

"This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and equality as a result.

"For the task is to give 20 million Negroes the same chance as every other American to learn and grow, to work and share in society, to develop their abilities—physical, mental, and spiritual, and to pursue their individual happiness."—President LYNDON B. JOHNSON, at Howard University, June 4, 1965.

INTRODUCTION

The historic Civil Rights Act of 1964 includes specific prohibitions on discrimination in voting, public accommodations, public facilities, public education, employment and federally assisted programs. Housing discrimination as such is not mentioned in the 1964 act. Careful consideration of title VI of the act, however, leads to the conclusion that it does directly preclude racial discrimination in the sale and rental of private housing.

Section 601 of title VI states that: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

This language does not confer discretionary power on Federal agencies; it imposes a compulsory obligation. In his testimony on this section before the Senate Judiciary Committee, former Attorney General Robert F. Kennedy emphasized: "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination * * *."¹

The legal concept of "discrimination" is not static, but one which is evolving continuously as a result of political and judicial development. In 1896, the Supreme Court held that "separate but equal" treatment of the races fulfilled the constitutional requirements of the 14th amendment. In 1954, the Court overruled that doctrine, declaring that the separation of the races by government is inherently discriminatory. In 1964, by enactment of title VI of the Civil Rights Act, the Congress added to the prohibition on racial discrimination the further stipulation that no person "be excluded from participation in" or "be denied the benefits of" any federally assisted program.

To achieve the objective of title VI, therefore, requires more than a passive Federal position with respect to discrimination. Racial discrimination is so deeply embedded in our present-day society that the mere "nondiscriminatory" expenditure of public funds may further entrench and subsidize segregation in public life. For the purposes of title VI, it is immaterial whether segregated housing patterns result from current practices of racial discrimination not prohibited by law, or reflect past discriminations embodied in today's ghettos. In either case, the congressional mandate can be fulfilled only by Government taking positive steps to eliminate and prevent community patterns of racial segregation, for the perpetuation of discrimination by a failure to remedy it may itself be considered an act of discrimination. Every federally aided program affecting housing should be measured against this affirmative requirement for compliance with title VI.

This publication demonstrates that the title VI affirmative requirement applies directly to federally financed urban renewal, highway and other construction and land acquisition programs. These Federal programs annually displace from their homes thousands of families, many of whom are forced to relocate in racial ghettos where communities tolerate housing discrimination and establish patterns of segregated housing. Moreover, apart from relocation into segregated housing, it will be shown that the title VI requirement applies to the entire private housing sector, which is directly benefited by and materially dependent upon the totality of Federal assistance programs in the area of community facilities and services.

Yet Federal programs affecting housing presently are being administered without adequate safeguards to insure that public funds are not being spent in a fashion which encourages, entrenches, subsidizes or results in racial discrimination.

¹ 88th Cong., 1st sess., on S. 1731 and S. 1750, p. 333.