

STATEMENT BY GOVERNOR ROSS R. BARNETT OF MISSISSIPPI BEFORE U. S. SENATE COMMERCE COMMITTEE, JULY 12, 1963.

Gentlemen, we are facing one of the most critical times in the history of our nation. Minority groups in our country have taken to the streets to agitate, to demonstrate, to breach the peace, and to provoke violence calculated to blackmail this Congress into passing legislation in direct violation of the United States Constitution. You have been forced to consider this legislation through the pressure and blackmail of mobs in the streets.

The President and the Attorney General have encouraged demonstrations, freedom rides, sit-ins, picketing and actual violation of local laws. What is happening in our nation today fits the pattern of what has been happening throughout the world insofar as the Communist activity is concerned. Compare the Communist tactics with a Cuba, a Laos, a Berlin, a Viet Nam, a Haiti, or other parts of the world. Communist tactics are to create a crisis and let it cool off. The same tactics are being practiced in the United States through a Birmingham, and letting it cool off; a Jackson, and letting it cool off; a Danville, Virginia; a Cambridge, Maryland; riots in Philadelphia; and in New York City. It's the same old Communist offensive of attack with a hammer and then withdraw. Attack with a hammer and then withdraw--each time causing more ill will, more racial unrest and pushing a wedge further between existing good relations of the people of a nation. It is the divide, disrupt and conquer technique. The passage of this Civil Rights legislation will positively provoke more violence, not just in the South, but throughout all areas of our nation. I am convinced that this is a part of the world Communist conspiracy to divide and conquer our country from within.

The Communists are, therefore, championing the cause of the Negroes in America as an important part of their drive to mobilize both colored and white for the overthrow of our government.

There are those who are so anxious to hold high the banner of the Civil Rights issue that they fail to read some of the writing on the banner. They fail to realize that the Communist Party hopes to incite civil insurrection in the South with the purpose of then

fanning the flames into a holocaust in the Northern racial strife areas. To date, they have been disappointed and defeated by the due process of law in the South where law enforcement agencies and level-headed citizens have been able to contain the aggravations of the outside racial agitators.

Gentlemen, it is obvious to many of us throughout the country that the racial agitation, strife and conflict that has been stirred up throughout our entire nation is largely Communist-inspired. Racial agitators in Mississippi and leaders of demonstrations in other states have backgrounds that have made many of us, including our local police, state investigating agencies, and the FBI, to be concerned about the real motivation behind these so-called Civil Rights leaders.

Your passage of this legislation will be no cure-all for the problems that this nation faces because of racial strife and conflict. The passage of this legislation will, however, mean the complete end of Constitutional government in America and result in racial violence of unimaginable scope. Even the New York Times has said that "with every negro advance, momentum for more violence and agitation increases, not decreases."

This legislation is so all-inclusive and so sweeping in its scope that it has been termed by many as the "WHITE SLAVE BILL".

Gentlemen, you have all learned through your personal experiences that to try to appease, accommodate, or give concessions to the demands of the arrogant leads only to additional conflicts and additional problems which you didn't face before. Certainly, you are familiar with the results of our policy of appeasement towards Cuba and Laos. The passage of this Civil Rights legislation will lead us into an area of conflict between the races, the like of which we have never known. There will be no end to the constant pressure for more and more and more.

The Attorney General has stated that the passage of this Bill would move the problem of so-called discrimination in public accommodations out of the streets and into the courts. I question this statement. The Attorney General has been personally responsible for helping to put mobs in the streets and I can prophesy that this legislation, if enacted, will put hundreds of thousands of white business men in the streets.

The purpose of government should be to protect the individual and to see to it that no one interferes with his private property. The present administration seems to have adopted the very heart of the Socialistic philosophy that the private rights of men are to be tolerated only at the suffrage of the State. What we are seeing today is a grasp for power by certain men in public office who would give to an all-powerful Central Government full control over all phases of the lives of our people. I see this legislation as an attempt by greedy minorities to prostitute the purpose of law and government as a protector of private property, and to use the law to plunder the property of others.

If you pass this legislation, you are allowing a minority in our country to force itself upon the majority of the citizens of our nation. What and where are the rights of the majority? The powers of the Attorney General under this legislation will be so sweeping and so encompassing as to comprise a serious threat, in itself, to the safety and stability of the nation. The Attorney General in his testimony has stated, "I think that it is an injustice that needs to be remedied. We have to find the tools with which to remedy that injustice." In other words, regardless of the Constitution, he, through this legislation, asks for the power to run roughshod over the rights of every individual and dictate to every citizen what he could or could not do with his private property and business. Where is the equal protection of the law?

