The limited amount of committee comment on the private club exception emphasizes its self-evident nature.

The House Judiciary Committee simply said (H.R. Rep. 914, 88th Cong., 1st sess., p. 21):

> "*Section 201(e)* exempts bona fide private clubs or other places not open to the public, except to the extent that their facilities are made available to customers or patrons of a covered establishment."

Other members of that Committee (McCulloch of Ohio, Lindsay of New York, Cahill of New Jersey, Shriver of Kansas, MacGregor of Minnesota, Mathias of Maryland, and Bromwell of Iowa, had this to say (*id.*, Part 2, p. 9):

> "Turning to the 'freedom of association' contention, there is little basis for urging this principle in behalf of owners of business who regularly serve the public in general. This 'freedom' can only be claimed by the party of interest—the owner, not the customer; and the owner of a public establishment, as above mentioned, is hardly in a position to raise it. Moreover, where freedom of association might logically come into play as in cases of private organizations, title II quite properly exempts bona fide private clubs and other establishments. Finally, it must be said that even if freedom of association is considered to be affected to some degree by the application of title II, there is no question that the courts will uphold the principle that the right to be free from racial discrimination outweighs the interest to associate freely where those making the claim of free association have knowingly and for profit opened their doors to the public."

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Or, by way of summary, while all concerned recognized the need for opening up places of public accommodation, all concerned equally recognized the need for continued privacy on the part of genuinely private establishments.

Section 201(e) was not further changed in the House, which passed H.R. 7152 on February 10, 1964.

2. Senate discussion and amendment.

On March 23, Senator Smathers read a newspaper column written by David Lawrence, the headline of which was, "Private Clubs Face Rights Fight—Facilities Open to Members' Guests Are Not Exempt in Proposed Law" (110 Cong. Rec. 6006-07). Accordingly, Senator Smathers put this question to Senator Humphrey, in charge of the bill (*id.* 6006):

> "I should like to ask the Senator from Minnesota what is his understanding with regard to the bill as it pertains to so-called private clubs?"

A colloquy ensued, in the course of which the participants agreed to "make some legislative history" (*id.* 6007-08), and Senator Humphrey undertook to expound the meaning of the private club exemption. Here are representative passages from his remarks, showing that he did not consider that the introduction of guests by a member turned such a club into one serving the public (*id.* 6008):

> " 'Which serves the public'—that is the controlling phrase, and is the controlling language that relates to subsection (e) when a private club loses its identity as a private club and becomes a public facility.
>
> "To put it more precisely, the Army and Navy Club which the Senator mentioned is well known

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in this community. It has a fine golf club, recreational facilities, swimming pools, dining rooms, recreational halls. It is a membership club. It is a private club and has within its by-laws provisions for members to bring in guests. It is not open to the public.

"Not everyone can stop by and say, 'Hello, my name is John Jones, and I would like to come in and have dinner,' because he would be asked for his membership card. Each membership card generally carries a number.

"If, however, a member of the club called up the manager and said, 'My friend, John Jones, is coming out to the club, and I want you to see that John Jones, his wife, and family have a nice dinner, and put it on my club card.' That means John Jones would be a guest, enjoying the hospitality of a member of the club. There is nothing in the bill that applies to such a club, except that it would be exempt.

"However, if on Saturday night, let us say, the Army and Navy Club decided it did not have enough income from its membership, and that once a week it had to open its facilities to anyone and everyone around the District of Columbia, Maryland, and Virginia, or anyone that came through; in other words, suppose it put up a big neon sign out at the gate which read, 'Tonight these facilities are open to one and all. Come one, come all. Reasonable rates, good dinner, lots of fun, dancing, and pretty girls, swimming pools, and so forth,' the club would give the whole treatment when that sign went up. But it would cease to be a private club, it would take on the character of a public facility or a public business under which it would become an institution or a facility serving the public.

"It is that simple.

"Whenever a private club loses its identity for whatever purpose it may be and becomes a facility

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that readily serves the public, then it is a public facility, and the effect of the proposed statute would apply.

