "white" race in its varied echelons cling to and manifest in the abstract but which they have failed to live up to in the actual.

Our position in the matter is set forth herewith without qualification—and further we feel that a special fund should be arranged for as part of the final legislation which can be construed properly as retribution for the delinquencies and deficiencies of our Government and certain elements of its population; this fund to be employed to aid our Negro citizens to develop those skills and qualities which would enable them to compete on an equal basis with their "white" fellow citizens who have had the advantages denied them for so many decades. Then and only then can it be said that we have basically rectified a situation which has plagued most of us in the depths of our conscience and which have made of our boasted claims a de-mock-cracy.

I know from my intimate contacts with many Negro fellow-beings that they possess the initiative and qualities which are lacking in many of our favored citizens. I know that there resides in this vast body of citizens an untapped reservoir of great qualities that can contribute immeasurably to the progress of our country if given the opportunity and aid which they well deserve to demonstrate and develop these potentials. Therefore, it will be to the everlasting shame of our legislators if they will indulge in quibbling debates when discussing this great and inescapable moral responsibility which all of us must accept and discharge on the highest level of social and civic ethicality.

Sincerely yours,

SYMON GOULD.

DECLARATION OF CIVIL RIGHTS PLATFORM OF THE AMERICAN VEGETARIAN PARTY

These segregation and discriminatory practices when forced upon our Negro fellow-citizens, especially the young, have the inevitable result of planting within them seeds of aversion, repugnance, and hatred in these immature minds which later must develop and flourish into a state of abhorrence bordering on reactions which sooner or later must and will find their vent and expression in acts of violence bordering on revolution.

We are now faced with this stage where the constant escalation of continued acts and decrees denying 20 million of our fellow Americans the rights and privileges which all Americans should possess and enjoy as a matter of course is compelling large groups of these outraged Americans to consider courses of action which may pull the pillars which support our democratic temple from their foundation and bring down upon guilty and innocent alike the dire results of these conditions which have been permitted to ferment and generate to the explosive stage.

Nine years ago, the Supreme Court, by a unanimous decision ruled that segregation should cease in school and college. These nine members of the highest court in the land by virtue of their oath of office, inspired by truth, justice, and honesty of opinion based on legality of reasoning, arrived at this ultimate judgment after long deliberations as their decision indicated. They may have been inspired by the dictum of Edmund Burke who envisioned a nation as a partnership "between those who are dead, those who are living, and those who are to be born." It is in this continuity of existence of which our Negro citizens are an integral part that our judicial savants have embraced this vital segment of our social system and decreed that these segregatory conditions must be exculpated like a cancer that has too long been permitted to exist and proliferate in various strata of our society. They realize as do all forward-looking Americans and officials of our Government that we cannot present ourselves as avowed exemplars of democracy to the rest of the world and especially to the emerging nations of Africa whence our Negro citizens originated, fulfilling the principle of "free and equal" unless we eliminate this false aspect of our democratic institution and deracinate its existance no matter where it may exist and in any degree. In particular the southern segregationists must be served with an unqualified notice that our country will not permit a small segment of its domain to be

dominated or dictated to especially when it goes counter to the expressed judicial and executive and legislative determination which realizes that the whole fabric of our social system may be rent asunder by revolution of this state of affairs is not rapidly and determinedly altered and amended so that we will welcome all Negro citizens no matter where they live into the American family as full-fledged and fully-pledged Americans without qualification or compromising conditions, in an unvenomed atmosphere which recognizes, at long last, that the United States cannot exist in its present divisive state where 20 million of its citizens are not accorded full and untrammeled privileges.

Therefore, the American Vegetarian Party in consonance with its credo of all-embracing humanitarianism, appeals to all Americans to cast out their myopic, intransigent, hypocritical, dishonest concepts of this overwhelmingly insistent problem, abetted and promoted in certain sections especially by shortsighted, self-seeking political leaders catering to hidebound prejudices of a minority, and accept the historical and humane development which has been germinated for over 100 years and which will no longer brook any delay and accept our Negro citizens on a basis of equality in all respects and permit them to develop in accordance with their personal abilities and qualities, unhindered in their quest for educational and economic opportunities enjoyed by all other Americans according to their status, to the end that their contribution for the further growth and progress in the United States may receive the full and unhindered and united potential which has lain dormant and depressed for such a long time through these unnatural restrictions, but which has been demonstrated time and again that where an individual is given the opportunity for development of his or her inherent qualifications and abilities that they can fulfill all the necessary demands of their intellectual and physical potentials for the general well-being of their community, their State, and the country as a whole.

The American Vegetarian Party hereby endorses all forms of protest and demonstrations on the part of our Negro citizens until these evil conditions have been eliminated from our way of life. Especially does it endorse the passive nonviolent methods initiated by Mahatma Gandhi who subscribed to the vegetarian ethos of meeting and overcoming these circumstances which circumscribe and limit the full expression of humanistic tendencies in our present day so-called civilization. The American Vegetarian Party in furtherance of its principled platform on behalf of promoting the best influences for and among all the peoples of all the nations of the world calls upon all departments of our Federal, State, and city governments charged with the moral and civic responsibility of instituting and promoting the well-being of all its citizens to put into effective functioning all necessary measures which will justifiably allay the discontents and dissatisfactions of these conditions which can only continue to breed dissensions and hatreds that must inevitably culminate in eruptions that may leave ineradicable scars on our social system thereby also affecting our efforts in the world areas to bring about those salutary phases which may hasten a better status of peaceful relationship between the United States and other nations, which much-to-be-desired aspect of international life is now being hindered in its realization and the efforts of our well-meaning Secretary of State in that direction is enormously impeded when we and he have to face the criticisms hurled at us by emerging independent countries who had expected to model their constitutional and legislative programs on our forms, but which they note are far from being put into actual and viable functioning by the obstructionist tactics of Governors, mayors, sheriffs, and other functionaries who are sworn to uphold the law of the land based on our hallowed constitutional and judicial pronouncements, which they persist in violating, arbitrarily or through specious divagatory tactics.

In pursuit of the higher morality which in the final analysis must be resorted to for the ultimate solution of our racial difficulties, the Vegetarian credo offers the teachings of Pythagoras, Plato, Aristotle, Socrates, Shelley, Shaw, Gandhi, Buddha, Jesus, Mohammed, Tolstoi, Thoreau, and others who in their enunciations have predicated their preachments on those simple virtues of brotherhood which enfolds and embraces all mankind who are members of one family who should live in amity with each other and in accord with their natural environment. American Vetetarian Party, 353 West 48th Street, New York City, 36.

We would appreciate hearing from all those interested in furthering the cause of the Vegetarian Party in their locality, not primarily from the political aspect which is secondary, but for the promulgation of vegetarianism in its ethical and dietetical significance and procedures.

The complete platform of the American Vegetarian Party for 1964 is now in the process of formulation.

The nominees for President in 1964 will be: Symon Gould, of New York City, Director of the Health Guild; Vice President: Dr. Abraham Wolfson, Miami Beach, Fla.

DECLARATORY PLANK IN THE PLATFORM OF THE AMERICAN VEGETARIAN PARTY CONCERNING ITS POSITION ON CIVIL RIGHTS

In 1776, the Founding Fathers declared that "all men are created free and equal." There was no qualification in the Declaration of Independence in this respect as regards race, creed, or color when conferring this principle of equality on Americans. The Bill of Rights and the Constitution of the United States subsequently implemented this basic principle of the democratic concept of American citizenship through the enactment of the 14th and 15th amendments.

Over 100 years ago, Abraham Lincoln electrified the civilized world with his pronouncement of the freedom-serving Emancipation Proclamation. The ideals and laws embodied in these documentary declarations and legal enunciations are accepted by all true liberty-loving and law-abiding Americans with the exception of certain sectors of our country which by virtue of race bias and distorted traditions refuse to abide by the spirit and letter of these enacted laws, denying thereby these rights to Negro Americans and citizens enjoyed by their fellow Americans. Such denial is manifest in varying degrees and in different forms, the passage of specially discriminatory and subhuman restrictive measures which abridge and curb and unjustly hinder the rights of Negro citizens to exercise their privilege of voting which is guaranteed to them by the Constitution to which they subscribe and the Federal Government the support of which they contribute in the form of loyalty and taxes. Such discriminatory practices are imposed on our Negro Americans through illegal subterfuges, often with the predisposed and biased cooperation of certain judicial representatives who see fit to counteract the obvious rights conferred on Negro citizens and thereby virtually nullify the law of the land which has been certified and endorsed by the highest courts after due deliberation on the part of these final courts of appeal and reason.

Such practices on the part of lesser authorities in southern sectors impose and degrade the Negro into the category of second-class citizenship and place him in the class previously disgraced by the presence of the untouchable elements in India which condition there has been eliminated through a progressive administration but which somehow in practice has been transferred to certain segments of southern Negro Americans in the South.

Therefore this continued imposition of inhuman restrictions and indignities on our fellow Americans is at complete variance with our basic democratic concepts and traditions and goes completely counter to any decent regard for simple, natural human relationships which should exist without question between all members of the human family and permit our Negro brethren to enjoy and exercise the same privileges of freedom, equality, and the inherent rights of life, liberty, and the pursuit of happiness vouchsafed to all Americans regardless of their race, mode of worship, origin, or the hue of their skin.

For over a century, our Negro compatriots have existed under oppressively degrading conditions in the South and to a degree these same discriminatory practices have been imposed upon them in varying degrees in the North as well. These immoral prohibitions and restrictions visited upon them with deliberate cruelty and without regard to their human sensitivities have had the effect of inflicting serious psychological and traumatic injuries upon the oppressed and the oppressors alike. Poll taxes, literacy tests of a specious character, herding on public carriers, closing of public schools, libraries, and recreational areas to their presence even though they pay taxes for the upkeep of such facilities, economic impositions, job limitations, etc., have exerted tremendous moral, physical, and economic damage of a vital nature in the lives of our Negro citizens especially in the South and have transferred and imbedded a profound hopelessness in the minds especially of the new generations of Negro youth who do not and cannot be expected to inherit and abide by the "slavery" concept or tradition which formed and crippled the lives and futures of their grandparents and their parents. Such conditions cannot be expected than otherwise create a revulsion and repulsion on the part of these scholastically-trained Negroes who refuse to continue to inhabit a world and a category which

impresses these unbearable and insupportable conditions which no sensitive human being can or should tolerate, especially in the case of these young Negroes who are equally gifted, able, and talented intellectually, physically, spiritually, to undertake and discharge the principles and duties of American citizenry as decreed by the Bill of Rights and the Constitution of the United States as well as the immortal document, the Declaration of Independence.

To Symon Gould (who was my first publisher):

A more ruthless and spirited realist
Could scarce be met with,
Nor a more constant idealist.
His astonishing vitality is excelled
Only by the nimbleness of his wit.
And the pluck and nonchalant gaiety of his heart.
He is a genius of the New York sidewalks,
As much at ease in the west
As in the east of his island city.
And through his veins runs quicksilver
And the ends of his magnetic fingers
Forever conjure gold dust to their tips
As it flies, like spring pollen, past his ears.

(Signed) LLEWELLYN POWYS,
Author of "Ebony and Ivory,"
"Thirteen Worthies," "Confessions of Two Brothers," etc.

To Whom It May Concern:

I hereby wish to set down for the information of anyone interested, the opinion I hold of Symon Gould and to add my testimony to that of his many friends in the newspaper, theatrical, film, and literary world, as well as in the vegetarian and natural health realms.

I have known Mr. Gould for over 40 years and have followed his career with admiration. He has been one of New York's really useful citizens, often working anonymously and behind the scenes for the cultural welfare of the town. From the time he originated and created the film-art movement in 1924, all through the sponsorship of the league for public discussion debates at Carnegie Hall, Town Hall (the predecessor of radio forums), right down the many years starting in 1920 during which time as an ardent bibliophile he has supplied the literary world with rare books and manuscripts gathered from the four corners of the world, as well as publisher of many worthy writers, Symon Gould has been patron, father-confessor, and friend of writing men and women from New York to Hollywood and all points east, west, north, and south.

BURNET HERSHEY,
Noted Journalist and Former President of the Overseas Club of America.

"The artistic destiny of the screen is in the hands of the little cinema movement of which the Film Guild directed and originated by Symon Gould is the pioneer organization which has my full support."

THEODORE DREISER (1929).

To Whom It May Concern:

My acquaintance with Symon Gould covers a period of nearly a quarter of a century. I have always found him both from a business and social standpoint a man of the highest integrity and a clean man in thought, action, and speech. For his character I have the highest respect.

(Signed) BENJAMIN DE CASSERES,
Celebrated Poet, Author, and Journalist.

"I consider Symon Gould one of the foremost exponents of natural healing and natural living. In my opinion, he is unequaled as a writer in placing before the public, with clarity and distinction, ideas and procedures which have done much to bring to ailing humanity a new understanding of the relationship between nutrition and disease and health and I am fortunate in counting him among my friends."

Dr. MAX WARMBRAND,
Author of "Encyclopedia of Natural Health."

[Immediate release]

AMERICAN VEGETARIAN PARTY,
New York City.

While Gov. Nelson Rockefeller, Senator Goldwater, and Governor Romney as well as a few others are ruminating as to their Presidential aspirations, intentions, or declarations, Symon Gould, the 1960 White House hopeful of the American Vegetarian Party has already announced his candidacy for that high office for 1964.

In particular, Mr. Gould takes issue with President Kennedy because of his uncertain approach to the racial crisis in view of the forthright position which the American Vegetarian Party has always taken with regard to the conditions surrounding the Negro citizen socially, economically, and as Americans deserving of every opportunity for self-development without any element of discrimination. Mr. Gould calls upon President Kennedy to take a firmer leadership in the crucial race situation which bids fair to increase in intensity and explosiveness and which calls for daily attention by every means of nationwide communication so that the understanding and support of the Nation as a whole may be enlisted before the situation gets out of hand. His European trip, Mr. Gould avers, should be canceled at this time while this condition affecting 10 percent of our population may boil over into revolution of some sort.

Mr. Gould is journeying to Barcelona on June 14 on the SS *Saturnia* to deliver the principal address at the annual International Vegetarian Congress which will be dedicated to world peace primarily. One of the main planks in the perennial platform of the American Vegetarian Party calls for the appointment in all the Cabinets and Ministries of governments, of a secretary of peace whose function would be to promote the ideal of peace among all nations. Such officials should not be diplomats or politicians but be selected from among the philosophers and humanists of each nation so that in their contacts and meetings, these secretaries of peace would foster a worldwide, global viewpoint rather than the narrow nationalistic concepts now in vogue and in conflict.

The vice presidential candidate on the American Vegetarian Party is Dr. Abraham Wolfson, aged 83, who is considered one of the finest examples of intellectual and physical specimens despite his octogenarian status, as attested by his writings, lecturing, and general civic activities. The headquarters of the American Vegetarian Party is 353 West 48th Street, New York City.

PLATFORM OF THE AMERICAN VEGETARIAN PARTY, 1960

For President: Symon Gould, New York City, N.Y.; for Vice President: Dr. Christopher Glan-Cursio, Miami Beach, Fla.

