4612

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 26

WILLIAM L. GRIFFIN, ET AL.,

Petitioners,

v.

MARYLAND,

Respondent.

MOTION TO REMOVE FROM SUMMARY CALENDAR AND TO ALLOW ONE HOUR ORAL ARGUMENT ON EACH SIDE

Petitioners respectfully move this Court under Rule 44 to remove the above-entitled case from the summary calendar and to allow one hour for oral argument on each side.

On May 20, 1963, the Court entered an order restoring the case "to the calendar for reargument." We are informed by the Clerk's office that this restoration was to the summary calendar and we respectfully suggest that a far more helpful presentation can be made to the Court if one hour is allowed for oral argument rather than merely 30 minutes.

The shortness of the time at the previous argument (when 40

minutes was allotted to each side) made it impossible for counsel for petitioners adequately to present all of the several lines of argument upon which the conviction in this case might be reversed. In view of the significance of the case, it is believed that all points should be developed fully for the Court.

Counsel for respondent, Attorney General Thomas B. Finan of Maryland, has authorized me to state that he concurs in the request contained in this motion.

WHEREFORE it is respectfully moved that the Court enter an order removing the case from the summary calendar and allowing one hour oral argument on each side.

Joseph L. Rauh, Jr.
Counsel for Petitioners

Joe:

Please note the call of the Docket for this Griffin case for June 16 in Federal court.

Bill

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MARYLAND

Wm L Griffin et al
Francis Collins, et al
Equivalent of right, Case

To Stedman Prescott, Jr., Esq.
1201 Mathieson Bldg.
Baltimore 2, Md.
Attorney

Please take notice that there will be a call of the Civil ~~Admiralty~~ and ~~Bankruptcy~~ Dockets of said United States District Court at Baltimore, on FRIDAY JUN 16 1961 at 3 o'clock p. m., for the purpose of assigning cases for trial and dismissing such cases as under the Rules of the Court are subject to dismissal.

You are attorney of record in case No. 12308 - on the CIVIL Docket.

WILFRED W. BUTSCHKY
Clerk

Passed
Order of Dismissal
Long Postponed

"RULE 8

There will be a call of all undisposed of cases which are at issue on the Court dockets at such time as the Court may from time to time appoint. At such call, the Court will assign definite trial dates. Upon consent of the parties, or for good cause shown, the Court may, at any time, specially assign cases for trial."

Your personal attendance at this Call is desired by the Court. If this is impossible, please advise the Clerk no later than 12:00 noon on the day of said Call what disposition you wish made of said case, as indicated on the reverse side hereof.

SEE REVERSE SIDE

Members of the bar will please note that the cases in this Call will be assigned for trial beginning MONDAY SEP 11 1961

If counsel on each side agree on a date for assignment and will so notify the Clerk before 12 o'clock noon on the day of the Call, the Clerk may assign the cases on any free date up to and including THURSDAY NOV 2 1961, and counsel will be excused from attendance at the Call.

ROSZEL C. THOMSEN

R. DORSEY WATKINS

W. CALVIN CHESNUT

UNITED STATES DISTRICT JUDGES.

FPI ATLANTA—11-6-56—10M—4300

October 25, 1960

Hon. William L. Kahler
State's Attorney for
Prince George's County
Upper Marlboro, Maryland

Dear Mr. Kahler:

In accordance with your request, I am enclosing Memorandum of Law in the Case of William L. Griffin, et al vs. Francis J. Collins, et al.

Very truly yours,

SPJr.:c

Stedman Prescott, Jr.
Deputy Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WILLIAM L. GRIFFIN, et al., :

Plaintiffs :

vs. : CIVIL ACTION NO: 12308

FRANCIS J. COLLINS, et al., :

Defendants :

:

::

MEMORANDUM ON BEHALF OF ALL
DEFENDANTS EXCEPT LUKE J. BENNETT, JR.

FACTS

These defendants adopt, and will not repeat here, the facts contained in the Stipulation of Facts filed herein.

ARGUMENT

I.

The Plaintiffs Have Failed to State a Claim Upon Which Relief Can be Granted.

Private Discriminatory Action Which is Not Performed in Obedience to Some Positive Form of State Law is Not Subject to Constitutional Proscription.

A.

The Plaintiffs have no constitutionally protected right to be admitted to Glen Echo Amusement Park or to use the facilities therein, the Park being privately owned and operated for profit as a commercial enterprise.

There is no claim in this action that Glen Echo Amusement Park is so controlled by public authority that the actions of the officers, agents and employees of its owners and operators are those of the State. The sole assertion of right advanced by the plaintiffs is that the federal constitution guarantees them the license, as Negroes, to enter and remain upon privately owned and

privately operated commercial property of another and, while on that property, to enter such contracts as they please with those who run the commercial enterprises located thereon. As the necessary reverse of that assertion of right, the plaintiffs would have this Court hold that the federal constitution denies the owner of private property the common law right to exclude whom he pleases, as he pleases, and further denies the private concessionaire operating on private property the common law right to deal with whom he pleases, as he pleases. The statements in this action regarding advertisements, regarding Glen Echo Amusement Park's being the only real facility within the reach of metropolitan Washington public transport and regarding the fact that some of the plaintiffs had "ride" tickets are mere window dressing. They add nothing to this dispute which would distinguish it from the numerous decisions that have flatly rejected the assertion of right behind which the plaintiffs have organized their entire case.

The argument that the federal constitution secures freedom from racial discrimination by private persons owning private property and operating private businesses has been so thoroughly investigated by this very Court in recent months that no elaborate discussion is necessary to demonstrate its absolute invalidity.

In Hackley v. Art Builders, Inc., 179 F. Supp. 851 (D. Md. 1960), the plaintiff Negroes, because of condemnation of a Wherry housing facility in which they were living while employed at the Army Chemical Center, sought to purchase a home in a private development. The owners refused to sell solely because of plaintiffs' race. Action to compel sale and for declaratory relief was terminated by judgment for the defendants, this Court stating, at page 856:

> "It is elementary that 'the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful'. Shelley v. Kraemer, 334 U.S. 1, 13, 68 S. Ct. 836, 842, 92 L.Ed. 1161; Williams v. Howard Johnson's Restaurant, 4 Cir.,

> 268 F.2d 845. The developers of Edgewood Meadows are private corporations, engaged in the business of selling real estate to private individuals. As such, they are legally entitled to deal with whom they please."

More recently, in Slack v. Atlantic White Tower System, Inc., 181 F. Supp 124 (D. Md. 1960), the plaintiff Negro was refused service of food for consumption inside a restaurant which followed a policy of providing only "carry-out" service for Negroes. Complaint for declaratory and injunctive relief was dismissed and judgment entered for the restaurant corporation, this Court stating, at pages 127-128:

> "Such segregation of the races as persists in restaurants in Baltimore is not required by any statute or decisional law of Maryland, nor by any general custom or practice of segregation in Baltimore City, but is the result of the business choice of the individual proprietors, catering to the desires or prejudices of their customers."
>
> * * * * * * * *
>
> "In the absence of statute, the rule is well established that an operator of a restaurant has the right to select the clientele he will serve, and to make such selection based on color, if he so desires. He is not an innkeeper charged with a duty to serve everyone who applies. Williams v. Howard Johnson's Restaurant, 268 F. 2d at page 847; Alpaugh v. Wolverton, 184 Va. 943, 36 S.E.2d 906; State v. Clyburn, 247 N. C. 455, 101 S.E.2d 295; and authorities cited in those cases. There is no restaurant case in Maryland, but the rule is supported by statements of the Court of Appeals of Maryland in Greenfeld v. Maryland Jockey Club, 190 Md. 96, 102, 57 A.2d 335, and in Good Citizens Community Protective Ass'n v. Board of Liquor License Commissioners, 217 Md. 129, 131, 141 A.2d 744."

In their Amended Complaint, plaintiffs characterize Glen Echo Amusement Park as a "place of public accomodations" and a "public amusement." Presumably, use of these labels was intended to distinguish this case, which involves an amusement park, from the cases involving restaurants and housing subdivisions. There are two decisions of interest on the point; neither supports the plaintiffs.

The first is Valle v. Stengel, 176 F. 2d 697 (3 Cir. 1949). In that case the plaintiffs Negroes, citizens of New York, went to

the Palisades Amusement Park in New Jersey. The park was privately owned and operated. A charge was made for admission. The plaintiffs entered the park but were refused admission to the swimming pool, even though one of them had paid an additional charge and gotten a ticket. Then they were ejected from the park and arrested by the county sheriff. The dismissal of their complaint for the issue of an injunction and for damages by the District Court was reversed by the Court of Appeals. This reversal was not based, however, upon the theory that the plaintiffs had a general constitutional right to make and enforce contracts for the use of the swimming pool. New Jersey had in effect a civil rights act which gave the plaintiffs full rights to use the park by forbidding the proprietor of a "place of public resort or amusement" from denying use of the facilities on account of race or color. Because of this statute, the Court concluded that the complaint stated a cause of action because it alleged that the sheriff had denied plaintiffs equal protection of the laws.

Maryland does not have such a statute, and this Court has already pointed out the inapplicability of that case to Maryland, saying, in Slack, supra, 181 F. Supp. at page 129:

> "In that case a sheriff's eviction of a Negro from a private amusement park was a denial of equal protection of the laws because under the New Jersey anti-discrimination law the Negro had a legal right to use the park facilities."

The second case is the only Maryland authority dealing with an argument of constitutional right to be free from discrimination at a private amusement park. In State v. Drews (Baltimore County Circuit Court, Criminal Number 20084, decided May 6, 1960), Judge Menchine held that Maryland law clearly permits the owners of private property used for resort and amusement purposes to exercise an arbitrary and discriminatory freedom of choice in deciding who will or will not be permitted to enter and remain on the premises. This

case is currently on appeal to the Maryland Court of Appeals sub nom. Drews v. State, No. 113, September Term, 1960.

Before anyone can be entitled to judicial relief, injunctive or declaratory, temporary or permanent, he must initially assert some invasion of his recognized legal rights. This entire case depends upon the ability of the plaintiffs to establish at the very beginning of their argument a right protected by the federal constitution. They have not and cannot establish such a right, for they are not entitled to go, unwelcome, upon the commercial property of another and there try to deal with a concessionaire who does not want their business. Even if they did have the right they claim, there has been no unconstitutional denial shown in this case, for any actions of the corporate defendants refusing to permit some of the plaintiffs to enter Glen Echo Amusement Park and refusing to permit some of the plaintiffs to remain in the park, after they had entered with knowledge of the Park's policy against the admission of Negroes, are only matters of private discrimination, against which the plaintiffs are not protected by the federal constitution. As Judge Soper said in Williams v. Howard Johnson's Restaurant, 268 F. 2d 845 (4 Cir. 1959) at page 847:

> "Unless these actions are performed in obedience to some positive provision of state law they do not furnish a basis for the pending complaint."

B.

The arrest of three of the plaintiffs for trespass was independent of any discriminatory action of the corporate defendants and does not amount to constitutionally forbidden state-enforced discrimination.

No doubt plaintiffs appreciate the weakness of their assertion of right in this action. One might assume that it was

with an eye to such weakness that three of them to all intents and purposes caused their own arrest by failing to leave the park when requested and thus laying themselves open to the criminal charge of wanton trespass. By so doing, they have sought to extend to this case the claim that state action provides a basis for the relief prayed. As has previously been pointed out, there is no claim in this case that the operation Glen Echo Amusement Park is so controlled by public authority as to make it a governmental instrumentality. The sole appearance of the authority of the State is in the arrest of plaintiffs Griffin, Green and Stewart. The "apprehension" of the remaining plaintiffs means nothing, for, as this Court stated in the Slack case, supra 181 F. Supp. at page 129:

> ". . . that implied threat [of arrest] is present whenever the proprietor of a business refuses to deal with a customer for any reason, racial or other, and does not make his action state action. . ."