I challenge the newspapers and news media of our country to awaken the man on the street, the small business man, all those who respect law and order, to the fact that this legislation is an open attack on the rights of every individual to the control of his personal, private property.

Every citizen has the right to own and operate his own business as he sees fit without interference from any source. To give to an all-powerful Central Government the right to force the owner of a private business to unwillingly do business with anyone creates a new and special right for a minority group in this nation that destroys the property and personal rights of every citizen.

Senator Russell has stated and the press has failed to report, "Our American system has always rejected the idea that one group of citizens may deprive another of legal rights and property by process of agitation, demonstration, intimidation, law defiance and civil disobedience. Every Negro citizen possesses every right that is possessed by any white citizen. But there is nothing in either the Constitution or in Christian principles or common sense and reason which would compel one citizen to share his rights with one of another race at the same place and at the same time. Such compulsion would amount to a complete denial of inalienable rights of the individual to choose or select his associates."

Gentlemen, what could be more unequal and discriminatory than to give one particular class of citizens the privilege of by-passing the normal channels of justice, which other citizens must follow. Under this legislation, any agitator or trouble-maker or crank could bring the owner of any business establishment into Federal Court by merely writing a letter to the U. S. Attorney General. The agitator would be represented, at no cost to himself, by the officials and attorneys of the Federal Government. If this legislation passes, American citizens will have no rights in the ownership and use of their private property, unless they use it in a way that federal officialdom considers to be consistent with the so-called public interest. Today, it seems to many Americans, the demands of the racial agitation groups fix official opinion as to what is the public interest. Tomorrow, the public interest could well be something else. It could even invade the home--or even the bedroom of the individual.

The legitimate purpose of government is to protect a man's home as his castle. Does not this same basic American Constitutional fact of life apply equally to a man's own private business? The legislation you have under consideration would use federal police power (as exemplified in our system of Federal courts) to destroy a man's personal property simply to satisfy racial minorities. Can there be no end to the current insanity that would compel the mixing of races in social activities to achieve WHAT? You can name it yourself!

The head of the NAACP here in Washington, D. C. (where Negro criminal violence against white people is creating something akin to a reign of terror) said on a national television program in early May of this year, that Negro violence is coming and that the NAACP will promote the violence if whites do not immediately give the Negro what he demands. What does he demand. Does he honestly know just what he really wants? Whatever he may want will not come as a result of this or any other legislative act. You can be certain of that basic fact. The race problem can never be solved by passage of laws, court edicts, or by breaches of the peace.

ONE ESTABLISHMENT GOES OUT OF BUSINESS

I have said that the free enterprise system has contributed much to making our nation great and that many establishments would go out of business if they were required to integrate. I am prepared to give you one specific example in Mississippi.

Mrs. Marjorie Staley of Winona, Mississippi, has operated a restaurant as a Continental Trailways Bus Terminal for quite a while. Apparently, she was making good and had a good business but she was told to either integrate or close the business. She chose to close her business rather than integrate. It is my understanding that Trailways officials had been directed by the Justice Department to warn her to either close or integrate. She has approximately \$20,000.00 of equipment in the restaurant. She had seven or eight people employed -- three whites and three or four Negroes. She had a payroll of \$2,000.00 per month. Now her business is closed, seven or eight people, Negroes and whites, are out of employment, and she has \$20,000.00 worth of equipment on her hands.

Prior to the time she closed this business, she served both white and colored in separate compartments -- one for the whites and one for the Negroes. Apparently, everyone was happy the way it was being operated. Everyone was well pleased--customers as well as employees, and Mrs. Staley.

This is one example that neither Congress nor the courts can change attitudes and customs.

Mrs. Staley is a widow and earned her livelihood operating her restaurant.

There is a communist nation just 90 miles from our shores and yet, with this and all the other problems we face as a nation, the whole attention of the Congress and our nation at this critical era in history is diverted to this tragic and mis-named Civil Rights

legislation. Perhaps this is all a part of a great conspiracy to divert our attention to this domestic issue so that we may neglect other and far more important matters.

Gentlemen, I have done some research on this matter as to the constitutionality of the proposed bill.

Section 3 of Senate Bill 1732 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, and accommodations of hotels, motels and numerous other private business enterprises.

