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MEMORANDUM

To: National Legal Affairs Committee

From: Livia D. Thompson

Date: August 3, 1988

Subject: Patterson v. McLean Credit Union: U.S. Supreme Court's Reconsideration of Runyon v. McCrary

Attached is a copy of the amicus brief filed by the American Jewish Congress and Marvin E. Frankel as Counsel of Record and joined by ADL and 109 other organizations in Patterson v. McClean Credit Union.[1] After granting certiorari on another issue, the Supreme Court decided on its own motion to hear argument on the question of whether its 1976 precedent Runyon v. McCrary ("Runyon"), interpreting Section 1981 to prohibit racial discrimination in the making and enforcing of private contracts, should be reconsidered and potentially overruled even though reconsideration of this issue was not requested by the parties. The amicus brief joined by ADL forcefully argues that the Supreme Court should not reconsider its decision in Runyon.

The Supreme Court in Runyon v. McCrary (1976) and earlier in Jones v. Alfred H. Mayer Co. (1968), interpreted two sections of the 1866 Civil Rights Act to prohibit racial discrimination in different types of private contractual arrangements. Prior to the decision in Runyon, the Court in Jones v. Mayer had interpreted Section 1982 of the statute to prohibit racial discrimination in the sale or rental of private as well as public property. In Runyon v. McCrary the Court relied upon Jones and interpreted Section 1981 to prohibit private, commercially operated, non-sectarian schools from denying admission to prospective students solely on the basis of race. If Runyon is reconsidered, the Supreme Court may overrule its 7-2 decision in Runyon and reinterpret Section 1981 to allow racial discrimination in this type of private contract.[2]

The brief filed by the amici argues that the Court's interpretation of Section 1981 in Runyon must stand. First, the brief argues that the Court's decision in Runyon is an integral part of the network of judicial decisions and legislation that have played a crucial role in condemning and reducing racial

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[1]The case originally concerned the issue of the cognizability of racial harassment claims under 42 U.S.C. Section 1981 ("Section 1981"), part of the 1886 Civil Rights Act which provides that "[a]ll persons within the jurisdiction of the United States shall have the same right ... to make and enforce contracts ... as is enjoyed by white citizens."

[2]The ramifications of such a decision are clearly enormous. One immediate concern would be the continued viability of the Shaare Tefila decision which held that Jews are a race for purposes of Section 1981 and Section 1982.

discrimination in the United States and forging of a national consensus against it. Yet a great deal of racial discrimination still exists in this country, and overruling Runyon would greatly harm the national fight against discrimination.

Moreover, the brief argues that the rule of stare decisis applies in this case with compelling force to sustain the Court's interpretation of Section 1981 in Runyon. While arguing that Runyon correctly construed Section 1981 as prohibiting private racially motivated refusals to contract, the brief asserts that even if that interpretation were doubted, considerations of stare decisis would weigh heavily against reconsidering the decision. Especially in circumstances such as this involving statutory construction, where Congress has knowingly accepted and ratified the Supreme Court's interpretation of a congresaional statute, the principle of stare decisis has special force. Furthermore, not only has Congress accepted Runyon, but many subsequent decisions of the Supreme Court as well as lower courts have also relied upon Runyon. These subsequent court decisions involve both Section 1981 and a variety of other discrimination issues. Parties who have been subject to discrimination and who have relied upon Section 1981 procedures and remedies, some of them having foregone redress available under other anti-discrimination statutes, would find themselves without remedy if Runyon were overruled.

Finally, the brief argues that the heavy burden required to persuade the Court to overrule a prior Supreme Court decision has not been met. On the contrary, none of the reasons that may justify a departure from precedent is present in this case. There have been no changes in social or economic circumstances in this country to warrant overruling Runyon, there are no legal policies rendering Runyon unworkable for the judicial system, nor has Runyon been proven unworkable in practice. Therefore, there are no sound legal or policy reasons for the Court to depart from its usual principles and reconsider or overrule its own precedent.

LDT:ms

cc: ADL Regional Directors

No. 87-107 Lois Thapson-AOC

IN THE

Supreme Court of the United States

October Term, 1987

BRENDA PATTERSON,

Petitioner,

vs.

McLEAN CREDIT UNION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals For the Fourth Circuit

ON REARGUMENT

BRIEF FOR AMICI

American Jewish Congress, Leadership Conference on Civil Rights, American Civil Liberties Union, American Federation of Labor—Congress of Industrial Organizations (AFL-CIO), American Jewish Committee, Anti-Defamation League of B'nai B'rith, Disability Rights Education and Defense Fund, League of Women Voters of the U.S., Mexican American Legal Defense and Educational Fund, National Association for the Advancement of Colored People (NAACP), National Organization for Women Legal Defense and Education Fund, People for the American Way and Other Organizations.

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American Federation of State, County, &
Municipal Employees
The American Federation of Teachers (AFL-CIO)
The American Nurses Association
Americans for Democratic Action, Inc.
Americans for Indian Opportunities
The American Veterans Committee, Inc.
Asian American Legal Defense and
Education Fund
The Association for Retarded Citizens of the U.S.
ASPIRA
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B'nai B'rith Women, Inc.
Business and Professional People
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Catholics for a Free Choice
The Center for Community Change
The Center for Law and Social Policy
The Children's Defense Fund
The Church of the Brethren—World
Ministries Commission
Citizen Action
The Coalition of Labor Union Women
Common Cause
The Communications Workers of America

The Community Relations Conference of Southern California
Congress of National Black Churches
The Department of Church in Society, Christian Church
The Federation of Organizations for Professional Women
The General Board of Church and Society of the United Methodist Church
The Human Rights Campaign Fund
The Indian Law Resource Center
The International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO
The International Union, United Automobile Aerospace and Agriculture Implement Workers of America
The Japanese American Citizens League
The Jewish Labor Committee
The League of Rural Voters Education Project
The League of United Latin-American Citizens
The Mental Health Law Project
The Mexican American Women's National Association
The Migrant Legal Action Program, Inc.
Minnesota Lawyers International Human Rights Committee
The Minority Business Enterprise Legal Defense and Education Fund, Inc.
The National Abortion Rights Action League
The National Alliance of Postal and Federal Employees
The National Association for Equal Opportunity in Higher Education
The National Association of Human Rights Workers
The National Association of Social Workers
The National Bar Association, Inc.

Question Presented

Whether or not the interpretation of 42 U.S.C. §1981 adopted by this Court in *Runyon* v. *McCrary*, 427 U.S. 160 (1976) should be reconsidered.

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Interest of the Amici

The *amici* are over 110 national organizations representing millions of Americans, men and women from all walks of life, and numerous races, ethnic groups and creeds. They represent a cross-section of American life. Not surprisingly, these groups often disagree with each other on many of the fundamental issues facing American society.

That they have all come together in support of the principles of equality articulated by this Court in *Runyon* reflects the degree to which there is fundamental agreement that racial discrimination has no place in American life, public or private, and that no socially desirable end would be served by a repudiation of *Runyon*.

The specific interests of the individual *amici* are found in the Appendix.

The brief is filed with the consent of the parties.

Summary of Argument

Runyon v. McCrary, 427 U.S. 160 (1976), is part of a web of judicial decisions and legislation that played a crucial role in condemning and reducing racial discrimination and helped forge a national consensus against it. Building upon *Brown* v. *Bd. of Educ.*, 347 U. S. 483 (1954), those decisions and enactments mark a turning point in the Nation's position on racism, charting a course toward its elimination.

Runyon has become an integral part of the law; it cannot be excised without doing major harm to the entire fabric of rules that regulate discriminatory behavior and establish the national consensus. This vital development adds decisively to the normal weight of *stare decisis* in this case.

Notwithstanding the well settled policy against discrimination, the unfortunate fact is that discrimination still exists. If the Court were to overrule *Runyon*, it would be sending a signal that racial discrimination is again legally and morally permissible. Principles of *stare decisis* and fidelity to the Court's special role in purging the Nation of racial discrimination counsel against such an action.

Although *amici* believe that, as recent scholarship demonstrates, *Runyon* correctly interpreted the legislative history of §1981, this brief argues that *stare decisis* would be in any event sufficient ground for reaffirmance. *Runyon* raised the question of statutory interpretation directly; the presentations were thorough; the social context in which the case was decided—specifically the activities of schools, many of them set up to avoid mandatory busing for integration purposes—made clear that the decision would be sweeping in its social impact.

Where a challenged rule is as well considered and well settled as that of *Runyon*—itself not a startling departure from prior decisions, but a logical development from *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409 (1968), and its progeny—the challenger bears the heavy burden of persuading the Court, beyond doubt, that "it has misread the relevant statute and its history," *Patsy* v. *Florida Board of Regents*, 457 U.S. 496, 517 (1982) (White, J. concurring). That showing is not made here.

Even if the Court does not view the legislative history as dispositive, where the questioned precedent has become a basic building block in the law and the legislative branch has relied and built upon it, as is the case here, *stare decisis* ought to control.

Stare decisis always carries special weight in matters of statutory construction, for Congress is free to change the Court's interpretations of a statute. Its failure to do so imports approval of the judicial construction. That is particularly true in the civil rights field, because civil rights decisions are uniquely visible, given the definitional role they play in society. The Court's interpretations of civil rights statutes have been revisited frequently by Congress, and frequently reversed when found to have placed too narrow a construction on those statutes.