* * * * * * * * *

"A private club is a fraternal, civic body. It has a purpose for existing. It has a charter, it has bylaws, and its members agree to live up to those bylaws.

"MR. SMATHERS. I agree with the Senator from Minnesota. I am frankly pleased to hear his explanation. I gather Mr. Lawrence is concerned about the phrase in section (e), subparagraph (e), which reads '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 (b).'

"MR. HUMPHREY. The Senator is correct.

"MR. SMATHERS. Subsection (b) has only to do with the public, and he apparently has overlooked that. What he thought was—

"MR. HUMPHREY. The Senator is correct.

"MR. SMATHERS. Because one had restaurants—

"MR. HUMPHREY. The Senator is correct.

"MR. SMATHERS. Because one had restaurants there, and people came in and guests were admitted. Thereafter it would lose the characteristics of a private club, because there was a restaurant serving a guest and, therefore, the whole thing would be opened up and the Federal Government would be able to take it over.

"MR. HUMPHREY. Exactly. My view is that that is not the case. I might go further. The Senator from Florida is a very generous, hospitable man. He likes to entertain his friends. I can well imagine that the Senator from Florida would have membership in a private club—let us take the

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Army and Navy Club as an example—and might decide that in the next week or two he would like to take to dinner about 15 of his colleagues in the Senate and their wives, for a little friendly get-together. Personally I would hope that he would bring along a few other people, to liven up the party.

"MR. SMATHERS. If the Senator from Minnesota were among the guests, we would not need anyone else.

"MR. HUMPHREY. That might be true. I was trying to wangle an invitation. If the Senator were to do that, even though not one of those 15 persons was a member of the club, inasmuch as the Senator picked up the tab—because it was the Senator's evening, so to speak—that little party would not make the club take on public characteristics. It would still be a private club, because those people would be there because the Senator from Florida had invited them.

"However, if the club were trying to make ends meet—and that is not unusual these days—and the board of directors decided that a substantial section of the club's facilities should be open to the public, it would then take on the characteristic of a public place, and it thereby would lose its special exemption. That is all that is provided in the bill. I do not believe that Mr. Lawrence's worry is justified.

"If a club were established as a way of bypassing or avoiding the effect of the law, and it was not really a club—I am sure the Senator knows what I mean—and there are clubs like that in existence, where anyone can step up and pay $2 and in that way become a member, with the $2 being used as a kind of cover charge, that kind of club would come under the language of the bill.

"However, the kind of club Mr. Lawrence is worried about would be exempt. If the proposed

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> statute is not adequate to give that kind of club an exemption, and to make it crystal clear that it would be exempt, I would favor writing in clarifying language to that effect."

On April 9, 1964, Senator Magnuson, another supporter of the bill, turned to the subject of private clubs. First he read the summary of Section 201(e) already quoted (*supra,* p. 88) from the House report (110 Cong. Rec. 7404). Then he elaborated (*id.* 7407):

> "Let us take a closer look at the provisions of the bill concerning private clubs and other establishments not open to the public generally. Local fraternal organizations, private country clubs, and the like are outside the reach of title II by reason of the bona fide private club exclusion.
>
> "However, the exemption for private clubs does not apply to the extent that they open their facilities to the customers or patrons of a coverage establishment, that is, to the extent they cease to be a private club. For example, if a hotel which is covered by title II has arrangements with a private golf club whereby the hotel's guests can use the club's golf course, the club must make the course available to the hotel guests without racial discrimination. On the other hand, the club could continue to discriminate with respect to its other facilities not subject to its agreement with the hotel. It could discriminate even as to its golf course with respect to other than hotel guests, and could make its facilities available to organizations not covered by title II without conforming to the nondiscrimination requirements of the title.
>
> "The following questions have been raised about this section of the bill:
>
> "First. Suppose a covered motel contains a so-called private club for the recreation of its guests and makes it available to all white guests

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upon the payment of a nominal fee. May it refuse to admit a Negro guest?

"No. An arrangement of this sort does not create a bona fide private club within the meaning of title II. The fact that the so-called club admits white persons who can pay the purported membership fee indicates that it is not really a private club at all.