PEACE

The philosophy of vegetarianism is synonymous with universal brotherhood and universal peace. Its fundamental principle of antikilling if internationally adopted would unconditionally eliminate wars. In furtherance of this anti-slaughter idea, vegetarians are opposed to the killing of animals for sustenance, sport, or style. Vegetarians contend that these barbaric practices in the name of "civilization" brutalize mankind and generates in human beings a blood-lust that ultimately finds its overall expression in annihilating fraticidal wars. Vegetarian ideals are rooted in an all-embracing reverence for all living entities. The pragmatic principles of vegetarianism are inspired by and directed by the inflexible laws of nature which mankind must and should accept as their guiding code and the eternal verities of existence on this planet. The American Vegetarian Party, emphasizes as it has for the past 12 years of its existence, that human beings must cease violating these natural laws to assure his continued presence which is now threatened by a hydrogen bomb holocaust in which as one eminent atomic authority predicts "none of us can count on having enough living to bury our dead." Nevertheless, despite this warning, missiles of intercontinental range are poised in all parts of the world awaiting a pushbutton signal ready to blot out civilization at the behest of little groups of willful men in high places motivated by materialistic, nationalistic, or ideological goals or concepts and embark on a campaign of global suicide. The American Vegetarian Party is unalterably opposed to such a contemplated cannibalistic sacrifice of youth on the fields of atomic warfare or mankind in cities and villages trapped by the inescapable effects of nuclear

weapons of destructive power which has increased more than a hundredfold in deadliness since the invention of the atom bomb. The happiness of the common man and the constant improvement of his living conditions should be the purpose of all governments and all their social and economic objectives should be subservient to man's natural needs.

PLENTY

The American Vegetarian Party supports and approves of all social concepts and projects which implement the program that is based on the humanitarian precept that no human being shall hunger, want for decent shelter or be without the simple necessities that will assure him and his family a normal, natural way of life. Vegetarians subscribe to the ethical principles that all natural resources upon which human life depend were intended for the equal use of all human beings in accord with their requirements. They should, therefore, be made available to them as equitable and rightful rewards for their proffered labor. The American Vegetarian Party maintains that the present maldistribution of resources in foodstuffs, clothing, housing which is witness to the fact that the greater part of the world's peoples suffer in varying degrees from tragic lacks in these categories of simple needs must continue to be a prime and ever-fruitful source of dissatisfactions with different types of government which discontent generates the hatreds that explode into civil strife, revolutions that eventually ripen into international conflicts. The social morality and economic corrective which would eliminate these unequal conditions that breed hostilities between classes of humans have been embodied in the humanitarian teachings and moral strictures of Buddha, Christ, Pythagoras, Plato, Socrates, Aristotle, Shelley, Tolstoy, Thoreau, Gandhi, Shaw, and others of equal eminence, all of whom are vegetarians with the exception of Jesus. In view of their viewpoints, it is high time that diplomats and political leaders should give way to philosophers and ethical guides if mankind is ever to reach a plane of living in amity with his fellow-beings which will confer upon him a dignified and decent place in the design of nature. Vegetarian agronomists have demonstrated that there is an abundance for all in the plenteous produce of this good earth if the vegetarian social concepts as enunciated by its exponents were incorporated as the fundamental procedures in national and international relationships and if peoples everywhere are permitted to fulfill their natural heritage in the enjoyment of life, liberty, and the pursuit of happiness in accord and concord with their simple needs and natural desires.

THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE DEPARTMENT,
Boston, August 12, 1963.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: Governor Peabody has asked me to reply to your letter requesting comment on public accommodations laws now in effect in Massachusetts; enclosed please find a statement which was solicited from and prepared by the Massachusetts Commission Against Discrimination.

I hope that this reply is not too late to be of some help to the committee or as background material for future deliberations.

Very truly yours,

RICHARD L. BANKS,
Secretary for Intergroup Affairs.

THE COMMONWEALTH OF MASSACHUSETTS,
COMMISSION AGAINST DISCRIMINATION,
Boston, July 22, 1963.

His Excellency ENDICOTT PEABODY,
Governor of the Commonwealth of Massachusetts,
Boston, Mass.

DEAR SIR: The Massachusetts Commission Against Discrimination, the agency established by law to administer the Massachusetts public accommodation statutes, has as a result of research and its own personal knowledge, made the following evaluation at your request.

It is of the opinion based upon fact and historical experience that the Commonwealth of Massachusetts is probably in the incontrovertible position of being best qualified to comment upon the efficacy of public accommodations legislation directed toward the elimination of discrimination because of race, color, religion, or national origin.

Variant with the current trend of many States toward adopting some form of such legislation the Commonwealth enacted a public accommodations statute in 1865 which imposed a fine of $50 for discrimination in any licensed inn, public place of amusement, public conveyance, or public meeting because of religion, color, or race.

A statute was enacted in 1933 which prohibited owners, proprietors and those in control of places of public accommodation from publicly displaying or advertising information which discriminated against anyone because of religious sect, creed, class, race, color, denomination, or nationality.

In 1950 legislation was enacted providing for the Massachusetts Commission Against Discrimination, an administrative-adjudicative agency, to administer a law prohibiting the discrimination by places of public accommodations against persons because of their race, color, religion, or national origin. Amendment to this law in 1953 provided magnitudinous augmentation so as to cover nearly all places seeking public patronage.

The Massachusetts attorney general by an advisory opinion in 1959 added real estate agencies as places of public accommodation when he held wherein "'a place of public accommodation, resort or amusement within the meaning hereof (C. 272, S. 92A) shall be defined as and shall be deemed to include any place whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public', real estate agencies fall within the statutory provision and come within the jurisdiction of the commission."

The commission has found in the administration of these public accommodations statutes and other civil rights legislation not cited hereinbefore that contrary to the arguments advanced by the adversaries, the experience of the Commonwealth has been one of complete encouragement and satisfaction. Every prophesy and reason advanced by the adversaries against such legislation have failed to materialize. There has been absolutely no racial strife nor incidents resulting from the enactment of these laws. There has been no loss of prestige or business, no injury nor detriment to the places of public accommodation.

More significantly this legislation has produced a healthier, more wholesome atmosphere within the Commonwealth. It has diminished fear, hate, suspicion, and belligerence that is directed toward and exercised against minority groups. It has afforded additional dignity and respect for all of us. It has promoted improved health, safety, and morality rather than the evils of racial strife, ghettos, slums, disease, increased crime, and the other festering maladies that evolve from discrimination and segregation. It has insured freedom of movement. It has put the State government in the sound constitutional position of protecting the rights of all rather than the gravely untenable and unconstitutional position of enforcing and perpetuating social systems and practices which make for the degradation of some citizens through the denial of their civil rights.

Inasmuch as unqualified equality is one of the cherished aims of the American philosophy and the Founding Fathers of this country, it is an integral and fundamental part of the American tradition, and has been from the incipiency of the Declaration of Independence, that every possible effort be exerted at all times to ascertain that such equality exist and endure in fact with regard to all citizens.

Massachusetts, the State possessing more civil right legislation than any other, has found the public accommodation legislation to be invaluable in providing the assurance of true democratic practice as well as principle. Therefore, the commission emphatically and unreservedly recommends similar legislation on a Federal level.

Very truly yours,

OSWALD L. JORDAN,
Acting Executive Secretary.

[CHAP. 479]

AN ACT CHANGING THE NAME OF THE "MASSACHUSETTS FAIR EMPLOYMENT PRACTICE COMMISSION" TO THE "MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION" AND RELATIVE TO ITS POWERS AND DUTIES

Be it enacted, etc., as follows:

SECTION 1. Section 17 of chapter 6 of the General Laws, as most recently amended by section 1 of chapter 637 of the acts of 1948, is hereby further amended by striking out, in lines 12 and 13, the words "Massachusetts fair employment practice commission" and inserting in place thereof the words:—Massachusetts commission against discrimination.

SECTION 2. Section 56 of said chapter 6, as amended, is hereby further amended by striking out, in lines 2 and 3, as appearing in section 3 of chapter 368 of the acts of 1946, the words "Massachusetts Fair Employment Practice Commission" and inserting in place thereof the words:—Massachusetts Commission Against Discrimination,—and by striking out the caption immediately preceding said section 56 and inserting in place thereof the following:—Massachusetts Commission Against Discrimination.

SECTION 3. Chapter 272 of the General Laws is hereby amended by striking out section 98, as amended by chapter 138 of the acts of 1934, and inserting in place thereof the following:—*Section 98.* Whoever makes any distinction, discrimination or restriction on account of religion, color or race, except for good cause applicable alike to all persons of every religion, color and race, relative to the admission of any person to, or his treatment in, any place of public accommodation, resort or amusement, as defined in section ninety-two A of chapter two hundred and seventy-two, or whoever aids or incites such distinction, discrimination or restriction, shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year, or both, and shall forfeit to any person aggrieved thereby not less than one hundred nor more than five hundred dollars; but such person so aggrieved shall not recover against more than one person by reason of any one act of distinction, discrimination or restriction. All persons shall have the right to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons. This right is recognized and declared to be a civil right.

SECTION 4. Chapter 151B of the General Laws is hereby amended by striking out section 5, as appearing in section 4 of chapter 368 of the acts of 1946, and inserting in place thereof the following:—*Section 5.* Any person claiming to be aggrieved by an alleged unlawful employment practice or alleged violation of cause (*e*) of section twenty-six FF of chapter one hundred and twenty-one or sections ninety-two A and ninety-eight of chapter two hundred and seventy-two may, by himself or his attorney, make, sign and file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of or the violation of said clause (*e*) of said section twenty-six FF or said sections ninety-two A and ninety-eight and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The attorney general may, in like manner, make, sign and file such complaint. The commission, whenever it has reason to believe that any person has been or is engaging in an unlawful employment practice or violation of said clause (*e*) of said section twenty-six FF or said sections ninety-two A and ninety-eight, may issue such a complaint. Any employer whose employees, or some of them, refuse or threaten to refuse to co-operate with the provisions of this chapter, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

After the filing of any complaint, the chairman of the commission shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation in connection therewith; and if such commissioner shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, he shall immediately endeavor to eliminate the unlawful employment practice complained of or the violation of said clause (*e*) of said section twenty-six FF or said sections ninety-two A and ninety-eight by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has occurred in the course of such endeavors, provided that the commission may publish the facts in the case of any complaint

which has been dismissed, and the terms of conciliation when the complaint has been so disposed of. In case of failure so to eliminate such practice or violation, or in advance thereof if in his judgment circumstances so warrant, he may cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the commission, at a time and place to be specified in such notice. The place of any such hearing shall be the office of the commission or such other place as may be designated by it. The case in support of the complaint shall be presented before the commission by one of its attorneys or agents, and the commissioner who shall have previously made the investigation and caused the notice to be issued shall not participate in the hearing except as a witness, nor shall he participate in the deliberations of the commission in such case; and the aforesaid endeavors at conciliation shall not be received in evidence. The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. In the discretion of the commission, the complainant may be allowed to intervene and present testimony in person or by counsel. The commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed at the request of any party. If, upon all the evidence at the hearing the commission shall find that a respondent has engaged in any unlawful employment practice as defined in section four or violation of said clause (*e*) of said section twenty-six FF or said sections ninety-two A and ninety-eight, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or violation of said clause (*e*) of said section twenty-six FF or said sections ninety-two A and ninety-eight and to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership in any respondent labor organization, as in the judgment of the commission, will effectuate the purposes of this chapter or of said clause (*c*) of said section twenty-six FF or said sections ninety-two A and ninety-eight, and including a requirement for report of the manner of compliance. If, upon all the evidence, the commission shall find that a respondent has not engaged in any such unlawful employment practice or violation of said clause (*c*) of said section twenty-six FF or said sections ninety-two A and ninety-eight, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent. A copy of its order shall be delivered in all cases to the attorney general and such other public officers as the commission deems proper. The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Any compaint filed pursuant to this section must be so filed within six months after the alleged act of discrimination. The institution of proceedings under this section, or an order thereunder, shall not be a bar to proceedings under said sections ninety-two A and ninety-eight, nor shall the institution of proceedings under said sections ninety-two A and ninety-eight, or a judgment thereunder, be a bar to proceedings under this section.

SECTION 5. Clause (*e*) 26FF of chapter 121 of the General Laws, as amended by chapter 51 of the acts of 1948, is hereby further amended by inserting after the word "discrimination", in lines 2, 8 and 9, and 12, in each instance, the words:—or segregation,—so as to read as follows:—(*e*) There shall be no discrimination or segregation; provided, that if the number of qualified applicants for dwelling accommodations exceeds the dwelling units available, preference shall be given to inhabitants of the city or town in which the project is located, and to the families who occupied the dwellings eliminated by demolition, condemnation and effective closing as part of the project as far as is reasonably practicable without discrimination or segregation against persons living in other sub-standard areas within the same city or town. For all purposes of this chapter, no person shall, because of race, color, creed or religion, be subjected to any discrimination or segregation.

SECTION 6. Nothing in section one or two shall be deemed to affect the terms, powers and duties of any of the present members or employees of the Massachusetts fair employment practice commission.

SECTION 7. The provisions of this act are severable, and if any provision, sentence, clause, section or part thereof shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the act or their application to other persons and circumstances. It is hereby declared to be the legislative intent that this act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which this act or any part thereof is inapplicable had been specifically exempted therefrom.

Approved May 23, 1950.

[CHAP. 697]

AN ACT RELATIVE TO DISCRIMINATION AGAINST EMPLOYEES AND PERSONS SEEKING EMPLOYMENT BETWEEN FORTY-FIVE AND SIXTY-FIVE YEARS OF AGE

Be it enacted, etc., as follows:

SECTION 1. Subsection 5 of section 1 of chapter 151B of the General Laws, as appearing in section 4 of chapter 368 of the acts of 1946, is hereby amended by inserting after the word "thereof", in line 7, the words:—in all respects except with respect to age.

SECTION 2. Said section 1 of said chapter 151B, as so appearing, is hereby further amended by adding at the end thereof the following subsection:—

8. The term "age" unless a different meaning clearly appears from the context, includes any person between the ages of forty-five and sixty-five.

SECTION 3. Subsection 6 of section 3 of said chapter 151B, as so appearing, is hereby amended by inserting after the word "origin", in line 3, the word:—, age.

SECTION 4. Subsection 8 of sai section 3 of said chapter 151B, as so appearing, is hereby amended by inserting after the word "origin", in line 7, the word:—, age.

SECTION 5. Subsection 9 of said section 3 of said chapter 151B, as so appearing, is hereby amended by inserting after the word "origin", in line 4, the word:—, age.

SECTION 6. Subsection 1 of section 4 of said chapter 151B, as so appearing, is hereby amended by inserting after the word "origin", in line 2, the word:—, age.

SECTION 7. Subsection 2 of said section 4 of said chapter 151B, as so appearing, is hereby amended by inserting after the word "origin", in line 2, the word:—, age.

SECTION 8. Subsection 3 of said section 4 of said chapter 151B, as so appearing, is hereby amended by inserting after the word "origin", in line 7 and in line 10, in each instance, the word:—, age.

SECTION 9. Section 9 of said chapter 151B, as so appearing, is hereby amended by inserting after the word "ancestry", in line 8, the words:—, and nothing contained in this chapter shall be deemed to repeal sections twenty-four A to twenty-four J, inclusive, of chapter one hundred and forty-nine or any other law of the commonwealth relating to discrimination because of age,—so as to read as follows:—*Section 9.* The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof, and any law inconsistent with any provision hereof shall not apply, but nothing contained in this chapter shall be deemed to repeal section ninety-eight of chapter two hundred and seventy-two or any other law of this commonwealth relating to discrimination because of race, color, religious creed, national origin, or ancestry, and nothing contained in this chapter shall be deemed to repeal sections twenty-four A to twenty-four J, inclusive, of chapter one hundred and forty-nine or any other law of the commonwealth relating to discrimination because of age; but, as to acts declared unlawful by section four, the precedure provided in this chapter shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. If such individual institutes any action based on such grievance without resorting to the procedure provided in this chapter, he may not subsequently resort to the procedure herein.

