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No. 22,675

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BOSSIER PARISH SCHOOL BOARD, ET AL., APPELLANTS

v.

URA BERNARD LEMON, ET AL., APPELLEES

and

UNITED STATES OF AMERICA, APPELLEE-INTERVENOR

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF FOR APPELLEE-INTERVENOR

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STATEMENT OF THE CASE

1. The Complaint, Defendants' Motion to Dismiss, Plaintiffs' Motion for Summary Judgment and a Preliminary Injunction

On December 2, 1964, eight Negro children residing with their parents at Barksdale Air Force Base, Louisiana filed a complaint in the District Court for the Western District of Louisiana under 42 U.S.C. 1983. The complaint charged that the defendants, the Bossier Parish School Board and its Superintendent, are denying plaintiffs the equal protection of the laws in violation of the Fourteenth Amendment by operating the public school system of Bossier Parish under a policy of racial segregation. Plaintiffs in their prayer for relief requested the court to enjoin the defendants from continuing to operate the Bossier Parish School System on such a basis (R. 1-12).

On January 4, 1965, the United States moved to intervene under the authority of section 902 of the Civil Rights Act of 1964, 42 U.S.C. 2000h-2[1/] (R. 19). The motion was granted (R. 111-112).

1/ Section 902 of the Civil Rights Act of 1964 provides:

> Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

In the course of the proceedings defendants filed a motion to dismiss the complaint for failure to state a claim (R. 63-64). Plaintiffs and the United States moved the court for a preliminary injunction and for summary judgment (R. 13-18, 25-27, 62, 65, 69).

Defendants' motion to dismiss was based on the theory the plaintiffs are not residents of Bossier Parish but reside at Barksdale Air Force Base, which, although located within the Parish, is subject only to the jurisdiction of the United States. From this they argue that plaintiffs have no right to a free public education in Bossier Parish and consequently no standing to invoke the equal protection clause. The district court rejected this contention, overruled defendants' motion to dismiss and granted plaintiffs' motion for summary judgment. On April 13, 1965, the court entered its findings of fact, conclusions of law and decree (R. 100-116).

2. The Decision Below

The court found that plaintiffs had been denied admittance because of their race to "white" schools located nearer their residence than the schools they presently attend. The court further found that defendants received more than $1,860,000 between 1951 and 1964 from the Department of Health, Education and Welfare under

20 U.S.C. 631-645 (R. 105). The court noted that while no funds had been received under those sections since March 10, 1964, some of the funds received prior to that date had been expended upon the construction of the school attended by six of the eight minor plaintiffs and some upon the construction of the schools to which admittance is sought by seven of the eight minor plaintiffs (R. 104). Moreover, the court found that under 20 U.S.C. 236, et seq. the school board received $446,388 on November 9, 1964, for maintenance and operation of its schools during the 1964-65 school year and $157,302 on November 13, 1964, as the last payment for the operation and maintenance of its schools during the 1963-64 school year (R. 107-108).

The court held that defendants, in accordance with 20 U.S.C. 636, were subject to several "assurances", one of which obligated the school board to provide facilities to the children for whose education contributions were made "on the same terms, in accordance with the laws of the state in which Applicant is situated, as they are available to other children in Applicant's school district" (R. 105; see R. 72). The court concluded that this assurance constituted a contractual agreement on the part of defendants to provide education for "federal" children on a nondiscriminatory basis, that plaintiffs are third-party beneficaries under this contractual agreement and are entitled to attend Bossier Parish schools on the same basis as children who reside within Bossier Parish (R. 105-107). This being so, the court ruled that plaintiffs enjoy the same rights as resident children of Bossier Parish, including the right to maintain a suit for desegregation of the public schools of the parish.

The court also found that plaintiffs had standing to maintain this suit under section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d (R. 109-110). Observing that defendants had accepted federal funds for maintenance and operation of their schools in November 1964 (after passage of the Civil Rights Act of 1964) the court held that defendants became obligated to provide the education for which the payments were received without racial discrimination, and that since plaintiffs are recipients of the rights conferred by section 601 of the Civil Rights Act of 1964, they have standing to maintain this suit (R. 110).