"The clubs exempted by section 201(e) are bona fide social, fraternal, civic, and other organizations which select their own members. No doubt attempts at subterfuge or camouflage may be made to give a place of public accommodation the appearance of a private organization, but there would seem to be no difficulty in showing a lack of bona fides in these cases.

* * * * * * * * *

"Fourth. May a private club sponsor a segregated benefit concert or other performance to which the public is invited?

"The answer is 'Yes' unless the performance is to take place in a hall which customarily presents entertainment moving in interstate commerce, including such a hall owned by the club. On the other hand, if the public is not invited to the performance, but it is presented for club members only, then segregation may occur no matter what kind of hall is used."

More than two months later, on June 13, 1964, Section 201(e) was slightly modified. On that day (110 Cong. Rec. 13697), Senator Long proposed an amendment to change the words "bona fide private club not open to the public" to read "private club not in fact open to the public," saying that

"Its purpose is to make it clear that the test of a private club, or an establishment not open to

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> the public, is exempt from title II, relates to whether it is, in fact, a private club, or whether it is, in fact, an establishment not open to the public. It does not relate to whatever purpose or animus the organizers may have had in mind when they originally brought the organization or establishment into existence."

Senator Humphrey, in charge of the bill, accepted the Long amendment:

> "The modification is, I believe, a good one, and the language is more precise.
>
> "The test as to whether a private club is really a private club, or whether it is an establishment, really not open to the public, is a factual one. The language of the proposed amendment reflects that objective.
>
> "It is not our intention to permit this section to be used to evade the prohibitions of the title by the creation of sham establishments which are in fact open to the white public and not to Negroes. We intend only to protect the genuine privacy of private clubs or other establishments whose membership is genuinely selective on some reasonable basis.
>
> * * * * * * * * *
>
> "I believe it tightens up the language, and makes it mean what we said it meant, rather than what someone else might feel was the intent."

After the Long amendment was then agreed to, Senator Hill proposed his Amendment No. 680, to make the bill inapplicable to "homes, churches, cemeteries or to private clubs of any kind or to fraternities or other organizations of any kind membership in which is selective." He modified his proposal, in view of the adoption of the Long amendment, to strike therefrom

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the words "or to private clubs of any kind" (110 Cong. Rec. 13697).

After mentioning homes, churches and cemeteries, Senator Hill continued (*id.* at 13697-13698):

> "As to fraternities, does any Senator believe that the Federal Government should intrude upon or interfere with the membership of the fraternity, whether Masonic, Knights of Columbus, Knights of Pythias, or any other fraternal order. That is what this amendment would do, protect the fraternity from any such aggression or intrusion on the part of the Government.
>
> "This is the purpose of my amendment. Where we have privacy, where we have sanctity, where we have sacredness today, this amendment would insure that the privacy, the sanctity, and the sacredness would be honored and would be observed and there could be and would be no Government interference or intrusion."

Senator Hart objected (p. 13698):

> "Section 202 prescribes discrimination or segregation if it is required by a State or local law. Amendment No. 680 would specifically exclude the following from the application of section 202: homes, churches, cemeteries, private clubs, fraternities and organizations of any kind, membership in which is selective.
>
> "Since, so far as appears, there are no State or local laws requiring segregation in places enumerated in amendment No. 680, the amendment would seem to have no practical effect. At any rate, such laws would obviously be unconstitutional.
>
> "Presumably, amendment No. 680 is intended primarily as a congressional expression favorable to the maintenance of segregation in all of the

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> places to which it would apply. If the amendment were adopted, some State and local legislative bodies might enact laws requiring discrimination in these places if only to have legislation on the books reflecting a segregationist public policy. With justification, they could point to this amendment as support for such legislation.
>
> "Clearly, therefore, this amendment should be rejected."

On a roll-call vote, the Hill amendment was rejected, 26-58 (*ibid.*).

Thereafter Section 201(e) of the Civil Rights Act of 1964 was not further changed, and it became law with the modification that the Long amendment involved.