So the remaining question relating to the merits of the present action is this: is a private landowner, whose premises are used for commercial purposes, whose right it is arbitrarily to exclude or remove from his premises anyone he wishes, and whose business policy it is not to admit or deal with Negroes, impotent to invoke the aid of the police in removing a Negro who has refused, after notice, to leave the premises?

To assert that the landowner is so impotent is to deny him the right to deal with whom he pleases, as he pleases; it is to deny him the right which, as pointed out in the previous section, this very Court has clearly upheld in recent cases. The plaintiffs would have this Court hold that while the federal constitution does not guarantee them protection from private discriminatory action in the nature of exclusion from private property, yet, once they have gotten on that property, they cannot be subjected to the criminal laws of the state in their removal. A proposition so manifestly unsound is difficult to imagine. It asks that Negroes, because of

their color, be granted immunity from the crime of wanton trespass.

If the instant plaintiffs had wanted to use the park swimming pool instead of the merry-go-round, this case would be little different from Tonkins v. City of Greensboro, North Carolina, 276 F 2d 890 (4 Cir. 1960), in which the Court concluded, at page 892:

> "We have, therefore, a case of racial discrimination in respect to a pool privately owned, financed and operated without participation or assistance, direct or indirect, by the City of Greensboro. This does not constitute state action or conduct which a Federal Court may enjoin under the Fourteenth Amendment."

In their argument before this Court the plaintiffs must assume the incredible position that, while they may not have the initial right to enter the swimming pool if they are not wanted, yet, if they can manage to jump in, then they have a right to stay, since they cannot be removed by the police, such removal being state action proscribed by the federal constitution.

The decision which comes closest to the plaintiffs' position of right without remedy is Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948). As a result of an agreement of neighboring landowners in St. Louis, occupancy of land owned by the original signers was restricted to Caucasions. The Shelleys, who were Negroes, purchased one of the restricted lots and received a warranty deed. A number of lot owners brough suit to restrain the Shelleys from taking possession and to divest their title. These plaintiffs secured the relief prayed by order of the Missouri Supreme Court. The Supreme Court of the United States, in reversing that order, held that judicial enforcement of the covenants was forbidden by the 14th Amendment because it amounted to state action denying equal protection of the laws to the defendant Negroes. The fulcrum of the reversal was the holding that the discrimination effected was the direct result of state action. The Court, speaking through Mr. Chief Justice Vinson, stated, at page 19:

> "We have no doubt that there has been state action in these cases in the full and complete sense of the phrase. The undisputed facts disclose that petitioners were willing purchasers of properties upon which they desired to establish homes. The owners of the properties were willing sellers; and contracts of sale were accordingly consummated. It is clear that but for the active intervention of the state courts, supported by the full panoply of state power, petitioners would have been free to occupy the properties in question without restraint."

There are two important distinctions between the instant suit and Shelley. The first is this: in Shelley there could have been no discrimination whatever without, or, as the Court put it, "but for", the intervention of a state court; both the buyer and the seller were willing to transact business, so that the only way any discrimination could be practiced was through a court order disrupting that willingness. In short, without that court order there could have been no discrimination. Here, on the other hand, the discriminatory acts of refusing admission to, of refusing ticket sales to and of refusing to honor tickets held by Negroes were all unilaterally complete before any state action, in the form of arrest, took place. No state action was necessary to create the discrimination complained of. The plaintiffs drew state action upon themselves not because they are Negroes but because they were trespassers. Not until the trespass existed did state action enter the picture.

To look at the distinction another way, the state court, in Shelley, itself created the discrimination in controversy by effecting against the defendants, because they were Negroes, a covenant directed against Negroes, while here the Special Deputy Sheriff arrested certain of the plaintiffs not because they were Negroes, but solely because they were trespassers. In Shelley, the state court could act against the Negro defendants only because they were Negroes, while here the state, acting through the Special Deputy Sheriff, had no legal discretion to inquire as to why the

plaintiff Negroes were not welcome on the Park premises and thus, in refusing to leave after being given an opportunity, became trespassers.

The second distinction between this case and Shelley is that here there is no willing seller. Indeed, because of that fact, this case is more nearly akin to the previously quoted Hackley case than to Shelley. In Hackley, as here, the situation involved a willing buyer but unwilling sellers and this Court held that the unwilling sellers had a right to sell or not to sell as they pleased.

Another case more closely related to the present dispute than Shelley is Green v. Samuelson, 168 Md. 421 (1935). There a group of Negroes endeavored to get the white merchants of Baltimore's Pennsylvania Avenue section to hire Negro clerks exclusively. This aim was backed by a picket line which, since all of the customers were Negroes, was almost completely effective to stop trade. The merchants secured an injunction against the picketing and the Court of Appeals affirmed on the theory that a merchant has a right to run a lawful business any way he likes, free from coercion to do otherwise.

While the present dispute does not involve picketing, it does involve coercion, for what plaintiffs really seek is an order of this Court compelling the corporate defendants to deal with Negroes. And the plaintiffs' means to that end would be a holding that Shelley stands for the proposition that it may be lawful for a landowner to tell a Negro to leave his property but that the landowner cannot effect a removal by calling the police authorities. This, despite the fact that all Shelley really stands for is the proposition that a possessory landowner may do what he pleases with his property but once he has sold it he cannot then prevent the buyer from reselling it to a Negro.

As long as it is the law of this State that a landowner using his property for commercial purposes may deal with whom he pleases as he pleases, the instant plaintiffs cannot be granted any relief. The present dispute lacks both of the elements necessary to the application of the doctrine of Shelley v. Kraemer, namely, a willing seller and a direct application of state power to create the discrimination complained of. Since none of the discriminatory acts at issue was performed in obedience to any positive expression of state law, the action should be dismissed for failure to state a claim upon which relief can be granted.

II

If This Action Is Not Dismissed, An Order Staying Further Proceedings Should Be Entered To Permit Authoritative Disposition of State Law Questions By the Court of Appeals of Maryland.

A.

Both the lack of threatened irreparable harm and the need for interpretation of the applicable state statute prior to disposition of the plaintiffs' constitutional objections to its enforcement require at least a stay of these proceedings.

If this Court should decide that the plaintiffs have some legally cognizable right, then the instant cause should be stayed while the plaintiffs seek an authoritative interpretation of the applicability of the Maryland criminal trespass statute to their exercise of that right. This stay should be entered for two reasons: (1) federal courts have no power to interfere with the orderly enforcement of state criminal statutes where there are no circumstances showing a threat of substantial, imminent, irreparable harm and where such interference is not absolutely necessary for the protection of constitutional rights; (2) federal courts must not pass upon federal constitutional claims asserted against the application of state laws where an authoritative interpretation of such laws in the state courts might avoid the constitutional issues.

Though these two rules of federal equity jurisprudence were born and have grown up separate from and independent of each other, they have one important common factor which highlights the application of both to the present dispute: the availability to the plaintiffs of an efficient state court remedy. Thus, if, as here, a civil rights plaintiff seeks declaratory and injunctive relief against the enforcement of an as-yet uninterpreted state

criminal statute, and it appears that he can efficiently obtain relief in the state courts, the federal court will not act (1) because there is no threat of such irreparable harm as to require federal interference with administration of state criminal laws, and (2) because, by passing on the cause, the state courts may avoid the necessity for determination of any federal constitutional question.

The cases developing the first of the above-mentioned rules were cited by Judge Hoffman in Reid v. City of Norfolk, Virginia, 179 F. Supp. 768 (E. D. Va. 1960), at page 772, where he summarized their effect by saying:

> "For many years it has been an established principle of law that courts of the United States have no power to enjoin state officers from instituting criminal actions unless (1) it is absolutely necessary for protection of constitutional rights, and (2) extraordinary circumstances exist where the danger of irreparable loss is both great and immediate."

Prior to discussing the Reid opinion at length, a study should be made of the cases developing the second of the above-mentioned rules. That rule has been referred to by the courts as the Pullman doctrine, it having originated in Railroad Commissioners of Texas v. Pullman Co., 312 U. S. 496, 61 S. Ct. 643, 85 L. Ed. 1416 (1941), where a federal injunction was sought, on constitutional grounds, against an order of the Commission requiring all sleeping cars in the state to be in charge of a Pullman conductor. Grant of the injunction was reversed and the case remanded with instructions that the proceedings be stayed. Final disposition if the case involved construction of a state statute on which the order was based. The Court held that such construction might well avoid the federal constitutional questions, thus terminating the controversy and was best left in the hands of the state courts. Observing that adequate procedural means were available under Texas law to obtain that construction, Mr. Justice Frankfurter observed, in closing, at page 501:

> "In the absence of any showing that these obvious methods for securing a definitive ruling in the state courts cannot be pursued with full protection of the constitutional claim, the district court should exercise its wise discretion by staying its hands."

A most pertinent recent Supreme Court opinion on this subject is Harrison v. NAACP, 360 U. S. 167, 79 S. Ct. 1025, 3 L.Ed. 2d 1152, in which Mr. Justice Harlan stated, at pages 176-177:

> "This now well-established procedure is aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our federal system. . .In the service of this doctrine, which this Court has applied in many different contexts, no principle has found more consistent or clear expression than that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them. . .This principle does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise; it serves the policy of comity inherent in the doctrine of abstention; and it spares the federal courts of unnecessary constitutional adjudication. . . The present case, in our view, is one which calls for the application of this principle, since we are unable to agree that the terms of these three statutes leave no reasonable room for a construction by the Virginia courts which might avoid in whole or in part the necessity for federal constitutional adjudication, or at least materially change the nature of the problem."

No lengthy recapitulation of the instant cause is necessary to show that it is one subject to stay under the Pullman doctrine. The Amended Complaint seeks a declaration of rights and injunctive restraint against the enforcement of a Maryland criminal statute which, though originally enacted in 1900, has not been authoritatively interpreted by the state courts with reference to the claims asserted by the plaintiffs. The gravamen of the Complaint is that enforcement of the statute against the plaintiffs deprives them of rights guaranteed by the federal constitution. Opportunity is available to the plaintiffs to obtain such an interpretation, either in the defense of the prosecutions under that statute which are currently pending before the Circuit Court for Montgomery County or through an independent action for declaratory relief in the Maryland courts.

Finally, the statute in question - Article 27, Section 577, of the

Annotated Code of Maryland (1957 Edition) - may be interpreted by the state courts in such a way as to remove, in whole or in part, the need for this Court's ruling on the constitutional claims here pressed by the plaintiffs. For instance, the statute might be held invalid under the State constitution, or inapplicable to amusement parks; or it might be held that anyone in the possession of a "ride" ticket has a license to remain in the Park at least until his money is refunded.

As Justice Douglas put it in Chicago v. Fieldcrest Dairies, 316 U. S. 168, 62 S. Ct. 986, 86 L. Ed. 1355 (1942), at page 173:

> ". . . [the constitutional] issue may not survive the litigation in the state courts. If it does not, the litigation is at an end. . .Avoidance of constitutional adjudications where not absolutely necessary is part of the wisdom of the doctrine of the Pullman Co. case."

There are, however, several novel wrinkles to the instant case which are not quickly ironed out by application of the general principles of the Pullman doctrine. One is the fact that the plaintiffs have not clearly designated the criminal trespass statute as the sole object of their injunctive prayer. Another is the fact that this is a civil rights suit. Both of these points were squarely presented in Catoggio v. Grogan, 149 F. Supp. 94 (D.N.J. 1957). Holding that neither was well taken, Judge Hartshorne observed, at pages 96, 97-98:

> "It is thus clear that plaintiff here has voluntarily omitted to base his contention that the lowering of his rents, the gist of his action, was invalid because beyond the Rent Control powers of the City of Hoboken, and this for the purpose of hoping to force this Federal Court to decide his case, without applying the Pullman doctrine of staying the proceedings here, to permit the State Courts to finally decide the purely State question here involved.
>
> "The first question thus is, whether a suitor has the right to compel a Federal Court to disregard the Pullman doctrine by simply failing to allege facts known to exist, upon which the application of the Pullman doctrine depends. To have such a result ensue would indeed require that justice be 'blind', and not as to the parties - the usual connotation - but as to the requirements of justice itself.