Approved August 1, 1950.

THE COMMONWEALTH OF MASSACHUSETTS,
DEPARTMENT OF THE ATTORNEY GENERAL,
Boston, November 24, 1959.

MRS. MILDRED H. MAHONEY,
Chairman, Commission Against Discrimination, Boston, Mass.

DEAR MRS. MAHONEY: You indicate that the Commission Against Discrimination has before it affidavits filed against two real estate agencies alleging discrimination because of color. One affidavit concerns the rental of an apartment in a two-family house owned and managed by a real estate agency which manages and owns a large number of such properties throughout the Commonwealth. Because, however, the house in question is not contiguous to eight other rental units controlled by the respondent it is not covered by the recently enacted "fair housing law" (C 239 of the acts of 1959).

The second affidavit was filed by the owner of a single-family dwelling. He alleges that a real estate agency refused to show his house to prospective Negro buyers.

You further indicate that your commission anticipates that it will continue to receive affidavits alleging discriminatory practices by real estate agencies regarding properties not covered by the housing amendment to the fair housing practice law.

You request, therefore, my opinion on the following question:

"Would the Commission in accepting jurisdiction under the Public Accommodations Law of complaints filed against real estate agencies which allege discrimination because of religion, color, or race be abusing its discretion or acting arbitrarily or capriciously or otherwise not in accordance with law?"

Under G.L. C. 151B, as amended, the Commission Against Discrimination is vested with jurisdiction of the "public accommodations law" so called. That law is found in G.L. C. 272, ss. 92A and 98.

Section 92A reads:

"Places of Accommodation or Resort Not to Discriminate Because of Sect, Creed, Class, Race, Color, or Nationality

"No owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement shall, directly or indirectly, by himself or another, publish, issue, circulate, distribute or display, or cause to be published, issued, circulated, distributed or displayed, in any way, any advertisement, circular, folder, book, pamphlet, written, or painted or printed notice or sign, of any kind or description, intended to discriminate against or actually discriminating against persons of any religious sect, creed, class, race, color, denomination or nationality, in the full enjoyment of the accommodations, advantages, facilities or privileges offered to the general public by such places of public accommodation, resort or amusement; provided, that nothing herein contained shall be construed to prohibit the mailing to any person of a private communication in writing, in response to his specific written inquiry.

"A place of public accommodation, resort or amusement within the meaning hereof shall be defined as and shall be deemed to include any place, whether licensed or unlicensed, *which is open to and accepts or solicits the patronage of the general public* and, without limiting the generality of this definition, whether or not it be (1) an inn, tavern, hotel, shelter, roadhouse, motel, trailer camp or resort for transient or permanent guests or patrons seeking housing or lodging, food, drink, entertainment, health, recreation or rest; (2) a carrier, conveyance or elevator for the transportation of persons, whether operated on land, water or in the air, and the stations, terminals and facilities appurtenant thereto; (3) a gas station, garage, retail store or *establishment, including those dispensing personal services;* (4) a restaurant, bar or eating place, where food, beverages, confections or their derivatives are sold for consumption on or off the premises; (5) a rest room, barber shop, beauty parlor, bathhouse, seashore facilities or swimming pool; (6) a boardwalk or other public highway; (7) an auditorium, theatre, music hall, meeting place or hall, including the common halls of buildings; (8) a place of public amusement, recreation, sport, exercise or entertainment; (9) a public library, museum or planetarium; or (10) a hospital, dispensary or clinic operating for profit; provided, however, that no place shall be deemed to be a place of public accommodation resort or amusement which is owned or operated by a club or institution whose products or facilities or services are available only to its members and their guests nor by any religious, racial or denominational institution or organization, nor by any organization operated for charitable or educational purposes.

"Any person who shall violate any provision of this section, or who shall aid in or incite, cause or bring about, in whole or in part, such a violation shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days or both." (1933, 117; 1953, 437, appvd. June 2, 1953; effective 90 days thereafter.) [Emphasis supplied.]

Section 98 reads:

"Religion, Color or Race Discrimination Penalized

"Whomever makes any distinction, discrimination or restriction on account of religion, color or race, except for good cause applicable alike to all persons of every religion, color and race, relative to the admission of any person to, or his treatement in, any place of public accommodation, resort or amusement, as defined in section ninety-two A of chapter two hundred and seventy-two, or whoever aids or incites such distinction, discrimination or restriction, shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year, or both, and shall forfeit to any person aggrieved thereby not less than one hundred nor more than five hundred dollars but such person so aggrieved shall not recover against more than one person by reason of any one act of distinction, discrimination or restriction. All persons shall have the right to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons. This right is recognized and declared to be a civil right."

Although to date 24 States have enacted public accommodations law similar in their scope to the Massachusetts laws, inquiry and research have uncovered no decided court cases bearing on the issue herein posed. However, the Connecticut Commission on Civil Rights, on December 15, 1955, ruled that under its interpretation of the Connecticut public accommodations statute a real estate agent is covered under the definition of a place of public accommodation as "an establishment which caters or offers its services or facilities or goods to the general public" within the meaning of that law.

It is significant that in the 4 years that have elapsed since the promulgation of the Connecticut ruling there has been no challenge to it in that State.

Obviously, a real estate agency is a "* * * place which is open to and accepts or solicits the patronage of the general public * * *," and it may well be that a real estate agency is an "establishment" in the business of "dispensing personal services." Finally, a real estate agency does not come within the clearly defined exceptions of a private club or a religious, racial, denominational, charitable, or educational use set out in the Massachusetts statute.

In view of the wording of our public accommodations statute, both standing alone and in the context of the broad and long-standing public policy established by the Massachusetts General Court to prohibit racial, religious and ethnic national discrimination, it would seem, and I so rule, that it is a violation for a real estate agency to refuse to offer its services to any person or to refuse to accommodate any person as a client because of his race, creed, or color.

Very truly yours,

EDWARD J. McCORMACK, Jr.,
Attorney General.

UNITED CHURCH OF CHRIST,
COUNCIL FOR CHRISTIAN SOCIAL ACTION,
New York, N.Y., August 13, 1963.

Hon. WARREN G. MAGNUSON,
Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: I have just returned to the office after being away for a week and found it was impossible to file a statement with your committee before August 7. However, I am filing a statement at this late date with the hope that it is still possible to have it entered in the record.

Thank you for your courtesy.

Cordially,

RAY GIBBONS.

TESTIMONY IN SUPPORT OF THE CIVIL RIGHTS ACT OF 1963

The Council for Christian Social Action of the United Church of Christ would like to present this testimony in support of the Civil Rights Act of 1963. This instrumentality of the United Church of Christ consists of 27 laymen, women, and clergy, elected by the general synod which represents the 2 million members of the United Church of Christ. Various occupational activities and geographic locations are represented on the council. Its assignment of responsibility is to study and offer recommendations from time to time on issues of social policy. The council does not presume to speak for the United Church of Christ as a whole, nor for its 2 million individual members. On this occasion, however, my testimony will reflect views expressed in official statements adopted by the general synod on several occasions, most recently at its meeting July 4–11, 1963, in Denver, Colo. The general synod is the highest deliberative body and the nationally representative body of the United Church of Christ.

At its meeting in July 1959, the second general synod called upon the churches and their members to pray and work "for the end of racial segregation and discrimination in our communities—in church life, in housing, in employment, in education, in public accommodations and services, and in the exercise of political rights."

The third general synod, at its meeting in Philadelphia in July 1961, issued a pronouncement entitled "A Call to Renewed Responsibility for Racial and Cultural Relations" in which it said, in part, "Nothing less that our total commitment and our determined efforts in behalf of a nonsegregated church in a nonsegregated society will demonstrate the reality of our repentance and our obedience to God."

The general synod on that occasion called on the members of the United Church of Christ to work for the elimination of segregation and discrimination in every aspect of life and begin with the local churches and church-related institutions. After commending the work of the NAACP, the pronouncement commended "those citizens who have protested by nonviolent demonstrations the wrongness of particular laws and customs." The statement also commended "the men and women who, with admirable self-discipline and courage, have by peaceful means opposed the inequities of segregation in churches and in places of public accommodation." In another part of the 1961 statement, the synod said: "The time has come when our Government should question whether it has the constitutional right to make funds available to institutions, projects, or programs that discriminate against persons on the basis of race or color."

The preceding quotations demonstrate that at its meetings in 1959 and 1961, the general synod advocated many of the policies which are now being proposed in the Civil Rights Act of 1963. At its meeting on July 4–11, 1963, the fourth general synod called upon its members to advocate, demonstrate, and involve themselves in support of the principles of the proposed Civil Rights Act of 1963" and "to urge their Senators and Representatives to support such legislation on a nonpartisan basis in this session of Congress" and it also instructed "the Council for Christian Social Action to present testimony in support of civil rights * * * legislation before committees of Congress."

To demonstrate that they are sincere in their support of civil rights for all, the delegates to the fourth general synod gave its support to the following resolution:

"General synod declares its policy to be to contribute funds only to institutions and churches which, as of July 1, 1964, have a policy of openness without respect to race, national background, or ethnic origin, and further urges the instrumentalities, conferences, and churches to adopt and pursue such a policy in respect to contributions."

WHY THE CIVIL RIGHTS ACT OF 1963 SHOULD BE PASSED

The moral position in regard to discrimination based on race, creed, or color, needs no elaboration. Anyone who takes seriously the principles underlying our Judeo-Christian heritage must admit that discrimination against the members of any group whom God has created is a sin against God and a corruption of whatever religious faith we profess. The very inconsistency of racial discrimination with our religious heritage is clearly demonstrated by the fact that as soon as I said I was representing a religious organization, everyone knew what position I would take regarding the civil rights legislation which is the subject of this hearing. It would be inconceivable for a church which calls itself the United

Church of Christ to take any other position and still claim it has a right to keep the name under which it is organized. The same can be said for any of the churches or synagogues which profess a belief in the fatherhood of God and the brotherhood of man.

Just as such discrimination is inconsistent with our religious beliefs, it is also contrary to the American principle of equality of opportunity and the belief in the dignity and integrity of the individual. If we take seriously these principles which have been so characteristic of America, we cannot defend acts of discrimination which would make these principles a colossal mockery. We must not permit the image of America as the land of equality and justic to be destroyed by those who defend their prejudices in order to protect what they believe to be their interests.

That such discrimination weakens the cause of America in its struggle with communism is clear. Dean Rusk has stated: "The biggest single burden we carry on our backs in our foreign relations in the 1960's is the problem of racial discrimination here at home." Anyone who fails to see what acts of discrimination are doing to our relations with the uncommitted nations has simply not been paying attention to what is going on in the world; and anyone who does understand what these acts are doing and continues to defend them, is placing his personal prejudices ahead of the Nation's interest. In other words, those who continue practices which deny to any individual or group equal opportunities in access to public accommodations, in education, employment, political participation, housing, and the administration of justice, are working against the interests of the United States.

Such action is also wrong because it is contrary to the principles of common decency and justice. By purely ethical standards—regardless of whether or not one is committed to principles of national loyalty or religious faith—to deny a person or group equal opportunities in any of the above-mentioned areas because of race, color, creed, or national origin is unjust and indecent. No further reason for bringing discrimination to an end is necessary.

Many persons may say that racial discrimination is wrong, but that it must be eliminated by friendly persuasion, by education, but not by law. "You can't change attitudes by law" is the statement one often hears to defend the status quo. This is only a half truth. The law changes behavior, which in turn usually changes attitudes. Discrimination in public accommodations in the city of Washington, D.C., is race and unexpected, whereas a decade ago it was accepted as the standard and normal pattern of society. After 1953, when the Supreme Court enforced the 1873 Legislative Assembly Act forbidding discrimination in restaurants (*District of Columbia* v. *John R. Thompson, Inc.*, 346 U.S. 100), discrimination in restaurants ended with full acceptance by restaurant owners and public alike. In 1956, the District Court of Appeals enforced the 1869 Washington ordinance prohibiting social discrimination in places of public amusement. *Central Amusement* v. *District of Columbia* (121 A. 2d 865 (D.C. App. 1956)). The result was that all places of public amusement were opened without disorder. This was done without it being necessary for a single owner or manager of any restaurant or amusement enterprise to be prosecuted under the District's nondiscrimination laws.

Another reason for the elimination of discrimination by law is that many proprietors and employers are people of good will who feel compelled to discriminate, not by law but by custom. Many proprietors of places of public accommodation would cease discrimination if their competitors would serve all persons regardless of race. Those who say laws are bad because they compel persons to conform ignore the fact that, in the absence of law, it is custom which demands conformity. In such a situation as this, the law not only increases the freedom of those discriminated against, but also gives the proprietor the freedom to serve all, which custom had made extremely difficult.

A third reason is closely related to the second; namely, that since most laws have the effect of restricting one person's freedom by increasing the freedom of another, we must see the function of law as that of selecting priorities. To say that laws against discrimination are bad because they restrict the freedom of choice of the proprietor, is to ignore the fact that such laws greatly increase the freedom of choice of the Negro who wants a place to eat, a place to sleep, a place to work, and a right to vote. No conscientious person who has seen a colored parent explain to this child what it means to be a Negro in America could defend discrimination in any form or under any circumstances. In other words, the quickest way for anyone to appreciate the necessity of law in this field is to put

himself in the shoes of a Negro who in the absence of such laws must face the sting and pain of humiliation daily. Such experiences should not be forced upon anyone—not for a day and certainly not for a lifetime.

A fourth reason we must continue to outlaw discrimination is to make the world know that, when discrimination exists, it does so in spite of the law and not because of it nor in the absence of it. We must serve notice everywhere that racial discrimination is contrary not only to American principles, but also to American law. When American tourists are deluged with questions abroad about the race problem in America, they should be able to say that discriminatory practices are those of individuals who are violating the law. If such is the case, we may never need to apologize, because no nation need ever be ashamed of the actions of some of its citizens when such actions are contrary to what the nations requires in its laws and constitution.

GEORGETOWN, S.C., *September 6, 1963.*

Senator WARREN MAGNUSON,
Chairman, Committee on Commerce,
Washington, D.C.

DEAR SIR: I enclose herewith a statement in opposition to the public accommodation law proposed by the administration. I am confident that the case against this bill, as presented to your committee, will convince the majority of you that the proposal is clearly unconstitutional, unwise, and unnecessary. My arguments concentrate on the constitutionality of the proposed. The bill must be defeated.

I would like my statement to be considered by your committee. I doubt if many members need to be convinced as to the constitutionality of the bill. I hope not, at least.

If there are any copies available to the public, I would appreciate a copy of your committee hearings on this bill.

Thank you for your consideration.

Sincerely,

JOHN A. CUTTS, III.

Mr. Chairman and gentlemen of the committee, if Congress enacts the proposed public accommodations bill, it will be sanctioning legislation which cannot withstand a constitutional test. The Attorney General sees a basis for this legislation in article I, section 8, which grants to Congress the power to regulate commerce among the several States. This clause has been the basis for antitrust legislation, laws setting rates for public utilities, making kidnaping a crime if the victim is carried across a State line, prohibiting convict-made goods from traveling in interstate commerce, establishing a minimum wage, and all the rest. Notice is taken that there is no express provision for these actions other than the interstate commerce clause. However, such is not the case with discrimination based on race or color. The 14th amendment was adopted specifically to deal with this question. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Section 5 of the amendment gives Congress the power to enforce the amendment.