The foregoing summary of the legislative history of the private club exemption in § 201(e) establishes in our view three significant points.

First, Congress established that exemption with a minimum of debate and obviously universal acceptance.

Second, Congress drew a line, easily susceptible of ascertainment by objective standards, to mark the boundary between the constitutionally protected right of freedom of private association on the one hand and the right to be free from discriminatory state action on the other.

Third, in fixing that boundary, the Congress responded to the invitation earlier extended by some members of this Court (*Bell* v. *Maryland,* 378 U.S. 226, 317):

> "In the give-and-take of the legislative process, Congress can fashion a law drawing the guidelines necessary and appropriate to facilitate practical

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administration and to distinguish between genuinely public and private accommodations. In contrast, we can pass only on justiciable issues coming here on a case-to-case basis."

B. THE FOREGOING GUIDELINE SHOULD BE GIVEN THE SAME EFFECT AS OTHER CONGRESSIONAL ENACTMENTS ENFORCING THE CIVIL WAR AMENDMENTS.

Congress enacted the Civil Rights Act of 1964 in response to President Kennedy's urging that it "assert its specific constitutional authority to implement the 14th amendment" (H.R. Doc. 124, 8th Cong., 1st sess., p. 6), that authority being Section 5 of the same amendment, declaring (*supra,* p. 4) that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Accordingly, this Court has consistently supported every Congressional determination in the civil rights enforcement area—and we cite cases from all three post-Civil War Amendments interchangeably, since all three have virtually identical enforcement provisions. *South Carolina* v. *Katzenbach,* 383 U.S. 301; *Katzenbach* v. *Morgan,* 384 U.S. 641; *Cardona* v. *Power,* 384 U.S. 672; *Jones* v. *Mayer Co.,* 392 U.S. 409; *Gaston County* v. *United States,* 395 U.S. 285; *Perkins* v. *Matthews,* 400 U.S. 379; cf. *Oregon* v. *Mitchell,* 400 U.S. 112.[8]

Briefly to summarize those recent landmarks, in *South Carolina* v. *Katzenbach,* 383 U.S. 301, the Court sustained the provisions of the Voting Rights Act of 1965 that establish elaborate Federal machinery to

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[8] Thirteenth Amendment, Section 2: "Congress shall have power to enforce this article by appropriate legislation."

Fifteenth Amendment, Section 2: "The Congress shall have power to enforce this article by appropriate legislation."

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strike down discriminatory voting practices, machinery resting on formulas too detailed to permit of summary here; in *Katzenbach* v. *Morgan,* 384 U.S. 641, the Court sustained other provisions of the same Act, overriding a state statute requiring literacy in the English language as a prerequisite to voting, and followed that decision in *Cardona* v. *Power,* 384 U.S. 672; in *Jones* v. *Mayer Co.,* 392 U.S. 409, the Court held that under the Thirteenth Amendment (which unlike the Fourteenth is not limited to state action) Congress could provide in 42 U.S.C. § 1982 that private individuals could not refuse to sell a house on the sole ground that the purchaser is a Negro; in *Gaston County* v. *United States,* 395 U.S. 285, the Court sustained still another portion of the Voting Rights Act of 1965 that suspended enforcement of a state literacy test because of prior educational discrimination; in *Perkins* v. *Matthews,* 400 U.S. 379, the Court sustained yet another provision of the Voting Rights Act of 1965, which had the effect of setting aside a municipal election because of changes in election procedures; while in *Oregon* v. *Mitchell,* 400 U.S. 112, the Court sustained the power of Congress to lower the voting age in Federal elections while denying Congress such power in respect of state elections.[9]

We have brushed over the particulars of those decisions because of the overriding significance of the principle that they illustrate: The power of Congress under the enforcement provisions of the Civil War Amendments is plenary, quite as full indeed as its power under the Necessary and Proper Clause, and the test is not whether Congress was wise or unwise, not whether

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[9] See also *Griffin* v. *Breckenridge,* No. 144, decided on June 7, 1971, which sustained 42 U.S.C. § 1985(3) as appropriate action to enforce the Thirteenth Amendment.