Section 2(h) provides that alleged existing discriminatory practices "take on the character of action by the states and therefore fall within the ambit of the equal protection of the Fourteenth Amendment to the Constitution of the United States."

Section 2(i) takes the position that Congress has the right to enact this proposed legislation in order to remove alleged burdens on and obstructions to commerce under the Commerce Clause of the Constitution of the United States.

Congress does not have the
power to enact this legislation
under the Fourteenth Amendment

The businesses sought to be controlled are purely private in character and as such fall within the ambit of what is commonly known as "free enterprise." Every loyal conservative American has a deep and abiding faith in our free enterprise system. He also stands ever vigilant to protect the citizen's right to own, control and operate his private business as he sees fit. The right to do business or to decline to do business with any individual is an inseparable part of said citizen's right to operate and control his privately owned business. If this right is destroyed by the Federal Government, the citizen has been deprived of one of his inalienable rights just as surely as though the Federal Government had confiscated his physical property.

The Fourteenth Amendment to the Constitution of the United States provides:

"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."

It should be noted that the Fourteenth Amendment is a prohibition against State action. It is not a prohibition against the action of one citizen against another. Each individual has a legal right to discriminate against another individual. Any control over such individual action by the operator of a private business lies wholly within the power of the State legislatures under the Tenth Amendment to the Constitution of the United States. Some states have passed legislation similar to this; some have not. Each State has the right to make its own decision.

Mississippi has taken no action on this question. In our State the owner of each business is free to make his own decision as to whom he will serve.

Eighty years ago in United States v. Nichols, entitled the Civil Rights cases, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835, the Supreme Court of the United States held Sections 1 and 2 of the Civil Rights Act of 1875 unconstitutional. Said acts provided that all persons in the United States were entitled to the full and equal enjoyment of accommodations, advantages, facilities and privileges of inns and places of amusement. In holding that Congress had no right to pass such a law under the Fourteenth Amendment, the Court said:

"It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the Amendment."

In pointing out the reasons Congress had no such power and why such attempted legislation on the part of Congress was repugnant to the Tenth Amendment, the Supreme Court said:

"And so in the present case, until some state law has been passed or some state action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the 14th Amendment, no legislation of the United States under said Amendment, nor any proceeding under such legislation, can be called into activity; for the prohibitions of the Amendment are against state laws and acts under state authority."

* * * *

"Such legislation cannot properly cover the whole domain of rights appertaining to life, liberty and property, defining them and providing for their vindication. That would be to establish a code of municipal law regulative of all private rights between man and man in society. It would be to make Congress take the place of the State Legislatures and to supersede them. 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. In fine, the legislation which Congress is authorized to adopt in this behalf

is not general legislation upon the rights of the citizen, but corrective legislation, that is, as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which, by the Amendment, they are prohibited from making or enforcing, or such acts and proceedings as the States may commit or take, and which, by the Amendment, they are prohibited from committing or taking."

* * * *

"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. It is not predicated on any such view. It proceeds ex directo to declare that certain acts committed by individuals shall be deemed offenses, and shall be prosecuted and punished by proceedings in the courts of the United States."

* * * *

"In other words, it steps into the domain of local jurisprudence, and lays down rules for the conduct of individuals in society towards each other, and imposes sanctions for the enforcement of those rules, without referring in any manner to any supposed action of the State or its authorities.

"If this legislation is appropriate for enforcing the prohibitions of the Amendment, it is difficult to see where it is to stop. Why may not Congress with equal show of authority enact a code of laws for the enforcement and vindication of all rights of life, liberty and property? If it is supposable that the States may deprive persons of life, liberty and property without due process of law, and the Amendment itself does suppose this, why should not Congress proceed at once to prescribe due process of law for the protection of every one of these fundamental rights, in every possible case, as well as to prescribe equal privileges in inns, public conveyances and theaters? 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 that subject,

and not merely power to provide modes of redress against such state legislation or action. 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."