* * * *

". . .it is the duty of the courts themselves, ex mero motu, to consider the situation as it exists in fact, whether or not either party stresses a particular point.

* * * * * *

"Great stress, however, is laid by plaintiff on the [claim] that while the Pullman doctrine may apply generally as above, it does not apply in cases arising under the Civil Rights Act. . .This contention is incorrect. Ever since the decision in Pullman, its doctrine has been applied, not only generally, but in cases expressly based upon the Civil Rights statute.

* * * * * *

"In short, not only the discretion vested in the Federal Courts in declaratory judgment proceedings, the general equitable discretion vested in the Federal Chancellor in granting injunctive relief, but finally the paramount need for maintaining harmonious relations between the Federal and State sovereignties, all conjoin here to require, not that this Court refuse to exercise its jurisdiction and power in the present instance, but that it stay its hand in doing so, pending, not the possible, but the imminent and final, decision of the important State question, which may well be decisive of the entire controversy now before this Court."

An additional complication is the fact that injunctive relief is here sought against the corporate defendants' enforcing or seeking the enforcement of the Maryland wanton trespass statute. While no case in point has been found, it is submitted that such fact does not remove this case from the application of the Pullman doctrine, because granting of the relief prayed would (1) clearly interfere with and restrict the enforcement of a state criminal statute, and (2) involve a tentative federal construction of that state statute.

Next, in anticipation of the argument that the Pullman doctrine does not apply to a situation in which, as here, the plaintiffs do not attack constitutionality vel non of the pertinent state statute but rather assert that the statute is inapplicable to them or, if applied, is unconstitutional, reference is made to Meridian v. Souther Bell Teleph. & Teleg. Co., 358 U.S. 639, 7a S. Ct. 455, 3 L.Ed 2d 562 (1959), which came before the Supreme Court in just such a posture. That tribunal, in a terse Per Curiam

opinion, vacated the judgment of unconstitutionality and remanded the case to the District Court in these terms, at page 640:

> ". . .with directions to hold the cause while the parties repair to a state tribunal for an authoritative declaration of applicable state law.
>
> "Proper exercise of federal jurisdiction requires that controversies involving unsettled questions of state law be decided in the state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions. See Railroad Com. v Pullman Co."

Another question is whether the pendency of actions in the state courts, e.g., the criminal cases in Montgomery County, requires the federal court to stay its hand. Mr. Chief Justice Stone answered in the affirmative in Meredith v. Winter Haven, 320 U. S. 228, 64 S. Ct. 7, 88 L. Ed. 9 (1943), where he said, at page 236:

> "So too a federal court, adhering to the salutary policy of refraining from the unnecessary decision of constitutional questions, may stay proceedings before it, to enable the parties to litigate first in the state courts questions of state law, decision of which is preliminary to, and may render unnecessary, decision of the constitutional questions presented. . .It is the court's duty to do so when a suit is pending and authoritatively answered, at least where the parties to the federal court action are not strangers to the state action."

In no event can any shortcomings of the pending state court actions be used as an excuse for avoidance of the Pullman doctrine any more than can the total absence of such proceedings. As the Court stated in Government and Civic Employees Organ. Com. v. Windsor, 116 F. Supp. 354 (N. D. Ala. 1953), at page 359:

> "At the time of the decision in the Watson case, there were proceedings pending in the State court. There are no such proceedings here. However, the application of the rule of abstention is not conditioned upon the pending of a state administrative or judicial proceeding. If the rule were otherwise, a litigant by the mere device of selecting the federal court as his forum, could, in many cases, pre-empt the exercise of jurisdiction."

In Albertson v. Millard, 345 U.S. 242, 73 S. Ct. 600, 97 L. Ed. 983 (1953), the Supreme Court reversed a three-judge District Court's decision upholding the validity of a state subversive activities law where state proceedings had started after the federal action. The court said, at pages 244-245:

> "There is pending in the Circuit Court for Wayne County, Michigan, a bill seeking a declaratory judgment that the Act is unconstitutional, both on federal and state grounds. That action is being held in abeyance pending our mandate and decision in this case.
>
> "We deem it appropriate in this case that the state courts construe this statute before the District Court further considers the action."

Similarly, in Leiter Minerals, Inc. v. United States, 352 U.S. 220, 77 S. Ct. 287, 1 L. Ed. 2d (1957), where a state court action in the outcome of which the United States was interested but to which it was not a party had been enjoined by a federal District Court, the Supreme Court affirmed because title of the United States to mineral rights was involved. However, specifically excepted from the affirmance were questions involving the interpretation of a state law which the Government argued was inapplicable to the situation or, if applied, was unconstitutional, Mr. Justice Frankfurter stating, at pages 228-229:

> "But the fact that the United States is not a party to the state court litigation does not mean that the federal court should initiate interpretation of a state statute. In fact, where questions of constitutionality are involved . . .our rule has been precisely the opposite: "as questions of federal constitutional power have become more and more intertwined with preliminary doubts about local law, we have insisted that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law."

Accordingly, the Court of Appeals affirmance was modified to permit the parties to obtain a state court interpretation of the statute.

The essence of these four cases is that, while the bare fact of pendency of a case in the state courts is by itself immaterial to the application of the Pullman doctrine, if the elements for application of that doctrine are otherwise present and action is pending in the state courts which could dispose of the federal litigation, then the federal court must stay the proceedings before it until the particular state action has been finally terminated.

It is the position of these defendants with regard to the criminal proceedings in Montgomery County that this Court should in no event grant any relief to the instant plaintiffs until those proceedings have been finally determined. At that time, this action might be no longer necessary; or this action might be ripe for determination on the merits by this Court; or the plaintiffs might have to start a new state action to obtain the required interpretation of the trespass statute, which, of course, they can do right now.

There remains to discuss the previously quoted decision in Reid v. City of Norfolk, Virginia, 179 F. Supp. 768 (E. D. Va. 1960), in which the Pullman doctrine was merged with the doctrine of non-intervention in the enforcement of state criminal law. The plaintiffs, three of whom were Negroes and one of whom was white, purchased tickets to attend a function to be held in the Norfolk City Arena, a municipally owned and operated place of assemblage. A state statute required segregated seating, made it a misdemeanor not to change seats when requested pursuant to such requirement and provided for ejectment of anyone failing to comply with a request to move. Shortly after they sat down, the plaintiffs were ordered by an usher and a police officer to change seats or leave. They were told that they would be arrested if they failed to move. They left voluntarily and brought an action for a declaration of their rights and an injunction against the statute's enforcement. The defendants, representing both the city and the state, moved to dismiss, principally upon the grounds that no federal injunction should issue (1) to restrain enforcement of state criminal statutes, (2) in the absence of clear and imminent irreparable harm, and (3) where the state courts have not passed on the validity of the statutes in the light of decisions rendered since Brown v. Board of Education. The Court denied the motion to dismiss, retained the case on the docket and gave the plaintiffs sixty (60) days to institute a proper proceeding in the state courts.

Judge Hoffman tied the availability of state remedy into the lack of threatened irreparable harm in these words, at page 772:

"While we are in complete accord with the view that one should not be required to subject himself to the embarrassment of an arrest as a prerequisite to testing his constitutional rights, we nevertheless feel that, in this proceeding, where plaintiffs may resort to an efficient legal remedy by way of a declaratory judgment proceeding in the state court, there is no clear showing of extraordinary circumstances indicating great and immediate danger of irreparable loss which justifies the intervention of a three-judge district court." [Emphasis added]

He went on to observe, at page 773:

"Our attention is directed to the fact that the constitutionality of the statutes under attack is, of recent date, the subject of state court action. On January 13, 1958, the Circuit Court of Arlington County, Virginia, held that 18-327 of the Code of Virginia, 1950, was unconstitutional. There is now pending in the same court a declaratory judgment action in which the constitutionality of 18-327, 18-328 is directly challenged. Moreover, in Bissell v. Commonwealth, 199 Va. 397, 100 S. E. 2d 1, the Supreme Court of Appeals of Virginia, in a similar case, found that the warrant of arrest was defective in that it did not properly charge a crime and, for this reason, the highest court in Virginia did not reach the constitutional question. It is inevitable, however, that the state courts will ultimately determine the constitutionality of these statutes. To adhere to the principles of comity would avoid any hazard of disrupting federal-state relations in a field already disturbed by friction. As was said by Mr. Justice Black in Watson v. Buck, supra (313 U. S. 387, 61 S. Ct. 966):

> "'Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional.'"

Reid presents a much clearer, much more direct problem of constitutional law than the instant case. Indeed, it is difficult to imagine statutes more clearly unconstitutional in their application. Nevertheless the Court did not hesitate to give Virginia the first opportunity at construction. The holding of Reid is perhaps best summarized thus: assuming the assertion of a recognizable legal right, whenever efficient legal relief is available in the state courts to a civil rights

plaintiff who attacks the federal constitutionality of the application of a state enactment, the state courts should be accorded the initial opportunity to adjudicate the cause.

In addition, it must not be overlooked that this holding applied to the prayers for declaratory relief as well as to those for injunctive relief, for, dealing with the question of a regularly constituted district court's passing only upon a claim for declaratory relief, Judge Hoffman asserted, at page 772:

> ". . . Assuming that no injunctive relief is demanded, it does not follow that a federal court must exercise equitable powers in all cases, where yielding to the principles of comity would not essentially deprive the litigants of rights which could be asserted and determined by a state court within a reasonable period of time."

B.

There is no inconsistency in urging this Court either to dismiss or to stay these proceedings.

It may be suggested that there is some ambivalence in asking this Court on one hand to dismiss the complaint and on the other to stay further proceedings. But there is no inconsistency in this position.

Plainly put, the argument of these defendants is this: since the plaintiffs have failed to show any right whatever, cognizable under the federal constitution, upon which to base their claims, this Court can and should dismiss the action. A dismissal based upon such grounds would adjudicate only a question of pure constitutional law, involving no construction of any state statute.

Furthermore, since the plaintiffs are wanting in equity for failure to show the necessary irreparable harm,

this ground alone justifies dismissal. Such a result is not foreclosed by Reid because Speilman Motor Sales Co. v. Dodge, 295 U. S. 89, 55 S. Ct. 678, 79 L. Ed. 1322 (1935), cited and relied on in Reid, specifically held that the bill, having failed to meet the test of irreparable harm, should have been dismissed for failure to state a claim for equitable relief. A similar situation arose in International Ladies' G. Wkrs.' Union v. Seamprufe, Inc., 130 F. Supp. 737 (E. D. Okla. 1955). The plaintiffs sought an injunction against the enforcement of a criminal trespass ordinance which was apparently being applied against them when they endeavored to solicit union members on Seamprufe property through speeches and the distribution of literature. Judgment was entered in favor of the municipality because (at page 739):

> ". . . there is no showing that irreparable injury will result from the enforcement of the instant ordinance.
>
> "In addition, it is fundamental that where the state court has not interpreted a local law, such as the one in view, and where local administrative officers have not by enforcement clearly demonstrated unconstitutionality, a strong presumption of constitutionality exists, and, this Court should only intervene where no other adequate remedy is available.
>
> "Plaintiffs have a clear and direct means of asserting their constitutional rights in a state court criminal proceeding wherein the United States Supreme Court can ultimately review all federal questions without bringing into needless conflict federal and state authority."