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more or less should have been legislated, but simply whether, fairly construed, what was enacted was reasonably appropriate. The test, in short, is that laid down by the Great Chief Justice more than a century and a half ago (*M'Culloch* v. *Maryland,* 4 Wheat. 316, 421):

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

Here the end is indeed appropriate, because Congress is drawing a line between competing considerations, the right of some citizens to be free to associate with only those with whom they desire to associate on private premises not offered for public accommodation, and the countervailing right of other citizens to be free from discriminatory state action. That line, which excepts "a private club or other establishment not in fact open to the public" from the operation of Title II of the Civil Rights Act of 1964, actually gives full effect to both sides of constitutionally protected liberties.

There is no question here of granting Congress power to restrict, abrogate, or dilute the guarantees of equal protection and of due process. Cf. *Katzenbach* v. *Morgan,* 384 U.S. 641, 651 n. 10, 668. Here the substantive guarantees of the Fourteenth Amendment are neither diluted nor denied, first because Section 201(e), by giving effect to the constitutionally protected liberties of privacy and private association, actually enforces First Amendment rights; and, second because, as we have shown in Point IV, *supra,* pp. 59-85, there

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is here no state action—at which of course the Fourteenth Amendment is alone directed.

Thus, bearing in mind that the Fourteenth Amendment has long since been deemed to incorporate the First (e.g., *Gitlow* v. *New York,* 268 U.S. 652; *Stromberg* v. *California,* 283 U.S. 359; *DeJonge* v. *Oregon,* 299 U.S. 353; *Hague* v. *CIO,* 307 U.S. 496), Congress by enacting Section 201(e) has given full effect to all aspects of the Fourteenth Amendment.

The ready acceptance of Section 201(e) by all concerned, in a series of debates prior to enactment whose length and thoroughness have been equalled in few if any instances in recent history, reflects a well-nigh universal consensus in support of the legislative determination. For the Court now to accord deference to what Congress said in this area accordingly involves not only respect to a coordinate branch of the government, but recognition as well of a virtually unanimous understanding.

That understanding is emphasized by the circumstance that many state civil rights laws similarly exempt private clubs, some impliedly because they deal in terms with *public* accommodations, some specifically: According to a recent study, sixteen of these state enactments expressly exempt private clubs. See 54 Geo. L.J. 915, 922-923, 939 (1966).

And, as the numerous cases cited by us at pp. 54-55, above, show, the problems encountered in administering the state private club exception are identical with those arising in judicial interpretation of Section 201(e). That is why we cited there both sets of decisions without differentiation.

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Actually, even to speak of "problems" is to inflate unduly what several years of litigating experience have shown to be no problem at all. That is because the ascertainment of whether a given undertaking is or is not "a private club or other establishment not in fact open to the public" is a purely factual inquiry, far easier of determination than at least three-quarters of the normal grist that falls to trial courts every day.

Consequently, by accepting the demarcation since drawn by Congress, the Court will be enabled to assure a resolution between competing constitutional claims that is workable, that is perfectly clear, that in consequence will not spawn a new and further litigation explosion, and that gives full effect to both sets of contentions in the traditional manner of reading together every provision of our fundamental law.

It bears reiteration that, as is shown in full detail in part B of the Statement (*supra,* pp. 12-15), the completely private nature of Moose Lodge No. 107 was stipulated by the parties, recognized by the court below, and once again admitted by the appellee Irvis here (Motion to Affirm 8): "Appellant is a private club."

Indeed, insofar as the Moose Lodge's activities extend to catering, they comply with the second clause of Section 201(e), viz., "except to the extent that the facilities of such establishment are made available to customers or patrons of an establishment within the scope of subsection (b)," the general enforcement provision. For, the parties have stipulated, when the Moose Lodge engages in catering, it "imposes no restrictions on the race or color of persons belonging to the outside group so using its facilities" (Stip., ¶ 6, A. 25).

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This interpretation is in exact accord with the views expressed by the Senate supporters of the Act (*supra,* pp. 89-94).