The Civil Rights Cases arose out of the denial by a hotel of its accommodations to persons of color and the denial by theaters of their accommodation to colored persons. In 1959 a Howard Johnson Restaurant denied service to Charles E. Williams, a colored attorney for the Internal Revenue Service. He brought suit claiming that such action violated the Civil Rights Acts of 1875 and the Commerce Clause of the Federal Constitution. In Williams v. Howard Johnson Restaurants, U.S.C.A.4th, 268 F.2d 845, the Court re-affirmed the doctrine of the Civil Rights Cases, and said:

"Sections 1 and 2 of the Civil Rights Act of 1875, upon which the plaintiff's position is based in part, provided that all persons in the United States should be entitled to the full and equal enjoyment of accommodations, advantages, facilities and privileges of inns, public conveyances and places of amusement, and that any person who should violate this provision by denying to any citizen the full enjoyment of any of the enumerated accommodations, facilities or privileges should for every such offense forfeit and pay the sum of \$500 to the person aggrieved. The Supreme Court of the United States, however, held in Civil Rights Cases 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835, that these sections of the Act were unconstitutional and were not authorized by either the Thirteenth or Fourteenth Amendments of the Constitution. The Court pointed out that the Fourteenth Amendment was prohibitory upon the states only, so as to invalidate all state statutes which abridge the privileges or immunities of citizens of the United States or deprive them of life, liberty or property without due process of law, or deny to any person the equal protection of the laws; but that the amendment did not invest Congress with power to legislate upon the actions of individuals, which are within the domain of state legislation."

From a legal point of view, it is perfectly clear that Congress does not have the power to control the activities of private business owners under the Fourteenth Amendment.

Congress does not have the power to enact this legislation under the Commerce Clause of the Constitution of the United States.

Article I, Section VIII, Clause 3 provides:

"The Congress shall have Power: . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . ."

No one can reasonably contend that the operation of a hotel, restaurant or drug store in Mississippi constitutes commerce among the several States. The Supreme Court of the United States clearly did not think so in the Civil Rights Cases, because it said:

"Has Congress constitutional power to make such a law? Of course, no one will contend that the power to pass it was contained in the Constitution before the adoption of the last three Amendments."

The last three Amendments referred to were the 13th, 14th, and 15th. The Commerce Clause was a part of the Constitution from its inception. The Supreme Court, therefore, said that no one would even contend that Congress had the power to pass such law prior to the adoption of the 13th Amendment.

Of course, the right to control commerce among the States includes the right to control interstate transportation, and Congress has done so in this field by Title 28 U.S.C.A., Section 3(1), which forbids a carrier to subject any person to undue or unreasonable prejudice or disadvantage in any respect. The right of the Congress to deny discrimination incident to interstate commerce has been upheld in a number of cases. Mitchell v. United States, 313 U.S. 80, 61 S.Ct. 873, 85 L.Ed. 1201;

Henderson v. United States, 339 U.S. 816, 70 S.Ct. 843, 94 L.Ed. 1302.

In like manner, the Supreme Court has also held that certain State action constituted an unlawful burden on interstate commerce in this field. Morgan v. Virginia, 328 U.S. 373, 66 S.Ct. 1050, 90 L.Ed. 1317.

In the Civil Rights Cases, the Supreme Court recognized the power of Congress to regulate public conveyances passing from one state to another, and said:

"And whether Congress, in the exercise of its power to regulate commerce amongst the several States, might or might not pass a law regulating rights in public conveyances passing from one State to another, is also a question which is not now before us, as the sections in question are not conceived in any such view."

It is clear, therefore, that the Supreme Court was not unmindful of the power of Congress under the Commerce Clause when it decided the Civil Rights Cases and when it held that no one would even contend that Congress had the right to pass this type of legislation under the Commerce Clause or prior to the adoption of the 13th, 14th, and 15th Amendments.

Who would seriously contend that the operation of a restaurant on Capitol Street in Jackson, Mississippi, could be classified as as commerce among the several States? If such action constitutes commerce among the States simply because some of the products handled were manufactured outside of Mississippi, every act of every citizen in every State could be controlled by Congress on the same basis. The Constitution should not be stretched entirely out of shape in an effort to reach what is believed by some to be an evil, the correction of which is a matter for each State to make its own decision. This issue was raised in Williams v. Howard Johnson Restaurant, supra, and was held not to fall within the Commerce Clause of the Constitution. The Court said:

"The plaintiff makes the additional contention based on the allegations that the defendant restaurant is engaged in

interstate commerce because it is located beside an interstate highway and serves interstate travelers. He suggests that a Federal policy has been developed in numerous decisions which requires the elimination of racial restrictions on transportation in interstate commerce and the admission of Negroes to railroad cars, sleeping cars and dining cars without discrimination as to color; and he argues that the commerce clause of the Constitution (Article I, Section 8, Clause 3), which empowers Congress to regulate commerce among the states, is self-executing so that even without a prohibitory statute no person engaged in interstate commerce may place undue restrictions upon it.