However, if this Court decides, as in Reid, not to dismiss the complaint, then, as in Reid, it should stay the proceedings, rather than pass with favor upon the plaintiffs' theory of "state action" and thus tentatively and perhaps

hypothetically to interpret the Maryland wanton trespass statute in a manner that would have far greater impact on our society than Bryan v. Board of Education.

Accordingly, it is submitted that if this Court finds, initially, that the plaintiffs have asserted a cognizable right, it may still dismiss for want of equity, but it must, at least, under Reid, retain the case on the docket and enter an order, to be drafted by these defendants, permitting the plaintiffs to present their claims to the courts of the State of Maryland, either through the criminal proceedings now pending before the Circuit Court for Montgomery County or through a declaratory judgment proceeding under Article 31A of the Annotated Code of Maryland (1957 Edition), the latter in no event to be commenced later than sixty (60) days following final disposition of the aforesaid criminal cases.

III

The Plaintiffs' Motion for Preliminary Injunction Should Be Denied.

The reasons against the issuance of a preliminary injunction in this case may be briefly stated as follows:

1. The plaintiffs have failed to assert a constitutionally cognizable right upon which any relief can be based.

2. Under the Reid case, as discussed in the previous section of this memorandum, the availability of efficient state relief by itself demonstrates a lack of such threatened irreparable harm as would warrant the exercise of federal injunctive powers to bar enforcement of a state criminal statute.

3. These plaintiffs have distinctly failed to show any threat of great, substantial harm. It is conceded that their being excluded from Glen Echo Amusement Park is a matter of immediacy, but even if it be decided that there is harm in such exclusion because they have a right to be in the Park contrary to the owner's wishes, that harm is still neither great nor substantial. This case, like Reid, does not involve the right to go to school or the right to earn a living. It involves only what the plaintiffs assert to be the right to amusement. The plaintiffs make no showing of harm aside from the assumption that until this case is finally decided they will be unable, as in the past, to use the Glen Echo facilities. This is too thin a support for the extraordinary remedy of federal injunction.

4. The relief of Preliminary Injunction is designed to freeze the situation of the parties until the litigation can be dealt with on its merits. As Judge Chesnut put it in Sinclair Refining Co. v. Midland Oil Co., 55 F. 2d 43 (4th Cir. 1932) at page 45:

> "The purpose of the preliminary injunction is to preserve the status quo until the rights of the parties can be fairly and fully investigated and determined by strictly legal proofs and according to the principles of equity."

In the present dispute there is no status quo which needs to be preserved pendente lite. The harm of which plaintiffs complain is already well in the past. The status of the parties has certainly not changed since July 2, 1960, when the plaintiff Stewart was arrested; no change is anticipated in the foreseeable future. Since that time, plaintiffs have not altered their positions one wit in reliance upon any act or assurance of any of the defendants. What the injunctive prayers do ask rather than a preservation of existing relationships is that an entirely new situation be established by court order whereby the defendants would be barred from enforcing the criminal laws of the State of Maryland and would be forced, for the first time, to extend a license permitting plaintiffs to enter the Park and to contract with the plaintiffs for the use of the facilities in the Park. This is far beyond the scope of injunctive relief. As the Maryland Court of Appeals said in Carpenters v. Roofers, 181 Md. 280 (1943), at pages 281-282,

> "Injunction is primarily a preventive remedy. Its province is to afford relief against future acts which are against equity and good conscience, and to keep a condition in statu quo, rather than to remedy something which is past or to punish for wrongful acts already committed. Consequently, it is a general rule that rights already lost and wrongs already perpetrated cannot be corrected by injunction."

With specific reference to the so-called "contract" rights of the plaintiffs, it is axiomatic that no court can make a contract for the litigants, so, absent some specifically enforceable agreement, no injunction may be imposed which would force the corporate defendants to deal with the plaintiffs.

5. No injunctive relief, preliminary or final, against the enforcement of any Maryland criminal statute can issue except until a three-judge Court has been convened in this case. 28 USCA, Sec. 2281, provides:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

It needs no elaboration to demonstrate that the clear wording of this statute applies to the instant litigation.

IV

The Plaintiffs' Motion for Summary Judgment Should Be Denied.

The first and obvious ground for opposition to the plaintiffs' motion for summary judgment is that, even assuming the correctness of all statements and allegations contained in the court papers of this suit, plaintiffs have failed to state a cause for relief, legal or equitable.

The second ground for opposition is the existence of a genuine dispute as to key facts not covered by the Stipulation of Facts filed herein. Perhaps the best way to illustrate this dispute is to begin with the observation that lurking in the plaintiffs' motion for summary judgment is the erroneous deduction that, if both sides move for summary judgment, the cause must be decided by granting one motion or the other. The incorrectness of this deduction is related thus in 6 Moore's Federal Practice, Para. 56.13 (2d Edition), at page 2093:

"There may be no dispute as to the facts which would justify judgment for one party on a particular legal theory, although there may be a dispute as to the facts which would justify judgment for the adverse party.

"Judge Frank, in the leading case of Walling v. Richmond Screw Anchor Co., cogently stated the doctrine in this manner:

'It does not follow that, merely because each side moves for summary judgment, there is no issue of material fact. For, although a defendant may, on his own motion, assert that, accepting his legal theory, the facts are undisputed, he may be able and should always be allowed to show that, if plaintiff's legal theory be adopted, a genuine dispute as to a material fact exists.'"

The actual situation presented is that if this Court accepts the legal theory advanced by these defendants, there is no genuine dispute as to any material fact and summary judgment should be entered in favor of these defendants. However, if this Court accepts the legal theory advanced by the plaintiffs, there are several genuine issues of fact that would prevent the plaintiffs from obtaining a summary judgment. Two obvious examples are the matters surrounding (1) the claims of plaintiffs Mann, McDowell and Freeman, who never entered the Park, and were never arrested, and (2) the allegation of conspiracy. These subjects are not covered by the Stipulation and are not suited to attack by counter-affidavit. Facing a similar situation in Amaya v. Stanolind Oil & Gas Co., 62 F. Supp. 181 (S. D. Tex. 1945), the Court entered summary judgment in favor of the defendants, stating, at page 206:

"There are many genuine issues of material facts that prevent plaintiffs' recovery in his law suit.

"There are no genuine issues of material facts that bar defendants' recovery herein."

Two companion principles are (1) that concessions made in support of these defendants' motion to dismiss do not

carry over and support the plaintiffs' motion for summary judgment, and (2) that any failure of these defendants to establish an undisputable factual basis for summary judgment in their favor does not mean that the plaintiffs have borne the burden of establishing a factual basis for their motion for summary judgment.

As to the first, these defendants have foreborne to take direct issue with the plaintiffs' assertions of conspiracy and irreparable harm only for the purposes of their motion to dismiss. This does not strengthen plaintiffs' motion for summary judgment any more than the factual allegations of the Amended Complaint with regard to the claims of Mann, McDowell and Freeman, as to which these defendants have admitted nothing and presently insist that those plaintiffs be on strict proof of their claims before they are granted any relief.

As to the second, even if this Court decides that, on the basis of the Amended Complaint, as modified by the Stipulation, these defendants are not entitled to a dismissal, the plaintiffs are not thereby relieved of their burden to establish facts which, under their theory of the law, would entitle them to equitable relief. They have not offered any proof whatever of irreparable harm, without which they cannot obtain equitable relief, preliminary, summary, or otherwise. Indeed, as pointed out in the previous section of this memorandum, the availability of relief in the state courts by itself establishes an absence of irreparable harm.

Allied with this portion of the discussion is the point that this case cannot go to summary judgment for the plaintiffs on the Amended Complaint and Stipulation alone.

because there exist other facts material to the cause which are not before this Court. In addition to the absence of facts in support of the allegations of irreparable harm and conspiracy, and as to the claims of Mann, McDowell and Freeman, there is a total blank as to the circumstances surrounding the entry of Griffin, Green and Stewart into the Park. These circumstances, which are insufficiently known to these defendants to support affidavits, are material to those three plaintiffs' claims for equitable relief, even assuming establishment of their claim of constitutional right. Furthermore, these circumstances are material to and may form the basis of a counterclaim by the corporate defendants. The intent of the actions of these plaintiffs and the damage caused by them may show that, even accepting their theory of constitutional law, these plaintiffs exceeded the bounds of their rights and are not entitled to relief in equity.

It is submitted, therefore, that the motion for summary judgment cannot be granted on the present state of the record, which indicates only that some facts relative to plaintiffs' action are not in dispute, being covered by the Stipulation. If these defendants do not prevail on their motion to dismiss or their motion to stay, the case should proceed as one not fully adjudicated, under Rule 56(d).

Three additional objections to plaintiffs' motion for summary judgment are these: (1) The motion, served on defendants' counsel by mail, was not served at least thirteen (13) days before hearing, contrary to the provisions of Rules 56(c) and 6(e). The summary judgment motion has raised numerous complex issues of law and fact. Defendants' counsel have not had adequate time to prepare for argument on these

issues, in view of the complexity of the other issues presented. The oral consent of defendants' counsel both to an early hearing and to a hearing on this date related only to the motions for preliminary injunction and to dismiss or stay this action. (2) The affidavits filed in support of plaintiffs' motion for preliminary injunction should not be considered by this Court because they are defective in having not been made upon the personal knowledge of the affiants, contrary to Rule 56(e). (3) The allegations contained in these affidavits, except as admitted in the Stipulation, cannot be taken as establishing the plaintiffs' case because these defendants hold the plaintiffs to strict proof of their claim and cannot file counter-affidavits due to lack of knowledge regarding the allegations which are disputed.

Finally, the transcendent reason for not granting the plaintiffs' motion for summary judgment is the plain statutory fact that only a three-judge District Court can, under 28 USCA Sec. 2284(5), grant summary judgment in favor of a prayer for injunctive relief against the enforcement, operation or execution of a state statute on the grounds of its unconstitutionality.

CONCLUSION

For the reasons stated, these defendants pray this Court: (1) to deny plaintiffs' motion for summary judgment; (2) to deny plaintiffs' motion for preliminary injunction; (3) to dismiss the cause and enter judgment for these defendants, or, in the absence of such dismissal, (4) to stay these proceedings until the plaintiffs have had a reasonable opportunity to obtain an adjudication of their claims by the

Court of Appeals of Maryland.

Respectfully submitted,

William G. Clark

Richard W. Case

Roger D. Redden

Attorneys for Defendants Francis J. Collins, Rekab, Inc., and Kebar, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WILLIAM L. GRIFFIN, et al.	:	
Plaintiffs	:	
vs.	:	CIVIL ACTION No. 12308
FRANCIS J. COLLINS, et al.	:	
Defendants	:	
	:	

::::::::::::::::::::

STIPULATION OF FACTS

It is hereby stipulated by and among the attorneys for the respective parties indicated below, being all the parties to this action with the exception of Luke J. Bennett, Jr., Sheriff of Montgomery County, Maryland, that the following facts are true and that the parties agree that these facts shall be admitted to the record as if proved:

1. The plaintiffs are Negroes, are citizens of the United States and presently reside in Washington, D. C.

2. At all times pertinent to this action, Rekab, Inc. was the owner of the premises known as Glen Echo Amusement Park (hereinafter referred to as "Park") and Kebar, Inc. was the holder of a lease from Rekab, Inc. under the terms of which the said Kebar, Inc. operated the Park. These corporations are duly organized and exist under the laws of the State of Maryland. Operation of the Park is subject to the customary fire, health and related regulations. The Park is located along the Potomac River in Montgomery County, Maryland, approximately 2.5 miles from the Maryland-District of Columbia line. It is the largest amusement park in the metropolitan Washington area and is directly accessible by public transportation within the area.