C. THE PROVISIONS OF THE CIVIL RIGHTS ACT OF 1964 THAT PROHIBIT DISCRIMINATION ON THE FOUR STATED GROUNDS OF "RACE, COLOR, RELIGION OR NATIONAL ORIGIN" EMPHASIZE IN STILL ANOTHER ASPECT THE UNTENABILITY OF THE DISTRICT COURT'S DISTINCTION BETWEEN A PRIVATE CLUB'S MEMBERSHIP RESTRICTIONS THAT ARE RACIAL AND THOSE THAT ARE RELIGIOUS OR ETHNIC.

The Congressional standard for equal treatment, set forth no less than eight times in four titles of the Civil Rights Act of 1964, forbids discrimination on four stated grounds: "race, color, religion or national origin." See Sections 201(a), 202, 301(a), 401(b), 402, 407(a)(2), 410, and 504(a), the last cited amending three subdivisions of § 104(a) of the Civil Rights Act of 1957; for the codified references, see 42 U.S.C. §§ 2000a(a), 2000a-1, 2000b(a), 2000c(b), 2000c-1 [listed but not codified], 2000c-6(a)(2), 2000c-9, 1975c (a)(1)-(3).

"Sex" was named in Title VII, Equal Employment Opportunity, as an additional area of forbidden discrimination. See Section 703 (eight subdivisions) and § 704(b)(2); the codified references are 42 U.S.C. §§ 2000e-2 and 2000e-3(b); see *Phillips* v. *Martin Marietta Corp.,* 400 U.S. 542.

"Religion" as an improper differentiation was omitted in Section 601 (42 U.S.C. §§ 2000d), an omission of course reflecting only the parochial school and sectarian college problem. Cf. *Flast* v. *Cohen,* 392 U.S. 83; *Board of Education* v. *Allen,* 392 U.S. 236; *Pierce* v. *Society of Sisters,* 268 U.S. 510.

Finally Section 801 (42 U.S.C. § 2000f), prescribing the duty of the Secretary of Commerce to conduct "a

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survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights," though it similarly omits "religion," adds as forbidden subjects of inquiry "his political party affiliation, how he voted, or the reasons therefor."

Yet despite these readily accessible indicia of Congressional enforcement of the Fourteenth Amendment, the court below, without once speaking of or even intimating reliance on the statutory omissions that seek an adjustment in respect of sectarian education, found a distinction between racial and religious or ethnic discrimination in a wholly secular fraternal body, striking down the first but supporting the latter two (A. 40).

Once again, though in a different context and on a different approach, the untenability of that distinction is starkly demonstrated by the terms of the Civil Rights Act of 1964.

We are not unaware, of course, of the recent Maine statute, which, though nowhere cited by the district court, anticipated the identical distinction that was made below. The operative part of Chapter 371, Maine Laws of 1969, provides as follows:

> "No person, firm or corporation holding a license under the State of Maine or any of its subdivisions for the dispensing of food, liquor or for any service or being a State of Maine corporation or a corporation authorized to do business in the State shall withhold membership, its facilities or services to any person on account of race, religion or national origin, except such organizations which are oriented to a particular religion or which are ethnic in character."

It seems sufficient at this juncture simply to remark that, in the light of the several considerations already

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canvassed in the earlier portions of the present brief, the quoted statute bristles with constitutional problems right on its face. But it will be time to discuss those problems—and the infirmities to which they give rise—if and when they are presented here in actual litigation.

D. ANY GENUINELY PRIVATE ORGANIZATION IS, IN RESPECT OF THE CHARACTER OF ITS MEMBERSHIP, BEYOND THE POWER OF GOVERNMENT TO REGULATE.

When Congress enacted the provisions directed at "Discrimination in Places of Public Accommodation," contained in Title II of the Civil Rights Act of 1964, and excepted from those provisions "a private club or other establishment not in fact open to the public," it was giving effect to the constitutionally protected liberties of privacy and private association that are inherent in the right of every individual to express his likes, his dislikes, his prejudices, and his after-judgments by joining a private club composed of like-minded persons.