Congress has not overturned *Runyon*, but instead has knowingly accepted and ratified it, incorporating it into subsequent legislation. Thus, the evidence of Congressional ratification is substantial. Even before *Runyon* had been decided, but in the aftermath of *Jones*, the Congress refused to make Title VII of the 1964 Civil Rights Act the exclusive remedy for employment discrimination. The proponents of doing so were seeking to repudiate lower court decisions which, in light of *Jones*, had read §1981 as creating a parallel, but independent, remedy. Their successful opponents determined that Congress ought not to abolish a 100-year-old remedy for racial discrimination, and that it was in any event appropriate to allow victims of racial discrimination a choice of remedies.

Several years later, Congress again treated *Runyon* as part of the body of civil rights law when it incorporated it into legislation enacted in response to *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240 (1975), allowing courts to award attorneys fees in cases brought, *inter alia*, under §1981.

Congress is not alone in treating *Runyon's* interpretation of §1981 as a settled aspect of the law of civil rights. This Court has done so as well. The *Runyon* holding was foreshadowed in *Jones* v. *Alfred H. Mayer Co.*, 392 U. S. 409 (1968) and made explicit in *Tillman* v. *Wheaton-Haven Recreation Association*, 410 U. S. 431 (1973), and *Johnson* v. *Railway Express Agency*, 421 U. S. 454 (1975). Since *Runyon*, the Court has repeatedly applied §1981 to private conduct. But the Court has not limited its use of *Runyon* to direct applications to discriminatory conduct. It was cited in *Bob Jones University* v. *U. S.*, 461 U. S. 574, 593 (1983), as evidence of a "fundamental national policy against racial discrimination in private education."

Yet another indication that *Runyon* is inextricably interwoven into the fabric of the law is the extent to which it is cited by the lower courts. The clear development of the law has led parties, in reliance on *Runyon*, to forego Title VII remedies in favor of §1981. Overruling now would dash their legitimate expectations in a way that "would be intolerable," as Judge Cardozo put it.

Stare decisis reflects a judgment that the very fact of change in a rule of law has a social impact that must be justified by the incremental benefits of the new rule over the old. Where, as in this case, it is the existing rule that serves the higher social objectives, there is no reason to discard the old rule.

There are, of course, occasions for departing from *stare decisis*. The existing rule may come to be unacceptably at odds with the body of law to which it relates. It may come to disserve rather that to serve agreed goals of the law. But no one contends, or could contend, that any such occasion for overruling is present with respect to *Runyon*.

The critical end served by *Runyon* is the full social and economic equality of racial minorities. That goal is as urgent now as it was in 1976, and indeed in 1866. This the most powerful kind of occasion for applying *stare decisis*.

ARGUMENT

I.

THIS COURT'S DECISION IN *RUNYON* CONSTITUTES AN INTEGRAL PART OF NATIONAL LEGAL PROTECTIONS AGAINST RACIAL DISCRIMINATION

When this Court requested the parties to brief and argue whether or not its interpretation should be reconsidered, it necessarily invoked consideration not merely of a narrow issue, but of the impact that a change of legal position would have on society. *See, Helvering* v. *Griffith*, 318 U.S. 371, 400 (1942).

The decision of this Court in *Runyon* v. *McCrary*, 427 U.S. 160 (1976) as well as its decision in the prior case of *Jones* v. *Alfred H. Mayer*, 392 U.S. 409 (1968), giving life to the 1866 Civil Rights Act, must be viewed in context. They were not isolated occurrences but rather part of what has become a comprehensive structure of law including new statutes and regulations designed to guard against discrimination in both the public and private spheres, adopted in the period following this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

For much of this century, this Court has struggled to make real the promise of the Declaration of Independence—that all men are created equal—a promise that was broken as early as the Constitution's compromises on slavery. The most dramatic turning point in that struggle was the Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), marking the end of the reign of separate-but-equal, and a return to the promise of the Reconstruction-era Amendments.

To be sure, this national policy of eradicating racial discrimination has eliminated many of the most odious forms of invidious discrimination. Blacks, and Mexican Americans too, can along with Whites now be born in the same hospitals, eat at the same lunch counters, relieve their thirst at the same drinking fountains, ride together on public transportation, and be buried in the same cemeteries.

From the 1960's on, a national consensus emerged that racial discrimination is intolerable. Court decisions have been rein-

forced by legislative action at the national and state levels. For "the past quarter of a century, every pronouncement of this Court and myriad Acts of Congress and Executive Orders attest a firm national policy to prohibit racial segregation and discrimination." *Bob Jones University* v. *U.S.*, 461 U.S. 574, 593 (1983).

That legislative and judicial activity worked a major transformation for the better in attitudes towards racial equality. But as evidenced by a substantial body of case law under the various anti-discrimination statutes, studies of public opinion and the continuing disparity between blacks and whites in educational and economic status, there remains a substantial gap between acceptance of principles of non-discrimination in theory and their implementation in practice. Although the frequency of officially countenanced discrimination which existed a third of a century ago has diminished substantially, racial discrimination remains a present day reality. Much existing racial discrimination is reflected in the cases on this Court's docket during the 1980's. These cases include judicial findings of racial discrimination in private employment as well as in public employment, racial discrimination in recalcitrant efforts to stem school desegregation, racial discrimination even in parental custody determinations, and racially discriminatory denials of the right to vote. "It would ignore reality to suggest that racial and ethnic prejudice do not exist or that all manifestations of those prejudices have been eliminated." *Palmore* v. *Sidoti*, 466 U.S. 429, 433 (1984).

Those continued "manifestations" are cautionary signs. They warn against any suggestion by the Court that certain forms of racial discrimination are no longer unacceptable. A suggestion of this sort from this Court would do great harm to the national consensus that racial discrimination is morally repugnant.

We have approached in light of this Court's leadership in the struggle for racial equality the question now posed by the Court: "Whether or not the interpretation of 42 U.S.C. §1981 . . . in *Runyon* . . . should be reconsidered . . . ." Guided by that light, we believe it to be clear that the question calls for a negative answer. This submission is supported by a series of intermediate conclusions.

(1) There are no changed factors since the thoroughly considered *Runyon* decision that could warrant overruling.

(2) The acceptance by Congress of both *Jones* v. *Alfred H. Mayer* Co., *supra*, and *Runyon* v. *McCrary*, *supra*, together with the extensive jurisprudence predicated upon those decisions by this Court and the lower federal courts, adds significant momentum and weight to the claims of *stare decisis*.

(3) The usual weight of *stare decisis* is enhanced in this case by a matured judicial and social consensus on the principles of racial equality to which the Court's jurisprudence for almost a half-century has been both a major impetus and a continuing response.

(4) No changes in the social conditions addressed by 42 U.S.C. §1981 or any other pertinent legal circumstances diminish the force of *stare decisis* in this case.

In discussing these interrelated subjects, this brief proceeds upon the premise that *Runyon* v. *McCrary* was not a startling or unexpected departure from prior decisions, but instead grew out of *Jones* v. *Alfred H. Mayer Co.* and its progeny. While the cases are arguably distinguishable from each other, *Runyon* v. *McCrary*, *supra*, 427 U.S. at 213 (White, J., dissenting), it does not follow, even on that view, that the Court may now focus on *Runyon* alone.

The connectedness of *Jones* and *Runyon* in the decisional process, and the fact that in the intervening years the two cases have been understood by the Congress, the courts, and the public at large as giving rise to a common web of rules barring private racial discrimination, and as enunciating a "fundamental national public policy against racial discrimination," *Bob Jones University* v. *U.S.*, *supra*, 461 U.S. at 593-94, suggest that the Court, in pursuing the inquiry on which it has embarked, will find it essential to consider *Runyon* against the larger background of *Jones* and related cases.

II.

STARE DECISIS APPLIES WITH COMPELLING FORCE TO SUSTAIN THIS COURT'S PRIOR CONSTRUCTION OF THE CIVIL RIGHTS ACT OF 1866

A. The Decisions in *Jones* and *Runyon*, Correct and Important When Made, Would Stand on the Ground of *Stare Decisis* Even if they Were Doubtful.

Many of the *amici* here filed briefs in *Runyon* and *Jones* urging that the Court construe §1981 and §1982 to apply to private conduct. All of the *amici* continue to believe that *Runyon* correctly construed that statute and its legislative history.

We submit that the decisions were and are sound for our time in every essential respect. Supporting, without repeating, the arguments on the merits of those cases by petitioner herein, we note that historical as well as legal scholarship continues to support this Court's conclusion that the Civil Rights Act of 1866 was understood by contemporaries to reach private racial discrimination, so that in the years following passage

> judges rejected attempts of defense attorneys to read into the Civil Rights Act an interpretation that limited its application to cases in which rights were infringed by some form of racially discriminatory state action. Federal jurisdiction was applied whether or not state discrimination was involved

R.J. Kaczorowski, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice and Civil Rights*, 1866-1876 (1985) at 8-9.[1]

To be sure that conclusion has been questioned. Beyond the dissents in both *Jones* and *Runyon*, Justices have criticized the decisions retrospectively, but then gone on to accept them as vital constructions of basic statutes withdrawn from judicial reconsideration by force of *stare decisis*. *See Runyon*, 427 U.S. at 186 (Powell, J., concurring); *id.* at 189-90 (Stevens, J., concurring).[2] This ultimate conclusion—that time and circumstances have

[1] *See also* brief *amici curiae* of C. Vann Woodward, *et. al.*; Gibbons, Book Review, 62 N.Y.U.L.Rev. 1379 (1987).

[2] As noted below, *see* Point II, c, even the dissenters in *Jones* and *Runyon* have joined, even authored, opinions applying those decisions to new circumstances involving private acts of racial discrimination.

made *stare decisis* the dispositive principle on this occasion—has our primary and vigorous support in this brief.

