STATEMENT OF

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BEFORE THE COMMITTEE ON COMMERCE OF THE UNITED STATES SENATE

IN RE: S. 1732 - The "Interstate Public Accommodations Act"

88th Congress - 1st Session

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(1) SCOPE OF STATEMENT

(a) The scope and purpose of this statement is to present to the Committee evidence to show that the provisions of S. 1732 should not be made applicable to the operation of privately owned and privately operated bathing beaches, which beaches are located in states in which the State, Federal Government, or any County or Municipal Corporation, or other public tax-supported body, operates or maintains any beach or beaches, which are open to the use of all persons.

(b) To propose to the Committee certain amendments to S. 1732 to effectuate such exclusion, and to suggest certain amendments designed to eliminate certain injustices from the Act.

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(2) DESCRIPTION OF THE TYPES OF BEACHES FOR WHICH EXCLUSION FROM THE ACT (S. 1732) IS REQUESTED.

(a) Examples of the types of beaches for which exemption from S. 1732 is requested are the approximately twenty-one privately owned and privately operated bathing beaches which are located on the western shore of the Chesapeake Bay and its tributaries in Maryland.

Of these twenty-one beaches, fourteen are located in Anne Arundel County, south of Baltimore; four are located in Baltimore County, north of Baltimore City; and three are located in Calvert County, within approximately 25 to 35 miles of the District of Columbia. Approximately three of these privately owned beaches are fully "integrated."

(b) Generally speaking, these twenty-one beaches, with a few exceptions, are "family owned and operated," and have been so owned and operated for several generations.

(c) Most of these small bathing beaches are located adjacent to small residential communities, and in a certain sense are practically part of these residential communities.

(d) Based on personal experience and personal observation it is estimated that the total gross annual business done by these twenty-one beaches will be less than five millions of dollars.

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(3) PUBLICLY OWNED AND PUBLICLY OPERATED BATHING BEACHES LOCATED ON THE WESTERN SHORE OF THE CHESAPEAKE BAY IN MARYLAND.

(a) The State of Maryland operates two very beautiful public bathing beaches on the western shore of the Chesapeake Bay within easy access from Baltimore City, Washington, D.C., and the adjacent metropolitan areas; namely, Elk Neck State Park and Beach, north of Baltimore City; and Sandy Point State Park and Beach, south of Baltimore City (within Anne Arundel County). Both are within easy access to both Baltimore and Washington by excellent roads. (Sandy Point State Park and Beach is located in Anne Arundel County and annually has more than 300,000 visitors.)

Baltimore City owns and operates a beautiful bathing beach, located in Anne Arundel County, south of Baltimore, and within about 35 miles of Washington, D.C.

Furthermore, according to newspaper reports, the Federal Government has recently devised a beautiful waterfront property located in Anne Arundel County, within 25 miles of Washington, D.C., and within about 36 miles of Baltimore City, consisting of approximately 265 acres of land with more than a mile of waterfront. This property could with little expense be converted into an additional waterfront park and beach by the Federal Government for the use of all of the public.

(b) It is estimated that the total acreage and miles of waterfront available to the public in publicly owned beaches on the western shore of the Chesapeake Bay in Maryland is in excess of the total acreage and the total miles of waterfront operated as private beaches in Maryland by private ownership.

(c) In no instance does it appear that the patronage of these publicly owned and operated beaches has reached anything near their maximum potential patronage, and there is absolutely no present lack of sufficient bathing facilities available to the general public, in the immediate vicinity of Baltimore and Washington.

(d) In addition, the many miles of beach front on the Atlantic Ocean at Ocean City, Maryland, are owned by Worcester County and are available to all persons.

Furthermore, the State of Maryland is presently acquiring an extensive expanse of Asseateague Island for use as a public beach.

SUMMARY

BASED ON A NEED FOR ADDITIONAL BATHING BEACH FACILITIES, THE PUBLIC NEEDS ARE MORE THAN ADEQUATELY PROVIDED FOR, AND THERE IS NO JUSTIFICATION FOR REQUIRING THE PRIVATELY OWNED AND PRIVATELY OPERATED BATHING BEACHES TO ACCEPT UNDESIRED PATRONAGE.

