

*v. Price*<sup>2109</sup> and *United States v. Guest*,<sup>2110</sup> again in the context of state action, in which the Court concluded that the statute included within its scope rights guaranteed by the Due Process and Equal Protection Clauses.

Because the Court found that both *Price* and *Guest* concerned sufficient state action, it did not then have to reach the question of § 241's constitutionality when applied to private action that interfered with rights not the subject of a general police power. But Justice Brennan, responding to what he apparently interpreted as language in the Court's opinion construing Congress's power under § 5 of the Fourteenth Amendment to be limited by the state action requirement, appended a lengthy statement, which a majority of the Justices joined, arguing that Congress's power was broader.<sup>2111</sup> "Although the Fourteenth Amendment itself . . . 'speaks to the State or to those acting under the color of its authority,' legislation protecting rights created by that Amendment, such as the right to equal utilization of state facilities, need not be confined to punishing conspiracies in which state officers participate. Rather, § 5 authorizes Congress to make laws that it concludes are reasonably necessary to protect a right created by and arising under that Amendment; and Congress is thus fully empowered to determine that punishment of private conspiracies interfering with the exercise of such a right is necessary to its full protection."<sup>2112</sup> The Justice throughout the opinion refers to "Fourteenth Amendment rights," by which he meant rights that, in the words of 18 U.S.C. § 241, are "secured . . . by the Constitution," *i.e.*, by the Fourteenth Amendment through prohibitory words addressed only to governmental officers. Thus, the Equal Protection Clause commands that all "public facilities owned or operated by or on behalf of the State," be available equally to all persons; that access is a right granted by the Constitution, and § 5 is viewed "as a positive grant of legislative power, authorizing Con-

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<sup>2109</sup> 383 U.S. 787 (1966) (due process clause).

<sup>2110</sup> 383 U.S. 745 (1966) (Equal Protection Clause).

<sup>2111</sup> Justice Brennan's opinion, 383 U.S. at 774, was joined by Chief Justice Warren and Justice Douglas. His statement that "[a] majority of the members of the Court expresses the view today that § 5 empowers Congress to enact laws punishing *all* conspiracies to interfere with the exercise of Fourteenth Amendment rights, whether or not state officers or others acting under the color of state law are implicated in the conspiracy," *id.* at 782 (emphasis by the Justice), was based upon the language of Justice Clark, joined by Justices Black and Fortas, *id.* at 761, that, because Justice Brennan had reached the issue, the three Justices were also of the view "that there now can be no doubt that the specific language of § 5 empowers the Congress to enact laws punishing all conspiracies—with or without state action—that interfere with Fourteenth Amendment rights." *Id.* at 762. In the opinion of the Court, Justice Stewart disclaimed any intention of speaking of Congress's power under § 5. *Id.* at 755.

<sup>2112</sup> 383 U.S. at 782.