The claims for *stare decisis* are made now for decisions that followed thorough presentations. The Court's responses to those presentations were thorough. The outcomes were, to say the least, logical and enlightened interpretations, now woven into the fabric of our statutory law.

The determination in *Runyon* that §1981 bars private racially motivated refusals to contract was certainly not a casual, incidental or subsidiary holding. The first contention made by petitioner Runyon was that:

> 42 U.S.C.A. §1981 Has No Application To Private Conduct. Congress Never Intended To Infringe on Private Acts. The Contract Clause of §1981 Does Not Prohibit Private Discrimination.

Brief of Petitioner Runyon at 2. Each of the parties and most of the *amicus* briefs, including that of the United States, devoted substantial attention to the legislative history of the Civil Rights Act of 1866.

The setting in which those submissions were made could only have heightened the importance of the disputed history. The *Runyon* cases were filed shortly after the Court had upheld busing as a remedy for school segregation, *Swann* v. *Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1 (1971). In many parts of the country segregated private academies threatened to undermine successful integration of the public schools. Thus, *Runyon* stirred questions of the widest public interest. The Court's holding that §1981 did reach private conduct and could be applied to private schools was forseeably sweeping in its impact. And undoing Runyon would have a likewise forseeably sweeping impact, in the first instance by sanctioning discrimination by private schools.

In cases such as this, where a well settled rule of law is challenged on the ground that the Court originally misapprehended the meaning of the statute, a challenger bears a particularly heavy burden of proof. Members of this Court have suggested various formulas to determine when the Court may overrule one of its statutory precedents. Justice Harlan, concurring in *Monroe* v. *Pape*, 365 U.S. 167, 192 (1961), wrote that before overruling would

merit consideration it must "appear beyond doubt from the legislative history . . . that [the Court] misapprehended the meaning of the controlling provision."[5]

Recently restated by Mr. Justice White, the sound principle is that to warrant overruling "in a statutory case, a particularly strong showing is required that [the Court has] misread the relevant statute and its history." *Patsy* v. *Florida Board of Regents*, 457 U.S. 496, 517 (1982) (concurring opinion). Under neither formulation is overruling of *Runyon* justified.

Even if the Court does not regard petitioner's showing on the legislative history as sufficient to dispel all doubt about the meaning of §1981, reexamination of *Runyon* is nevertheless not appropriate. As Justice Harlan observed in *Monroe*, matters of disputed legislative history, such as those canvassed in the several opinions in *Runyon*, are clear occasions for recalling and applying Justice Brandeis' wise observation that "in most matters it is more important that the applicable rule of law be settled than it be settled right." *Burnet* v. *Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (dissenting).

That is compellingly sound for a case like this one, where the questioned precedent has become a basic building block in the law and the legislative branch, primarily responsible for the rule, and authorized to change it, has instead relied and built upon this Court's interpretation.

B. Congress Has Approved and Built on this Court's Decision in *Runyon*

"[C]onsiderations of *stare decisis* weigh heavily in the area of statutory construction, where Congress is free to change this

[5] Both the majority and the dissenters in *Monell* v. *Department of Social Services of New York City*, 436 U.S. 658, 700 (1978), appeared to accept Justice Harlan's test as appropriate, although the majority was less certain as to its correctness than was Justice Rehnquist in dissent. *See*, 436 U.S. at 700 n. 65, 715 (Rehnquist, J., dissenting). A portion of *Monroe*'s reading of 42 U.S.C. §1983 (whether a municipality was a person for purposes of that statute) was overruled in *Monell*, *supra*. Justice Harlan's remarks, however, were not directed to this issue, but the "under color of state law" issue raised in *Monroe*. At Point IV, B, *infra*, we explain why the *Monell* result is consistent with *stare decisis*, but overturning *Runyon* is not.

Court's interpretation of its legislation." *Illinois Brick Co.* v. *Illinois*, 431 U.S. 720, 736 (1977), *citing Edelman* v. *Jordan*, 415 U.S. 651, 671 (1974); *Burnet* v. *Coronado Oil & Gas Co.*, *supra*, 285 U.S. at 406-08 (Brandeis, J., dissenting).[4] The failure of Congress to change the law in response to the Court's decision must be taken as an indication "that the interpretation of the Act then accepted has legislative approval," *U.S.* v. *Elgin, Joliet & Eastern Railway Co.*, 298 U.S. 492, 500 (1936).

If the *Jones* and *Runyon* decisions were in some obscure area of the United States Code, it might be unrealistic to treat the Congress' theoretical power to overrule as an affirmative acceptance of the Court's interpretation. Civil rights decisions like these, however, are uniquely visible, for they go to the heart of the society's conception of itself and of the relation of its members to the whole and to each other. In the decade since *Runyon* was decided, Congress has repeatedly intervened to overturn decisions of this Court construing civil rights statutes narrowly.[5] The contrast with the acceptance of *Runyon* is striking and significant.

There is no need in this regard to rely on speculation or presumption, or to construe the silence of Congress, for Congress has on more than one occasion knowingly accepted and ratified this Court's construction of the 1866 Act in *Runyon* and *Jones* as reaching private discrimination. In such circumstances, *stare decisis* has special force, *Square D. Co.* v. *Niagara Frontier Tariff*

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[4] *Accord NLRB* v. *International Longshoremen's Ass'n*, 473 U.S. 61 (1985); *Gulf, Colorado and Santa Fe R.* v. *Moser*, 275 U.S. 133 (1927).

[5] *See* Pregnancy Discrimination Act of 1978, Pub.L. 95-555, 92 Stat. 2076, codified at 42 U.S.C. 2000e(k), overturning *General Electric Co.* v. *Gilbert*, 429 U.S. 125 (1976); Voting Rights Act Amendments of 1982, Pub.L. 97-205, 96 Stat. 131, codified at 42 U.S.C. §1973, overturning *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980); Civil Rights Restoration Act of 1988, Pub.L. 100-259, 102 Stat. 28, codified at 42 U.S.C. §2000d, overturning *Grove City College* v. *Bell*, 465 U.S. 555 (1984); Handicapped Children's Protection Act of 1986, Pub.L. 99-372, 100 Stat. 796, codified at 20 U.S.C. §1415(e)(4)(B)-(G), overturning *Smith* v. *Robinson*, 468 U.S. 992 (1984); *cf.* Civil Rights Attorney's Fees Award Act of 1976, Pub.L. 94-559, 90 Stat. 2641, codified at 42 U.S.C. §1988, overturning *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975).

Bureau, Inc., 106 S.Ct.1922, 1928-29 (1986); *Patsy* v. *Florida Board of Regents*, *supra*.

The first major decision came between the decisions in *Jones* and *Runyon*, when Congress considered amendments to strengthen Title VII of the 1964 Civil Rights Act. In the course of its deliberations, an amendment was offered to make Title VII the exclusive remedy for employment discrimination. Eliminating the "redundant" remedy under the 1866 Civil Rights Act, the proposal would have left §1981 otherwise intact. *See* H.R. Rep. No. 238, 92nd Cong., 2nd Sess., *reprinted in* 1972 U.S. Code Cong. & Admin. News 2137, 2175 (minority views); 118 Cong. Rec. 3172-73 (1972) (remarks of Sen. Hruska).

The proposal was rejected both in the Senate Committee and on the floor. The floor manager of the bill, Senator Williams, explained the objection to the proposal when it came to the floor for consideration:

> It was recently stated by the Supreme Court in the case of *Jones* v. *Mayer*, that these acts [including the Civil Rights Act of 1866] provide fundamental constitutional guarantees. In any case, the courts have specifically held that Title VII and the Civil Rights Acts of 1866 and 1871 are not mutually exclusive, and must be read together to provide alternative means to redress individual grievances.
>
> . . .
>
> The peculiarly damaging nature of employment discrimination is such that the individual, who is frequently forced to face a large and powerful employer, should be accorded every protection that the law has in its purview, and that the person should not be forced to seek his remedy in only one place.

118 Cong. Rec. 3371,3372 (1972).[6] The amendment failed, at first in a tie vote, and, one week later, on a motion to reconsider, by a vote of 50-37. 118 Cong. Rec. 3965 (1972). In opposing the motion

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[6] *Accord* S. Rep. No. 92-415, 92nd Cong., 1st Sess., at 24 (1971) (additional enforcement powers to EEOC not in derogation of existing civil rights statutes).

to reconsider, which opponents urged be treated as a decision on the merits, 118 Cong. Rec. 3961 (remarks of Senator Javits), Senator Williams argued against making Title VII the exclusive remedy for employment discrimination on the ground that it was inconceivable that Congress would abolish an existing remedy for illegal discrimination: "For 100 years, there has been built a body of law dealing with the rights of individuals that would be wiped out."

The House of Representatives, which, in response to lower court decisions granting a cause of action under §1981 for private discrimination, had earlier adopted the exclusivity provision by a narrow margin, 117 Cong. Rec. 32, 111-12 (1971), ultimately accepted the Senate's view that it was inappropriate to repeal the 1866 Civil Rights Act, *Conference Report on H.R. 1746, The Equal Employment Opportunity Act of 1972*, H.R. Rep. No. 92-899, 92d Congress, 2d Sess. (1972).

Both sides, without the benefit of *Runyon*, assumed that §1981 applied to private conduct—indeed, that it had always so provided—and no one questioned that it ought to be so applied outside the employment field.