3. Defendant Francis J. Collins has, at all times pertinent to this action been employed by the National Detective Agency, charged under the terms of this employment with serving as supervisor of the guard force at the Park.

4. The National Detective Agency is employed by Rekab, Inc. and by Kebar, Inc. to provide a force of guards at the Park.

5. The duties of the guard force at the Park include maintaining order within the Park and enforcing the policies of the owners and operators of the Park with regard thereto.

6. At all times pertinent to this action the defendant Collins held a commission from the State of Maryland as a Special Deputy Sheriff for Montgomery County, Maryland.

7. Defendant Kebar, Inc., as operator of the Park, advertises publicly in the Washington metropolitan area. These advertisements do not indicate who, if anyone, would be excluded from use of the Park.

8. The Park is a recreational facility privately owned and operated for profit as a commercial enterprise. It has at all times been operated on a well-maintained basis catering primarily to those persons living in the nearby metropolitan Washington area, with the amusement facilities of the Park being directed largely toward the entertainment of children.

9. The owners and operators of the Park feel that the maintenance of their Park in its present condition as a private business requires a business policy which does not permit Negroes to attend the Park. Accordingly, Negroes who seek admission to the Park are excluded solely on account of their race. This policy is presently in effect.

10. Persons employed by the National Detective Agency and assigned to the Park, including Francis J. Collins, have been advised, by the owners and operators of the Park, of the business policy of the Park with respect to the admission of Negroes.

11. On or about July 1, 1960, Francis J. Collins, attired in the uniform customarily worn by him as supervisor of the National Detective Agency guards, after consulting the Park Office and the agents, servants and employees of Rekab, Inc. and Kebar, Inc., did advise William L. Griffin, Gwendolyn Green and Renyl Stewart, who had entered the Park premises with knowledge of the business policy of the Park owners and operators with respect to the admission of Negroes to the Park, that pursuant to the policy of the Park they were not welcome. The behavior of said plaintiffs at all times was orderly and peaceful. Defendant Collins requested them to leave and further advised them that if they did not leave peaceably within a reasonable time, they would be subject to arrest for trespass. When they refused so to do, he, acting pursuant to his authority as a Special Deputy Sheriff for Montgomery County, Maryland, did arrest the aforenamed persons, plaintiffs herein, for violation of Article 27, Section 577 of the Annotated Code of Maryland (1957 ed.) which alleged violations are currently pending before the Circuit Court for Montgomery County, Maryland. At the time of their arrest, plaintiffs Griffin and Green had in their possession "ride" tickets obtained for them by white companions. Their tickets bore the following legend: "Management reserves the right to revoke the privileges granted by this ticket by refunding its purchase price."

12. Admission to the Park is free. Tickets for use within the Park are obtainable at various booths located within the Park. It is the practice within the Park that these tickets may be transferred among those persons admitted to the Park. Pursuant to the policy of the owners and operators of the Park not to admit Negroes to the Park premises, it is the policy of the owners and operators of the Park not to sell tickets to Negroes for use within the Park and not to honor tickets for use in the Park held by Negroes, however obtained.

13. It has been the business policy of Rekab, Inc. and Kebar, Inc., since they acquired the ownership of the Park in 1955, to have a Special Deputy Sheriff on the premises at all times to insure the orderly operation of the Park.

Charles T. Duncan

Joseph H. Sharlitt

Juanita J. Mitchell

John Silard

Attorneys for Plaintiffs

William G. Clark

Richard W. Case

Roger D. Redden

Attorneys for Defendants
Francis J. Collins,
Rekab, Inc. and Kebar, Inc.

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MARYLAND

WILLIAM L. GRIFFIN, et al., Plaintiffs	:	
	:	Civil Action No._____
v.	:	
FRANCIS J. COLLINS, individually and as DEPUTY SHERIFF in and for GLEN ECHO PARK, et al., Defendants	:	

ANSWER OF LUKE J. BENNETT, JR., SHERIFF OF MONTGOMERY COUNTY TO AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF

The Answer of Luke J. Bennett, Jr., Sheriff of Montgomery County, one of the defendants in the above entitled cause, to the Amended Complaint for Declaratory Judgment and for Injunctive Relief of William L. Griffin, et al., against him and others in this Court exhibited.

This defendant answering says:

That he has no real interest in the ouctome of the case and will abide by the Court's Order.

C. Ferdinand Sybert
Attorney General

Stedman Prescott, Jr.
Deputy Attorney General
1201 Mathieson Building
Baltimore 2, Maryland
Lexington 9-5413
Attorneys for Luke J. Bennett, Jr., Sheriff of Montgomery County

I HEREBY CERTIFY that, on this 8th day of August, 1960, a copy of the within Answer was mailed to Charles T. Duncan, Esq., 473 Florida Avenue, N.W., Washington 1, D.C., Joseph H. Sharlitt, Esq., 6712 Brennon Lane, Chevy Chase, Md., Mrs. Juanita J. Mitchell, 1239 Druid Hill Ave., Baltimore 17, Md., and John Silard, Esq., 1631 K Street, N.W., Washington 6, D.C., attorneys for Plaintiffs,

Francis J. Collins, Deputy Sheriff in and for Glen Echo Park, Glen Echo, Montgomery County, Md., defendant, and Abram Baker, 5910 Bradley Boulevard, Bethesda, Maryland, Resident Agent of Rekab, Inc. and Kebar, Inc., defendants.

Stedman Prescott, Jr.
Deputy Attorney General

Sted This is Amended Complaint

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WILLIAM L. GRIFFIN
3562 13th Street, N.W.
Washington, D. C.

GWENDOLYN GREENE
3038 8th Street, N.E.
Washington, D. C.

RONYL STEWART
1734 Upshur Street, N.W.
Washington, D. C.

DOROTHY MANN
3406 23rd Street, S.E.
Washington, D. C.

CLYDE R. McDONELL
2205 1st Street, N. W.
Washington, D. C.

KAY FREEMAN
732 Quebec Place, N. W.
Washington, D. C.

Plaintiffs

vs. : Civil Action No._____

FRANCIS J. COLLINS, individually and as DEPUTY SHERIFF in and for GLEN ECHO PARK, Montgomery County, Maryland
Glen Echo
Montgomery County, Maryland

LUKE J. BENNETT, JR., individually and as SHERIFF in and for Montgomery County, Maryland
Court House
Rockville, Maryland

REKAB, INC., a Maryland corporation
Glen Echo, Maryland
Resident Agent: Abram Baker
5910 Bradley Boulevard
Bethesda, Maryland

KEBAR, INC., a Maryland corporation
Glen Echo, Maryland
Resident Agent: Abram Baker
5910 Bradley Boulevard
Bethesda, Maryland

Defendants

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND FOR INJUNCTIVE RELIEF

1. Jurisdiction of this action is invoked pursuant to the provisions of 28 U.S.C. § 1343 and 28 U.S.C. § 2201.

2. Plaintiffs are members of the Negro race, citizens of the United States and residents of the District of Columbia and bring this action in their own right and on behalf of all others similarly situated.

3. Defendant Bennett is the duly elected sheriff of Montgomery County, Maryland.

4. Defendant Collins is a deputy sheriff in and for Glen Echo Park, Montgomery County, Maryland, having been deputized and given official authority as such officer by defendant Bennett; defendant Collins also is an employee of Rekab, Inc. (hereinafter referred to as "Rekab") and/or Kebar, Inc. (hereinafter referred to as "Kebar"). At all times mentioned herein, defendant Collins acted in the dual capacity of deputy sheriff of Glen Echo Park, Montgomery County, Maryland, and of employee of Rekab and/or Kebar.

5. Defendant Rekab is a corporation duly organized and existing pursuant to the laws of the State of Maryland; it owns real property located in Montgomery County, Maryland, on which is situated a public amusement known as "Glen Echo Park".

6. Defendant Kebar is a corporation duly organized and existing pursuant to the laws of the State of Maryland; it does business in Montgomery County, Maryland, as the manager and operator of Glen Echo Park.

7. Glen Echo Park is a place of public accommodation -- a public amusement park permanently located in Montgomery County, Maryland, on the outskirts of the District of Columbia, equipped with merry-go-round, roller coaster and other "rides", a restaurant,

fun house, swimming pool, games of skill and similar facilities. It operates under licenses issued by public officials and is regulated and inspected by public officials of Maryland. It is the only such amusement park in the metropolitan area of Washington, D. C.; it advertises extensively to the public-at-large in the District of Columbia area and extends an unrestricted invitation to the public in the District of Columbia area. Admission to the park itself is free, and the public generally, upon payment of the prescribed fees, may enjoy the facilities of the park.

8. Defendants Rekab and Kebar, acting through their agents, employees and servants, have adopted and presently maintain a policy of denying admission to the park and use of its facilities to Negroes solely because of their race or color.

9. Defendant Collins, acting for and pursuant to the directions of defendants Rekab and/or Kebar, has implemented and enforced the racially discriminatory policies of the defendant corporations at Glen Echo Park. Defendant Bennett, having knowledge that defendant Collins was using his state authority to implement and enforce the racially discriminatory policies of defendants Rekab and Kebar, continued to allow defendant Collins to possess and exercise that authority for such purposes.

10. On or about July 1, 1960, plaintiffs William Griffin, Gwendolyn Greene and Ronyl Stewart entered Glen Echo Park, acquired transferrable "ride" tickets from white companions and boarded the merry-go-round. Their behavior at all times was orderly and peaceful. The merry-go-round operator called defendant Collins, who arrived attired in his uniform of deputy sheriff. Defendant Collins told said plaintiffs that the park was racially segregated and, acting for the management, ordered them to leave the merry-go-round and the park because they were Negroes. Plaintiffs refused to leave and were thereupon arrested by defend-

ant Collins and imprisoned on the park premises, until Montgomery County Police, called by defendant Collins, arrived and took plaintiffs to a state police station located in Bethesda, Montgomery County, Maryland. There, on a charge filed by defendant Collins they were booked on criminal trespass charges and held until bond was posted for their release.

11. Defendants Rekab and Kebar, on numerous occasions during the preceding twelve months, have placed and caused to be placed in newspapers, on billboards and on radio and television, advertisements of Glen Echo Park directed to the residents and public-at-large of the metropolitan Washington area. Said advertisements in substance invited members of the public to use and enjoy the recreational facilities of Glen Echo Park. Said advertisements did not state that the park maintains a policy of racial discrimination, nor did they indicate that members of the Negro race otherwise would be unwelcome.

12. On or about July 2, 1960, plaintiffs Dorothy Mann, Clyde R. McDowell and Kay Freeman, went to Glen Echo Park with the intent and desire of using its facilities. Upon arrival, said plaintiffs were advised by agents and employees of defendants Rekab and/or Kebar of the racial policies of the park, of the arrests referred to in Paragraph 10 hereof, and of the likelihood of their own arrest if they attempted to use the facilities of the park. As a result thereof and in apprehension of their own arrest, said plaintiffs were intimidated from attempting to use and did decline to attempt to use the facilities of the park.

13. Since June 30, 1960, in addition to the arrests referred to in Paragraph 10 hereof, defendants have caused the arrest of eight other members of the Negro race for entry on or refusal to leave the premises of Glen Echo Park.

14. Defendants, individually or acting through their employees, agents and servants, have told plaintiffs and others similarly situated, and have publicly announced their intention of maintaining their policy of racial discrimination by causing the arrest, under color of law and by use of state authority, of all Negroes who attempt to enter Glen Echo Park or use its facilities.

15. The statements and announcements above referred to are part of a continuing conspiracy by all defendants to maintain racial discrimination, enforced by use of governmental action and authority, at Glen Echo Park.

16. The conspiracy above described and the arrests and acts made and taken pursuant thereto, are carried out under color of statutes, ordinances, regulations, customs or usages of the State of Maryland.