In 1875 Congress "declared that, in the enjoyment of the accommodations and privileges of inns, public conveyances, theaters, and other places of public amusement, no distinction shall be made between citizens of different race or color, or between those who have, and those who have not, been slaves." Five cases came to the U.S. Supreme Court to challenge the validity of this prohibition in the *Civil Rights* cases, 1883, 109 U.S. 3. Mr. Justice Joseph P. Bradley of New Jersey wrote the opinion of the Court, concurred in by Justices Samuel F. Miller, of Iowa, Stephen J. Field, of California, Chief Justice Morrison R. Waite, of Ohio, William B. Woods, of Georgia, Stanley Matthews, of Ohio, Horace Gray, of Massachusetts, and Samuel Blatchford, of New York. Mr. Justice John Marshall Harlan, of Kentucky, delivered a dissenting opinion. The Court (8–1) voided this "public accommodations" section in these words:

"It is a State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. * * * To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and

innocuous is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation, or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the 14th amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must necessarily be predicated upon such supposed State laws, and be directed to the correction of their operation and effect * * *.

"* * * It is absurd to affirm that, because the rights of life, liberty, and property (which include all civil rights that men have) are by the amendment sought to be protected against invasion on the part of the State without due process of law, Congress may therefore provide due process of law for their vindication in every case; and that, because the denial by a State to any persons, of the equal protection of the laws, is prohibited by the amendment, therefore Congress may establish laws for their equal protection * * *.

"* * * The truth is, that the implication of a power to legislate in this manner is based upon the assumption that if the States are forbidden to legislate or act in a particular way on a particular subject, and power is conferred upon Congress to enforce the prohibition, this gives Congress power to legislate generally upon the subject and not merely power to provide modes of redress against such State action or legislation. The assumption is certainly unsound. It is repugnant to the 10th amendment of the Constitution, which declares that powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively or to the people * * *.

"Civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful acts of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property, or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress * * *.

"When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that State, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected. There were thousands of free colored people in this country before the abolition of slavery, enjoying all the essential rights of life, liberty, and property the same as white citizens; yet no one, at that time, thought that it was any invasion of his personal status as a freeman because he was not admitted to all the privileges enjoyed by white citizens, or because he was subjected to discriminations."

The *Civil Rights Cases* state the constitutional law of today. Congress may only prohibit discrimination by State action. Under the 10th amendment, Congress may go no further, regardless of the power it seeks to invoke.

In certain instances Congress or the courts have voided discrimination in airlines, buslines, railroads, and shipping. It is true that these corporations enter interstate commerce, which fact enables Congress to regulate their fees, qualifications of their operators, mergers, routes, etc. But there is no constitutional provision dealing with these subjects as there is for discrimination. One must look elsewhere for justification of the prohibition against discrimination in these interstate carriers.

The Federal Government has subsidized the shipping industry for many years. It gave land to the railroads as a boon for transcontinental expansion; the railroads laid many thousands of miles of track on Federal territory given them. Buslines must use highways built with Federal funds. The Civil Aeronautics Act of 1938 created a Civil Aeronautics Authority which builds airways and airports. Thus all these carriers owe their existence in one way or another to

Federal moneys. Congress has the power to decide where and how to spend its money. Indeed, the administration expects to use this power as a weapon to coerce cities to end discrimination. Obviously, Federal money is not granted without strings attached. The Government can pull these strings and forbid discrimination on public carriers, since by accepting or utilizing Federal funds, the carrier assumes a quasi-public character which removed its right as a private concern to discriminate. Since the Federal Government, under the due process clause of the fifth amendment cannot allow discrimination in its agencies, it must outlaw it.

However, no hotel, motel, lodging house, restaurant, lunchroom, lunch counter, soda fountain, retail store, shop, department store, gasoline station, theater, or stadium receives any Federal subsidy. Therefore, the Federal Government cannot regulate its private discrimination.

In addition the Government cannot legitimately prohibit interstate transportation of goods intended for private businesses which discriminate since this amounts to an indirect attempt to accomplish what Congress cannot do directly.

This bill must not be passed. Whatever the President hopes to gain by this proposal—whether political support or whatever—he can find no support for it in the interstate commerce clause. The protection of civil rights is the duty of all government, but the people have the right to expect that any action will be as the result of long and careful consideration, especially of the fact that there is no basis for the action which is proposed. If the situation is so explosive, as the President says it is, then the proper remedy is a constitutional amendment and not a public accommodations law. Congress must not succumb to marches on Washington or emotional predictions and demands to justify an unconstitutional action. This proposal should be defeated.

JOHN ALLEN CUTTS, III,
University of South Carolina School of Law.

(The following letter was received by Senator Engle's office in response to an inquiry regarding the pamphlet by Loyd Wright and John C. Satterfield, entitled "Analysis of 'The Civil Rights Act, 1963'.")

DEPARTMENT OF JUSTICE,
Washington, December 20, 1963.

Mr. CHARLES E. BOSLEY,
Administrative Assistant to Senator Clair Engle,
Senate Office Building, Washington, D.C.

DEAR MR. BOSLEY: This is in reply to your request for our comments on a newspaper advertisement sponsored by the Coordinating Committee for Fundamental American Freedoms which you enclosed in your letter to the Attorney General. The advertisement attacks the civil rights bill now pending in Congress.

The purported analysis of the pending bill reveals a complete lack of understanding of the proposed legislation. The pending civil rights bill seeks simply to protect the right of American citizens to be free from racial and religious discrimination and to guarantee to them the full enjoyment of citizenship. As such, the bill is a constitutionally and morally justified exercise of the obligations and authority of the Federal Government.

The bill does not establish "dictatorial Federal control," as the advertisement claims. If enacted, it would simply help in the realization of the promise of the Declaration of Independence and the Constitution of the United States that all men are created equal and are entitled to the equal protection of the laws.

The extravagant statements made in the advertisement do not fairly represent either the contents of the bill or its purposes. These extreme statements are hardly calculated to assist in the solution of a problem which is of such immense importance to the United States and to the citizens most directly affected.

The following is an examination of what the various provisions of the bill would do, and also what the bill would not do. The latter is particularly important in view of the innuendoes, distortions, and exaggerations contained in the advertisement.

A. Protection of the right to vote

1. In many localities, local election officials have a habit of turning down Negroes on the ground that they are illiterate (even those who are teachers or college graduates) while at the same time registering white applicants who are unable to read or write.

2. The bill would rectify this situation by requiring that equal standards be used for all applicants. And the bill makes no changes in existing law, under which the courts—not the Justice Department—have the right to register persons who are eligible to vote when those persons have been illegally turned down by local officials.

3. The bill also would prevent long and unnecessary delays in voting suits by requiring that such suits be heard on an expedited basis, with a provision for prompt appeals.

4. The bill does not give the Department of Justice power "to gain Federal control of the electoral machinery." It merely requires fairplay for all eligible voters, regardless of race. That is as it should be.

B. Public accommodations

1. The bill contains no provisions whatever governing the sale or rental of private homes.

2. The bill does not affect doctors, lawyers, or realtors.

3. The bill does not affect small rooming houses with no more than five rooms for rent which are actually used by the proprietor as his residence.

4. The bill does not affect places of business merely because they pay State or local license fees to operate their establishments.

5. The bill would prevent racial discrimination when it is supported by the State. Discrimination of that type has already been declared unconstitutional.

6. The bill would require that certain business establishments, whose operations affect interstate commerce and which held themselves out as serving the public, provide these services to the public, without distinction as to race. These establishments include hotels and motels furnishing lodging to transients, restaurants and lunchrooms, motion picture houses, theaters, and gasoline stations.

7. At least 30 States and many municipalities now have such legislation requiring fair treatment of all races in places of public accommodation. Federal legislation would extend this protection throughout the country. Under article I of the Constitution and under the 14th amendment the Congress has the clear constitutional authority to pass such legislation.

8. Many Southern States have long had laws on the books prohibiting businessmen from serving their customers on a nondiscriminatory basis. There is no record of protests that this constituted an unwarranted governmental interference with business.

C. Nondiscrimination in programs assisted by Federal funds

1. The bill provides that, where Federal money is used to support any program or activity—money which is paid into the Treasury by Negro and white citizens alike—the program must be used for the benefit of both races, without discrimination. This is basic American justice and fairplay.

2. Sweeping statements in the advertisement intimating that the bill would affect persons who borrow money from or deposit mony in a federally insured bank, farmers who have financial dealings with Federal agencies, and the like, are distortions designed to arouse resentment. The bill will not punish innocent beneficiaries of Federal aid for wrongs committed by others. The bill would not affect an individual farmer, for example, who borrows money through a Government agency. It would affect the distributor of those funds if the distributing agency refused to lend to Negroes but did lend to white persons.

3. The bill does not require the calling of any loans or "blacklisting" of individuals.

4. The bill will permit the appropriate Federal agency to refuse to give further Federal aid to those who are carrying out certain programs or activities with Federal assistance but who deny the benefits of these programs to individuals solely because of their race. Even this cutoff will not be made until all methods of persuasion and voluntary compliance have been completely exhausted.

5. The bill provides that the courts will be the ultimate judges of whether funds may be cut off. Ample opportunity is provided for judicial review of any Federal agency action which cuts off assistance on grounds of racial discrimination.

D. Desegregation of public schools

1. Under the bill, the Federal Government will have no control whatever over hiring and firing of teachers or selection of textbooks.

2. It is not true that the bill would enable the Commissioner of Education to "force the transfer of children from one school to another."

3. The charge that the bill would mean "thought control" of future generations is untrue and absurd.

4. The bill provides for technical assistance and financial grants to schools which are complying with the law of the land by beginning the desegregation of their classes—if, and only if—the local authorities request such assistance. Local authorities would remain in complete control of their school systems.

5. It is a startling fact that today, nearly 10 years after the Supreme Court of the United States declared that compulsory segregation in public education violates the Constitution, almost two-thirds of the previously segregated school districts have still not afforded Negro children their constitutional rights. The bill would enable the Federal Government, under certain conditions, to bring suit in court for school desegregation in compliance with the Constitution. Thus, the bill would simply implement the law of the land and hasten the enjoyment by all our citizens of their constitutional rights.

E. Fair employment opportunity (employers, employees, and unions)

1. Nothing in the bill permits any individual to demand employment.

2. The bill contains no provision to require a quota system or racial or religious "balance" in employment.

3. The bill does not permit the Federal Government to control the internal affairs of employers or unions or to tell them whom to hire or fire.

4. The bill does prohibit racial discrimination by certain employers engaged in interestate commerce, and by labor organizations, and it continues existing prohibitions against racial discrimination in Federal employment and employment under Government contracts.

5. The statement that "Federal administrative personnel would be prosecutor, judge, jury, and executioner" is completely inaccurate. The Commission would seek to obtain voluntary compliance. If unsuccessful, the charges of discrimination would be tried before a Federal court, with full right of appeal.

6. Some 25 States now have laws to prohibit discrimination in employment. Federal law would extend this protection throughout the 50 States.

F. Effect on "everyone"

The legislation will be unwelcome only to those who wish to treat our Negro citizens as second-class human beings. Negroes serve in our Armed Forces, pay taxes which support our local, State, and Federal governments, and contribute to the economic welfare of the country by buying goods and services. They must no longer be subjected to hardship and humiliation because of their color.

The legislation will be welcome to all of us who believe in the American ideal of equal opportunity for all our citizens and who wish to maintain the respect not only of other nations but—what is most important—of ourselves.

Thank you for writing to the Attorney General about this matter.

Sincerely,

BURKE MARSHALL,
Assistant Attorney General,
Civil Rights Division.

YALE UNIVERSITY,
LAW SCHOOL,
New Haven, Conn., August 9, 1963.

Senator JACOB K. JAVITS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR JAVITS: Your letter of June 28, asking my views on the pending civil rights bills prohibiting discrimination in public accommodations, arrived during my absence from New Haven on vacation, and I have hence not had a chance to respond before this. Since the issues have by now been rather thoroughly canvassed in testimony before the Senate Judiciary and Commerce Committees, I will simply state my general conclusions with respect to S. 1731.

It seems to me that the public accommodations provisions of S. 1731 are quite clearly constitutional under the commerce clause. I believe also that they can be sustained under the powers vested in Congress by section 5 of the

14th amendment. It is true that a somewhat similar law was held invalid under the 14th amendment in the civil rights cases in 1883, but I believe that circumstances and legal doctrine have sufficiently changed in the 80 years since that decision to justify a conclusion that such provisions would today be upheld by the Supreme Court.

As to the merits of S. 1731, I think the bill would be of substantial assistance in implementing the fundamental constitutional rights intended to be secured by the 14th amendment. But I feel the bill does not go far enough, particularly in providing serious measures to cope with violation of Negro rights in the area of employment and voting.

If I can be of any further assistance, please feel free to call upon me.

With best personal regards,

Sincerely,

THOMAS I. EMERSON.

UNIVERSITY OF PENNSYLVANIA,
Philadelphia, Pa., August 26, 1963.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR MAGNUSON: I enclose a letter in which a favorable view of the constitutionality of legislation such as the public accommodations provisions of the current civil rights bill is expressed. That letter is joined in by the law school professors and law school deans whose names appear at the foot thereof. Obviously, it was not feasible to circulate the letter all over the country for manual signature. I have the concurrence of each man whose name is included and I assure you of my authority to identify him with the letter.

You will note that the name of the law school of each subscriber is set opposite his name. This is simply for identification. Each subscriber speaks for himself as an individual; he does not speak for his institution, nor for his faculty colleagues. It is anticipated that there will be additional subscribers, whose names will be furnished you in due time, as well as some individual letters from law school people.

Sincerely,

JEFFERSON B. FORDHAM.

GENTLEMEN: The legislative proposals for congressional action prohibiting segregation or discrimination, by reason of race, color, religion, or national origin, in places of public accommodation, now pending before the Senate and House of Representatives, have given rise to debate concerning the source of congressional power to enact such legislation.

It is our opinion as teachers of constitutional or public law that Congress has the authority to enact a comprehensive law securing equality of treatment without regard to race, color, creed, or national origin in business establishments dealing with the public. Since segregation or discrimination in such establishments usually obstructs or distorts the movement of people or goods in interstate commerce, such laws as the National Labor Relations Act, the Fair Labor Standards Act, and the Agricultural Adjustment Act of 1938, as amended, and the decisions upholding them, furnish ample precedents for sustaining an equal public accommodations law under the power to regulate interstate commerce. The Supreme Court has also frequently upheld the use of the commerce clause to promote policies based not merely upon public health or commercial welfare but moral principles. In this connection it should be remembered that the triviality of the effect of an activity upon interstate commerce, when judged by itself, is not enough to remove it from the scope of Federal regulation where its impact, taken together with the impact of many others similar to it, is important.

In pointing to the commerce clause as an ample source of power under established principles, we do not minimize the importance of the 14th amendment. This amendment could also provide a sufficient basis for sustaining a comprehensive equal public accommodations' law as applied to many, and perhaps all, the covered establishments.

Without depreciating in any way the force of the arguments based on the amendment, we feel obligated to observe, however, that, in the present state of the law, reliance solely upon that provision would raise substantial constitutional issues in a number of possible applications and put the proposed public accommodations sections to legal risks which could be avoided by additionally drawing upon the commerce clause as a source of congressional power.

We reject the argument that an equal public accommodations law is an unconstitutional interference with private property. Both the Supreme Court of the United States and the State courts have time and time again upheld the legislative power to regulate businesses offering accommodations or services to the public.