A further indication that contemporary Congresses have assimilated the *Jones-Runyon* reading of the 1866 Civil Rights Act as the grounding for subsequent lawmaking is the Civil Rights Attorneys' Fees Awards Act of 1976, codified as 42 U.S.C. §1988. That Act was the legislative response to *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975), which had reaffirmed the traditional American rule against the award of attorneys' fees absent statutory authorization. The *Alyeska* Court criticized a series of lower court decisions granting attorneys' fees under various statutory provisions, including the 1866, 1871, and 1875 Civil Rights Acts. 421 U.S. at 270 n.46.

Not surprisingly, when the Congress overturned *Alyeska*, it listed, *inter alia*, §1981 as a statute under which fees could be awarded. It described the class of §1981 cases in which fees could be awarded as those challenging private employment discrimination and discriminatory refusals to admit blacks to private recreational facilities. The relevant committees cited *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454 (1975), and *Tillman* v. *Wheaton-*

Haven Recreation Association, 410 U.S. 431 (1973), in support of these conclusions, *see*, H.R. Rep. No. 1558, at pp. 3-4 n.8; S. Rep. No. 1011, at pp. 3-4, 94th Cong., 2nd Sess., *reprinted* in 1976 U.S. Code, Cong. & Admin. News 5908, 5910-12. The Senate Committee explained:

> [The *Alyeska*] decision and dictum created anomalous gaps in our civil rights laws whereby awards of fees are, according to *Alyeska*, suddenly unavailable in the most fundamental civil rights cases. For instance, fees are now authorized in an employment discrimination suit under Title VII of the 1964 Civil Rights Act, but not in the same suit brought under 42 U.S.C. §1981, which protects similar rights but involves fewer technical prerequisites to the filing of an action. Fees are allowed in a housing discrimination suit brought under Title VII of the Civil Rights Act of 1968, but not in the same suit brought under 42 U.S.C. §1982, a Reconstruction Act protecting the same rights."

The decision to overturn *Alyeska* in regard to §1981 was predicated upon the importance Congress attached to the availability of that statute as a vehicle for eliminating private racial discrimination. As stated by one of the Act's sponsors:

> [w]hen Congress calls upon citizens. . . . to go to court *to vindicate its policies and benefit the entire Nation*. Congress must also ensure that they have the means to go to court." (emphasis added)

122 Cong. Rec. 33313 (1976) (remarks of Senator Tunney). Overturning *Runyon* would frustrate this Congressional policy.

This is a case, then, like *Patsy* v. *Florida Board of Regents*, *supra*, where answers to two key questions counsel against overruling—"whether the decisions in question misconstrued the meaning of the statute as revealed in its legislative history and whether overruling these decisions would be inconsistent with more recent expressions of congressional intent. . . . " 457 U.S. at 501.

Even where the conclusion favoring *stare decisis* on the "history alone is somewhat precarious" (*id.* at 507), which is not the case here, it draws commanding strength when it accords with

"recent congressional activity in [the] area" (*id.* at 502). Here, as in *Patsy*, to alter the statutory construction which has been well known to Congress and accepted as a premise for both action and inaction by the legislators would "usurp policy judgments that Congress has reserved for itself." *Id.* at 508.

It bears emphasis, with the utmost deference, that Congress has gone along—legislating and *not legislating*—with *Jones* and *Runyon* as notable parts of what the statutory law of civil rights means. A decent respect for that coordinate branch counsels against the partial, piecemeal, disruptive change that an overruling would now effect. The joint enterprise of legislating and interpreting has moved 20 and 12 years, respectively, beyond *Jones* and *Runyon*. Congress has not merely acquiesced in those decisions, but has built upon them and around them. Overruling *Runyon* would amount to a legislative revision that Congress has rejected.

C. *Runyon* and *Jones* Have Become Integral Parts of the Decisional Law

1. Runyon and Jones in the Decisions of this Court

Runyon followed the authority of *Jones* v. *Alfred H. Mayer Co.*, *supra*, which held that 42 U.S.C. §1982, the real property counterpart of §1981, barred private acts of racial discrimination. There were hints already in that case foreshadowing the ruling in *Runyon*, 392 U.S. at 422 n.28; *id.* at 442 n.78. Subsequently, in two cases, the Court, without extended discussion, applied the *Jones* holding—that the Reconstruction-era Civil Rights Act reached private activity—to §1981.

In *Tillman* v. *Wheaton-Haven Recreation Ass'n*, *supra*,[7] the Court held that "[i]n light of the historical interrelationship between §1981 and §1982, we see no reason to construe these sections differently . . . ." *Id.* at 439-40. That holding was necessary to resolve the discrimination claims of black visitors to a private swim club who were denied entry but were not denied the right to "purchase, lease . . . [or] hold real property", and so could not invoke §1982.

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[7] *Sullivan* v. *Little Hunting Park, Inc.*, 396 U.S. 229 (1969), a case factually similar to *Tillman*, was bought under both §1981 and §1982. The Court, having found a violation of §1982, did not discuss §1981.

Two years later, in *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454 (1975), the Court considered the relationship of Title VII to §1981 as applied to discrimination in private employment. The Court noted its specific approval of a long line of appellate holdings (based primarily on the decision in *Jones*)[6] that "§1981 affords a federal remedy against discrimination in private employment on the basis of race." *Id.* at 459-60. By analogy to *Jones'* holding that 1982 was independent of Title VIII, 42 U.S.C. §3601 *et seq*, it held that §1981 gave a remedy independent of Title VII, 42 U.S.C. §2000e *et seq*.

Against this legal background, *Runyon* can hardly be said to have been a departure from earlier holdings or an aberration. Indeed, as the majority and concurring opinions made clear, the decision in that case followed from *Jones*, *supra*, *Tillman* v. *Wheaton-Home Recreation Ass'n*, *supra*, and *Johnson* v. *Railway Express Agency, Inc.*, *supra*. It is difficult to see how the Court could determine that one decision should be overruled without implicating and jeopardizing the entire line of cases.

The application of §1981 to private conduct did not begin with *Runyon*, nor did it end there. On the contrary, since 1976, the Court has continued to apply that rule to private discrimination, starting with *McDonald* v. *Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976), hard on the heels of *Runyon*. *General Building Contractors Ass'n* v. *Pennsylvania*, 458 U.S. 375, 390 n.17 (1982), again applied §1981 to private discrimination, specifically reaffirming *Runyon* in the process.

In both *Goodman* v. *Lukens Steel Co.*, 107 S.Ct. 2617 (1987), and *St. Francis College* v. *Al-Khazraji*, 107 S.Ct. 2022 (1987), the Court, in opinions by Justice White, again applied §1981 to private employment discrimination. Underscoring the close "historical interrelationship between §1981 and §1982," *Tillman* v. *Wheaton Recreation Ass'n, Inc.*, *supra*, 410 U.S. at 439-40, the holding in *St. Frances College*, that §1981 embodied a broader

[6] *See, e.g., Waters* v. *Wisc. Steel Workers*, 427 F.2d 476 (7th Cir.), *cert. denied*, 400 U.S. 911 (1970); *Long* v. *Ford Motor Co.*, 496 F.2d 500 (6th Cir. 1974); *Macklin* v. *Spector Freight Systems, Inc.*, 478 F.2d 979 (D.C. Cir. 1973); *Brady* v. *Bristol-Meyers, Inc.*, 459 F.2d 621 (8th Cir. 1972); *Brown* v. *Gaston County Dyeing Machine Co.*, 457 F.2d 1377 (4th Cir.), *cert. denied*, 409 U.S. 982 (1972); *Young* v. *I.T.T.*, 438 F.2d 757 (3rd Cir. 1971).

concept of race than current anthropological theories, was then held controlling in a companion case brought under §1982, *Shaare Tefila Congregation* v. *Cobb*, 107 S.Ct. 2019 (1987).

The impact of *Runyon* has spread far beyond the confines of litigation about whether §1981 has been violated. In *Fullilove* v. *Klutznick*, 448 U.S. 448 (1980), Justice Powell, whose vote was crucial to the result, explicitly referred to §1981, as construed in *Runyon*, as supporting authority for the Congressional decision to mandate race conscious set-asides. 448 U.S. at 500; *id.* at 506. For him, the existence of widespread illegal discrimination in both the public and private[9] sectors, was a *sine qua non* of upholding the set-aside. As to private contracting, §1981, with the *Runyon* gloss, created the requisite illegality.

Runyon has been understood as standing for far more than a narrowly legal proposition. In *Bob Jones University* v. *U.S.*, *supra*, 461 U.S. at 593-94, *Runyon* was cited as evidence of a "fundamental national public policy" against racial discrimination in private education. Overruling Runyon would make such discrimination legal, and would thus announce law at odds with "fundamental national policy."

2. *Runyon and Jones in the Lower Courts and the Reliance of those Suffering Discrimination*

The impact of *Jones* and *Runyon* is not limited to the work of this Court. Even the briefest glance at Shepard's Citations or a computer print-out of Lexis or Westlaw will disclose the extent to which these cases have become embodied in the daily work of the lower federal and state courts, and an element of the national campaign against racial discrimination. The citations also evidence the extent to which a body of law has led the public at large to rely on the *Jones-Runyon* line of decisions. *Stare decisis* protects such settled expectations, *Vasquez* v. *Hillery*, 106 S.Ct. 617 (1986); *Helvering* v. *Griffiths*, 318 U.S. 371, 400, 404 (1943).

