IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF McCOMB, et al Defendants.	CIVIL ACTION NO. _____ MOTION FOR PRELIMINARY INJUNCTION

The United States of America, plaintiff, moves the Court for a preliminary injunction against the defendants and in support of such motion states:

1. The plaintiff, by a verified complaint and affidavits heretofore filed herein has shown that it will suffer irreparable injury; that an unlawful, undue and unreasonable burden will be placed on interstate commerce if Sections 2351.5, 2351.7, 2409.7 and 7787.5 of the Mississippi Code, 1942, annotated, as amended, are not declared unconstitutional, null and void, and that compliance with and the enforcement of the aforesaid sections of the Mississippi Code will violate Section 180a, Title 49, Code of Federal Regulations, and will constitute undue and unreasonable burden upon interstate commerce in violation of Article I, Section 8 of the Constitution of the United States.

2. The plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff moves this Court for a preliminary injunction temporarily enjoining the defendants, agents, officers, employees, successors in office, and all those in active concert or participation

with them from enforcing, attempting to enforce, or complying with Sections 2351.5, 2351.7, 2409.7 and 7787.5 of the Mississippi Code, 1942, annotated, as amended, or from otherwise interfering with the lawful operation of interstate motor carriers.

UNITED STATES OF AMERICA,

Plaintiff

ROBERT E. HAUBERG
United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

UNITED STATES OF AMERICA, Plaintiffs v. CITY OF McCOMB, ET AL., Defendants.	NO._____

MEMORANDUM IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

I

Introduction

A. The Bus Terminal

The Greyhound Corporation, an interstate common carrier by motor vehicle, maintains a bus terminal in the City of McComb, Mississippi, in which, prior to September 22, 1961, separate facilities for the use of white and Negro races were maintained, designated by signs indicating which race was to use each facility. On September 22, 1961, the Interstate Commerce Commission issued its order, effective November 1, 1961, prohibiting any carrier to utilize terminal facilities in which segregation was maintained, and forbidding the posting of signs indicating that facilities were segregated according to race. Pursuant to the Commission's order, Greyhound, on October 24, 1961, removed these racial signs from its McComb terminal. The next day Defendant Guy, for the purpose of enforcing the laws of Mississippi

requiring segregation, which are more fully referred to in the complaint, directed certain McComb police officers to place signs at the entrances of the bus terminal designating certain facilities for the use of persons of the Negro race and others for the use of persons of the white race. The same day officers of the McComb Police Department, acting pursuant to the above-mentioned instructions, installed a sign in the sidewalk approximately eighteen inches from one entrance of the bus terminal reading "White Only By Order Of Police Dept.", and another, and similar, sign, an equal distance from another entrance, reading "Colored Only by Order of Police Dept."

B. The Railroad Terminal

The Illinois Central Railroad, an interstate common carrier by rail, maintains a railroad terminal in McComb, Mississippi, in which, prior to October 1, 1961, separate facilities for the use of persons of the white and Negro races were maintained, designated by signs indicating which race was to use each facility. On or about October 1, 1961, in compliance with notification from the Attorney General that maintenance of the signs was a violation of federal law, Illinois Central removed the signs. On October 7, 1961, the defendant Guy, for the purpose of enforcing the laws of Mississippi requiring segregation, which are more fully referred to in the complaint, directed certain officers of the McComb Police Department to place signs in the vicinity of the terminal designating certain terminal facilities for use of persons of the white race and others for use of persons of the Negro race. The same day, officers of the McComb Police Department, acting pursuant to the aforementioned instructions, erected on the property of Illinois Central a sign near one of the entrances to the terminal reading "White Waiting

similar sign, near another entrance, reading, "Colored Waiting Room, Colored Only By Order of Police Dept."

In the view of the United States, and as will be shown in detail hereinafter, the posting of these signs and the statutes, regulations, and orders which caused such posting, are in violation of a number of provisions of the Federal Constitution and of federal law generally

Accordingly, the defendants and all those in concert with them, should be enjoined, in accordance with the complaint, from displaying these signs, from interfering with compliance by Greyhound and the Illinois Central Railroad with federal law, and from enforcing ~~any~~ Mississippi statutes or regulations requiring segregation in bus or railroad terminals.