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(4) THE "FINDINGS" AS SET FORTH IN SEC. 2 of S. 1732 FAIL TO ESTABLISH ANY VALID FACTS SUFFICIENT TO JUSTIFY THE INCLUSION OF PRIVATELY OWNED AND OPERATED BATHING BEACHES WITHIN THE CLASSIFICATION OF BUSINESSES TO WHICH THE PROVISIONS OF S. 1732 ARE APPLICABLE. AS INDICATED BY THE FOLLOWING ANALYSIS OF THE "FINDINGS:"

Sec. 2 (a) of the "Findings" sets forth no basis for such inclusion, as bathing beaches are abundantly available to all persons in Maryland at publicly owned and operated bathing beaches, and in addition in at least three privately owned and operated beaches, which three beaches are fully integrated.

Sec. 2 (b) of the "Findings" sets forth no valid basis for such inclusion as none of the twenty-one privately owned and operated beaches, insofar as known, offer overnight accommodations (all being within commuting distance of Washington and Baltimore, and all catering to daily transient business only).

Sec. 2 (d) of the "Findings" sets forth no valid basis for such inclusion as the movement of "goods, services and persons" applicable to the operation of bathing beaches; with but minor exceptions, does not "move in inter-state commerce;" and, strictly defined, bathing beaches are not places of amusement as used in Sec. 2 (d) but rather are "places of participating recreational activities," as distinguished from places of "amusement."

COMMENT

The "Findings" as stated in Sec. 2 (d) would appear to be mere expressions of opinion - entirely unsupported with any factual basis in support of such opinions.

Sec. 2(e) of the "Findings" would not appear to be applicable to bathing beaches, generally speaking, as they would not appear to fall into the classification of "retail establishments" as used in this sub-section.

Sec. 2(f) of the "Findings" sets forth no basis for the inclusion of bathing beaches in S. 1732, as these beaches are not located in any city. They have no facilities for holding conventions, and generally speaking offer no accommodations for overnight visitors.

Sec. 2(g) of the "Findings" sets forth no basis for the inclusion of bathing beaches in S. 1732, as in no instance are there any business organizations seeking services in any area affected by the operation of these beaches. All of these beaches are located in remote rural areas where their presence contributes extensively to the local economy, and which economy would be seriously injured as a result of these beaches being forced by law to accept all persons. This would result in a certain loss of business and a resultant loss of employment opportunity by the residents of these rural beach areas.

Sec. 2(h) of the "Findings" sets forth no applicable principal or basis for the inclusion of privately operated beaches in the provisions of S. 1732.

In the case of these privately operated beaches, no discriminatory practice is "encouraged, fostered, or tolerated" in any degree by the Governmental authorities of the State in which they are located, or by the "activities of their executive or judicial officers."

COMMENT

As applied to the operation of privately owned and operated bathing beaches in Maryland, Sec. 2 (h) is a statement of opinion unsupported by any factual evidence.

Sec. 2 (i) of the "Findings." The conclusions set forth in this sub-section are not applicable to privately owned and privately operated bathing beaches in Maryland, as these beaches neither "burden nor obstruct commerce," and the use of the commerce clause of the Federal Constitution for the purpose of imposing integration on these privately owned and operated beaches is a perversion of the Commerce Clause, for the purpose of effectuating a highly dubious purpose, concerning which purpose there are wide differences of opinion and which principal is not generally accepted by large segments of the population.

It is not the proper function of government to legislate for moral purposes. Nor is it a proper function of government to deprive any segment of the people of their inherent right of the self determination of their associations for the sole purpose of appeasing the demands of another segment of the people in their desire to satisfy their social ambitions.

