

No such limiting language is found in the present bill.

The omission is a significant one and leads to the conclusion that Congress is attempting to prevent private discrimination against all places of public accommodation, whether commerce is involved or not. Unless some other source of power is found, Congress may not reach that far.

With respect to the open housing sections, it has been argued that the prohibition against private acts of discrimination is amply supported under the commerce clause since buyers, materiel and credit freely cross State lines. This argument would have constitutional substance if Congress found as true the key fact that discrimination on the basis of race is a burden to the free flow of such commerce. H.R. 2516 fails to make this finding, and I personally believe that the omission is an intentional one.

I do not feel that the distinction between owner-occupied, owner-sold, or broker-sold housing has any critical importance constitutionally, nor does the number of private units involved play a critical role. These facts should only come into play in support of a "commerce" argument which is backed by a congressional finding that commerce is affected and a record of testimony in support thereof before appropriate committees.

It is not stylish nowadays to remember that the commerce clause is not a source of unlimited power. However, I commend to the committee the statement of Chief Justice Hughes in *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. at page 30:

The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction which the commerce clause itself establishes between commerce "among the several States" and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system.

(2) Under the 14th amendment:

Historically, the 14th amendment has served as a limitation on State action. Only recently has the language of section 5 of that article been viewed as an independent source of Federal power to reach private discrimination.

As of this date, the Supreme Court has not held that the 14th amendment serves as a constitutional basis for the Congress to prohibit acts of private discrimination.

Several Justices have entertained that view—for example, Douglas and Goldberg in separate, concurring opinions in the *Atlanta Motel* case, and indeed a majority reached that conclusion as dictum in *United States v. Guest*, 383 U.S. 745.

Whatever the view of the Court may be in the future on this issue, we in Congress have an equal and independent duty to interpret the Constitution.

Section 5 of the 14th amendment states that "Congress shall have the power to enforce, with appropriate legislation, the provisions of this article." The "provisions" of the 14th amendment prohibit State discrimination, not private discrimination. The only "right" which exists under the 14th amendment is to be treated equally by the State. It does not mean that every person has a constitutional "right" to be treated equally by every other person. That is the thrust of the civil rights cases.