II

Posting of Signs Requiring or Suggesting Racial Segregation Violates Federal Law

A. The Fourteenth Amendment

It is now a fundamental principle of our constitutional system that a state may affirmatively require segregation neither with respect to services it provides nor with respect to activities it regulates. This principle has found application in such diverse areas as public education (Brown v. Board of Education, 347 U.S. 483 (1954); recreation (Mayor and City Council of Baltimore v. Dawson, 350 U.S. 877 (1955)); Holmes v. City of Atlanta, 350 U.S. 879 (1955)); New Orleans City Park Improvement Assoc. v. Detiege, 358 U.S. 43 (1958)); and transportation (Browder v. Gayle, 142 F. Supp. 707 (M.D. Ala., 1956), affirmed, 352 U.S. 903); see Mitchell v. United States, 313 U.S. 80, 94 (1941); Flemming v. South Carolina Electric & Gas Co., 224 F. 2d 752 (5th Cir. 1955), appeal dismissed, 351 U.S. 901.

As long ago as 1941, the Supreme Court said that a state requirement that carriers shall segregate passengers according to race invades a "fundamental individual right guaranteed against state action by the Fourteenth Amendment." Mitchell v. United States, 313 U.S. 80, 94 (1941). While the Mitchell case itself involved interstate railroad transportation, the principle it states has been applied again and again to other forms of transportation. See, e.g., Browder v. Gayle, supra; (intrastate buses); Boman v. Birmingham Transport Co., 280 F. 2d 531 (5th Cir. 1960) (same); Flemming v. South Carolina Elec. & Gas Co., supra (same).

There can be no serious argument today that the Fourteenth Amendment sanctions state-required racial segregation. With respect to transportation, and all facilities constituting integral parts of transportation, such segregation has been specifically outlawed by a great body of decisional law.

Thus, the actions of the police in posting these signs is unlawful state action in violation of the Fourteenth Amendment. As the Court of Appeals for this Circuit said in Baldwin v. Morgan, 287 F. 2d 650 (1961), a case in which similar signs were posted indirectly by the state through the medium of the carrier:

> The last order compels the posting of visible signs clearly indicating which waiting room is for whites and which is for colored. . . . The very act of posting and maintaining separate facilities when done . . . as commanded by these state orders is action by the state. . . . The action of . . . an arm of the state . . . in posting and maintaining the signs and the separate waiting rooms on the basis of color is forbidden. __/

B. The Commerce Clause

Posting the segregation signs also unconstitutionally burdens interstate commerce.

In Morgan v. Virginia, 328 U.S. 373 (1946), the Supreme Court held unconstitutional under the Commerce Clause (Art. I, Section 8), a statute which required separate accommodations for Negro and white passengers on interstate motor carriers. The principle of the Morgan case

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__/ It is irrelevant whether or not the state actually enforces the segregation required by the signs. In Baldwin, supra, the court said that orders of the state requiring signs are "constitutionally invalid. . . without regard to whether in fact the segregated use of occupancy of such waiting rooms is coercively compelled either by the Commission, the City or the Terminal."

is equally applicable to terminal facilities, compare Henderson v. United States, 339 U.S. 816 (1950) with Boynton v. Virginia, 364 U.S. 454 (1960). See also Matthews v. Southern Ry. System, 157 F. 2d 609 (D.C. Cir. 1946); cf. Whiteside v. Southern Bus Lines, 177 F. 2d 949 (6th Cir. 1949); Chance v. Lambeth, 186 F. 2d 879 (4th Cir. 1951).

It is no longer arguable today that racial segregation may be maintained in facilities operated or used by interstate carriers of passengers. The acts of the defendants are in flagrant conflict with settled constitutional principles.

C. The Interstate Commerce Act

Posting of the signs also conflicts with and violates the Interstate Commerce Act.

49 U.S.C. 316(d) renders it unlawful for any common carrier by motor vehicle engaged in interstate commerce to subject any particular person "to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Similarly, 49 U.S.C. 3(1) prohibits unjust discrimination by rail carriers. These provisions have been authoritatively construed to proscribe racial segregation of passengers on railroads (Mitchell v. United States, 313 U.S. 80 (1941); Henderson v. United States, 339 U.S. 816 (1950); NAACP v. St. Louis-San Francisco Ry. Co., 297 I.C.C. 335 (1955)) on motor carriers (Boynton v. Virginia, 364 U.S. 454 (1960); Keys v. Carolina Coach Co., 64 M.C.C. 769 (1955)), and in terminal facilities which are an integral and regular part of the transportation service (Boynton v. Virginia, supra).