17. The above described acts of defendants are unlawful in that they constitute state enforced racial discrimination in a place of public accommodation--more particularly, the sole public amusement park in the metropolitan area of the District of Columbia--in contravention of plaintiffs' rights secured by the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and by the laws of the United States, including, among others, the provisions of 42 U.S.C. §§1982 and 1983.

18. By reason of defendants' acts, plaintiffs have been publically embarrassed and humiliated and have been deprived of their federal constitutional and statutory rights. The damage and injury done to plaintiffs is continuing and irreparable, and there is no adequate remedy at law.

WHEREFORE, plaintiffs pray that this Court:

A. Adjudge and declare that the defendants' acts in utilizing governmental authority and powers of the state and the

sanctions of state law to aid, support and enforce the denial to plaintiffs, solely because of their race, of admission to Glen Echo Park and enjoyment of its facilities, are in violation of plaintiffs' rights under the Constitution and laws of the United States;

B. Issue an injunction, permanently and pendente lite, restraining and preventing defendants and each of them, and the officers, employees, agents and servants of the corporate defendants, from doing any and all acts, including, without limiting the generality of the foregoing, the threatening, making or causing to be made any arrests under the criminal trespass or any other statutes of the State of Maryland which are designed or have the effect of preventing plaintiffs or any other individuals similarly situated from peaceably entering the public amusement park known as "Glen Echo Park" in Montgomery County, Maryland, from peaceably using and enjoying or attempting to use and enjoy the facilities located in said public amusement park, from peaceably entering into or attempting to enter into contracts with persons in said amusement park for the use and enjoyment of the facilities located therein, and from peaceably purchasing or attempting to purchase articles of personal property on sale in said public amusement park, solely on the ground of their race or color; and

C. Grant such other and further relief as to the Court may seem just and proper.

Charles T. Duncan

Charles T. Duncan
473 Florida Avenue, N.W.
Washington 1, D. C.

-4-

Joseph H. Sharlitt
6712 Brennon Lane
Chevy Chase, Maryland

Juanita J. Mitchell
1239 Druid Hill Avenue
Baltimore 17, Maryland

Of Counsel:

John Silard per J.H.S. to authorize
1631 K Street, N. W.
Washington 6, D. C.

CERTIFICATE OF SERVICE

Copy of the foregoing Amended Complaint for Declaratory Judgment and for Injunctive Relief was mailed, postage prepaid, this 14th day of July, 1960, to Francis J. Collins, Deputy Sheriff in and for Glen Echo Park, Glen Echo, Montgomery County, Maryland; Luke J. Bennett, Jr., Sheriff in and for Montgomery County, Maryland, Court House, Rockville, Maryland; and Abram Baker, Resident Agent of Kebar, Inc, 5910 Bradley Boulevard, Bethesda, Maryland.

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MARYLAND

CHAMBERS OF
R. DORSEY WATKINS
UNITED STATES DISTRICT JUDGE
BALTIMORE 2, MARYLAND

July 21, 1960

Joseph H. Sharlitt, Esquire
919 18th Street, N.W.
Washington 6, D. C.

Re: Griffin, et al. v. Collins,
et al., Civil Action No. 12308

Dear Mr. Sharlitt:

Before receipt of your letter of July 20th I had already written Chief Judge Thomsen a rather full memorandum of our conference of July 18th. Your letter will be attached to that memorandum.

Very truly yours,

R. Dorsey Watkins

United States District Judge.

CC- William G. Clark, Esquire
930 Bonifant Street
Silver Spring, Maryland

Sherbow & Sherbow
1316 Munsey Building
Baltimore 2, Maryland

Luke J. Bennett, Jr., Sheriff
Court House
Rockville, Maryland

Francis J. Collins, Deputy Sheriff
Glen Echo, Maryland

July 20, 1960

Honorable Dorsey Watkins,
Judge, United States District Court,
District of Maryland,
U. S. Post Office Building,
Baltimore, Maryland

Re: Griffin, et al. v. Collins,
et al., C. A. #12308

Sir:

The undersigned, as counsel to the plaintiffs in the above suit, write to supplement the representations made to the Court in the conference of all counsel held with the Court on this past Monday, July 18th. At that time the undersigned indicated a willingness to consent to the two-week continuance of the hearing on plaintiffs' Motion for Preliminary Injunction originally suggested by counsel to the defendants and further acceded to the Court's subsequent determination--made in view of the absence of any other Judge sitting in the interim who could sit on the case--to transmit the case to Judge Roszel Thomsen for hearing before him on his return on or about August 15th. Counsel for the plaintiffs did, at that time, represent to the Court that pressures within the community (including continuing arrests) as well as their own concern over the continuing constitutional deprivations alleged by the plaintiffs, pressed them to request the Court, in turn, for the earliest possible hearing on this Motion.

In supplement, the undersigned wish only to add that these pressures continue and, accordingly, do provide even greater reason for hearing as soon after August 15th as is practicable. While the undersigned do not wish in any way to unreasonably dislocate the calendar facing Judge Thomsen upon his return, we do respectfully ask that the Court transmit this case to him with an indication of plaintiffs' request for the earliest practicable hearing

and the circumstances surrounding this request for expedition, so that another series of delays after Judge Thomsen's return may be avoided.

Sincerely yours,

Joseph H. Sharlitt

Charles T. Duncan

JHS:mh
cc: William G. Clark, Esq.
930 Bonifant Street
Silver Spring, Md.

Sherbow & Sherbow
1316 Munsey Building
Baltimore, Md.

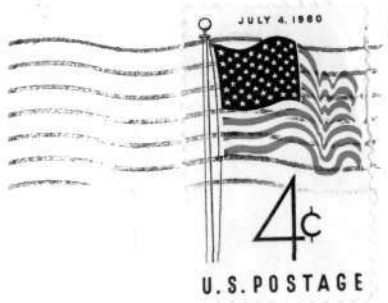
Luke J. Bennett, Jr., Sheriff
Court House
Rockville, Md.

Francis J. Collins, Deputy Sheriff
Glen Echo
Montgomery County, Md.

JOSEPH H. SHARLITT
SUITE 705
919 - 18TH STREET, N. W.
WASHINGTON 6, D. C.

Postponement of
Glen Echo Case
to
about August 15

WASHINGTON
JUL 20
PM
1960
D.C.



Luke J. Bennett, Jr., Sheriff
Court House
Rockville, Md.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MARYLAND
R. DORSEY WATKINS, DISTRICT JUDGE
529 POST OFFICE BUILDING
BALTIMORE 2, MARYLAND

OFFICIAL BUSINESS

BALTIMORE, MD. JUL 21 9-PM 1960

PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, $300

Luke Bennett, Jr. Sheriff

Court House

Rockville, Maryland

MONTGOMERY COUNTY
M A R Y L A N D

OFFICE OF SHERIFF
COURT HOUSE
ROCKVILLE, MARYLAND

Rockville's
CENTENNIAL
CELEBRATION.
Aug. 27th thru Sept. 3rd

ROCKVILLE JUL22'60 MD. U.S. POSTAGE 04 PB METER P.B.115499

Mr. James H. Norris,
Assistant Attorney General,
1201 Mathiesen Building,
Baltimore, Maryland.

Amended Complaint filed

Hearing postponed until middle of August

Sheriff's Department
Court House
Rockville, Maryland

LUKE J. BENNETT, JR.
SHERIFF, MONTGOMERY COUNTY
OFFICE: POPLAR 2-2121

July 11, 1960

Mr. James H. Norris,
Assistant Attorney General,
1201 Mathieson Building,
Baltimore, Maryland.

Dear Mr. Norris:

As per instructions from Mr. Alfred Carter the attorney for Montgomery County, Maryland, I am enclosing all the papers that were served on me this morning by a U.S. Marshall.

It seems that the Washington newspapers and even these court papers continue to refer to these men as Deputies instead of Special Deputies, and I am of the opinion there is quite a difference.

I would appreciate hearing from you at your earliest convenience.

Yours truly,

Luke J. Bennett, Jr.

Luke J. Bennett, Jr.,
Sheriff, Montgomery County,
Maryland

SUMMONS IN A CIVIL ACTION D. C. Form No. 45a Rev. (6-49)

United States District Court

FOR THE

DISTRICT OF MARYLAND

#9700

~~DIVISION~~

CIVIL ACTION FILE NO. 12308

WILLIAM L. GRIFFIN, GWENDOLYN GREENE, RONYL STEWART, DOROTHY MANN, CLYDE R. McDOWELL, KAY FREEMAN,
Plaintiffs

vs.

FRANCIS J. COLLINS, individually and as DEPUTY SHERIFF in and for GLEN ECHO PARK, Montgomery County, Maryland
Glen Echo, Montgomery County, Maryland
LUKE J. BENNETT, JR., individually and as SHERIFF in and for Montgomery County, Maryland
Court House
Rockville, Maryland
~~Plaintiff~~

v.

THE REKAB COMPANY, a Maryland corporation
~~5x~~ 5803 Kenmore Road, Baltimore 10, Maryland
Resident Agent: Nathan Patz
2110 Mathieson Building, Baltimore, Maryland
KEBAR, INC., a Maryland corporation
Glen Echo, Maryland
Resident Agent: Abram Baker
5910 Bradley Boulevard, Bethesda, Maryland

Defendant s

SUMMONS

To the above named Defendant s:

You are hereby summoned and required to serve upon Joseph H. Sharlitt, Esquire,

plaintiff's attorney , whose address is: 6712 Brennon Land, Chevy Chase, Maryland,

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

WILFRED W. BUTSCHKY
Clerk of Court.

MARILYN D. FIGIEL
Deputy Clerk.

TRUE COPY
TEST:

WILFRED W. BUTSCHKY
Clerk

BY Marilyn D. Figiel
Deputy Clerk

Date: July 8, 1960. [Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

D. C. Form No. 45a Rev. (6-62)

SUMMONS IN A CIVIL ACTION

United States District Court

FOR THE

DISTRICT OF MARYLAND

United States District Court
FOR THE
DISTRICT OF MARYLAND

No. 9760

CIVIL ACTION FILE NO. 12308

DIVISION

SUMMONS IN CIVIL ACTION

v.

Defendant s

To the above named Defendant:

You are hereby summoned and required to serve upon Joseph H. Sharfitt, Esquire,

plaintiff's attorney, whose address is: 6712 Brennon Land, Chevy Chase, Maryland,

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

WILFRED W. NUSCHKE

Clerk of Court.

MARILYN D. PIONE

Deputy Clerk.

Date: July 8, 1960.

[Seal of Court]

Note—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

RETURN ON SERVICE OF WRIT

Note—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

I hereby certify and return, that on the day of 19 ,

I received this summons and served it together with the complaint herein as follows:

[SEAL]

day of , 19 .

MARSHAL'S FEES

Travel $

Service

By *Deputy United States Marshal.*

United States Marshal.

Subscribed and sworn to before me, a this

day of , 19 .

Returnable not later than days after service.

SUMMONS IN CIVIL ACTION

Attorney for Plaintiff.

FPI—LK—7-28-59—130M—6681

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WILLIAM L. GRIFFIN,
3562 13th Street, N. W.
Washington, D. C.

GWENDOLYN GREENE,
5038 8th Street, N. E.
Washington, D. C.

RONYL STEWART,
1734 Upshur Street, N. W.
Washington, D. C.

DOROTHY MANN,
3406 23rd Street, S. E.
Washington, D. C.

CLYDE R. McDOWELL,
2203 1st Street, N. W.
Washington, D. C.

KAY FREEMAN,
732 Quebec Place, N. W.
Washington, D. C.