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(5) DESPITE THE FACT THAT THE "FINDINGS" SET FORTH NOT A SINGLE VALID BASIS FOR THE INCLUSION OF PRIVATELY OWNED AND OPERATED BATHING BEACHES IN THE PROVISIONS OF S. 1732, NEVERTHELESS SEC. 3 OF THE ACT IS SO BROADLY DRAFTED THAT SOME, IF NOT ALL, OF THESE PRIVATELY OWNED AND OPERATED BEACHES WOULD BE INCLUDED.

(a) The provisions of Sec. 3 (a) (3) (i) and Sec. 3 (a) (3) (ii) apparently would be applicable to any privately owned and privately operated bathing beach which fell within the stipulations of these two sections.

(1) Considering sub-section (ii) of Sec. 3 (a) (3) first, the language used in this sub-section which states that if a "substantial portion of any goods held out to the public for sale, use, rent or hire, has moved in inter-state commerce," makes it almost impossible for any bathing beach operator to determine whether or not his operation comes within the purview of this Act.

There is not a beach operator alive who could know for a certainty that a "substantial" portion of the goods, sold at his beach, had not moved in inter-state commerce, because there is no standard set forth in the Act to guide anyone in determining what constitutes a "substantial" portion of goods held out for sale, rent or hire.

To determine what constitutes a "substantial" portion of goods in any case will require a court determination. It well may be that there will be as many different decisions as to what does constitute a "substantial" portion of goods as there are District Courts and Courts of Appeals in the United States.

It would appear that even the Supreme Court would be unable to lay down a hard and fast rule as to what constituted a "substantial" portion of goods, which rule could be applied to all cases.

The inclusion of the word "substantial" in the Act does not appear to be a loose use of terminology, but rather it appears to be a careful and well-studied use of this word, for the purpose of making the Act uncertain and unclear, with the object in view to force the operators of small businesses into compliance with this Act, because they would be unable to stand the expense and difficulties involved in litigating the question.

THE RESULT BEING THAT THE INCLUSION OF THE WORD "SUBSTANTIAL" IN THE ACT WITHOUT A PRIOR DETERMINED STANDARD AS TO WHAT DOES OR DOES NOT CONSTITUTE A "SUBSTANTIAL" PORTION OF GOODS MAKES THIS ACT LEGISLATIVE DURESS - - THE OPERATOR OF A PLACE OF BUSINESS MUST EITHER YIELD TO THE DICTATES OF THOSE EMPOWERED TO INSTITUTE LEGAL PROCEEDINGS AGAINST HIM ON A CHARGE OF NON-COMPLIANCE WITH THE ACT, OR ELSE ENTAIL EXPENSIVE LITIGATION.

The same lack of clearness and uncertainty as to what is intended manifests itself in the use of the words "moved in interstate commerce" in the same sub-section.

There is, of course, no difficulty in determining that if goods are transported in inter-state commerce directly to the operator of any place of business, then clearly such goods have moved in inter-state commerce and are covered by the Act.

But what about goods which moved in inter-state commerce in the normal course of trade, and have come to rest within a state, and are in the hands of a dealer in such goods for re-sale in intra-state commerce? If the operator of a privately-operated bathing beach were to purchase such goods from a dealer in intra-state commerce after such goods had previously been transported in inter-state commerce, would the prior inter-state transportation imprint follow these goods into the hands of the beach operator who had purchased them in intra-state commerce? How could a beach operator who had purchased such goods be certain under the language used in this Act that he would not or could not be charged with offering "goods which had moved in interstate commerce" and thereby be subjected to litigation or threats of litigation for being in violation of the provisions of this Act?

Unless the words "moved in interstate commerce" are clearly defined and limited in the Act by proper standards, the use of such undefined words will enable those authorized to institute litigation uder the Act to use the Act as a form of legislative duress - to compell the operators of small businesses and others who cannot afford the costs of expensive litigation to either yield to the dictates of those empowered to institute litigation under the Act, or become involved in expensive litigation which they may be unable to afford.

