

acted within its delegated powers. But in the course of that opinion the Court announced principles that are controlling here. 'If the absence of jurisdiction of the Federal courts meant a sacrifice or obliteration of a right which Congress had created, the inference would be strong that Congress intended the statutory provisions governing the general jurisdiction of those courts to control. That was the purport of the decisions of this court in *Texas & New Orleans R. Co. v. Brotherhood of Railway & S.S. Clerks* (281 U.S. 548), and *Virginian R. Co. v. System Federation No. 40* (300 U.S. 515). In those cases it was apparent that but for the general jurisdiction of the Federal courts there would be no remedy to enforce the statutory commands which Congress had written into the Railway Labor Act. The result would have been that the 'right' of collective bargaining was unsupported by any legal sanction. That would have robbed the act of its vitality and thwarted its purpose.' (Id. 320 U.S. at p. 300.)

"Here, differently from the *Switchmen's* case, 'absence of jurisdiction of the Federal courts' would mean 'a sacrifice or obliteration of a right which Congress' has given professional employees, for there is no other means, within their control (*American Federation of Labor v. National Labor Relations Board, supra*), to protect and enforce that right. And 'the inference [is] strong that Congress intended the statutory provisions governing the general jurisdiction of those courts to control.' (320 U.S. at p. 300.) This Court cannot lightly infer that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers. Cf. *Harmon v. Brucker* (355 U.S. 579); *Stark v. Wickard* (321 U.S. 288); *American School of Magnetic Healing v. McAnnulty* (187 U.S. 94)."

Congress in section 601 has put Federal agency assistance to racial discrimination beyond agency power, and made it a violation of individual rights to subject any person to discrimination under a federally assisted program.¹⁹ Accordingly, courts have power to protect those statutory rights in accordance with the established doctrines reviewed above—that agency action in excess of power (*Harmon*), contrary to congressional limitations (*Leedom, McElroy*) or in violation of statutory rights (*Steele*), requires Federal courts to provide judicial relief to the injured citizen. Particularly is this so, as the Supreme Court has emphasized (*Steele*), where Congress has provided no formal or adequate administrative remedy to the injured citizen.

In sum, it is clear that where Federal agencies have failed to secure their rights under section 601, injured citizens may sue those agencies in Federal court to require them to take remedial protective action.

APPENDIX B

(The Civil Rights Act of 1964)

TITLE VI.—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. 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.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or orders shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other

¹⁹ There is no legislative history which precludes the result suggested. The only congressional effort to provide specifically for suit by injured citizens to enforce sec. 601 rights was incorporated in a substitute to title VI originally offered by Senators Ribicoff and Keating. However, when the administration provided a new draft of that title, the Senators withdrew their substitute (see 110 Congressional Record 7065) and thus there was neither a vote nor any discussion on the issue of individual suits to enforce sec. 601 rights.