Plaintiffs,

v. : Civil Action No. 12308

FRANCIS J. COLLINS, individually and as DEPUTY SHERIFF in and for GLEN ECHO PARK, Montgomery County, Maryland,
Glen Echo,
Montgomery County, Maryland

LUKE J. BENNETT, JR., individually and as SHERIFF in and for Montgomery County, Maryland
Court House
Rockville, Maryland

THE REBAR COMPANY, a Maryland corporation,
5803 Kenmore Road
Baltimore 10, Maryland
Resident Agent: Nathan Patz
2110 Matheson Building
Baltimore, Maryland

REBAR, INC., a Maryland corporation,
Glen Echo, Maryland
Resident Agent: Abram Baker
5910 Bradley Boulevard
Bethesda, Maryland

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT
AND FOR INJUNCTIVE RELIEF

1. Jurisdiction of this action is invoked pursuant to the provisions of 28 U.S.C. §1343 and 28 U.S.C. §2201.

2. Plaintiffs are members of the Negro race, citizens of the United States and residents of the District of Columbia and bring this action in their own right and on behalf of all others similarly situated.

3. Defendant Bennett is the duly elected sheriff of Montgomery County, Maryland.

4. Defendant Collins is a deputy sheriff in and for Glen Echo Park, Montgomery County, Maryland, having been deputized and given official authority as such officer by defendant Bennett; defendant Collins also is an employee of The Rekab Company (hereinafter referred to as "Rekab") and/or Kebar, Inc. (hereinafter referred to as "Kebar"). At all times mentioned herein, defendant Collins acted in the dual capacity of deputy sheriff of Glen Echo Park, Montgomery County, Maryland, and of employee of Rekab and/or Kebar.

5. Defendant Rekab is a corporation duly organized and existing pursuant to the laws of the State of Maryland; it owns real property located in Montgomery County, Maryland, on which is situated a public amusement known as "Glen Echo Park".

6. Defendant Kebar is a corporation duly organized and existing pursuant to the laws of the State of Maryland; it does business in Montgomery County, Maryland, as the manager and operator of Glen Echo Park.

7. Glen Echo Park is a place of public accomodation --

a public amusement park permanently located in Montgomery County, Maryland, on the outskirts of the District of Columbia, equipped with merry-go-round, roller coaster and other "rides", a restaurant, fun house, swimming pool, games of skill and similar facilities. It operates under licenses issued by public officials and is regulated and inspected by public officials of Maryland. It is the only such amusement park in the metropolitan area of Washington, D. C.; it advertises extensively to the public-at-large in the District of Columbia area and extends an unrestricted invitation to the public in the District of Columbia area. Admission to the park itself is free, and the public generally, upon payment of the prescribed fees, may enjoy the facilities of the park.

8. Defendants Rekab and Kebar, acting through their agents, employees and servants, have adopted and presently maintain a policy of denying admission to the park and use of its facilities to Negroes solely because of their race or color.

9. Defendant Collins, acting for and pursuant to the directions of defendants Rekab and/or Kebar, has implemented and enforced the racially discriminatory policies of the defendant corporations at Glen Echo Park. Defendant Bennett, having knowledge that defendant Collins was using his state authority to implement and enforce the racially discriminatory policies of defendants Rekab and Kebar, continued to allow defendant Collins to possess and exercise that authority for such purposes.

10. On or about July 1, 1960, plaintiffs William Griffin, Gwendolyn Greene and Ronyl Stewart entered Glen Echo Park, acquired transferrable "ride" tickets from white companions and boarded the merry-go-round. Their behavior at all times was orderly and peaceful. The merry-go-round operator called defendant Collins, who arrived attired in his uniform of deputy sheriff. Defendant Collins told said plaintiffs that the park was racially segregated and, acting for the management, ordered them to leave the merry-go-round and the park because they were

Negroes. Plaintiffs refused to leave and were thereupon arrested by defendant Collins and imprisoned on the park premises, until Montgomery County Police, called by defendant Collins, arrived and took plaintiffs to a state police station located in Bethesda, Montgomery County, Maryland. There, on a charge filed by defendant Collins they were booked on criminal trespass charges and held until bond was posted for their release.

11. Defendants Rekab and Kebar, on numerous occasions during the preceding twelve months, have placed and caused to be placed in newspapers, on billboards and on radio and television, advertisements of Glen Echo Park directed to the residents and public-at-large of the metropolitan Washington area. Said advertisements in substance invited members of the public to use and enjoy the recreational facilities of Glen Echo Park. Said advertisements did not state that the park maintains a policy of racial discrimination, nor did they indicate that members of the Negro race otherwise would be unwelcome.

12. On or about July 2, 1960, plaintiffs Dorothy Mann, Clyde R. McDowell and Kay Freeman, went to Glen Echo Park with the intent and desire of using its facilities. Upon arrival, said plaintiffs were advised by agents and employees of defendants Rekab and/or Kebar of the racial policies of the park, of the arrests referred to in Paragraph 10 hereof, and of the likelihood of their own arrest if they attempted to use the facilities of the park. As a result thereof and in apprehension of their own arrest, said plaintiffs were intimidated from attempting to use and did decline to attempt to use the facilities of the park.

13. Since June 30, 1960, in addition to the arrests referred to in Paragraph 10 hereof, defendants have caused the

arrest of eight other members of the Negro race for entry on or refusal to leave the premises of Glen Echo Park.

14. Defendants, individually or acting through their employees, agents and servants, have told plaintiffs and others similarly situated, and have publicly announced their intention of maintaining their policy of racial discrimination by causing the arrest, under color of law and by use of state authority, of all Negroes who attempt to enter Glen Echo Park or use its facilities.

15. The statements and announcements above referred to are part of a continuing conspiracy by all defendants to maintain racial discrimination, enforced by use of governmental action and authority, at Glen Echo Park.

16. The conspiracy above described and the arrests and acts made and taken pursuant thereto, are carried out under color of statutes, ordinances, regulations, customs or usages of the State of Maryland.

17. The above described acts of defendants are unlawful in that they constitute state enforced racial discrimination in a place of public accomodation—more particularly, the sole public amusement park in the metropolitan area of the District of Columbia—in contravention of plaintiffs' rights secured by the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and by the laws of the United States, including, among others, the provisions of 42 U.S.C. §§1982 and 1983.

18. By reason of defendants' acts, plaintiffs have been publically embarrassed and humiliated and have been deprived of their federal constitutional and statutory rights. The damage and injury done to plaintiffs is continuing and irreparable, and there is no adequate remedy at law.

WHEREFORE, plaintiffs pray that this Court:

A. Adjudge and declare that the defendants' acts in utilizing governmental authority and powers of the state and the sanctions of state law to aid, support and enforce the denial to plaintiffs, solely because of their race, of admission to Glen Echo Park and enjoyment of its facilities, are in violation of plaintiffs' rights under the Constitution and laws of the United States;

B. Issue an injunction, permanently and pendente lite, restraining and preventing defendants and each of them, and the officers, employees, agents and servants of the corporate defendants, from doing any and all acts, including, without limiting the generality of the foregoing, the threatening, making or causing to be made any arrests under the criminal trespass or any other statutes of the State of Maryland which are designed or have the effect of preventing plaintiffs or any other individuals similarly situated from peaceably entering the public amusement park known as "Glen Echo Park" in Montgomery County, Maryland, from peaceably using and enjoying or attempting to use and enjoy the facilities located in said public amusement park, from peaceably entering into or attempting to enter into contracts with persons in said amusement park for the use and enjoyment of the facilities located therein, and from peaceably purchasing or attempting to purchase articles of personal property on sale in said public amusement park, solely on the ground of their race or color; and

C. Grant such other and further relief as to the Court may seem just and proper.

/s/ Charles T. Duncan
Charles T. Duncan
473 Florida Avenue, N. W.
Washington 1, D. C.

/s/ Joseph H. Sharlitt
Joseph H. Sharlitt
6712 Brennon Lane
Chevy Chase, Maryland

/s/ Juanita J. Mitchell
Juanita J. Mitchell
1239 Druid Hill Avenue
Baltimore 17, Maryland

Of Counsel:

/s/ John Silard
John Silard
1631 K Street, N. W.
Washington 6, D. C.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

WILLIAM L. GRIFFIN, et al., Plaintiffs,	)	
v.	)	Civil Action No.
FRANCIS J. COLLINS, et al., Defendants.	)	

MOTION FOR PRELIMINARY INJUNCTION

Come now plaintiffs and move that pending the final determination of the plaintiffs' claim as alleged herein, this Court issue a preliminary injunction restraining and preventing defendants and each of them, and the officers, employees, agents and servants of the corporate defendants, from doing any and all acts, including, without limiting the generality of the foregoing, the threatening, making or causing to be made any arrests under the criminal trespass or any other statutes of the State of Maryland which are designed or have the effect of preventing plaintiffs or any other individuals similarly situated from peaceably entering the public amusement park known as "Glen Echo" in Montgomery County, Maryland, from peaceably using and enjoying, or attempting to use and enjoy the facilities located in said public amusement park, from peaceably entering into or attempting to enter into contracts with persons in said public amusement park for the use and enjoyment of the facilities located therein, and from peaceably purchasing or attempting to purchase articles of personal property on sale in said public amusement park, solely on the ground of their race or color, upon the following grounds:

1. Glen Echo Park is the only public amusement park within the District of Columbia metropolitan area.

2. Denial of the use of its facilities to plaintiffs under color of state law creates continuing public humiliation and irretrievable deprivation of fundamental constitution and statutory rights.

3. There is no dispute as to any of the material facts.

4. Relevant legal authorities in the United States Supreme Court and elsewhere are all in support of plaintiffs claim.

5. Delay in granting the relief requested will render ultimate relief nugatory, as the facilities of the Glen Echo Park are used and usable only in the summer months. Therefore, denial of the relief requested will result in irreparable injury. Balancing the equities, there is on the one side a substantially incontrovertible assertion of basic constitutional rights, as opposed on the other side to an insupportable "right" to use state authority for the inadmissible purpose of effectuating and enforcing a scheme of racial discrimination which the State of Maryland is barred under the Fourteenth Amendment from aiding or supporting in any way.

WHEREFORE, it is respectfully urged that the Motion for Preliminary Injunction be granted.

Respectfully submitted,

s/ CHARLES T. DUNCAN
Charles T. Duncan

473 Florida Avenue, N. W.
Washington 1, D. C.

s/ JOSEPH H. SHARLITT
Joseph H. Sharlitt

919 18th Street, N. W.
Washington 6, D. C.

Of Counsel:

s/ JOHN SILARD
John Silard

1631 K Street, N. W.
Washington 6, D. C.

s/ JUANITA J. MITCHELL
Juanita J. Mitchell

1239 Druid Hill Avenue
Baltimore 17, Maryland

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

William L. Griffin, et al., Plaintiffs, v. Francis J. Collins, et al., Defendants	)	Civil Action No.

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

District of Columbia, SS:

William L. Griffin, being duly sworn, deposes and says:

1. My name is William L. Griffin and I am one of the plaintiffs in the above-entitled action. I am a resident of the District of Columbia; and am a student at Howard University; ~~and am employed as a by the~~

2. I have read the complaint filed in this action on my behalf by my attorneys. I affirm on information and belief that each of the statements contained in said complaint is true.

3. In the District of Columbia and elsewhere in the Metropolitan area of Washington, D. C., I have seen and heard, on television, radio, in the press and on billboards, advertisements of Glen Echo Park. In substance, those advertisements invited members of the public to visit and use, presumably upon payment of the usual charges, the recreational facilities of the park. No mention was made of race in said advertisements, nor did they advise that the park was operated on a policy of racial segregation or that members of the Negro race otherwise were unwelcome.

4. More particularly, I was present on the evening of June 30, 1960, at Glen Echo Park and with a ticket got on the merry-go-round there. My demeanor was quiet and orderly.