While section 316(d) and section 3(1) refer only to common carriers, the prohibition of federal law more broadly applies to others who might cause a carrier to violate his obligations under the section. 18 U.S.C. 2 makes it an offense for any person to command, induce, procure, or cause a violation of federal law. As we show in detail elsewhere herein, the Elkins Act (49 U.S.C. 42, 43) vests jurisdiction in the federal courts to issue injunctions to prevent violations of the Interstate Commerce Act and the regulations issued pursuant thereto. That Act expressly provides for injunctive relief against any violation of the Act, including, of course, a violation of section 316(d) and section 3(1). One who causes, commands, induces, or procures another to violate section 316(d) or section 3(1) therefore not only violates 18 U.S.C. 2 but he is also subject to the injunctive power of the Court. Compare I.C.C. v. Blue Diamond Products Co., 93 F. Supp. 688 (S.D. Iowa, 1950); see also S.E.C. v. Timetrust Inc., 28 F. Supp. 34 (N.D. Cal., 1939). Thus, the prohibition of section 316(d) and section 3(1) applies not only to the Greyhound Corporation but also to the State of Mississippi and the police.

D. The Interstate Commerce Commission Regulation

As indicated, on September 22, 1961, acting upon the petition of the Attorney General, the Interstate Commerce Commission issued broad regulations prohibiting racial discrimination by and in facilities used by motor carriers subject to the jurisdiction of the Commission. Section 4 of that regulation provides that no terminal facilities used by a motor carrier may be separated on the basis of race, and section 10 defines "separation" as, among other things,

"the display of any sign indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used, or otherwise distinguished on the basis of race, color, creed, or national origin." Posting of the signs by the police near the bus terminal conflicts with this order, and, since under Article VI of the United States Constitution, in case of conflict, federal regulation is paramount over state law and state court processes. The signs must be removed.

III

The United States Is A Proper Plaintiff

A. The Interest of the United States

If our substantive contentions are correct, what basically is involved here is a violation by the defendants of several provisions of the Federal Constitution and federal statutory law.

The United States has, of course, a legal interest in the protection of the constitutional rights of its citizens and in the protection of interstate commerce from unlawful interference. See In Re Debs, 158 U.S. 564 (1895); United States v. Raines, 362 U.S. 17 (1960). Moreover, the Attorney General is charged by statute with the duty of enforcing federal law and conducting legal proceedings in the exercise of that duty. 5 U.S.C. 316, 310. It is significant in this context that the Interstate Commerce regulation, which is one of the federal directives which is contravened by the posting of the signs next to the bus terminal, was secured upon the petition of the Attorney General of the United States. This status as a petitioner in the regulation there most immediately involved gives him a special legal interest with respect to the protection of that regulation.

In short, in many ways the actions of the defendants jeopardize important legal interests of the United States. These interests are translated into standing to bring this action (1) by way of specific statutory authority to sue, and (2) by way of the feneral power of the Attorney General to sue to protect the legal interest of the United States.

B. Congress Has Authorized Injunction Actions By The Attorney General In This Context In The Interstate Commerce Act Itself.

The Elkins Act, 49 U.S.C. 42, 43 provides specific statutory standing with respect to both aspects of the instant suit./

Under section 43 of Title 49, whenever there is reasonable ground for the belief that a common carrier is committing a discrimination forbidden by law, suit may be brought on the direction of the Attorney General, with or without a request from the Interstate Commerce Commission. The section also provides that persons (other than carriers) may be made parties as the court may deem necessary.

Likewise, section 42 provides that in any proceeding for the enforcement of statutes relating to interstate commerce it shall be lawful to include as parties in addition to the carrier all persons interested in or affected by the practice under consideration and that orders and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to the carriers. In the past, parties enjoined under section 42 have included those whose practices caused the carrier to violate the Act or prevented him from complying with its requirements. See United States v. Baltimore and Ohio Railroad, 333 U.S. 169, 171-172, note 2 (1948). And, since the purpose of section 42 is to render I.C.C. enforcement more effective (Committee on Interstate and Foreign Commerce, House Rep. No. 3765,

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/ While the Elkins Act is contained in Chapter 2 of the Interstate Commerce Act rather than in the Motor Carrier Act it applies to both. I.C.C. v. Cheesebrough, 77 F. Supp. 441 (D. Minn. 1948); Daily Maid, Inc., 68 MCC 339 (1956).