The inclusion of the words "substantial portion of goods" and the use of the words "moved in inter-state commerce" as used in the Act, give those empowered to institute enforcement litigation the powers of AUTOCRATIC DICTATORS.

Furthermore, the inclusion of these words with no limiting or defining standards in the Act permits the Act to be used by persons with ulterior motives as a vehicle for LEGALIZED BLACKMAIL AGAINST THE OPERATORS OF PRIVATE BUSINESS.

FOR THE CONGRESS TO PLACE SUCH AN UNRESTRAINED POWER TO INSTITUTE OR THREATEN TO INSTITUTE ENFORCEMENT LITIGATION IN THE HANDS OF THE PUBLIC WOULD BE A BETRAYAL OF THE AMERICAN PEOPLE.

(2) The provisions of Sec. 3 (3) (i) would appear to bring the operators of privately operated bathing beaches within the Act, if "goods, services, facilities, privileges, or advantages or accommodations.....are provided to a substantial degree to interstate travelers."

The same uncertainty and requirements for a determination by the courts, as previously discussed, would likewise face every operator of a private bathing beach to determine what was, or what was not, a "substantial degree of interstate travelers," as used in this sub-section, and the operators of private bathing beaches would again be at the mercy of those empowered to institute enforcement litigation, and would be subjected to duress and threats to instigate enforcement litigation, with its resultant burden of heavy costs, or else surrender and comply with the provisions of the Act.

As to the twenty-one private bathing beaches cited in (2) of this Statement, the application of this particular provision of the Act would be chaotic and unequal, as between the several private beaches, for the following reasons:

(a) As to the beaches enumerated, which beaches are located to the north of Baltimore City, it is probable that less than 1 per cent of the patronage of these beaches is from other than residents of Maryland.

(b) As to the private beaches which are located in Anne Arundel County to the south of Baltimore and which beaches are not more than twenty miles distant from Baltimore, a similar condition probably exists.

(c) As to the private beaches which are south of the Severn River in Anne Arundel County, the proportion of out-of-state patrons may rise to as much as 30 to 40%.

(d) As to the beaches which are located in Calvert County, the percentage of non-Maryland patrons may rise to as much as 60 or 70%.

The result being that out of the twenty-one beaches cited in this Statement, possibly eleven would not have more than 1% of out-of-state patrons, while the other 10 private beaches would possibly have from 30 to 70% of out-of-state patrons.

Under this situation it is possible that eleven of these local private beaches would not have to integrate and could continue to operate on a segregated basis, while the remaining ten beaches would have to be integrated, under the Act, merely because their particular locations were more accessible to out-of-state visitors.

ANY SUCH RESULT WOULD BE UNFAIR AND INEQUITABLE.

THIS POSSIBILITY IN ITSELF IS SUFFICIENT TO JUSTIFY AND TO REQUIRE THE EXCLUSION OF THESE PRIVATELY OPERATED BEACHES FROM THE PROVISIONS OF S. 1732.

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(6) THE SAME LACK OF DEFINITENESS AND CLEARNESS AND LACK OF STANDARDS IS PRESENT IN SEC. 3 (b) OF THE ACT (PAGES 6-7 OF THE ACT). THIS SUB-SECTION PROVIDES FOR THE EXCLUSION OF "BONA FIDE PRIVATE CLUBS OR OTHER ESTABLISHMENTS NOT OPEN TO THE PUBLIC."

What is a bona fide club? Are so-called "Key Clubs" bona fide clubs as used in the Act? If in the operation of our private bathing beach we limit admission to persons who have applied for and have been given a "Guest Membership Card" entitling them to admission, with non-holders of such cards being excluded, does that constitute a bona fide club or other establishment not open to the public? Under our present operation, we have a sign at our entrance which reads that no invitation is extended either expressly or impliedly to visit our beach, and that admission is by invitation of the management only. Is this type of operation covered by the exclusion as to "other establishments not open to the public" as used in the Act?

The answer to these questions does not appear in the language of the Act itself. How are we and other beach operators to determine whether our operations qualify for exclusion under this sub-section?