Defendant Collins approached me in uniform and told me that the park was segregated and that I would have to leave because of my race. I told him I wanted to see the manager and he told me he was acting for the management. I refused to leave and he grabbed my arm and placed me under arrest. Then a Montgomery County Police squad car arrived and I was escorted to it and then driven to the Montgomery County police station in Bethesda, Maryland, and held there approximately two hours until released upon posting a bond of $100.00.

5. I have friends and relatives who want to use the facilities at Glen Echo Park, and I am now being and have been denied the right to take myself, them, and the younger members of my family to Glen Echo Park because of my race.

6. I have no alternative places within reach of public transportation in metropolitan Washington where I and members of my family can enjoy the facilities of an amusement park.

S/ WILLIAM L GRIFFIN

William L. Griffin

Subscribed and sworn to before me this 7TH day of July, 1960.

S/ M. EVELYN CHAPMAN

Notary Public

My Commission expires: 6/30/65

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

GWENDOLYN GREEN, et al., Plaintiffs	}	
v.	}	Civil Action No.
FRANCIS J. COLLINS, et al., Defendants	}	

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

District of Columbia, SS:

Gwendolyn Green, being duly sworn, deposes and says:

1. My name is Gwendolyn Green and I am one of the plaintiffs in the above-entitled action. I am a resident of the District of Columbia; and am a student at Howard University; ~~and am employed as a _____ by the~~

2. I have read the complaint filed in this action on my behalf by my attorneys. I affirm on information and belief that each of the statements contained in said complaint is true.

3. In the District of Columbia and elsewhere in the Metropolitan area of Washington, D. C., I have seen and heard, on television, radio, in the press and on billboards, advertisements of Glen Echo Park. In substance, those advertisements invited members of the public to visit and use, presumably upon payment of the usual charges, the recreational facilities of the park. No mention was made of race in said advertisements, nor did they advise that the park was operated on a policy of racial segregation or that members of the Negro race otherwise were unwelcome.

4. More particularly, I was present on the evening of June 30, 1960, at Glen Echo Park and with a ticket got on the merry-go-round there. My demeanor was quiet and orderly.

Defendant Collins approached me in uniform and told me that the park was segregated and that I would have to leave because of my race. I told him I wanted to see the manager and he told me he was acting for the management. I refused to leave and he grabbed my arm and placed me under arrest. Then a Montgomery County Police squad car arrived and I was escorted to it and then driven to the Montgomery County police station in Bethesda, Maryland, and held there approximately two hours until released upon posting a bond of $100.00

5. I have friends and relatives who want to use the facilities at Glen Echo Park, and I am now being and have been denied the right to take myself, them, and the younger members of my family to Glen Echo Park because of my race.

6. I have no alternative places within reach of public transportation in Metropolitin Washington where I and members of my family can enjoy the facilities of an amusement park.

S/ GWENDOLYN GREENE

Gwendolyn Green

Subscribed and sworn to before me this 7TH day of July, 1960.

S/ M. EVELYN CHAPMAN

Notary Public

My Commission expires: 6/30/65

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RONYL STEWART, et al., Plaintiffs	)	
v.	)	Civil Action No.
FRANCIS J. COLLINS, et al., Defendants	)	

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

District of Columbia, SS:

Ronyl Stewart, being duly sworn, deposes and says:

1. My name is Ronyl Stewart and I am one of the plaintiffs in the above-entitled action. I am a resident of the District of Columbia; and am a student at ~~Howard University; and am employed as a ~~ by the GODDARD COLLEGE, PLAINFIELD, VT.

2. I have read the complaint filed in this action on my behalf by my attorneys. I affirm on information and belief that each of the statements contained in said complaint is true.

3. In the District of Columbia and elsewhere in the Metropolitan area of Washington, D. C., I have seen and heard, on television, radio, in the press and on billboards, advertisements of Glen Echo Park. In substance, those advertisements invited members of the public to visit and use, presumably upon payment of the usual charges, the recreational facilities of the park. No mention was made of race in said advertisements, nor did they advise that the park was operated on a policy of racial segregation or that members of the Negro race otherwise were unwelcome.

4. More particularly, I was present on the evening of July 2, 1960, at Glen Echo Park and attempted to purchase food in a restaurant located there. Defendant Collins approached me

in uniform and told me that the park was segregated and that I would have to leave because of my race. I told him I wanted to see the manager and he told me he was acting for the management. I refused to leave and he grabbed my arm and placed me under arrest. Then a Montgomery County Police squad car arrived and I was escorted to it and then driven to the Montgomery County police station in Bethesda, Maryland and held there approximately two hours until released upon posting a bond of $100.00.

5. I have friends and relatives who want to use the facilities at Glen Echo Park, and I am now being and have been denied the right to take myself, them, and the younger members of my family to Glen Echo Park because of my race.

6. I have no alternative places within reach of public transportation in Metropolitan Washington where I and members of my family can enjoy the facilities of an amusement park.

s/ RONYL STEWART

Ronyl Stewart

Subscribed and sworn to before me this 7TH day of July, 1960.

s/ M. EVELYN CHAPMAN

Notary Public

My Commission expires: 6/30/65

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

DOROTHY MANN, et al., Plaintiffs	)	
v.	)	Civil Action No.
FRANCIS J. COLLINS, et al., Defendants	)	

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

District of Columbia, SS:

Dorothy Mann, being duly sworn, deposes and says:

1. My name is Dorothy Mann and I am one of the plaintiffs in the above-entitled action. I am a resident of the District of Columbia; ~~and am a student at Howard University;~~ and am employed as a secretary by the AFL-CIO.

2. I have read the complaint filed in this action on my behalf by my attorneys. I affirm on information and belief that each of the statements contained in said complaint is true.

3. In the District of Columbia and elsewhere in the Metropolitan area of Washington, D. C., I have seen and heard, on television, radio, in the press and on billboards, advertisements of Glen Echo Park. In substance, those advertisements invited members of the public to visit and use, presumably upon payment of the usual charges, the recreational facilities of the park. No mention was made of race in said advertisements, nordid they advise that the park was operated on a policy of racial segregation or that members of the Negro race otherwise were unwelcome.

4. On or about July 2, 1960, I went to Glen Echo Park, intending to avail myself of its facilities. Before entering,

I was advised that the park is operated on a racially segregated basis, that Negroes are not permitted to use the facilities of the park, and that I would be arrested if I attempted to enter the park. On the basis of this understanding, I became, and am now, genuinely apprehensive of an arrest and, for that reason, have not subjected myself to the possibility of an arrest by attempting to use the park facilities.

5. I have friends and relatives who want to use the facilities at Glen Echo Park, and I am now being and have been denied the right to take myself, them, and the younger members of my family to Glen Echo Park because of my race.

6. I have no alternative places within reach of public transportation in Metropolitan Washington where I and members of my family can enjoy the facilities of an amusement park.

s/ Dorothy Mann

Dorothy Mann

Subscribed and sworn to before me this 1st day of July, 1960.

s/ M. Evelyn Chapman

Notary Public
my Commission Expires 6/30/65

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

CLYDE R. McDOWELL, et al., Plaintiffs	
v.	Civil Action No.
FRANCIS J. COLLINS, et al., Defendants	

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

District of Columbia, SS:

Clyde R. McDowell, being duly sworn, deposes and says

1. My name is Clyde R. McDowell and I am one of the plaintiffs in the above-entitled action. I am a resident of the District of Columbia; and am a student at Howard University; ~~and am employed as a ——— by the~~ .

2. I have read the complaint filed in this action on my behalf by my attorneys. I affirm on information and belief that each of the statements contained in said complaint is true.

3. In the District of Columbia, and elsewhere in the Metropolitan area of Washington, D. C., I have seen and heard, on television, radio, in the press and on billboards, advertisements of Glen Echo Park. In substance, these advertisements invited members of the public to visit and use, presumably upon payment of the usual charges, the recreational facilities of the park. No mention was made of race in said advertisements, nor did they advise that the park was operated on a policy of racial segregation or that members of the Negro race otherwise were unwelcome.

4. On or about July 2, 1960, I went to Glen Echo Park, intending to avail myself of its facilities. Before entering, I was advised that the park is operated on a racially segregated basis, that Negroes are not permitted to use the facilities of the park, and that I would be arrested if I attempted to enter the park. On the basis of this understanding, I became, and am now, genuinely apprehensive of an arrest and, for that reason, have not subjected myself to the possibliility of an arrest by attempting to use the park facilities.

5. I have friends and relatives who want to use the facilities at Glen Echo Park, and I am now being and have been denied the right to take myself, them, and the younger members of my family to Glen Echo Park because of my race.

6. I have no alternative places within reach of public transportation in Metropolitan Washington where I and members of my family can enjoy the facilities of an amusement park.

S/ CLYDE R. McDOWELL

Clyde R. McDowell

Subscribed and sworn to before me this 7TH day of July, 1960.

S/ M. EVELYN CHAPMAN

Notary Public

My Commission expires: 6/30/65

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KAY FREEMAN, et al., Plaintiffs	)	
v.	)	Civil Action No.
FRANCIS J. COLLINS, et al., Defendants	)	

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

District of Columbia, SS:

Kay Freeman, being duly sworn, deposes and says:

1. My name is Kay Freeman and I am one of the plaintiffs in the above-entitled action. I am a resident of the District of Columbia; and am a student at Howard University; ~~and am employed as a by the~~

2. I have read the complaint filed in this action on my behalf by my attorneys. I affirm on information and belief that each of the statements contained in said complaint is true.

3. In the District of Columbia, and elsewhere in the Metropolitan area of Washington, D. C., I have seen and heard, on television, radio, in the press and on billboards, advertisements of Glen Echo Park. In substance, those advertisements invited members of the public to visit and use, presumably upon payment of the usual charges, the recreational facilities of the park. No mention was made of race in said advertisements, nor did they advise that the park was operated on a policy of racial segregation or that members of the Negro race otherwise were unwelcome.

4. On or about July 2, 1960, I went to Glen Echo Park intending to avail myself of its facilities. Before entering,

I was advised that the park is operated on a racially segregated basis, that Negroes are not permitted to use the facilities of the park, and that I would be arrested if I attempted to enter the park. On the basis of this understanding, I became, and am now, genuinely apprehensive of an arrest and, for that reason, have not subjected myself to the possibility of an arrest by attempting to use the park facilities.

5. I have friends and relatives who want to use the facilities at Glen Echo Park, and I am now being and have been denied the right to take myself, them, and the younger members of my family to Glen Echo Park because of my race.

6. I have no alternative places within reach of public transportation in Metropolitan Washington where I and members of my family can enjoy the facilities of an amusement park.

s/ Kay Freeman

Kay Freeman

Subscribed and sworn to before me this 7th day of July, 1960.

s/ M. Evelyn Chapman

Notary Public

My Commission expires: 6/30/65

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

WILLIAM L. GRIFFIN, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil Action No.
	)	
	)	12308
FRANCIS J. COLLINS, et al.,	)	
	)	
Defendants.	)	
	)	

O R D E R

Upon the aforegoing Complaint for Declaratory Judgment and for Injunctive Relief, Affidavits, and Motion for Preliminary Injunction, it is by the United District Court for the District of Maryland this 8th day of July, 1960 ORDERED that the Defendants in this proceeding appear and show cause before this Court on July 21, 1960 at 10 a.m. why the preliminary injunction prayed for should not be granted, provided a copy of the said Complaint, Affidavits, Motion and this Order be served upon said Defendants on or before the 12th day of July, 1960.

R. Dorsey Watkins

U. S. District Judge

TRUE COPY
TEST:

WILFRED W. BUTSCHKY
Clerk

By Arthur J. Robertson
Chief Deputy Clerk

#4612-WILLIAM L.GRIFFIN,et al.vs
FRANCIS J.COLLINS,et al.