"The cases upon which the plaintiff relies in each instance disclosed discriminatory action against persons of the colored race by carriers engaged in the transportation of passengers in interstate commerce."

"In every instance the conduct condemned was that of an organization directly engaged in interstate commerce and the line of authority would be persuasive in the determination of the present controversy if it could be said that the defendant restaurant was so engaged. We think, however, that the cases cited are not applicable because we do not find that a restaurant is engaged in interstate commerce merely because in the course of its business of furnishing accommodations to the general public it serves persons who are traveling from state to state. As an instrument of local commerce, the restaurant is not subject to the constitutional and statutory provisions discussed above and, thus, is at liberty to deal with such persons as it may select."

Neither the fact that some customers of an establishment may be travelling in interstate commerce nor the fact that some of the goods sold may have been purchased from outside the State constitutes commerce

subject to control by Congress. In Elizabeth Hospital, Inc. v. Richardson, U.S.C.A.8th, 269 F.2d 167, the Court held that the treatment of some patients who were travelling in interstate commerce did not destroy the purely local character of the services furnished by the hospital, and said:

"The fact that some of plaintiff's patients might travel in interstate commerce does not alter the local character of plaintiff's hospital. If the converse were true, every country store that obtains its goods from or serves customers residing outside the state would be selling in interstate commerce. Uniformly, the courts have held to the contrary. A.L.A. Schechter Poultry Corp. v. United States, 1935, 295 U.S. 495, 55 S. Ct. 837, 79 L.Ed. 1570; Lawson v. Woodmere, 4 Cir., 1954, 217 F.2d 148, 150; Jewel Tea Co. v. Williams, 10 Cir., 1941, 118 F.2d 202, 207; Lipson v. Socony-Vacuum Corp., 1 Cir., 1937, 87 F. 2d 265, 267, certiorari granted 300 U.S. 651, 57 S.Ct. 612, 81 L.Ed. 862 certiorari dismissed 301 U.S. 711, 57 S.Ct. 788, 81 L.Ed. 1364."

Congress is now asked to control the operation of country stores and hotels on the theory that their operation constitutes commerce among the several States. The statement of the proposition is so ridiculous that it need not be further refuted.

It is my understanding that the Attorney General of the United States has suggested to this Committee that it disregard the decision of the Supreme Court of the United States in the Civil Rights Cases. I have always been under the impression that it was the duty of the Attorney General of the United States to advise congressional committees as to the present status of the law. I do not believe he has the authority to recommend to you that you exercise, on behalf of the Federal Government, power which the Supreme Court has specifically held to be unconstitutional.

In conclusion, I would like to ask certain members of the Congress two questions: (1) How long do you plan to bow to the unreasonable and unconstitutional demands of selfish minorities in your state? (2) When do you expect to begin to represent the great majority of your own people?

Another question naturally follows--how far do you think the great white majority of this nation will stand to be pushed?

I have received and am receiving daily letters from substantial everyday citizens in every state of this nation and I say to you seriously that our fine white citizens have stood just about as much of this minority insanity as they can take.

Gentlemen, you are just about to hear from that great, silent, substantial white majority back home.

When John Doe and Ole Joe Q. Doakes on Main Street in every city, town, village and cross-road in your state, finds out exactly what is really in this legislation--just what the present U.S. Attorney General and the Negro minorities want today--turmoil will really break loose in this nation.

If you think 500,000 Negroes marching on Washington is something, pass this legislation and you'll find out what one hundred million angry white Americans will do.

Please think deeply on these matters. Think seriously as to how much the white man will take in having his rights chipped away with new legislation such as this and by each decision of the Federal Courts. Are there no rights of the individual sacred today in this country?

Equality in a social sense is attainable only in total slavery. Justice Brandeis said, "One of the inalienable rights of men is to be let alone." This certainly applies to the hard-working, small business man?

Why should not the individual, who has worked to produce his own business, have the right to decide whom he will serve, whom he will associate with, and whom he will let on his premises?

What we are about to experience in our nation today is tyranny of the mob. The intent of this legislation is to steal away the fundamental rights of man to own and manage his private property as he sees fit.

The President and Attorney General are sewing the seeds of hate and violence. The nation could reap a bloody harvest. Gentlemen, if you pass this Civil Rights legislation, you are passing it under the threat of mob action and violence on the part of Negro groups and under various types of intimidation from the Executive Branch of this government. This legislation must be defeated if this nation is to survive as a Constitutional Republic of Sovereign States.

The decision is yours. May God have mercy on your souls!

THE END