It is our conclusion, therefore, that Congress should enact or reject an equal public accommodations law on its merits without confining the legislation to any one constitutional theory to the exclusion of others. Any other course would unnecessarily limit counsel and the courts in upholding the statute as applied in particular cases.

Sincerely,

John G. Fleming, R. H. Cole, Albert A. Ehrenzweig, Geoffrey C. Hazard, Jr., E. C. Halbach, Jr., I. M. Heyman, Dean Frank C. Newman, Preble Stolz, University of California at Berkeley; Dean Erwin N. Griswold, Paul A. Freund, Mark DeW. Howe, Arthur E. Sutherland, Jr., Ernest J. Brown, Harvard University Law School; Kenneth L. Karst, Ivan C. Rutledge, Paul D. Carrington, Roland J. Stanger, William W. Van Alstyne, Ohio State University College of Law; Dean Allan F. Smith, University of Michigan Law School; Dean Eugene V. Rostow, Yale University Law School; Murray Schwartz, University of California at Los Angeles; John O. Honnold, Jr., Howard Lesnick, A. Leo Levin, Louis B. Schwartz, Dean Jefferson B. Fordham, Theodore H. Husted, Jr., University of Pennsylvania Law School; Harlan Blake, Marvin Frankel, Walter Gellhorn, Wolfgang Friedmann, William K. Jones, John M. Kernochan, Louis Lusky, Jack B. Weinstein, Columbia University Law School.

UNIVERSITY OF HOUSTON,
DEPARTMENT OF POLITICAL SCIENCE,
Houston, Tex., July 18, 1963.

Senator JOHN O. PASTORE,
U.S. Senate, Committee on Commerce,
Washington, D.C.

DEAR SENATOR PASTORE: I am enclosing herewith the prepared statement on the public accomodations bill which you requested in your letter of August 6. I am sorry that I was unable to prepare this statement and forward it to you earlier. However, the circumstances prevented this.

You caught me figuratively with my pants down: all of my books and notes were packed and en route to Houston; I was in the process of preparing and grading final examinations; and I was also in the process of packing and moving to Houston. This move has now been completed.

In spite of this turmoil I have prepared the enclosed statement. I hope it is of sufficient importance to warrant its inclusion in the official hearing record of the Committee on Commerce.

I wish to thank you once again for this opportunity.

Respectfully yours,

JOHN P. GREEN,
Assistant Professor in Political Science.

P.S.—Please note that I am now officially at the University of Houston, and no longer affiliated with Louisiana State University in New Orleans.

Gentlemen, every American schoolchild learns, in addition to the Pledge of Allegiance to this country, portions of Thomas Jefferson's Declaration of Independence, especially that part in which he states that "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

This Declaration, although it is not legally a part of our Constitution, is as fundamental to the American way of life as are the Constitution and the Bible. While the principles embodied in the Declaration have no legal foundation under our constitutional system of government, they underlie that Constitution and provide its moral basis. Without the Declaration, and its faith in the equality of man, the American system would be bereft of its historical and emotional impact upon the human race.

The Declaration of Independence with its emphasis upon the natural rights of the individual was not a unique document; that is, it did not spring into full maturity like Pallas Athena from the brains of Zeus. Rather, it was the culmination of the doctrines and beliefs raging throughout the American Colonies and the British homeland.

Lockean though it may have been in origin, the Declaration embodies and exemplifies the American version of the natural rights doctrine. The Virginia bill of rights, for example, had already stated that "all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive, or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." Similarly, the Pennsylvania constitution of 1776 referred to the fact that all men "have certain natural, inherent and unalienable rights, amongst which are, the enjoying and defending life and liberty." The Massachusetts constitution of 1780 reaffirmed that "all men are born free and equal."

The full import of this doctrine of equality upon the American social scene was, perhaps, most cogently revealed by President Lincoln: "Four score and seven years ago our fathers brought forth upon this continent a new nation conceived in liberty and dedicated to the proposition that all men are created equal."

The doctrine of equality heralded to the world in the American Declaration of Independence was not embodied into the American Constitution as a legal right until the 14th amendment was added to that document. In the 14th amendment the equality of man is assured each citizen against the actions of the several sovereign States through the "equal protection of the laws" clause. "Equal protection" in the 14th amendment immediately follows the "due process" clause.

Subsequent to the passage of this amendment, the Supreme Court of these United States has averred that the Federal "due process" clause of the fifth amendment includes "equal protection of the laws." Hence, it is now the law of the land that every American is assured protection against the actions of any State or the National Government insofar as this principle of equality is concerned.

"Equal protection of the laws" is derivative of, and consonant with, the doctrine of the equality of man; it is, essentially, naught but the legal statement of the moral principle. This was made explicit in the development of the notorious "separate but equal facilities" doctrine. In *Roberts* v. *City of Boston* (1848) the highest court of Massachusetts was faced with the issue of the legality of separation of the races. In this case, this court enunciated the "separate but equal facilities" doctrine, maintaining that such facilities were not a violation of the Massachusetts constitution in which it was stated that "all men are born free and equal." This doctrine was later adopted by the American Supreme Court in the famous *Plessy* decision, the Court holding in this opinion that "separate but equal facilities" were not a violation of the "equal protection of the laws" clause of the 14th amendment. It must be stressed that the *Plessy* decision affirmed the principle of equality: its importance and impact lay in the fact that the Court held here that such facilities did not in fact violate the principle of equality, or, in other words, that equality is not denied where segregation of the races exists if the separate facilities are equal.

The 1954 decision in *Brown* v. *Board of Education* is important because the Court in this instance held that the principle of equality is violated in fact whenever and wherever separate facilities exist.

It is with this problem of the relationship of separate facilities to the fundamental moral and constitutional doctrine of the equality of man that this committee and this Congress must deal. Although the problem is a constitutional one, it is primarily a moral issue. In essence, this Congress has been asked to reaffirm the basic principles upon which this Union was founded. In this sense, the moral issue before this committee is: will the National Government, through the exercise of legitimate congressional powers, act to assure the fulfillment of the moral ideals under which this Republic was created.

The vitality of the American political system has lain to a great extent in the ability of its political leaders to compromise and thus achieve positive results. Compromise cannot exist in a doctrinaire environment. It can only exist where fundamental principles have already been accepted. In the United States the fundamental principles of a democratic republic have been agreed upon. Consequently, the give and take in American politics between "liberal" and "conservative" has operated primarily over the means of achieving the accepted

goals of the American dream, within the confines of the political system established by the Constitution.

On the issue now before this committee, compromise is not possible. This committee is debating a bill which involves the fundamental moral issue of the equality of the citizens of this great Nation. This committee is not debating an issue on how to best achieve some secondary or derivative goal; it is, rather, debating whether or not this Congress and this Nation will adhere to its fundamental moral beliefs.

The issue, as such, is clear. There are no gray areas here. This Congress must choose between accepting or rejecting the basic doctrine that all American citizens are in fact to be treated equally. The Federal courts have already spoken in this field and have received now the full support of the executive branch.

Congress can no longer avoid the issue. It must either enact the proposed bill by which all Americans regardless of race or color or national origin can fully use public accommodations or else it must reject the proposition that American citizens are to receive equal treatment in public matters. Congress cannot merely sit back now. To do so—to avoid the issue by procrastination—would constitute an explicit acceptance by this Congress of the present state of affairs in which American citizens are denied their birthright, a birthright granted by God to all mankind and not to be violated by governmental decree or governmental inertia.

Federal and State inaction in granting this God-given right to equality has already led to open near-revolution by minorities who have too long been denied their natural rights. The Negro revolution now occuring, it must be noted, did not begin until the Supreme Court had agreed with that minority that its right to equality had been denied. It did not gain momentum, furthermore, until time had shown that in spite of the Supreme Court's ruling, the States had nevertheless continued to deny this right and had indicated the intention of perpetuating this denial.

The measure now being considered by this committee is a direct result of the Negro movement. Consequently, it had been maintained by some that Congress is acting under coercion. It is true that coercion exists, but not from the Negro elements. The coercion results from the illegal actions of those public officials throughout this Nation, and especially in the South, who are actively engaged in the denial to American citizens of their natural and constitutional rights. The Negro movement, in short, is but the symptom of a disease; and it would be foolish indeed to maintain that the doctor is forced to take protective and preventive measures to remove the symptom, rather than to eliminate the disease itself. It is this disease—the denial to all Americans of their rights—with which this Congress must deal.

The issue before this committee is generally regarded as action to assure the rights of minorities such as the Negro. However, this proposed action assures all Americans of their rights, not merely the minorities of theirs. This action will guarantee to all Americans, whites as well as Negroes, their right to free access to the public domain.

With the permission of this committee I would like to illustrate this point with a personal story. I am sure that this story can, in its essential truth, be refashioned and retold time and again by every member of this committee.

When my father died, my mother decided to take a trip to visit her children as well as various friends who were scattered along the eastern seaboard and throughout the South. She had intended to have as her traveling companion a woman who was her closest friend, a woman who had begun working for my parents prior to the birth of their first child and who had raised all five of their children. This woman is a Negro, a second mother to myself as well as my brothers and sisters, and an individual with whom anyone would be proud to associate.

Needless to say, my mother decided to cancel the trip. For, although it would have been possible for them to travel together in the Northeast, the practical problem arose as to how they would be able to travel once they hit the southern areas. They would not be able to eat together; they would not be able to lodge in the same quarters; the inconveniences with which they would be faced, in short, would have been insurmountable.

Not only was my mother's friend being denied the right to associate with whom she wished, but so too was my mother. Southerners especially have insisted that segregation was based on the right of the individual to select one's own companions. Yet, in this instance, the doctrine of segregation actually prohibited the individual from just this very right.

The principle of this story is obvious: the denial of persons because of the color of their skin to free access of public accommodations is as much a denial of the rights of the whites as it is of the colored. It is but a variation of the fact that whenever the rights of one individual are denied, that denial ipso facto is a denial of the rights of all individuals.

The moral issue, thus, is quite clear. This committee and this Congress must either reaffirm the basic right of equality to all American citizens, or it must deny the basic right of equality to any American citizen.

Although the moral issue is clear, there have been several objections to the action being studied by this committee, objections which have a degree of validity to them.

First, it has been argued that the proposed action is a violation of States rights. Our constitutional system, as this committee is well aware, is based upon a Federal principle: the powers of the National Government are limited, and the powers of the States are reserved. Under this separation of powers between the sovereign National Government and the several sovereign States, there has arisen the doctrine of States rights.

There are in existence at least two versions of States rights. The first version is that our Constitution was derived from the States, not the people; that consequently the States have the ultimate right to interpose between the peoples of the States and the Federal Government; and, lastly, that the States have the right to decide when the Federal Government has overstepped its constitutionally limited powers. This concept of States rights has been denied by the Federal judiciary. In *McCulloch* v. *Maryland* the Supreme Court stated as dictum, in accordance with the Federalist papers of Hamilton and the arguments of Daniel Webster, that the Constitution was derived from the people of the United States, not from the several States. This dictum has been the law of the land ever since, and has often been reiterated by the Federal judiciary since that decision.

In *Ableman* v. *Booth* the Supreme Court went even further, denying the right of any or all States to interpose between the people of the several states and the Federal Government. It might be noted here that this decision, handed down by a predominantly southern court, and written by a great southern Chief Justice (Taney), was applauded by the South. (The issue at stake had been the Fugitive Slave Act and the question of whether a Northern State might interpose to prevent the return of fugitive slaves to the South.) The denial of the right of interposition by the States has continually been upheld by the Federal courts since this decision.

Inasmuch as the States cannot interpose, they equally cannot decide for themselves the question of when and where the Federal Government has overstepped its bounds. Should the Federal Government misuse its powers, the first recourse is of course the Federal courts. The Supreme Court, has, as we all know, often restrained the actions of the Congress and the Executive. Another recourse is constitutional amendment. This recourse has also been used.

In short, this interpretation of States rights has never been legally accepted in this Nation. The full maintenance of such a concept can lead only to the dissolution of this mighty Nation and in fact was instrumental in creating the bloodiest warfare in which this Nation has ever been engaged.

A more valid interpretation of the doctrine of States rights is the doctrine that the several States are sovereign within the limits placed upon them by the Federal Constitution. Essentially, this interpretation is based upon the 10th amendment which states that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It should be noted first that this amendment does not grant full reserved powers to the States. It is not a carte blanche to the States to undertake any action not prohibited them by the Constitution nor granted solely to the Federal Government. Rather, it reserves such powers to the States and to the people. If this is a "States rights" amendment, it is also a "people's rights" amendment.

It should be noted further that this amendment, although it does reserve powers to the States, does not mention any rights of the States. Nowhere, in fact, under our Constitution are the States explicitly granted or reserved any rights.

The rights which the several sovereign States do have are the rights which any legitimate government has: the right to protect the morals, health, and safety of its citizens; and the right to use its powers legitimately for the welfare of its citizens.

In either case, the rights of the States are subservient to the interests of their citizens.

The rights of the States, furthermore, are coextensive with the duties of the States. For, if the States have the right to protect the morals of their citizenry, for example, they also have a duty to protect the morals of their populace. It is unfortunate that many of those who hide behind the cloak of States rights are willing to forget the duties and obligations of the States toward their citizens.

The doctrine of States rights is based not only upon the 10th amendment but also upon the pragmatic principle that it is preferable to leave the management of local affairs to the local units of government whenever possible. This principle rests partly upon the belief that local affairs are better managed and understood locally, and partly upon the belief that it is desirable to restrict the National Government and to strengthen the several State governments so that checks and balances might be maintained between the two elements of our Federal system. Although prudence teaches us the efficacy of such a practice, prudence also tells us that where the States are derelict in their duties it is better to have the Federal Government act, if possible under the Constitution, than to have inaction in matters of deep concern to the citizens of this Nation. Prudence teaches us, that is, that even in those areas which logically should be left to the States, Federal action is sometimes desirable.

This committee is faced with the problem of whether the action proposed to this committee is in fact a violation of the rights and duties of the States. I do not think it will be denied that the action proposed does extend into that area in which the States have prime interest and as such is a violation of States rights.

This does not, however, constitute an excuse for inaction by this Congress. Congress is confronted with a conflict between two constitutional rights: the right of the individual to equality, and the right of each State to manage its internal affairs. In such a conflict, only one solution is possible. The individual rights must take priority over the right of the States. Such a solution is logical, moral, necessary, and constitutional.

It is logical inasmuch as this Nation is composed of individuals, and each governmental body at whatever level is legitimate only to the extent that it protects the rights of the individual. The several States have been remiss in their duty to protect the rights of the individuals within their boundaries. Hence the proposed action is intended to provide that protection.

The morality of this action is undeniable. As stated previously, the moral issue is that of the equality of all peoples. This is the basis of the American system and must be upheld by this Congress.

It is necessary because to deny any action at this time will lead to bloodshed. Consequently, to deny action at this time would constitute a dereliction of duty by this Congress to protect the Nation against senseless anarchy and internal dissolution. It is necessary, furthermore, because the Federal Government is entrusted by the Constitution to guarantee the rights of citizens against unconstitutional restrictions by the States.

And it is constitutional since the Federal Government is supreme over the several sovereign States whenever a conflict arises between the powers of the National Government and those of the States. It is constitutional because, although on the face of it, it violates the principle of States rights, in fact it does not violate this principle: the Federal Government is acting only because of the inaction of the States.

It has been argued, secondly, that the proposed action is a violation of individual rights; specifically, of the right of individuals to enjoy the fruits of their labor. This argument was best presented to this committee in the testimony of the Governor of Florida wherein he presented the paradox that should this Congress enact the proposed legislation it would give to each buyer the right to buy from whom he pleased, but would deny to the seller the similar right to sell to whom he pleased.