What standards are set forth in the Act to guide us in our determination of these questions?

What standards are set forth in the Act to enable the courts to determine what are bona fide clubs and what are other establishments not open to the public?

Under these conditions we, as beach operators, will be at the mercy of persons empowered to instigate enforcement litigation.

We would have to either submit to their dictates and abandon our right to operate under what we construe to be the law, or else be subjected to expensive litigation.

This makes it possible for those empowered to instigate enforcement litigation to exercise duress upon the operators of these private beaches in an effort to compel them to integrate their properties.

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(7) JUSTIFICATION OF THE RIGHT OF THE PRIVATELY OWNED AND PRIVATELY OPERATED BEACHES TO OPERATE ON A SEGREGATED BASIS.

(a) The "Findings" as set forth in Sec. 2 of the Act set forth no factual basis for including privately owned and operated bathing beaches under the provisions of the Act.

(b) There is no lack of available publicly owned and publicly operated beaches in the Maryland area, and persons who for personal reasons may not desire to patronize these public beaches should not be denied the right to have available to them for their patronage, privately owned and privately operated beaches, whose patronage is compatible to those persons who do not desire integrated bathing.

(c) Privately operated beaches should not be denied the right to offer segregated services for the use of such persons.

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ANALOGY

The operation of these privately owned and operated bathing beaches falls into the same category as does the operation of private schools.

The State operates public schools, paid for by the taxpayers, for the use of all persons.

Persons who for personal reasons do not desire their children to attend public schools should not be denied the right to send their children to private schools whose enrollment may be segregated, and such private schools should not be prohibited by law from operating.

Likewise, the State of Maryland, the City of Baltimore, and certain counties operate public bathing beaches, paid for and maintained by the taxpayers.

Persons who do not desire to bathe with the persons who patronize these public beaches should not be denied by law from having available to them private beaches, whose patrons are compatible to their customary associations.

The Federal Government has available waterfront property in Anne Arundel County for use as a federally operated public bathing beach.

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(8) POSSIBLY THE MOST REPUGNANT AND UN-AMERICAN PROVISIONS OF THIS ENTIRE ACT ARE THE PROVISIONS OF SEC. 5 (PAGES 7, 8, 9 OF THE ACT), WHICH SECTION EMPOWERS PRIVATE CITIZENS TO INSTIGATE ENFORCEMENT OF THE ACT.

This opens the door to harassment and worse by vindictive persons and also opens the door to extortion through threats of instigating unfounded enforcement litigation, and creates by law, as previously stated, a vehicle which could be used by unscrupulous persons as the basis for Legalized Blackmail.

It is suggested that Sec. 5 be stricken from the Act in its entirety, and that in lieu thereof, that criminal penalties be written into the Act, to be enforced by the Attorney General.

The additional effect of striking from the Act the present provisions relating to so-called Civil Action for Preventive Relief, and substituting therefor criminal penalties, is that with criminal penalties inserted in the Act, the language of the Act will have to be clear and definite so as to meet the Constitutional requirements relating to criminal laws.

SUGGESTED AMENDMENTS TO S. 1732

Suggested Amendment No. 1:

After the end of line 3 on page 7 of the Act, insert a new sub-section to read as follows:

(c) The provisions of this Act shall not apply to a privately owned and privately operated bathing beach nor to any facility contained within the boundaries of any such privately owned and privately operated bathing beach, which beach is located within any State, or in any County of any State, in which State or County the State, County, any Municipal Corporation, the Government of the United States or any Department or Agency thereof, or any other public authority maintains, operates or makes available to the general public without discrimination as to race, color or creed, the facilities, services, privileges, advantages or accommodations of such publicly operated or publicly owned bathing beach.

Suggested Amendment No. 2:

In pages 7-8-9 of the Act strike out all of Section 5 and insert in lieu thereof criminal penalties.

Suggested Amendment No. 3:

On page 9 of the Act amend Section 6 by eliminating all reference to institution of remedies by other than the Attorney General of the United States.