Not only that, but in thus drawing the line, Congress very properly stopped short of finding state action in a situation where, both conceptually as well as realistically, no arm of the state in fact participated.

The obvious way for this Court to give full effect not only to the reach of the First Amendment but also to the limitations of the Fourteenth is to respect and reaffirm the Congressionally drawn boundary between those apparently conflicting constitutional rights—a step that, necessarily, requires reversal of the judgment below.

We conclude with a formulation of the constitutionally guaranteed right to privacy and to private association inherent in club membership, one expressing the view that, so far as the character of its membership is concerned, every genuinely private organization is to

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that extent beyond the reach of governmental regulation. That formulation is not "authority" here, since it is not only the expression of a single District Judge but is dictum as well, inasmuch as the club there under consideration was held to be, in fact, a place of public accommodation. But the basic constitutional principle was there so fully and so convincingly delineated that we adopt it here as our own—and of course it would be indefensible plagiarism were we to set it forth without attribution.

Judge Singleton of the Southern District of Texas said in *Wright* v. *Cork Club,* 315 F. Supp. 1143, 1156-1157:

> "In conclusion, to make it perfectly clear, the Court wishes to reiterate that any truly private organization or association, such as a country club, a social club, a business partnership, or a political association would be beyond the bounds of government regulation with regard to membership. More often than not the resolution of constitutional disputes is accomplished, not by the application of absolute rules, but by a balancing process. The cause of racial integration is a laudable one indeed. But to allow the government to intrude into the essentially private affairs of men, even in the name of integration, would work a greater injustice to all citizens, no matter what may be their race, creed, or religion.
>
> "To allow such a governmental intrusion would violate not only the First Amendment, but the very essence of the Bill of Rights. The Bill of Rights stands for the proposition that there are bounds beyond which the government cannot go in interfering with individual rights. The Supreme Court in numerous past decisions has drawn the lines establishing the metes and bounds of governmental authority. [Citing *Griswold* v. *Connecticut,* 381 U.S. 479, for privacy of marriage; *Katz* v.

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> *United States,* 389 U.S. 347, for privacy of conversations; *Mapp* v. *Ohio,* 367 U.S. 643, for privacy of home; and *NAACP* v. *Alabama,* 357 U.S. 449, for privacy of association.] Foremost among the protected areas is the privacy of the individual, in his home, in his private associations, and even in the very words which he utters in private. The Bill of Rights, though it does not say it in so many words, guarantees to every individual the basic right of privacy. In essence, when the courts protect the individual from governmental interference with his right of assembly or freedom of speech and press, protect him from unreasonable searches and seizures or from being forced to incriminate himself, they are protecting his integrity and privacy as an individual. Underlying the specific guarantees of the Bill of Rights is a basic concern for the integrity and privacy of the individual.

[After quoting from *Griswold* v. *Connecticut,* 381 U.S. 479, 483:]

> "Thus, before Title II of the Civil Rights Act can be applied to a so-called 'private club,' a Court must determine, as this Court has done, that the organization is not in fact a private club. In this Court's view, governmental regulation of the membership of private clubs is beyond the pale of governmental authority. If the government were allowed to regulate the membership of truly private clubs, private organizations, or private associations, then it could determine for each citizen who would be his personal friends and what would be his private associations, and the Bill of Rights would be for naught."

It is not without significance that similar formulations have been made by members of this Court (*Bell* v. *Maryland,* 378 U.S. 226, 313, quoted at p. 45, *supra; Gibson* v. *Florida Legislative Comm.,* 372 U.S. 539, 565, 570, 575-576, quoted at pp. 49-50, *supra*).

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CONCLUSION

The judgment below is palpably erroneous and must be reversed.

If the Court is of opinion that the appellee Irvis has lost standing to sue by reason of rejecting the only form of decree that would have given him personal redress, then such reversal should include a direction to dismiss the complaint for lack of Article III jurisdiction, since it now appears that no Case or Controversy presently exists.

If however the Court is of opinion that jurisdiction was not lost, then such direction to dismiss should rest on the failure of the complaint to state a claim on which relief could be granted.

Respectfully submitted.

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