In employment discrimination cases, which constitute the bulk of the reported §1981 cases in the lower courts, §1981 differs in several respects from Title VII: immediate access to court, pu-

[9] In 1980, private construction constituted almost 80 percent of the value of all construction. 1987 *Statistical Abstract of the U.S.* at 701 (Table 1263).

nitive and compensatory damages (particularly important in hostile environment cases, where backpay is not appropriate), jury trials, and, in many states, a longer statute of limitations, *Johnson* v. *Railway Express Agency. Inc., supra.* It applies to employers of firms hiring less than 15 employees. Those who might otherwise prefer to take advantage of the Equal Employment Opportunity Commission's conciliation processes may be deterred by long delay and errors by the Commission.[10] *See Staff Report on the Investigation of Civil Rights Enforcement By the E.E.O.C.*, Serial No. 99-Q, House Committee on Educ. and Labor, 99th Cong. 2d. Sess. (May 1986). On the other hand, Title VII offers a lower standard of proof, and the availability of E.E.O.C. investigation, conciliation, and enforcement. The remedies are independent and complementary; and by Congressional choice, the election of remedies is for the plaintiff.

If the Court were to reverse *Runyon*, parties who have relied upon §1981 procedures and remedies, some of them having foregone redress available under Title VII, would find themselves without remedy. The "injustice and oppression" inherent in the disappointment of legitimate reliance on *Runyon* by lawyers and their clients "would be so great as to be intolerable." B. Cardozo, *The Nature of the Judicial Process* (1921) at 147.

Jones and *Runyon* are much more than illustrations of what Justice Douglas described when he referred to *stare decisis* as "a strong tie which the future has to the past," *Stare Decisis*, 49 Colum. L.Rev. 735, 736 (1949). With effects radiating beyond their specific holdings, these precedents have helped to build and sustain the "fundamental national public policy" against racial discrimination in legal relationships, public or private.

To gouge them out of the body of the law could not work neatly as micro-surgery, excising only two "cases." The overruling would cast doubt upon living legal doctrine of which the two cases are vital parts. It would unsettle congressional and wider public understandings that racial discrimination is illegal in employment, in private as well as public education and in many large, not necessarily all, social and economic arrangements which take

[10] *Cf.* Age Discrimination Claim Assistance Act of 1988, P.L. No. 100-283, 102 Stat. 78 (extending statute of limitations in cases held beyond limitations period by E.E.O.C.)

contractual form. Stepping in now to work such a revision in the meaning of a statute, when Congress has not seen fit to do that, would disserve the national purposes for which this Court sits.

III.

THE CONSTRUCTION IN *RUNYON* HAS BEEN STRENGTHENED AND APPROVED BY THE TESTS OF TIME, SOCIAL APPROVAL AND RELIANCE

A. The Inquiry in a *Stare Decisis* Case is Broader and More Policy-Driven Than in a *De Novo* Case of Statutory Interpretation

Stare decisis rests on "practical . . . and policy considerations," *U.S.* v. *Southeastern Underwriters Ass'n*, 322 U.S. 533, 594 (1944) (Jackson, J. dissenting), underlying the role of the judiciary, and the public perception of it, in the society. Whether or not to overturn a particular decision depends on a careful appraisal of the "practical effects of one [rule] against the other." R. Jackson, *Decisional Law and Stare Decisis*, 30 A.B.A.J. 334 (1944).

The presumption against overruling embodied in *stare decisis*, a presumption not overcome by a mere showing that a new rule is sounder in a technical sense than the old, *Illinois Brick Co.* v. *Illinois, supra*, 431 U.S. at 737, requires a court not only to consider a narrow legal issue, but to gauge the impact that the very fact of changing the legal position will have on society. See *Helvering* v. *Griffiths, supra*, 318 U.S. at 400.

Here, the sure foreknowledge of what the relevant impacts will be adds to the weighty reasons for renewed adherence to, not departure from, *Runyon*. The proponents, if any, of abandoning *Runyon* cannot meet "the heavy burden of persuading the Court that changes in society or in the law dictate that the values served by *stare decisis* yield in favor of a greater objective . . . ." *Vasquez* v. *Hillery, supra*, 106 S.Ct. at 625. On the contrary, the *Runyon* rule furthers the "social interest served by equity and fairness or other elements of social welfare." B. Cardozo, *The Nature of the Judicial Process*, 113 (1921).

B. The *Runyon* Rule Captures the National Consensus Against Racial Discrimination

If governmental discrimination was and is peculiarly obnoxious, it remains true that no minority group can be, and perceive

itself as being, fully part of the community when it is subject to invidious discrimination in the sector still fairly called "private." The ability to compete effectively in that sector—in employment, in housing, in access to public accommodations, in admission to non-public schools and the like—is a critical necessity.

Runyon, its progenitors and progeny, are not legal anomalies extending the rule of non-discrimination where democratically elected legislatures fear to tread. Rather, as Senator Javits said in 1972, "the laws of 1866, 1871 as well as 1964, are to implement [the] promise . . . we make under the Constitution to prevent discrimination," 118 Cong. Rec. 3961 (1972).

These and still other legislative responses to the problem of private racial bias are not the product of a determined minority or highly skilled lobbyists, but a reflection of a broad and deep-seated public consensus. H. Schulman, C. Stech, and L. Bobo, *Racial Attitudes in America* (1985). It is indicative of that consensus that there have been no serious efforts to overturn *Runyon* legislatively, that the decision is not the subject of great controversy in the legal or popular literature, *cf. Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 108 S.Ct. 1133 (1988), and that no party in this very case sought to have *Runyon* reconsidered.

This Court uses particular "cases" or "controversies" to decide "important questions of federal law," Sup. Ct. R. 17, for the benefit of the Nation as a whole. And for the Nation as a whole, questions of technical doctrine, or the correctness of the Court's historical judgments, are not at center stage. A *sua sponte* decision to overturn a prior decision outlawing racial discrimination would be seen by many as a signal that racial discrimination is once again tolerable, that such discrimination is socially and morally acceptable, that the Supreme Court, which for so many years was the bellwether institution in American life on civil rights, is signaling a shift in national attitudes on this paramount problem. Even if Congress were to overturn such a decision, irreparable damage would be done, for the Court would have used its unique role as a teacher of national values to suggest the acceptability of racial discrimination.

It is the very fact of change that would be of the greatest significance as far as the public is concerned. This is a time, then, for

reaffirming principles of *stare decisis* recalled by the Court not long ago in *Vasquez* v. *Hillery, supra*, 106 S.Ct. at 625:

> *[S]tare decisis* [is] the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion. That doctrine permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.

The negative impact of a reversal of *Runyon* would be felt particularly by minorities and members of other groups protected by civil rights statutes. Affected ineluctably would be their feelings about themselves, their neighbors, their place in the society, and their confidence in the institutions of government, particularly the courts. There is no judicial philosophy and no valid perception of this Court's role that can give these prospective consequences less than compelling weight in considering the question of overturning at this time such precedents as *Jones* and *Runyon*.

IV.

NONE OF THE REASONS THAT MAY JUSTIFY A DEPARTURE FROM PRECEDENT IS PRESENT HERE

Judge Cardozo described circumstances that warrant departures from *stare decisis:*

> If judges have wo[e]fully misinterpreted the *mores* of their day, or if the *mores* of their day are no longer those of ours, they ought not to tie, in helpless submission, the hands of their successors.

The Nature of the Judicial Process, supra, at 151-52. Stare decisis does not require the Court blindly to "perpetuate the injustice," *Jones v. U.S.*, 366 U.S. 213, 221 (1967) of an earlier decision. Stability and predictability are valuable principles, but they are not the only, nor necessarily the most important, values for the legal system.

There is nothing of that sort to weigh in this case against *stare decisis*. Respect for "the *mores* of [our] day" counsels an entirely opposite judgment.

The national needs that underlay *Runyon* are as pressing today for its reaffirmation. Although racial discrimination is now generally regarded as unacceptable, the unfortunate fact remains that, like the grand jury discrimination considered in *Vasquez* v. *Hillery, supra*, it has not become unacceptable in practice. Statutory protections for racial minorities are not mere surplusage, relics of a battle long ago won, which unnecessarily clutter the United States Code. The construction of §1981 to cover private conduct is as essential now as it was in 1976 when *Runyon* was decided.

The present utility of the prior rule is only half the *stare decisis* equation; the other half is whether the proposed new rule of decision—in this case, one permitting racial discrimination in private contracts—would "represent what should be according to the established and settled judgment of society."[12] Again, there is no need to speculate on what that judgment is, for "few social or political issues in our history have been more vigorously debated and more extensively ventilated than the issue of racial discrimination." *Bob Jones University* v. *United States, supra*, 461 U.S. at 595.

In *Norwood* v. *Harrison*, 413 U.S. 455, 469-70 (1973) (footnote omitted) this Court noted the disfavored status of racial discrimination: "although the Constitution does not proscribe private bias, it places no value on discrimination." The array of anti-discrimination statutes passed by Congress and the States, the numerous public and private corporate affirmative action plans aimed at increasing the ability of minority-owned businesses to enter into contractual relationships previously denied to them, give eloquent testimony to the need and resolve to continue the legal assault against racial discrimination. So do the public opinion polls collected and described in H. Schuman, C. Stech and L. Bobo, *Racial Attitudes In America, supra*. And there are no legiti-

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[12] *Dwy* v. *Connecticut Co.*, 89 Conn. 74, 99 (1915), quoted in B. Cardozo, *The Nature of the Judicial Process, supra*, at 151.

mate countervailing goals or pressures that would be served by overruling.

A. No Changed Economic or Social Circumstances Warrant Departure from the Rule of *Stare Decisis*

The "assault on the citadel of privity", *MacPherson* v. *Buick Motor Co.*, 217 N.Y. 382 (1916) and the overturning of the ill-conceived separate-but-equal rule of *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), in *Brown* v. *Board of Education*, 347 U.S. 483 (1954) are among the best known instances of abandoning a long-settled rule of law in light of changed economic or social circumstances. Neither case, of course, involved statutory interpretation.

