

While title VI does not expressly establish judicial power to secure section 601 rights on behalf of injured citizens, a right of judicial relief is implicit in the congressional enactment of the substantive right itself, under the established doctrine that courts will presume judicial power to secure the Federal statutory rights of a protected class. The legal basis of this principle is discussed fully in appendix A.

Under this doctrine, it is clear that when Federal agencies fail to secure the rights of injured citizens under section 601, such citizens may sue those agencies in Federal court to require them to take remedial protective action. Congress, in section 601, has put Federal agency assistance to racial discrimination beyond agency power, and has made it a violation of individual rights to subject any person to discrimination under a federally assisted program. It follows that courts have the power to protect this statutory right in accordance with this established doctrine.

Thus, if the communities and the Federal agencies should continue to fail to meet their title VI obligations, judicial remedies are available to enforce the housing desegregation requirement of the 1964 Civil Right Act.

APPENDIX A

THE DOCTRINE OF IMPLIED JUDICIAL POWER TO SECURE FEDERAL STATUTORY RIGHTS

Title VI of the 1964 Civil Rights Act does not specifically provide for suits by persons denied the rights granted in section 601. But that section does provide that "no person in the United States shall on the ground of race * * * be excluded from participation in, be denied the benefits of, or be subjected to discrimination under * * *" any federally assisted program. Accordingly, under the established doctrine that courts will presume judicial power to secure Federal statutory rights, the availability of judicial relief is implicit in the congressional enactment of the substantive right itself.

That principle was firmly established by the Supreme Court's 1944 decision in *Steele v. Louisville & Nashville R.R. Co.* (323 U.S. 192), recognizing judicial power to enforce rights against racial discrimination found in the Railway Labor Act, though Congress had not expressly provided a judicial remedy. Recently, the Supreme Court emphatically reaffirmed that principle with the emphasis that "this Court cannot lightly infer that Congress does not intend judicial protection of rights it confers against [Federal] agency action * * *" *Leedom v. Kyne* (358 U.S. 184, 190).²⁵

Even before the *Steele* decision, the Supreme Court had found an implied right of judicial suit to vindicate Federal statutory rights where Congress had failed to prescribe a judicial remedy as such. See, e.g., *Texas & New Orleans R. Co. v. Brotherhood of Railway & S.S. Clerks* (281 U.S. 548, 549); *American School of Magnetic Healing v. McAnnulty* (187 U.S. 94); *Virginia R. Co. v. System Federation* (300 U.S. 515).

In *Steele*, that rule was applied where a Federal right against racial discrimination was found by the Court to inhere in the Railway Labor Act against the union which is the statutory representative of the class or craft of workers. Although Congress had provided administrative relief before the Railroad Adjustment Board through an individual grievance proceeding, the Supreme Court ruled (p. 206) that: "We cannot say that there is an administrative remedy available to petitioner or that resort to such proceeding in order to secure a possible administrative remedy * * * is prerequisite to relief in equity." And the Court went on to uphold the availability of judicial relief for Negro workers to enforce this Federal statutory right against racial discrimination:

"In the absence of any available administrative remedy, the right here asserted, to a remedy for breach of the statutory duty of the bargaining representative to represent and act for the members of a craft, is of judicial cognizance. That right would be sacrificed or obliterated if it were without the remedy which courts can give for breach of such a duty or obligation and which it is their duty to give in cases in which they have jurisdiction * * * there can be no doubt of the justiciability of these claims. As we noted in *General Committee v. Missouri-Kansas-Texas R. Co.*, *supra* (320 U.S. 331), the statutory provisions which are

²⁵ The principle applies even to criminal statutes. As stated in the opinion of Judge Hand for the Second Circuit with respect to one Federal criminal enactment: "Although the act does not expressly create any civil liability, we can see no reason why the situation is not within the doctrine which, in the absence of contrary implications, construes a criminal statute, enacted for the protection of a specified class, as creating a civil right in members of the class, although the only express sanctions are criminal." *Reitmeister v. Reitmeister* (162 F. 2d, 691, 694).