57th Cong., 3rd Sess., p. 6 (1903)), the section clearly allows suit against the present defendants by the Attorney General.

C. The Standing Of The United States Without Express Statutory Authorization.

The United States, acting through the Attorney General, has been permitted to obtain equitable relief in the courts of the United States, even though it lacked statutory authority to do so, in order to protect various interests of the United States. United States v. San Jacinto Tin Co., 125 U.S. 273 (1888) (to protect Government's property interest); United States v. American Bell Tel. Co., 128 U.S. 315, 367-68 (1888) (to protect public interest against fraudulently procured patent monopoly). This doctrine received its broadest statement in In Re Debs, 158 U.S. 564 (1895), where it was held that the United States had a sufficient interest to obtain injunctive relief against strikers who were interfering with the mails and interstate commerce. The Court emphasized that it was not merely the proprietary interest of the United States in the mails which supported relief, stating (at p. 584) that:

> Every Government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter. The obligations which it is under to promote the interest of all, and to prevent the wrongdoing of one resulting in injury to the general welfare, is of itself sufficient to give it a standing in court.

Debs therefore stands for the proposition that the United States has an interest in protecting interstate commerce against interferences and that this interest gives it standing to obtain injunctive relief. No

subsequent decision has undermined the continuing validity of Debs.

On the contrary, since Debs interests of the United States other than the protection of commerce have been recognized as sufficient to support it in invoking equitable jurisdiction. E.g., United States v. California, 332 U.S. 19 (1947) (federal interest in natural resources of the 3-mile coastal belt); Heckman v. United States, 224 U.S. 413 (1912) (suit to set aside conveyances made by Indians, based on United States interest as guardian of Indians); Sanitary District v. United States, 266 U.S. 405 (1925) (interest in seeing that laws of United States prohibiting obstructions in rivers are not violated).

The principle of the Sanitary District case was reaffirmed as recently as 1960 in United States v. Republic Steel Corp., 362 U.S. 42 (1960). In that case the United States sought an injunction against Republic to stop it from depositing industrial waste in a river. It was contended that the waste constituted an obstruction within the meaning of the Rivers and Harbors Act, 33 U.S.C. 403. However, that statute provided for injunctive relief only where the obstruction was a "structure" -- which industrial waste clearly was not. The court relied upon Sanitary District and held that the United States needed no express statutory authority to protect by suit for injunction its interest in the unobstructed flow of navigable rivers.

The Supreme Court, even more recently, upheld the power of the United States to secure injunctive relief to protect its interest in the integrity of federal court orders. See United States v. State of Louisiana, 364 U.S. 500, 501 (1960); Bush v. Orleans Parish School Board, 188 F. Supp. 915 (E.D. La., 1960), aff'd. 365 U.S. 569; 190 F. Supp. 861, aff'd., 365 U.S. 569 and 366 U.S. 212; 191 F. Supp. 871, aff'd., 367 U.S. 908; 194 F. Supp. 182, aff'd., ___U.S. _____(Oct. 16, 1961).

Injunctive Relief Is Proper

We have shown that the actions of the Pike County officials are in conflict with and violate federal law. We have also shown that the Attorney General has standing to sue in this Court to deal with these violations. It remains to be demonstrated that the remedy of injunction is properly applied here.

Damages are, of course, inadequate to compensate the United States for the injury it sustains when its laws are violated, its commerce interrupted, and its citizens deprived of their constitutional rights. Almost by definition, such injuries cannot be remedied at law and are irreparable. The action of the police officials imposes an intolerable burden upon interstate commerce by requiring the interstate carriers to defy the order of the Interstate Commerce Commission and federal law generally if they are to continue serving McComb.

Under the supremacy clause of the Constitution (Art. VI) there can be no doubt but that the objectionable signs must be removed. While these signs remain posted, they constitute an affront to federal authority and cause great and irreparable damage to interstate commerce. To permit these signs to frustrate federal policy while the Interstate Commerce Commission order takes effect is clearly intolerable. A temporary restraining order will prevent this from happening.

CONCLUSION

Wherefore, it is respectfully submitted that a temporary restraining order and a preliminary injunction should issue.

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