In both *McPherson* and *Brown* there were fundamental changes in society that the Court pointed to as a justification for overturning earlier decisions. In the case of *McPherson*, the relevant change was from a market composed of artisans dealing directly with customers to a mass market in which producers of goods were several steps removed from the ultimate consumer.

Brown reflected, among many forces, domestic social changes after which it could no longer be pretended that enforced separation of races comported with equality. Emphasizing the latter point in regard to education, the Court said, 347 U.S. at 492, "we must consider public education in light of its full development and its present place in American life . . . " and not the more limited role it played at the time the 14th Amendment was adopted or *Plessy* was decided.

There is no comparable change of circumstances to support overruling in this case. Contracts are still an indispensable part of doing business, and doing business is still a crucial aspect of life in the United States. Private racial discrimination is as offensive as it ever was.

B. The *Runyon* Decision Places No Unusual Burdens on the Judicial System

Amici have discovered no case overturning prior statutory decisions because of changed economic or social conditions alone. There have, of course, been some cases involving departure from *stare decisis* because of changed legal circumstances. In

these cases departing from precedent, not adhering to it, brings unity and cohesiveness to the law, the very goals *stare decisis* is intended to further. No such special circumstances are present here.

In *Puerto Rico* v. *Branstad*, 107 S.Ct. 2802 (1987), this Court overruled the holding of *Kentucky* v. *Dennison*, 24 How. 66 (1861), that the federal courts could not order state officials to comply with the mandatory provisions of the Extradition Clause, Art. IV, §2. *Dennison* reasoned that a federal order to a state official would violate the sovereignty of the states. That conception of the relation of the states to the federal government no longer prevailed, at least after *Ex parte Young*, 209 U.S. 123 (1908).

In *Boys Markets, Inc.* v. *Retail Clerks Union Local 770*, 398 U.S. 235 (1970), the Court overruled its earlier decision in *Sinclair Refinery Co.* v. *Atkinson*, 370 U.S. 195 (1962), that federal courts could not issue injunctions to enforce contractual no-strike provisions. Developments subsequent to *Sinclair Refinery*—the holdings that federal common law governed collective bargaining agreements and that cases involving interpretations of collective bargaining agreements could be removed from state to federal courts—left no-strike clauses wholly unenforceable. Since that combination of legal rules was at odds with federal labor policy favoring no-strike agreements, *Sinclair Refining* was overruled.

Likewise, in *Monell* v. *Department of Social Services of New York City*, the Court overruled that portion of *Monroe* v. *Pape*, *supra*, which had held that a city was not a "person" for purposes of §1983 liability. It noted that the *Monroe* holding was inconsistent both with earlier decisions and with subsequent ones involving other governmental bodies, notably school boards. The rule allowing a school board to be sued was inconsistent with the *Monroe* rule and one or the other had to yield. Since the *Monroe* rule could not be justified on the basis of reliance—no municipality could expect to violate federal law with impunity—it had to yield, *Monell* v. *City of New York*, *supra*, 436 U.S. at 699-701.

Here there are no legal policies at odds with each other. True, in those cases in which Title VII and §1981 overlap, plaintiffs have an opportunity to elect remedies. But the existence of these op-

tions does not reflect conflicting legal policies which if enforced would be at war with each other or with some important federal policy. On the contrary, they represent a conscious policy choice to afford a variety of weapons with which to attack private racial discrimination.

Sometimes social and legal changes converge to require reconsideration of an earlier precedent. *Batson* v. *Kentucky*, 106 S.Ct. 1712 (1986), overturning *Swain* v. *Alabama*, 380 U.S. 202 (1964), illustrates this point. In *Swain*, the Court refused to consider a claim that, in a particular case, the prosecutor had used peremptory challenges in a racially discriminatory manner. It did so because it thought it impossible to prove in a particular case that such challenges were racially motivated.

Although the Court in *Swain* was careful to note its disapproval of the racially discriminatory use of peremptory challenges, its decision was nevertheless taken by some prosecutors to signal approval of such actions. In succeeding years, the discriminatory use of peremptory challenges not only did not decline, 106 S.Ct. at 1725 (White, J., concurring) but, possibly as a result of *Swain*, may have become still more common. See 106 S.Ct. at 1726-27 (Marshall, J., concurring).

Moreover, as the *Batson* majority demonstrated, the Court since *Swain* had held that a defendant could in fact prove purposeful discrimination in the selection of a particular jury panel from "the totality of the relevant facts" 106 S.Ct. at 1721, thus undercutting the theoretical grounds of *Swain*.

The combined impact of these social, factual and legal changes left *Swain* an obstacle to "the court's unceasing efforts to eradicate racial discrimination in the procedures used to select the venire from which individual jurors are drawn." Hence it was overruled. *Runyon*, by contrast, is part of "the court's unceasing efforts to eradicate racial discrimination;" it is as essential as ever to those efforts.

C. The *Runyon* Rule Has Not Proven Unworkable

A rule of law which in the abstract is thought to be sound may prove unworkable in practice. *Stare decisis* is no barrier to the

discarding of such a rule. Such was the case of *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, *supra*, overruling *Enelow* v. *N.Y. Life Ins. Co.*, 293 U.S. 379 (1935), and *Ettelson* v. *Metropolitan Life Ins. Co.*, 317 U.S. 188 (1942).

Enelow and *Ettelson* held that whether stays of certain actions were immediately appealable depended on whether the underlying action was one at law or in equity. Given the merger of the law and equity sides of the District Court, and the difficulty of determining retrospectively and hypothetically whether modern causes of action would have been considered equitable or legal at the time that those terms had substantial significance, the *Enelow-Ettelson* doctrine "lost all moorings to the actual practice of the federal courts," was "deficient in utility and sense," "unsound in theory, unworkable and arbitrary in practice," and "unnecessary to achieve any legitimate goals." *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 108 S.Ct. at 1140. Understandably, with so little to recommend it, the *Enelow-Ettleson* doctrine was abandoned.

As is the case with every prohibitory statute, there is always the question of how far a statute should sweep.[13] The *Jones-Runyon* reading of §§1981 and 1982 raises fewer problems in this regard than do decisions under Title VII, the Sherman Anti-Trust Act, the Clean Air Act, or hundreds of other statutes.

The familiar problem of setting limits, to be dealt with case by case, is no ground for overruling a precedent that gives rise to the problem. There are, in a word, no reasons of substance for discarding the settled interpretations of §§1981 and 1982 so long accepted by the Congress and the affected citizenry.

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[13] It is also quite possible that in some future case the Court will be called upon to determine the reach of §1981 in light of constitutional claims of association or religion. That situation, not present in the instant case, would not in any event suggest the unworkabilty of §1981.

CONCLUSION

For the reasons stated, the interpretation of §1981 announced in *Runyon* v. *McCrary* should not be reconsidered.

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APPENDIX

APPENDIX A
INTEREST OF THE AMICI

The American Jewish Congress is an organization of American Jews founded in 1918 to preserve the civil, religious, political and economic rights of American Jews and all Americans. It participated in many of the leading civil rights cases of the last four decades, including both *Jones* v. *Alfred H. Mayer* and *Runyon* v. *McCrary*.

Affiliated Leadership League of and for the Blind of America is a coalition of national and state groups interested in blindness and programs for the blind and severely visually impaired. Also, it seeks to protect the civil rights of the disabled.

The Alliance for Justice is a national association of public interest legal organizations working for equal justice. It is particularly concerned with the rights of minorities and women and works toward removing the vestiges of discrimination against these groups. A number of the Alliance's member organizations representing these groups have relied on *Runyon* as precedent for further delineating the rights of minorities.

Alpha Kappa Alpha Sorority Inc. is a national Greek-lettered organization which is comprised of over 100,000 members in more than 725 undergraduate and graduate chapters. In 1908, the Sorority became the country's first Greek lettered organization which was established by and for Black women. Long active in the civil rights and affirmative action movement, the Sorority is concerned with this court's decision to revisit the issues decided in *Runyon* v. *McCrary* and urges that the interpretation of 42 U.S.C §1981 announced therein should be reaffirmed.

The American-Arab Anti-Discrimination Committee (ADC), founded in 1980 to defend the civil rights of people of Arab descent and to promote their rich ethnic heritage, is a grassroots advocacy organization based in Washington, D.C. The ADC works toward protecting the civil rights of all people and assuring equal treatment under the law regardless of race, religion, national origin, sex or any other basis of invidious discrimination.

The American Association for Affirmative Action is a national association of individuals and organizations from the public and private sectors who are dedicated to the development and

enhancement of equal employment opportunity, affirmative action programs and to professional growth in the field.

American Association of University Women (AAUW), a national organization of over 150,000 college-educated women and men, is strongly committed to promoting and achieving legal, social, educational and economic equity for women. AAUW supports legal protection for the rights of all individuals and opposes all forms of discrimination.

The American Civil Liberties Union (ACLU) is a nationwide, nonpartisan organization of over 250,000 members dedicated to preserving and advancing the fundamental civil rights and civil liberties of the people of the United States. In particular, the ACLU has long been involved in the effort to eliminate racial discrimination from our society. In pursuit of that goal, the ACLU has participated in numerous discrimination cases before this Court, and filed an earlier *amicus* brief in this case.

The American Council of the Blind is a national membership organization of the blind and visually handicapped consisting of chapters in almost every state. It has approximately 35,000 members and is dedicated to improving the well being of blind people in all aspects of society.