It cannot be denied that the passage of this legislation does entail restrictions upon property rights. But here, as in the case of the rights of the States, the conflict between two rights must be settled on the basis of which right is paramount. And here again, the right of the individual to full equality in public matters must take priority.

The right to property, essential though it is, is secondary to the right to equality. It is, in fact, a derivative of the right to equality. For the individual has a right to property only because he is, first and foremost, equal to every other individual. The right to property, furthermore, may be restricted. In this country the right to property has often been restricted.

Restrictions on the right to property are legitimate when and only when they are based upon the principle of equality. All restrictions upon the right to ownership, that is, must be based upon equitable treatment. Any restriction upon this right that is not so based is by its very nature immoral and contrary to the laws of nature.

The proposed legislation is not immoral. It does fulfill the natural law. The restrictions placed upon private property in this instance are based upon the principle of equal treatment; all businesses covered by the proposed legislation will be equally restricted. This is a legitimate exercise of power.

The plaint of the Governor of Florida is a meaningless one. In all States, owners of public accommodations are already under restrictions. This new legislation will provide one further regulation, it is true. But as before, so now, the owner of public accommodations has the free choice of operating under the restrictions placed upon him by the State and the Federal Government, or not operating at all. This imposition of restrictions upon public accommodations for the protection of the morals, health, or safety of the general public is no innovation for either the States or the Federal Government.

The restriction of private property under the proposed legislation is moral and in accordance with the natural law and the Constitution. Is it justifiable? It is, since the purpose of the restriction is the maintenance of that principle of equality upon which our whole society is based.

The final argument against the proposed legislation is that the use of the commerce clause as a basis of this legislation would be a dangerous extension of the powers of Congress under that clause. With this argument I concur. Although it cannot be denied that Congress has the right and power to use the commerce clause in this manner, I think it should be pointed out that the principal purpose and intent of that clause is the regulation of commerce, and not the enactment of moral legislation. Congress has already, it is true, used the commerce clause as a basis for moral legislation: the Mann Act provides a worthy example of this use of the commerce clause. But in those instances wherein the Congress has so used this clause, it had no alternative source of power. Restraint in the use and extension of the commerce clause would appear to be a more prudent exercise of congressional power than unrestrained use of this clause.

Some have argued that Congress should use the "equal protection of the laws" clause of the 14th amendment in spite of the fact that the Supreme Court in the civil rights cases denied the power of Congress to use this clause for legislation such as is now being proposed. The argument here is that the Supreme Court today would reverse the prior decision and uphold the power of Congress under the 14th amendment. The argument again is that since the proposed legislation deals with the problem of equality, the Congress should not use subterfuge. To this argument I fully subscribe. Should the Congress use the 14th amendment as the basis of the proposed legislation it would avoid any dangerous extension of the commerce clause, it would openly support the legislation on the moral basis upon which it should rest, and it would avoid all subterfuge.

A third alternative is open to Congress. The ninth amendment states that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Certain it is that one right not enumerated in the Constitution, but basic to our structure of government and society, is the right to equality. The ninth amendment can be and should be used (either in conjunction with the 14th amendment or by itself) as the basis of this legislation.

I would like to indulge this committee with one further thought. It has become common knowledge that should this committee submit the proposed legislation to the full Senate a group of Senators will use their prerogatives and indulge in a lengthy and destructive filibuster.

It must be noted that in 1957 and in 1960 when Congress enacted "civil rights" legislation, filibusters had been used in which the arguments against such legislation were fully expounded. Furthermore, since the *Brown* decision of 1954 this Nation has continuously heard arguments against that decision and against proposals for granting full equality to all American citizens. And, lastly, since the demonstrations of last spring these arguments have been reiterated with even greater vociferation.

I would not deny the right of any Senator to fully expound his position on the floor of the Senate. But I believe that the issue of the equality of all Americans presented by this legislation is of such moral impact that to allow any Senator or any group of Senators the right to abuse their prerogative of

full debate is in itself immoral. The right of any minority, such as represented by those Senators who intend to filibuster, must not be denied; yet the right of the majority to have its way after full deliberation cannot be denied either. In short, the Southern Senators should be allowed a respectable time for debate. But the indulgence of filibuster should not be tolerated. For 100 years now the Negro has been supposedly free and yet for 100 years he has been denied his constitutional rights. Nearly 10 years ago the Federal courts reaffirmed the fact that the Negro has been denied his rights. And, as noted elsewhere, the denial of the rights of the Negro has essentially been equally a denial of the rights of all other Americans. Further delay is clearly unwarranted.

No Senator can today hide behind the argument that Senators have a prerogative to filibuster. This fiction was destroyed last year when the Senate invoked cloture upon a small group of Senators after reasonable debate had occurred. If the Senate could invoke cloture then, it can and must invoke cloture after reasonable debate has taken place on this proposed legislation.

In view of the gravity of the issue, I would say to this committee—and to the full Senate—that those Senators who refuse to overthrow the proposed filibuster are morally incompetent and are deserving of the contempt of the American people.

I want to thank this committee for the opportunity of presenting my views. I sincerely hope that this committee, this Senate, and this Congress will enact the proposed legislation. I fully believe that only such action will be in keeping with the ideals of our Nation and will be commensurate with the problems now besetting this Nation internally.

Thank you.

OFFICE OF THE GOVERNOR,
Springfield, Ill., September 20, 1963.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: The Civil Rights Act of the State of Illinois has been in existence since 1885. It is not possible to review case by case the record of the past 78 years. The Commission on Human Relations of the State of Illinois has had considerable experience in investigating complaints under this law. Their experience would be of help.

The public accommodations law of the State of Illinois, chapter 38, article 13, has been a good law.

The State human relations commission investigates all complaints brought to its attention. The commission's policy and procedure is simple and effective. Respondents are consulted with a view toward compliance under the law. A statement of policy is sought which is affirmative with respect to the law. Failure to secure voluntary compliance means that the complaint is submitted to the local State's attorney or to the attorney general. These two offices have fixed responsibility to act under the law.

The significant point is that voluntary compliance with the law is the rule rather than the exception. Of 73 cases filed with the commission in 1962, none went to court. Two cases did go directly to the State's attorney where the matter was adjusted in a pretrial conference. Utilization of the human relations commission to secure compliance develops a better understanding of the nature of the problem, insofar as the respondent is concerned. Thus, in a practical way, the law can become the framework, which was referred to earlier.

Often respondents have fear of loss of business or of status and prestige. Although unfounded in reality, nevertheless these fears have a powerful meaning to a businessman. Every citizen has a right to know why he should obey any particular law. Indeed, government has a responsibility to make all of the necessary interpretations. Utilization of the human relations commission staff meets this test.

There is no case in Illinois where an open nondiscriminatory policy has been to the detriment of the proprietor. Negroes do not take over, nor do whites stay away in droves from any establishment under the law.

In summary, a public accommodations law speaks effectively on a problem solving level. Its force and impact is increased substantially when utilized in conjunction with professional human relations agencies and it develops, among other things, a climate most beneficial for all Americans.

In addition, let me point out that in 1961 this administration secured from the general assembly the first fair employment practices legislation in the history of Illinois. The 1963 session of the general assembly made it crystal clear that the legislation was applicable to government and labor organizations.

Last July, I called a meeting of Illinois mayors and city managers in Springfield. Some 200 mayors and city managers turned out for this meeting at which time I reviewed for them our responsibilities and duties in the area of civil rights. On this day, I issued by executive order a code of fair practices governing conduct in the areas of State services and facilities, fair employment practices, State licensing, public works, State financial assistance, training and apprentice programs, State employment service and professions and trades.

Subsequent to the meeting, these mayors and city managers returned home to apprise local authorities of civil rights responsibilities and in many cases to call for local ordinances in this area.

Of great importance, our State commission on human relations has done an outstanding job and has spurred interest in this area in many of our communities. As a result, the number of local human relations commissions has increased.

Sincerely,

OTTO KERNER, *Governor.*

NATIONAL COMMUNITY RELATIONS ADVISORY COUNCIL,
New York, N.Y., August 27, 1963.

Re S. 1732.

Hon. WARREN G. MAGNUSON,
Senator from Washington, Chairman, Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: It is my pleasure to enclose a statement on the public accommodations bill (S. 1732) submitted by six national member agencies and 66 Jewish community councils throughout the Nation, all of which are affiliated together in the National Community Relations Advisory Council.

I would appreciate your distributing a copy of this statement to each member of your committee. Our organizations are ready to render whatever assistance we can to your committee during the course of its deliberations on this legislation.

Best wishes.

Sincerely yours,

LEWIS H. WEINSTEIN, *Chairman.*

STATEMENT ON PUBLIC ACCOMMODATIONS BILL BY CONSTITUENT ORGANIZATIONS OF THE NATIONAL COMMUNITY RELATIONS ADVISORY COUNCIL

The six national Jewish organizations and 66 Jewish community councils, all of which are affiliated together in the National Community Relations Advisory Council (NCRAC) and through which they concert their policies and programs, welcome this opportunity to submit this statement on proposed Federal legislation dealing with discrimination in public accommodations.

The constituent organizations of the NCRAC are the American Jewish Congress, Jewish Labor Committee, Jewish War Veterans of the U.S.A., and the congregational bodies representing the three wings of religious Judaism: Union of American Hebrew Congregations (reform); Union of Orthodox Jewish Congregations of America, and United Synagogue of America (conservative).

The 66 Jewish community councils joining in the present statement are:

Jewish Welfare Fund of Akron.
Albany Jewish Community Council.
Atlanta Jewish Community Council.
Federation of Jewish Charities of Atlantic City, N.J.
Baltimore Jewish Council.
Jewish Community Council of Birmingham.
Jewish Community Council of Metropolitan Boston.
Jewish Community Council, Bridgeport.
Brooklyn Jewish Community Council.
Jewish Federation of Broome County, N.Y.
Community Relations Committee of the Jewish Federation of Camden County, N.J.

Jewish Community Federation, Canton, Ohio.
Jewish Community Relations Council, Charleston, S.C.
Cincinnati Jewish Community Relations Committee.
Jewish Community Federation, Cleveland, Ohio.
United Jewish Fund and Council, Columbus, Ohio.
Connecticut Jewish Community Relations Council.
Jewish Community Council, Dayton, Ohio.
Jewish Federation of Delaware.
Jewish Community Council of Metropolitan Detroit.
Eastern Union County, N.J., Jewish Community Council.
Jewish Community Council of Easton and Vicinity.
Jewish Community Welfare Council, Erie, Pa.
Jewish Community Council of Essex County, N.J.
Jewish Community Council of Flint, Mich.
Jewish Federation of Fort Worth, Tex.
Community Relations Committee of the Hartford (Conn.) Jewish Foundation.
Indiana Jewish Community Relations Council.
Indianapolis Jewish Community Relations Council.
Jewish Community Council, Jacksonville, Fla.
Community Relations Bureau of the Jewish Federation and Council of Greater Kansas City.
Kingston, N.Y., Jewish Community Council.
Conference of Jewish Organizations of Louisville.
Community Relations Committee of the Jewish Federation-Council of Greater Los Angeles.
Jewish Community Relations Council of Memphis.
Milwaukee Jewish Council.
Jewish Community Relations Council of Minnesota.
Jewish Federation of New Britain, Conn.
New Haven Jewish Community Council.
Norfolk Jewish Community Council.
Jewish Community Relations Council of Oakland, Calif.
Central Florida Jewish Community Council (Orlando).
Jewish Federation of Palm Beach County, Fla.
Jewish Community Council of Paterson, N.J.
Jewish Community Council of Peoria, Ill.
Jewish Community Council, Perth Amboy, N.J.
Jewish Community Relations Council of Greater Philadelphia.
Jewish Community Relations Council, Pittsburgh.
Jewish Community Council of the Plainfields, N.J.
Jewish Federation of Portland, Maine.
Jewish Federation of Portland, Oreg.
Jewish Community Council, Rochester, N.Y.
Jewish Community Relations Council of St. Louis.
Community Relations Council of San Diego.
San Francisco Jewish Community Relations Council.
Jewish Community Council, Schenectady, N.Y.
Scranton-Lackawanna Jewish Council.
Jewish Federation, Springfield, Ill.
Jewish Community Council of Toledo.
Jewish Federation of Trenton.
Tulsa Jewish Community Council.
Jewish Community Council, Utica.
Jewish Community Council of Greater Washington.
Jewish Federation of Waterbury.
Wyoming Valley Jewish Committee, Wilkes-Barre, Pa.
Jewish Community Relations Council of the Jewish Federation of Youngstown, Ohio.

We believe that the prohibition of discrimination in public accommodations, proposed by the administration as part of its 1963 Civil Rights Act, is one of the most significant parts of that bill, and we urge its adoption.

Our Nation is now vividly conscious of an abrupt change in the civil rights climate. We have been told unmistakably that the generation of Negroes which was to be sacrificed under the concept of gradual alleviation of discrimination is not in a sacrificial mood. Massive demonstrations in the North as well as the South have clearly revealed that the time has come for an abrupt break with the "too little, too late" policy under which we have been operating.

Tensions have been particularly acute in the area of public accomodations and it is imperative that Federal legislation be passed to eliminate discrimination in hotels, restaurants, and other public facilities. It is no accident that the student sit-ins of 1961 originated at a southern lunch counter, a public facility which, it was deeply felt, had to be made available to everyone. The fact that subsequent demonstrations, sit-ins, wade-ins, and the like have affected the field of public accomodations more than any other area in which discrimination is prevalent suggests again the overwhelming need for comprehensive legislation in this field. It is the obligation of Congress to enact such legislation to insure that those who have been promised equal rights will in fact receive them.

THE NEED FOR PUBLIC ACCOMMODATIONS LEGISLATION

President Kennedy in his civil rights message of June 19, 1963, said that "Events of recent weeks have again underlined how deeply our Negro citizens resent the injustice of being arbitrarily denied equal access to those facilities and accommodations which are otherwise open to the general public. That is a daily insult which has no place in a country proud of its heritage—the heritage of the melting pot, of equal rights, of one nation and one people. No one has been barred on account of his race from fighting or dying for America—there are no 'white' or 'colored' signs on the foxholes or graveyards of battle."

The President's recognition of the sense of outrage on the part of minority groups led him to include in his civil rights message and in the comprehensive civil rights bill of 1963 (S. 1731) a section on discrimination in public accommodations. This section of the comprehensive Civil Rights Act has also been introduced as a separate bill (S. 1732) by Senator Mansfield and 45 other Senators.

We believe that there is great need for legislation of this type. Jews are not unfamiliar with the humiliation which results from approaching a facility supposedly open to the public and being turned away with either crudely anti-Semitic remarks or inadequate evasions which clearly reveal the bias of the speaker. Discrimination against Jews in the area of public accommodations has, of course, diminished greatly in the last few years. Nevertheless, the possibility of insult has not been totally eliminated.

We do not pretend, of course, that the insult to us anywhere approaches the humiliation and indignity to which the Negro is constantly subjected. It is a terribble thing to approach a cafeteria, a hotel, a store, or any other place that appears to solicit the trade of everyone and then to find that this means everyone who is of the right color. From the time of the first sit-ins, demonstrators have explained that they were protesting psychic as well as physical injury. The refusal of owners of places of public accommodation to serve them, or the insistence that they be served at separate facilities, stamps them with a badge of inferiority, a constant reminder of second-rate status. The deep resentment aroused by this treatment goes far to explain the fact that laws against discrimination in public places are the oldest and most widespread form of civil rights legislation.

