IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-75

MOOSE LODGE NO. 107, *Appellant,*

v.

K. LEROY IRVIS, *et als.*

On Appeal From the United States District Court for the Middle District of Pennsylvania

---

SUPPLEMENTAL BRIEF OF APPELLANT MOOSE LODGE NO. 107

Pursuant to Rule 41(5), appellant Moose Lodge No. 107 files this Supplemental Brief to bring new matter to the attention of the Court.

First. At p. 11 of our brief in chief, in the bracketed footnote paragraph at the bottom of the page, we noted that there had been argued in the Pennsylvania Superior Court on March 8, 1971, the appellee Irvis's appeal from the decision of the Court of Common Pleas of Dauphin County holding that the dining room of Moose Lodge No. 107 was not a "place of public accommodation" within the meaning of the Pennsylvania Human Relations Act of February 28, 1961, 43 Purdon's Pa. Stat. Annot. §§ 951 *et seq.*

That appeal has now been decided. On December 13, 1971, the Superior Court of Pennsylvania filed the

following *Per Curiam:* "Order affirmed, on the opinion of Judge Lipsitt"—of the Court of Common Pleas, reported in the Dauphin County Reports at 92 Dauph. 234.

Three of the seven justices of the Superior Court dissented, essentially on the ground that, since guests who were not Moose members were admitted to the Lodge's dining room, the latter became a "place of public accommodation."

We have lodged with the Clerk a certified copy of the *Per Curiam* and the dissent.

Under Section 204(a) of the Pennsylvania Appellate Court Jurisdiction Act of July 31, 1971, the decision of the Pennsylvania Superior Court "may be reviewed by the Supreme Court upon allowance of appeal by any two justices of the Supreme Court upon petition of any party to the matter."

A petition for the allowance of such an appeal was timely filed on January 7, 1972, but had not been acted on at the time this Supplemental Brief went to press.

Second. A pertinent provision of the Civil Rights Act of 1964, heretofore overlooked by all the parties, should be called to the attention of this Court.

Section 504 of that Act amended Section 104 of the earlier Civil Rights Act of 1957 by adding, *inter alia,* this paragraph relating to the duties of the Civil Rights Commission (78 Stat. at 251; 42 U.S.C. § 1975c(a)):

> "(6) Nothing in this or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to inquire into or investigate any membership practices or internal operations of

> any fraternal organization, any college or university fraternity or sorority, any private club or any religious organization."

The legislative history shows that the quoted paragraph was not part of the bill that became the Civil Rights Act of 1964 either when that measure was introduced or when it was reported to the House (H.R. Rep. 914, 88th Cong., 1st sess., pp. 7-8); the provision in question was offered as an amendment on the floor. There it was redrawn in the course of debate, and accepted by Chairman Celler of the House Judiciary Committee, in charge of the bill. 110 Cong. Rec. 2291-2296. There were no further textual changes in the course of the legislative process; no amendments to the quoted subparagraph were made or even offered in the course of the Senate debate; and it was enacted into law precisely as it was agreed to on the House floor.

Respectfully submitted.

FREDERICK BERNAYS WIENER,
1750 Pennsylvania Avenue, N. W.,
Washington, D. C. 20006,
Counsel for the Appellant.

CLARENCE J. RUDDY,
111 West Downer Place,
Aurora, Illinois 60504,

ROBERT E. WOODSIDE,
Two North Market Square,
Harrisburg, Pennsylvania 17101,

THOMAS D. CALDWELL, JR.,
123 Walnut Street,
Harrisburg, Pennsylvania 17108,

Of Counsel.

JANUARY 1972.