The American Ethical Union of the Ethical Culture Societies. Ethical culture is a humanistic religious and educational movement inspired by the idea that the supreme aim of human life is working to create a more humane society.

The American Federation of Government Employees, AFL-CIO, (AFGE), is a labor organization which represents approximately 700,000 civilian employees of the federal government. AFGE is the largest labor organization of nonpostal federal employees and represents employees in nearly every major department and agency of the federal government including the Department of Defense Schools. AFGE is deeply committed to the eradication of any form of discrimination.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a federation of 90 national and international unions having a total membership of approximately

13 million working men and women of all races, colors, religions and national origins.

The American Federation of State, County & Municipal Employees (AFSCME) represents more than 1.4 million public employees throughout the United States. Its membership includes employees of state, county, municipal governments, school districts, public hospitals, and nonprofit agencies who work in a cross section of jobs ranging from blue collar to clerical, professionals and para-professionals.

The American Federation of Teachers, AFL-CIO (AFT) is a labor organization of 680,000 teachers, school related personnel, nurses and health professionals, and state employees, with a long tradition of commitment to civil rights.

The American Jewish Committee is a national organization of approximately 50,000 members founded in 1906 for the purpose of protecting the civil and religious rights of Jews. It believes that the security and the constitutional rights of Jewish Americans can best be protected by helping to preserve the security and the rights of all Americans, irrespective of race, creed or national origin, including the broad availability of remedies for invidious discrimination. It, too, was *amicus curiae* in *Runyon* and *Jones*.

The American Nurses Association, (ANA), is a professional association representing 53 constituent state and territorial nurses associations and their almost 200,000 members. As such the ANA is the largest professional representative of registered nurses in the United States and is concerned with the economic, social, and general welfare of both nurses and the society.

Americans for Democratic Action, Inc. (ADA), a liberal, independent, political action, membership organization. ADA is committed to achieving economic and social justice and the promotion of civil, human and constitutional rights for all.

Americans for Indian Opportunities is a nonprofit organization working toward economic self-sufficiency for American Indians and political self-government for tribal members.

The American Veterans Committee, Inc. (AVC), founded in 1943, is a national organization of veterans who served honorably in the Armed Forces of the United States in World War I, World

War II, Korean War, or Vietnam War. AVC has filed *amicus* briefs in many court cases expressing AVC's strong belief that discrimination based on race, color, religion, sex, or national origin is detrimental to the national welfare.

The Anti-Defamation League of B'nai B'rith is an organization of American Jews formed in 1913 to combat all forms of bigotry. Throughout its history, it has sought "to secure justice and fair treatment to all citizens alike and to put an end forever to unjust and unfair discrimination against and ridicule of any sect or body of citizens" as demonstrated by its briefs in *Runyon* and *Jones*.

The Asian American Legal Defense and Education Fund is a nonprofit corporation established in 1974 under the laws of the states of California and New York. It was formed to protect the civil rights of Asian Americans throughout the Nation through the prosecution of lawsuits and the dissemination of public information.

The Association for Retarded Citizens of the United States, (ARC) marking its 39th year of nationwide service to people with mental retardation, is made up of over 160,000 members in some 1,300 local and state ARC chapters across the country. One of ARC's goals is to ensure that persons with mental retardation are entitled to and exercise their full range of human and civil rights.

ASPIRA is a national nonprofit association providing educational and leadership services and advocacy on behalf of Hispanic youth.

The Black Women's Agenda, Inc., (BWA), founded in 1979, is a private, nonprofit, voluntary organization of distinguished black women invited to serve. BWA is committed to public policy changes to secure human and civil rights for black women and their families.

B'nai B'rith Women, Inc., (BBW) is a Jewish women's service and advocacy organization.

Business and Professional People in the Public Interest, (BPI), is a nonprofit law center active in civil rights and other public interest cases. BPI members are dedicated to securing fair treatment and effective remedies for all persons.

Christian lines of action which assist humankind to move toward a world where peace and justice are achieved."

The Human Rights Campaign Fund, (HRCF), is the largest political action committee representing the interests of the gay and lesbian community on the national level, and the ninth largest independent PAC in the United States. HRCF is dedicated to equal rights for all and works diligently to preserve civil rights.

The Indian Law Resource Center is a non-profit legal and educational organization promoting the rights of Native Americans in the United States and throughout the Americas. The Center is dedicated to ending racial discrimination and to guaranteeing equality and opportunity for Indians under the law.

The International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, (IUE) has approximately 200,000 members throughout the Nation who are employed in the electrical equipment and related industries. Of this total membership, substantial numbers are minorities and/or women. The IUE, by its constitution, contracts, actions and lawsuits, has been in the forefront of the Nation's struggle to establish equal opportunity in employment for minorities and women.

International Union, United Automobile Aerospace & Agricultural Implement Workers of America (UAW), with about one million members and 500 retired members, has been one of the labor movement's leaders in protecting civil rights and in prosecuting civil rights cases during its 50 year history.

The Japanese American Citizens League (JACL) is a nonprofit, educational, human and civil rights organization. As a national organization, JACL has 115 chapters throughout the United States, incorporating 25,000 members.

The Jewish Labor Committee (JLC) is a nonsectarian Jewish defense agency which serves as a link between the Jewish community and the trade union movement bringing to each the concerns of the other.

The Leadership Conference on Civil Rights is a voluntary, nonpartisan association of approximately 180 autonomous national organizations representing minorities, women, disabled persons, labor, and major religious groups and older Americans.

Interest of the Amici

The Conference has served for 38 years as the coordinating mechanism on behalf of legislative and executive branch advocay for the civil rights coalition.

The League of Rural Voters Education Project, (LRVEP), is dedicated to increasing the effective participation of rural voters in the political process. Since 1983, LRVEP has provided educational media tools, a national strategy, and various educational publications to help rural people change the political roots of the current farm crisis.

The League of United Latin-American Citizens (LULAC) is the oldest and largest Hispanic organization in the United States. Since 1929, LULAC has worked to assure Hispanic citizens a good education, a better job and the civil rights promised to every American.

The League of Women Voters of the United States (LWVUS) is a non-partisan, nonprofit membership organization with 105,000 members in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The LWVUS believes that government and private institutions share responsibility to provide equal opportunity in education, housing and employment.

The Mental Health Law Project (MHLP) is a nonprofit public-interest organization established in 1972 to protect and expand the legal rights of mentally ill and mentally retarded children and adults. MHLP has represented thousands of mentally disabled people in individual cases and class actions establishing fundamental rights.

The Mexican American Legal Defense and Educational Fund ("MALDEF") is a national civil rights organization established in 1967. Its principal objective is to secure through litigation and education the civil rights of Hispanics living in the United States. Because of the continued discrimination suffered by Hispanics in the private sector—particularly in employment, education, and housing—Hispanics continue to place extensive reliance on the Civil Rights Act of 1866 to vindicate their civil rights.

The Mexican American Women's National Association (MANA) is the Nation's largest membership organization for

cultural and racial justice and to promote the Church's vision of multi-cultural, multi-racial understanding, mutual respect and collaboration consistent with the values and principles of democracy and the Constitution of the United States.

The National Caucus and Center on Black Aged is a membership based organization of 30,000 that provides advocacy services to the low income and minority elderly throughout the United States.

The National Community Action Agency Executive Directors' Association, (NCAAEDA), represents a network of 980 community action agencies around the country who are fighting poverty. NCAAEDA is a professional organization providing training and technical services that support community action.

The National Congress for Puerto Rican Rights is a national Puerto Rican civil rights organization founded in 1981. Its basic mission is to seek the political empowerment and defend the civil rights of all Puerto Ricans and Latinos in the United States.

The National Council of Churches of Christ in the U.S.A. (NCC) is a "community of communions" composed of thirty-two national religious bodies in the United States having an aggregate membership of over 44,000,000. The NCC has been committed throughout its history to the attainment and protection of the civil rights and liberties of all citizens.

The National Council of Jewish Women (NCJW), was founded in 1893. It is an organization comprised of 200 sections across the country with over 100,000 members who are active in advocacy and community service. NCJW is the oldest major Jewish women's organization in the United States. Its members are volunteers dedicated in the spirit of Judaism to the advancement of human welfare and the democratic way of life.

The National Council of La Raza exists to improve opportunities for the more than 20 million Americans of Hispanic descent. Incorporated in 1968, the Council serves as an advocate for Hispanic Americans and as a national umbrella organization for its local "affiliates"—Hispanic community-based groups which serve 32 states, Puerto Rico, and the District of Columbia—and for other local Hispanic organizations nationwide. The Council's

network includes more than 3,000 Hispanic organizations and individuals nationwide.

The National Council on the Aging, Inc. is a national nonprofit association of organizations and professionals serving the needs of older citizens. It engages in research, demonstration programs, professional standards setting and advocacy.

The National Council of Senior Citizens, Inc., is a public interest advocacy organization established to represent the interests of older people before local, state and federal governments.

The National Education Association (NEA) is the largest public employee organization in the United States, with approximately 1.9 million members, virtually all of whom are employed by public educational institutions. One of NEA's principal purposes is to safeguard the civil rights of its members in matters pertaining to their employment. To this end NEA has funded litigation on behalf of its members alleging violations of 42 U.S.C. §1981. In addition, NEA has a major interest in the elimination of racial and ethnic discrimination. NEA filed an *amicus* brief in *Runyon* v. *McCrary*.

The National Federation of Business and Professional Women's Clubs, Inc. (BPW/USA) is the world's oldest and largest organization of working women. With 125,000 members in 3,400 local organizations across the country BPW/USA promotes full participation, equity, and economic self-sufficiency for working women. BPW/USA includes among its members men and women of every age, religion, race, political party and socioeconomic background.