PRECEDENTS FOR THE PROPOSED LEGISLATION

Legislation in the area of public accommodations is neither novel nor impractical. Massachusetts adopted the first public accommodations bill in 1865. In the close to 100 years following this enactment, 30 States and the District of Columbia have prohibited discrimination in places of public accommodation (Alaska, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, Wisconsin, Wyoming).

These laws have worked well wherever they have been adopted and it is perfectly apparent that they have brought none of the grave evils in their train that have been so freely predicted. The benefit they confer on the aggrieved minority groups is reflected in the continued demand for further legislation. The absence of evils is shown by the continued adoption of new laws in State after State.

Furthermore, the laws have uniformly been upheld whenever their constitutionality has been challenged on the ground that they represent an undue invasion of property rights. The courts have consistently held that State laws against discrimination in public accommodations are a valid exercise of the

police power. *Darius* v. *Apostolos*, 68 Colo. 323, 190 Pac. 510 (1920); *Crosswaith* v. *Bergin*, 95 Colo. 241, 35 P. 2d 848 (1934); *Baylies* v. *Curry*, 128 Ill. 287, 21 N.E. 595 (1899); *Pickett* v. *Kuchan*, 323 Ill. 138, 153 N.E. 667 (1926); *Bolden* v. *Grand Rapids Operating Corp.*, 239 Mich. 318, 214 N.W. 241 (1927); *Brown* v. *J. H. Bell Co.*, 140 Iowa, 89, 123 N.W. 231 (1910); *Rhone* v. *Loomis*, 74 Minn. 200, 77 N.W. 31 (1898); *Messenger* v. *State*, 25 Nebr. 674, 41 N.W. 638 (1889); *People* v. *King*, 110 N.Y. 414, 18 N.E. 245 (1888); *Commission* v. *George*, 61 Pa. Super. 412 (1915). Most recently, in *Frank Marshall, et al.*, v. *Kansas City, — Mo.* — (1962), the Supreme Court of Missouri held that a municipal antidiscrimination ordinance "bears a substantial and reasonable relation to the specific grant of power to regulate restaurants and to the health, comfort, safety, convenience, and welfare of the inhabitants of the city and is fairly referable to the police power of the municipal corporation."

Although the Supreme Court of the United States has never had this issue directly presented to it, the Court has made it clear that it regards these laws as constitutional. In *District of Columbia* v. *John R. Thompson Co.*, 346 U.S. 100, 109 (1953), it said "* * * certainly as far as the Federal Constitution is concerned there is no doubt that legislation which prohibits discrimination on the basis of race in the use of facilities serving a public function is within the police power of the States."

THE TERMS OF S. 1732

S. 1732 contains six sections dealing with discrimination in places of public accommodation.

Section 1 provides that this act may be cited as the "Interstate Public Accommodations Act of 1963."

Section 2 is an elaborate set of legislative findings. It contains nine detailed paragraphs designed to establish the constitutional basis for congressional action in this area. They recite the large amount of interstate travel by Americans and the hardships resulting from discrimination against members of minority groups engaged in such travel. They state that discrimination in cultural and recreational opportunities as well as in retail stores restricts the number of persons to whom the benefits of interstate commerce are available. They state further that such discriminatory practices are "encouraged, fostered, or tolerated, in some degree" by the States "which license or protect the businesses involved" and that these practices "take on the character of action by the States and therefore fall within * * * the 14th amendment to the Constitution * * *." Finally, it is asserted that the burdens on commerce can best be removed by invoking the power of Congress under the 14th amendment and under the commerce clause of the Constitution.

Section 3 creates a right to nondiscrimination in places of public accommodation. Subsection (a) prohibits discrimination in any public place furnishing lodging to transient guests, including guests traveling in interstate commerce, and in any public place of amusement or entertainment which presents movies or other entertainment or entertainers that move in interstate commerce. It also prohibits discrimination in any store or restaurant that offers goods or food or any other services or accommodations to the public if the enterprise falls within one of the following four categories: (1) The goods or services are provided to a substantial degree to interstate travelers; (2) a substantial part of the goods made available has moved in interstate commerce; (3) the activities of the enterprise otherwise substantially affect interstate commerce; or (4) the establishment is an integral part of an enterprise in one of the previous categories (for example, by being located on its premises).

Subsection (b) of section 3 provides an exception for bona fide private clubs.

Section 4 provides that no person shall deny or interfere with the rights guaranteed in section 3. It specifically applies to all persons "whether acting under color of law or otherwise." Hence, it applies to private individuals and companies as well as to persons acting under governmental authority.

Section 5 provides for a civil action to prevent violations of section 4. (There are no criminal penalties.) Under this section, an action for preventive relief may be brought by the person aggrieved. It may also be brought by the Attorney General if he has received a written complaint from a person aggrieved and he certifies that the aggrieved person "is unable to initiate and maintain appropriate legal proceedings" and that the purposes of the title will be furthered by his bringing an action.

A person is to be considered unable to maintain a proceeding (1) if he cannot bear the expense of litigation or obtain a lawyer "either directly or through other interested persons or organizations" or (2) if there is reason to believe that bringing a suit would jeopardize his economic standing or result in injury or economic damage to himself or his family.

If a complaint is filed with the Attorney General involving an enterprise in a State having an applicable law against discrimination, the Attorney General is directed to give the local officials opportunity to handle the matter. The Attorney General is however not required to refer the matter to local authorities if he certifies to the court that the delay involved in such a referral would adversely affect the interests of the United States or that in the particular case "compliance would be fruitless."

Before bringing an action, the Attorney General is required to use the services of any Federal agency which may be available to secure voluntary compliance, if he believes that "such procedures are likely to be effective in the circumstances."

Section 6 gives the U.S. district courts jurisdiction to hear cases brought under this title whether or not the complainant has already exhausted his other administrative or legal remedies. It also provides that this legislation does not preclude State or local agencies from enforcing their own antidiscrimination laws.

COMMENTS ON THE BILL

We suggest two major ways in which the protections provided by S. 1732 might be substantially broadened. The first is by resting the bill not only on the commerce clause but also on the 14th amendment; the second is by allowing the Attorney General to bring suits in the name of the Federal Government, and not as a substitute for an individual aggrieved party.

(1) S. 1732 rests on the commerce clause (see section 3). We suggest that the bill should rest on the 14th amendment as well, so as to include establishments which are licensed by the State, whether or not these establishments in some way operate in interstate commerce.

Justice Douglas, concurring in *Garner* v. *Louisiana*, 368 U.S. 157, 181–5, said that it is impermissible for a State to exercise its power to license businesses either "in terms or in effect to segregate the races in the licensed premises."

"One can close the doors of his home to anyone he desires. But one who operates an enterprise under a license from the Government enjoys a privilege that derives from the people * * * [the] necessity of a license shows that the public has rights in respect to those premises. The business is not a matter of mere private concern. Those who license enterprises for public use should not have under our Constitution the power to license it for the use of only one race. For there is a constitutional requirement that all State power be exercised so as not to deny equal protection to any group." (368 U.S. 184–5.)

It is, of course, State action which is prohibited by the 14th amendment, and not the action of individuals. But it is clear to us (as it has been to courts and legislatures) that there are certain establishments which are affected with a public interest, and which have a public consequence.

Section 2(h) of the bill (the findings of fact) recognizes that the discriminatory practices are fostered to some degree by the States, "which license or protect the businesses involved by means of laws and ordinances * * *. Such discriminatory practices * * * take on the character of action by the States and therefore fall within the ambit of the equal protection clause of the 14th amendment to the Constitution of the United States."

This proposition should be made an explicit basis for bringing an establishment within the purview of the act. A possible formulation is suggested by a bill (H.R. 6720) introduced in the House of Representatives by Representative Lindsay which would prohibit discrimination in any enterprise "authorized by a State or a polit'cal subdivision of a State * * * providing accommodations, amusements, food, or services to the public * * *."

(2) Under the terms of S. 1732 the Attorney General is authorized to act only if he finds that aggrieved individuals are unable to do so, or that interested organizations are not available or are unable to sponsor this case. Aside from the fact that it imposes a means test on individuals and conceivably on civil rights organizations as well, this approach is unsound in theory. It conceives of racial segregation and discrimination as a private rather than a public wrong. It ignores the fact that Federal officials have the responsibility of seeing that public officials adhere to the law of the land. We suggest, therefore, that the bill should authorize the Attorney General to bring suits in this area directly in the

name of Federal Government and without the necessity of showing that aggrieved parties are unable to act.

It has been suggested that this law would be ineffective because it would be impossible for the Government to bring civil proceedings against all the thousands of enterprises to which it would apply—that this would require a vast Federal police force. The same argument could be made against any Federal regulatory law. It ignores the fact that the vast majority of the enterprises affected by the law would comply with it because it is the law. The law would set a standard to which law-abiding persons would conform. Many hotels, restaurants, and other public places would find that the bill provided the incentive they needed to end a distasteful practice which they have continued only because of local custom or demand.

Nevertheless, there may be other proprietors, more recalcitrant, against whom stronger sanctions are needed. If a proprietor should wait until a court order was issued against him, under this bill that order would only provide for enforcement of the law. The proprietor who defies the law receives no additional penalty. We suggest that the bill include a provision for damages, to provide an incentive to comply with the law for those for whom avoidance of a lawsuit is not incentive enough.

S. 1732, as presently drawn, is very broad in scope, as it must be to meet the needs of the people it intends to protect. We urge that the coverage of this bill not be limited under the guise of concern for private property as represented by Mrs. Murphy's boardinghouse. The boardinghouse is, we believe, simply a red herring. The bill contains an exemption for bona fide private clubs, and this is sufficient to protect the legitimate interests of free association. Other establishments, open to the public and often licensed by the State are properly within the coverage of this bill.

CONCLUSION

The grave human problems created by discrimination in public accommodations urgently cry out for immediate correction. The Jewish organizations submitting this statement therefore urge this committee to recommend adoption of S. 1732 with the broadening amendments described above.

THE NATIONAL COUNCIL,
EPISCOPAL CHURCH CENTER,
New York, N.Y., August 29, 1963.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: Last May the presiding bishop of the Protestant Episcopal Church sent out the enclosed statement. At the meeting of the House of Bishops in Toronto on August 12, 1963, three resolutions were passed.

We respectfully bring to your attention the deep concern of our church and its leaders as shown in these statements.

Very truly yours,

(The Rev.) GENE SCARINGI,
Washington Representative.

RESOLUTIONS ADOPTED BY THE HOUSE OF BISHOPS, PROTESTANT EPISCOPAL CHURCH, TORONTO, ONTARIO, AUGUST 12, 1963

I

Resolved, That the House of Bishops of the Protestant Episcopal Church urges the Congress of the United States to pass such civil rights legislation as shall fairly and effectively implement both the established rights and the needs of all minority groups in education, voting rights, housing, employment opportunities, and access to places of public accommodation.

II

Resolved, That the House of Bishops of the Protestant Episcopal Church, mindful of the Church Assembly to be held in Washington, D.C., on August 28, 1963, in cooperation with the March on Washington for Jobs and Freedom, (a) recognizes not only the right of free citizens to peaceful assemblage for the re-

dress of grievances, but also that participation in such an assemblage is a proper expression of Christian witness and obedience,

(*b*) welcomes the responsible discipleship which impels many of our bishops, clergy, and laity to take part in such an assemblage and supports them fully,

(*c*) prays that through such peaceful assemblage citizens of all races may bring before the Government for appropriate and competent action the critical and agonizing problems posed to our Nation by racial discrimination in employment, in access to places of public accommodation, in political rights, in education and housing.

III

Resolved, That the House of Bishops of the Protestant Episcopal Church commends to all people the presiding bishop's letter dated Whitsunday 1963, as appropriate and helpful in the present racial crisis; and that we support the presiding bishop in this wise and timely expression of Christian leadership.

A STATEMENT BY THE PRESIDING BISHOP OF THE PROTESTANT EPISCOPAL CHURCH

Recent events in a number of American communities—Birmingham, Chicago, Nashville, New York, and Raleigh, to mention only the most prominent—underscore the fact that countless citizens have lost patience with the slow pace of response to their legitimate cry for human rights. Pleas of moderation or caution about timing on the part of white leaders are seen increasingly as in unwillingness to face the truth about the appalling injustice which more than a tenth of our citizens suffer daily. While we are thankful for the progress that has been made, this is not enough.

Our church's position on racial inclusiveness within its own body and its responsibility for racial justice in society has been made clear on many occasions by the general convention. But there is urgent need to demonstrate by specific actions what God has laid on us. Such actions must move beyond expressions of corporate penitence for our failures to an unmistakable identification of the church, at all levels of its life, with those who are victims of oppression.

I think of the words we sing as we hail the ascended Christ, "Lord and the ruler of all men," and of our prayers at Whitsuntide as we ask God to work His will in us through His Holy Spirit. And then in contrast to our praises and our prayers our failure to put ourselves at the disposal of the Holy Spirit becomes painfully clear. Only as we take every step possible to join with each other across lines of racial separation in a common struggle for justice will our unity in the Spirit become a present reality.

It is not enough for the church to exhort men to be good. Men, women, and children are today risking their livelihood and their lives in protesting for their rights. We must support and strengthen their protest in every way possible, rather than to give support to the forces of resistance by our silence. It should be a cause of rejoicing to the Christian community that Negro Americans and oppressed peoples everywhere are displaying a heightened sense of human dignity in their refusal to accept second-class citizenship and longer.

The right to vote, to eat a hamburger where you want, to have a decent job, to live in a house fit for habitation: these are not rights to be litigated or negotiated. It is our shame that demonstrations must be carried out to win them. These constitutional rights belong to the Negro as to the white, because we are all men and we are all citizens. The white man needs to recognize this if he is to preserve his own humanity. It is a mark of the inversion of values in our society that those who today struggle to make the American experiment a reality through their protest are accused of disturbing the peace. And that more often than not the church remains silent on this, our greatest domestic moral crisis.

I commend these specific measures to your attention: (1) I would ask you to involve yourselves. The crisis in communities North and South in such matters as housing, employment, public accommodations, and schools is steadily mounting. It is the duty of every Christian citizen to know fully what is happening in his own community, and actively to support efforts to meet the problems he encounters.

(2) I would also ask you to give money as an expression of our unity and as a sign of our support for the end of racial injustice in this land. The struggle of Negro Americans for their rights is costly, both in terms of personal sacrifice and of money, and they need help.

(3) I would ask you to take action. Discrimination within the body of the church itself is an intolerable scandal. Every congregation has a continuing

need to examine its own life and to renew those efforts necessary to insure its inclusiveness fully. Diocesan and church-related agencies, schools, and other institutions also have a considerable distance to go in bringing their practices up to the standard of the clear position of the church on race. I call attention to the firm action of the recent Convention of the Diocese of Washington which directed all diocesan-related institutions to eliminate any discriminatory practices within 6 months. It further requested the bishop and executive council to take step necessary to disassociate such diocesan and parish-related institutions from moral or financial support if these practices are not eliminated in the specified time. I believe we must make known where we stand unmistakably.

So I write with a deep sense of the urgency of the racial crisis in our country and the necessity for the church to act. Present events reveal the possible imminence of catastrophe. The entire Christian community must pray and act.

ARTHUR LICHTENBERGER,
Presiding Bishop.

Whitsuntide, 1963.

NATIONAL RETAIL MERCHANTS ASSOCIATION,
Washington, D.C., August 14, 1963.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: As the Congress considers the President's proposals in the field of civil rights, we wish to report to you the results of a recent survey by the association.

The National Retail Merchants Association is a voluntary association of department, specialty, and chain stores located in every State in the Union and in most communities. At the request of the Attorney General we asked our members to advise us what progress had been made with regard to problems relating to racial matters. The results of this survey indicated quite clearly that an overwhelming majority of our members had made substantial strides in integrating their operations.

Several of our Southern stores reported that for the past 3 years they have been hiring nonwhites in selling and nonselling capacities. One of the largest stores in a nearby Southern State reported that out of 3,000 employees, 400 are Negroes and that some 60 are employed in selling and nonselling functions, with several classified as junior and senior executives. These jobs were formerly held by whites.

On the basis of our study it would seem that a Federal statute such as the one being considered dealing with public accommodations is neither needed nor advisable.

Sincerely,

JOHN C. HAZEN,
Vice President, Government.

PITTMAN & CROWE,
Cartersville, Ga., August 27, 1963.

To the Chairman of the Commerce Committee of the U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: A few weeks ago my brother, R. C. Pittman, of Dalton, Ga., expressed views before your committee adverse to the civil rights program. My brother and I have different views on this question. On August 27, 1963, I was honored to make a speech before the Lions Club of Cartersville, Ga., on the question of civil rights. I send you herein an original copy of that speech. To my surprise, the speech was received favorably by the members of that club. It is the largest civic club in this section of Georgia. I send copy of the speech to the chairman of the committe for the reason that neither of our Georgia Senators are on the committee and they entertain a different view to what I entertain. If you think it worthwhile, I would appreciate your bringing this speech to the attention of members of the committee.

Respectfully,

C. C. PITTMAN.

SPEECH OF C. C. PITTMAN BEFORE THE LIONS CLUB OF THE CITY OF CARTERSVILLE, GA., ON AUGUST 27, 1963

Mr. President, I do appreciate this opportunity of talking to this group of fellow citizens. I was one of the organizers of this club and its first president. Many of my friends do not agree with all my views on public matters. At one time a most eloquent bishop of the Southern Methodist Church was preaching a sermon to a large congregation on the horrors of hell, one of his listeners rose up in the audience and said, "Bishop Pierce, do you believe that a just God would condemn a human soul to the hell you have described when that soul has never had an opportunity to hear the gospel of Christ preached to him?" The bishop hesitated for reply and said, "My brother, the question is not what God will do for the heathen who never hears the gospel preached, but what will he do with you and me if we fail to send the gospel to the heathen?" So, I sincerely believe, if I proclaim a true gospel, I will be saved whether my friends believe and heed it or not.

A President of the United States has many problems to solve and all good citizens should be patient with him in his efforts to solve them for us in this complex age.

The first shipload of 20 Negro slaves docked at Jamestown, Va., in the year 1619, and from that day for 200 years the slave trade was carried on in the colonies by the owners of foreign ships, and in 1808 the people of the United States outlawed the slave trade as a sin against humanity. After slavery was outlawed in the Federal Constitution, following the Civil War, many of our States ignored the Constitution, just as they ignore it now and many of our politicians hold their offices by encouraging violations of the Constitution and constitutional rights of our citizens. The first platform plank of a successful Georgia politician is "I am against civil rights for Negroes."

In the years immediately prior to our Civil War, two questions disturbed our Nation, one was the high tariff on agricultural products and the other was slavery, and these questions brought on the Civil War with its tragic results. The Southern States' leaders maintained that they had a right to control all internal questions in their respective States, including slavery, but the North, Northeastern, and Western States contended that the Constitution and laws of the United States were supreme. Daniel Webster of Massachusetts, and Henry Clay of Kentucky, and President Jackson of Tennessee maintained that the Constitution was the supreme law. Hayne and Calhoun of South Carolina claimed that the State constitutions were the supreme laws, and could nullify Federal acts. In the great debate between Hayne and Webster, Hayne upheld States rights and Webster upheld "Liberty and union, now and forever, one and inseparable."

A meeting was held to celebrate the birthday of the great Thomas Jefferson. Both sides of the question hoped that President Jackson, of Tennessee, would take their side of this question. At an appropriate time, the President rose, fixed his eyes upon Calhoun and proposed a toast, "Our Federal Union—it must be preserved." And these words indicated to the guests that States rights must yield to the Federal Constitution and laws, and from then on down to this day, the North, East, and West have been arrayed against the Southern view of State rights.

When the Supreme Court decision on integration was rendered in 1954 by a unanimous court, our Southern Senators and Congressmen encouraged our people to ignore that decision, saying it was not "the supreme law of the land." A minority of our lawyers dared to stand up and say that it was the law and would finally have to be obeyed. After 9 years of strife, it now more clearly appears to all of our thinking people that it is the law, the supreme law, and that all prior decisions contrary thereto are null and void.

Many men and women live today who were required by their parents to go into the field and labor with members of the colored race, and with the exercise of a little reason we can see that laboring with Negroes in the fields is the same as laboring with Negroes in our public schools and universities and Armed Forces. Many men and women still live in the South who were fed from the breasts of Negro women and suffered no ill effects from that nourishment, and many of our white citizens are cousins to mulatto citizens, begotten by the immoral acts of their forebears. Since these things are true, it would seem to be wise that we should be more tolerant toward our brothers in black, and exercise the Golden Rule toward him.

In 1920, a resolution was proposed by the Federal Congress to all the States to permit women to vote, as the 19th amendment to the Constitution. This

resolution was submitted to the senate of Georgia, composed of 52 members, 43 years ago. Forty-seven members of that senate voted to deny the vote to women, and some of them argued that "Nobody is for women voting, except long-haired men and short-haired women; that women did not have the education or the intelligence to fit them for the ballot." Only five Georgia senators voted to allow women to vote, and those five were all liberal in their political views, and of these 47 opposing woman suffrage, a great majority were conservative in their views. I was one of these five senators. The white women of the United States in quest for the ballot conducted peaceful marches in many States of the Nation, in securing their rights to vote. When our Negro citizens do the same thing in many southern cities, they are arrested, hauled off to jail, tried and many are sent to almost private county chain gangs for their "crimes."

Our able Vice President, Lyndon Johnson, recently said, "Whatever the reasons, it is wrong that Americans who fight alongside other Americans in war should not be able to work alongside the same Americans, wash up alongside them, eat alongside, or send their children to sit in school alongside children of other Americans." About the same time, President Eisenhower declared that he believed in civil rights demonstrations by Negroes to emphasize their rightful discontent. So, we have a President of the United States and a Vice President saying that Negroes have a legal right to peaceful demonstrations, but here in the South we have guardians of the law sending Negroes to their private chain gangs for doing that which other guardians of the law in the North, East, and West approve as constitutional rights. In the West we even have a Goldwater of Arizona saying, "I am utterly opposed to discrimination in any form," and our Georgia politicians say he may carry Georgia over Kennedy on that account. "Lord forgive them; they know not what they say." I don't agree with them.

When the question of secession was being agitated in Georgia, the counties of Georgia had elections to determine whether we would secede from the Union or not. A majority of the voters in most north Georgia counties elected delegates pledged to oppose the Civil War, but the counties of middle and south Georgia voted for secession and war. Bartow County voted 2 to 1 against the war, yet we had many slaves. Bartow County does not restrict Negroes in their rights to vote, while many other counties think about Negroes just as they did about white women 40 years ago—that they don't have sense enough to vote.

Our U.S. Senator Russell said that Kennedy sent the civil rights bill to Congress against his better judgment and that this is not the time to consider it. One hundred years ago, at the time the 14th amendment to the Constitution was adopted, they also said it was not the time to give Negroes equal rights with other people. If not so, why was it adopted then? The Senator also said, "I don't believe the difficulties of 20 million Negroes are any greater than that of 20 million whites, who are living at the bottom of the economic heap in this country." Those words speak a fearful truth. It is not the 20 million Negroes that present the greatest danger to our Nation, but it is the 20 million underprivileged poor white people that present our greatest danger. So, admittedly, we have at least 40 million underprivileged human beings in this rich United States that are a constant threat to our "liberty and our unity." It is the duty of Congress, Federal courts, and of the President of the United States to relieve these people of this slavery before relief is too late. The States are not relieving them, and we know will not relieve them.

In 1948, President Truman was running for a full term as President of the United States on a "Fair Deal" program and some of our Georgia politicians found it convenient to travel in all parts of the world to avoid the campaign, a new party was formed, "Dixiecrat," and it was freely predicted that Dixiecrat Thurmond, would carry Georgia and the South. Large campaign funds came into his headquarters in Georgia, the November election was held. I was honored by the Democratic Party to be one of its electors. The Dixiecrats got 85,000 votes, the Republicans 75,000, and Truman 256,000 Democratic votes in Georgia. Now, some of our Georgia statesmen are saying that a conservative Goldwater, a Republican, may beat Kennedy in Georgia. They forget that Goldwater, the conservative Republican, is also for civil rights, but condemn Kennedy for trying to carry out the "law of the land" which a Republican Chief Justice wrote, and which the oath of a President requires him to carry out.

Concluding, we find that the Declaration of American Independence proclaimed all men to be free and equal, the War Between the States confirmed, with much blood, that the Constitution of the United States is the supreme law, as it is last construed by our Supreme Court, the proclamation of Lincoln freed the slaves from physical slavery and the administration of Jack Kennedy has done more to free the Negro and white slaves from unjust economic conditions

than any President since Lincoln, except Franklin Roosevelt. It is our humble opinion that those who claim that a conservative in any party will supplant Kennedy as President of the United States will have an awakening in the November election of 1964.

Two thousand years ago, the good neighbor was he who had compassion. In 1963, a good President is he who shows compassion for the underprivileged and poor of every race under God.

YALE UNIVERSITY LAW SCHOOL,
New Haven, Conn., September 6, 1963.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR MAGNUSON: On June 29 and July 15, you kindly invited my views on the constitutional basis for S. 1732, the bill to eliminate discrimination in public accommodations affecting interstate commerce. Much has happened since we corresponded earlier in the summer, and your committee's hearings constitute a record of fundamental value and importance on this and related issues.

Apart from my earlier note to you, registering my strong support for the bill, I have joined some other law teachers in a brief statement to Senator Eastland discussing the constitutional foundations for the proposal. And you have received a great deal of persuasive testimony on the constitutionality of the bill under the commerce clause and the 14th amendment. In this letter, therefore, I shall indicate only certain constitutional grounds not mentioned in our joint statement to Senator Eastland—grounds which in my view amply justify vigorous congressional action to help our people make good the constitutional promises we have made, but not kept to our fellow-citizens of Negro blood.

I regard the bill before you as part of a process of national education, national awakening, and national action. It should not be viewed as a "solution" for the problem of inequality, but as one step among many toward such a solution.

I start with the premise that we can no longer tolerate the revolutionary resistance to law of many officials who have taken oaths to uphold and defend the Constitution. With appropriate patience and forbearance, the United States has waited for the slow educative effects of litigation and social change to change men's minds. Meanwhile, we have become accustomed to a pattern of civil disobedience which now approaches open rebellion. We have gradually come to accept the lawlessness of public officials as a normal feature of our life. These men organize, encourage or ignore campaigns of terror against those who would uphold the law—campaigns involving beatings, intimidations, threats, reprisals, bombings, burnings, and even murders for which no one is ever convicted, and almost no one even indicted. They make a mockery of the law in arrangements for voting and choosing jurors, for schools, parks, and other facilities. Thus far, we have temporized with this attitude, and lived with the illusion that we had no choice but to acquiesce in it. It has become our Algeria, as dangerous to public order as the secret war of some officers was to France.

Now we are reaping the whirlwind. We see that lawlessness breeds lawlessness. Sustained and bitter white resistance to law has led to dangerous countermeasures. Massive parades in the streets, however disciplined, carry the risk of mob violence. Yet if men who love freedom are denied the vote, and kept off juries; if men who respect themselves are degraded in the labor market and in public accommodations; if, after a century of waiting, we brush aside the Constitution once again, we shall deserve the tragedy of large scale and cumulative civil strife.

I hope and believe that this castrophe will no occur—that the good sense and good will of the American people, stirred by the social progress of the Negro, and by the leadership of the Supreme Court, have been mobilized into far-reaching programs of public and private effort which should make 1963 as momentous a year in our moral history as 1863 was. In this perspective, S. 1732 should be viewed as one phase of a far more comprehensive movement, which should include at a minimum prompt and universal protection of the right to vote, by procedures more rapid than those of litigation; the assurance that juries, our ultimate safeguard against tyranny and injustice, truly represent the people; and the opening of public schools to all who would attend them.

It is right that Congress take active responsibility for progress. We should no longer rely primarily on the courts for advances in civil rights. The courts

have spoken nobly for the law, and for the national conscience. They have started the process of change, and started it superbly. But they do not have and cannot assume executive powers or powers of administration. In any event, we know that the law in action is far behind that announced by the Supreme Court, and that fact is a reproach to all of us who share responsibility for the state of the law.

An explosion of feeling has now transformed the race problem in American life, and given it new dimensions, and new urgency. That change in opinion now requires political, administrative, and executive action on a very large scale to transform the situation by vindicating the law. Many areas of the struggle for law in our public arrangements are crucial, including those dealt with by S. 1732.

In approaching its work on this front, I recommend that the Congress seriously consider a neglected source of authority as one of many available foundations for its action. I refer to what has well been called "the sleeping giant of the Constitution," the clause in article IV, section 4, which provides, "The United States shall guarantee to every State in this Union a republican form of government." Whatever powers the guarantee clause may give the courts—and of course that question is controversial—there can be no controversy about the momentous obligation it imposes on the President and on the Congress. No one now knows the outer limits of the clause. I submit, however, that a State whose government disenfranchises half its citizens of voting age, keeps Negroes off juries, and otherwise remains in a posture of complete defiance of law does not possess a republican form of government, in any possible meaning of the term.

Facing these facts, and the responsibility of Congress and the President under the guarantee clause, let us remember the spirit of Cromwell before the Long Parliament, and of the Unionists who sustained President Lincoln. I do not doubt the power to prevail of those deep, almost mystical national instincts which preserved the Union a century ago. But the time has come to invoke them, and to allow the memory of those great events to order men's thoughts and actions.

Yours sincerely,

EUGENE V. ROSTOW.

UNITED CHURCH,
BOARD FOR HOMELAND MINISTRIES,
DIVISION OF CHRISTIAN EDUCATION,
Philadelphia, Pa., August 15, 1963.

HON. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR: I am writing to you in regard to the current civil rights legislation which is now in the process of hearings before your committee. I want to encourage you to do whatever you can to speed up and to see to the passage of this legislation.

The United Church of Christ is a denomination of 2 million members spread throughout the country. There is a significant Negro constituency in this denomination. As a matter of fact the Congregational Churches which are part of the United Church of Christ have for a century been engaged in Negro education and in a variety of projects on behalf of the civil rights of Negroes. The particular responsibility I carry is for the education in churches of children, youth, and adults; and it is our intense concern that every possible vestige of segregation and of injustice and disenfranchisement of our Negro fellows be stripped away by the action of all good citizens. It is our belief that essential to that end is the Federal civil rights legislation which will unmask and deny legal support to the structures and systems of segregation which are so thoroughly involved.

At the most recent meeting of our national body, the general synod, major steps were taken to try and put our own house in order in regard to our practice and efforts on behalf of civil rights. We have made major pronouncements and serious efforts in this regard in the past, but this summer marks a new departure in our efforts to speed up the achievement of serious justice for all of our Negro brethren.

I shall appreicate hearing from you as to your belief about the potential passage of this legislation and will be interested to know your position in regard to it.

Sincerely yours,

EDWARD A. POWERS.

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