The National Federation of Temple Sisterhoods, representing the women of Reform Judaism with more than 100,000 members in 600 local sisterhoods throughout the United States, is dedicated to religious and educational programs and projects that translate the prophetic teachings of Judaism into our lives, synagogues and communities. An organization of religious women it is committed to the pursuit of justice and freedom.

The National Gay and Lesbian Task Force (NGLTF), with 13,000 members nationwide, lobbies, advocates and educates to achieve full civil rights for lesbians and gay men. NGLTF is

deeply committed to ending discrimination on the basis of race, sex, ethnicity, physical ability, religion and sexual orientation.

The National Jewish Community Relations Advisory Council is an umbrella organization consisting of 13 national member agencies and the 114 Community Relations Councils representing all Jewish major communities in the United States. These Jewish community relations agencies have held a longstanding and deep commitment to promoting social and economic justice for all people. The history and experience of anti-Jewish persecution and discrimination underscores its efforts to ensure that all minorities are afforded protections against discrimination and oppression.

The National Legal Aid and Defenders Association (NLADA) is a private charitable association started some 77 years ago by prominent members of the legal profession. The purpose of the organization is to contribute to the accessibility, quality and effectiveness of legal representation of those indigent persons in the United States who cannot pay for representation. The clients of the civil organizations are poor, and often members of minority groups who have historically depended on the post Civil War Civil Rights Acts to pursue legal remedies otherwise unavailable to them.

The National Low Income Housing Coalition is a membership organization of housing groups and individual activists across the country. Its basic principle is that housing is a basic principle human right and all people are entitled to decent, safe, sanitary and acceptable housing.

National Neighbors is a national federation of 260 multiracial neighborhood groups in 27 states and the District of Columbia working to promote fair housing and successful multiracial neighborhoods.

The National Organization for Women (NOW) is a membership organization with more than 700 chapters in all 50 states. NOW's purpose is to take action to bring women into full and equal participation in American society. One of NOW's top priorities is combating racism and the double burden faced by women of color.

Interest of the Amici

The National Puerto Rican Forum is a 32 year old national Puerto Rican and Hispanic organization involved in providing direct services in the area of employment and education.

The National Urban League, Inc., (NUL) is a non-profit community-based agency which works to secure equal opportunity for blacks and other minorities in every sector of American society. The vigor of the NUL is manifested through its 112 affiliates in 34 states and the District of Columbia.

The National Women's Law Center is a non-profit legal advocacy organization dedicated to the advancement and protection of women's rights and to the elimination of discrimination from all facets of American life.

The National Women's Political Caucus is dedicated primarily to the election and appointment of qualified women to political office. Representing thousands of members of all ages, lifestyles and economic and ethnic backgrounds, the Caucus is committed to working for women's rights, civil rights and legislation supporting women and families.

The NOW Legal Defense and Education Fund (NOW LDEF) was founded in 1970 by leaders of the National Organization for Women as a nonprofit civil rights organization to perform a broad range of legal and educational services nationally in support of women's effort to eliminate sex-based discrimination and secure equal rights. A major goal of the NOW LDEF is eliminating barriers that deny women economic opportunities. In furtherance of that goal, NOW LDEF has participated in numerous cases to secure full enforcement of laws prohibiting discrimination against women and minorities by both public and private entities.

Opportunities Industrialization Centers of America, Inc. is a private non-profit organization, which promotes full employment and is especially organized for the purpose of finding, motivating, training, counseling and placing on jobs the unemployed and underemployed but primarily persons who are poor, with little or no skills, young or old.

The Organization of Chinese Americans, Inc., (OCA) with 7,500 members in 41 chapters nationwide is committed to encour-

aging the active leadership of all Chinese Americans in all levels of civic affairs. The OCA promotes civil rights for all individuals regardless of race or ethnic background.

The Organization of Pan Asian American Women (Pan Asia) was founded in 1976. It is a national, non-profit membership organization composed of Filipino, Chinese, East Indian, Japanese, Korean, Vietnamese, Pacific Islander, and other American women of Asian descent. Pan Asia seeks to ensure the full participation of Asian-Pacific American women in all aspects of American society, particularly in those areas where they have traditionally been excluded or under represented. It is particularly concerned about the negative impact reversal of *Runyon* would have on equality of educational opportunities for racial minorities.

The Phi Beta Sigma Fraternity, Inc., with the force, vigor, power and energy of more than 85,000 dedicated men in more than 600 chapters across the United States, Africa, Europe, Korea and the Caribbean, continues faithfully to perpetuate composite growth and progress as the "People's Fraternity" dedicated to providing services to all humanity. The officers and members of Phi Beta Sigma support equality regardless of race, color, creed, national origin, or sex.

Planned Parenthood Federation of America, Inc. (PPFA) is the nation's oldest and largest voluntary family planning organization with 182 affiliates in 44 states and the District of Columbia operating approximately 800 clinics. PPFA supports the principles of equality articulated in *Runyon* and believes that racial bias or discrimination in any form is intolerable.

People for the American Way is a nonpartisan, education-oriented citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of religious, civic, and education leaders devoted to the Nation's heritage of tolerance and pluralism, People for the American Way now has 270,000 members nationwide. The organization's primary mission is to educate the public on the vital importance of the democratic tradition.

Interest of the Amici

Project Equality, Inc. is a national non-profit organization established by the religious community to support equal employment opportunities for minorities and women.

The Progressive National Baptist Convention was founded twenty-seven years ago to promote and work for certain goals, including the realization of racial, social and economic injustice. Today, the PNBC numbers 1.8 million members in primarily Black American Baptist churches nationwide.

The Puerto Rican Legal Defense and Education Fund, Inc. is a national civil rights organization established in 1972. Its principal objective is to secure, through litigation and education, the civil rights of Puerto Ricans and other Latinos living in the United States. Because of the continued discrimination suffered by Puerto Ricans and other Latinos in the private sector, particularly in employment, education, and housing, Puerto Ricans and other Latinos continue to place extensive reliance on the Civil Rights Act of 1866 to vindicate their civil rights.

The A. Philip Randolph Institute is a national organization of black trade unionists representing some 40 unions with 200 chapters in 37 states. Since its inception in 1965, it has served as a bridge between the labor movement and the black community.

The Southern Christian Leadership Conference, (SCLC), founded in 1957, is a voluntary civil rights organization comprised of 18 chapters throughout the United States. SCLC is dedicated to improving the quality of life of African American people.

The Southern Poverty Law Center is a nonprofit organization whose purpose is to advance the legal rights of the poor through litigation and education. It provides class action litigation in areas of civil rights and representation of those injured or threatened by activities of the Klu Klux Klan and related groups.

The Synagogue Council of America is an umbrella organization representing Orthodox, Conservative and Reform Jewish Rabbinical and Congregational bodies in the United States. It has long supported strong measures to ensure the civil rights of all Americans.

The Union of American Hebrew Congregations (UAHC) represents 800 Reform congregations and 1.2 million Reform

Interest of the Amici

Jews across the U.S. Throughout its history, the UAHC has steadfastly supported efforts to provide civil rights and equality for all Americans.

The United Church of Christ, Office for Church and Society, is the agency of the UCC assigned the social action mission of the 1.7 million member church. The Office for Church and Society has the responsibility of addressing questions of civil and equal rights and social issues that empower individuals to have choices.

The United States Student Association (USSA) is a national membership organization representing college and university students in the United States. USSA seeks to expand educational opportunities for all individuals in our nation regardless of race, sex, physical ability, or ability to pay.

The Villers Foundation is a private, nonprofit foundation concerned with assuring that the essential needs of elders, especially those of lower income, are met, and concerned with enabling elders to be active participants in society so they are empowered to act on their own behalf.

The Washington Ethical Action office is the Washington office of the American Ethical Union, a national federation of ethical societies (ethical cultural movement). The ethical cultural movement is a humanistic, religious, and educational movement inspired by the ideal that the supreme aim of human life is working to create a more humane society.

Women Employed is a national membership association of working women. Over the past fifteen years, the organization has assisted thousands of women with problems of discrimination, monitored the performance of equal opportunity enforcement agencies, analyzed equal employment opportunity policies, and developed specific, detailed proposals for improving enforcement efforts.

The Women's Equity Action League (WEAL) was founded in 1972 as a national, non-profit membership organization sponsoring research, education, litigation, and advocacy to advance the economic status of women. It is committed to the full and effective enforcement of anti-discrimination laws in order to ensure equality of opportunity for all, regardless of race, sex, nation-

ality, age religion or disability. WEAL has appeared before this court as *amicus curiae* in several cases concerning the rights of women.

The Women's Legal Defense Fund is a non-profit membership organization founded in 1971 to provide *pro bono* legal assistance to women who have been the victims of discrimination based on sex. The Fund devotes a major portion of its resources to combating sex discrimination in employment through litigation of significant employment discrimination cases, operation of an employment discrimination counseling program, and advocacy before the Equal Employment Opportunity Commission and other federal agencies charged with enforcement of the equal opportunity laws.

The Workmen's Circle is a Jewish organization that offers benefits and services to its members, supports legislative and other action for social progress in the liberal tradition and is committed to the perpetuation and enrichment of Jewish secular culture.

For 130 years, the YWCA of the U.S.A. has struggled to secure equity and dignity for all people. Thus, it has a strong interest in the outcome of the issue of statutory interpretation that is now before the U.S. Supreme Court. 42 U.S.C. §1981 has been an important tool for redress, one which the YWCA of the U.S.A. believes should remain available to parties seeking justice.