Accordingly, on April 13, 1965, the court enjoined defendants from refusing to admit plaintiffs to the schools which they would attend if they were white, from continuing to assign students with regard to race, from continuing to operate a bi-racial school system, from continuing to maintain dual school zone or attendance area lines based on race, and from continuing to approve programs and other policies designed to perpetuate racial segregation. The court ordered the school board to submit a plan in accordance with these guidelines (R. 113-116).

On April 30, 1965 defendants filed a notice of appeal from this order (R. 125-126).

I. Plaintiffs Have Standing to Maintain This Suit Under the Equal Protection Clause

Defendants contend that, because plaintiffs reside at Barksdale Air Force Base--a defense installation within the jurisdiction of the United States--they are not "within the jurisdiction" of Bossier Parish or the State of Louisiana, and therefore have no standing to maintain this suit under the equal protection clause, which provides that no state shall deny "to any person within its jurisdiction the equal protection of the laws."

Whether plaintiffs are "within the jurisdiction" of the State of Louisiana and Bossier Parish does not depend upon whether they reside there, but upon whether they attend school there. For example, a foreign corporation admitted by the state to transact business within its boundries is "within the jurisdiction" for purposes of the equal protection clause. Wheeling Steel Corp. v. Glander, 337 U.S. 562 (1949); Hanover Ins. Co. v. Harding, 272 U.S. 494, 508 (1926); Air Way Corporation v. Day, 266 U.S. 71 (1924); see also Pavel v. Pattison, 24 F. Supp. 915, 918-19 (W.D. La. 1938) where the court held repugnant to the equal protection clause a statute denying nonresidents owning land within the state the right to trap certain animals upon that land.

II. Having Admitted Plaintiffs to the Schools of Bossier Parish, Defendants are Precluded From Segregating Plaintiffs Racially, Whether or Not Plaintiffs Have a Legal Right to Attend Such Schools.

Defendants assume that, if they are under no "legal duty" to afford plaintiffs free public education at Bossier Parish Schools, they can, notwithstanding the equal protection clause, segregate plaintiffs racially. But it does not follow that a State which is under no obligation to furnish free public education may furnish such education voluntarily under discriminatory conditions. If this were true a state could avoid its obligation under the decision in Brown v. Board of Education, 347 U.S. 483 (1954) simply by repealing its laws requiring the provision of free public education and substituting a system whereby communities, voluntarily and without obligation provided such education. Again, the cases involving state statutes discriminating against foreign corporations doing business in the state are in point. As the Supreme Court stated in Hanover Insurance Co. v. Harding, 272 U.S. 494, 507 (1926);

> It was settled in the Bank of Augusta v. Earle, 13 Pet. 519; Paul v. Virginia, 8 Wall. 168; Ducat v. Chicago, 10 Wall. and Horn Silver Mining Company v. New York, 143 U.S. 305, that foreign corporations cannot do business in a state except by the consent of the State; that the State may exclude them arbitrarily or impose such conditions as it will upon their engaging in business within its jurisdiction. But there is a very important qualification to this power of the State, the recognition and enforcement of which are shown in a number of decisions of recent years. That qualification is, that the State may not exact as a condition of the corporation's engaging in business within its limits that its rights secured to it by the Constitution of the United States may be infringed.

The Court in Hanover Insurance Co. v. Harding, supra, held that it was a violation of the equal protection clause to require a foreign corporation to pay a personal property tax not levied on domestic corporations similarly situated and to require payment of this tax as a condition precedent to renewal of the corporation's license. See also, Wheeling Steel Corp. v. Glander, 337 U.S. 562, 571 (1949); Air Way Corporation v. Day, 266 U.S. 71 (1924). So here, defendants--even if they are educating plaintiffs as a matter of suffrance--may not condition admittance to their schools upon the surrender of plaintiffs' equal protection rights.

III. <u>Even Assuming that Defendants Could Racially Segregate Children Attending Bossier Parish Schools By Suffrance, They Cannot Segregate Plaintiffs, Who Have a Legal Right to Attend Such Schools</u>

A. <u>Defendants, Having Accepted and Retained the Benefits of the Contract, Are Estopped to Deny Either Their Obligations Under It, or the Legal Rights of Plaintiffs Flowing from those Obligations</u>

In return for receiving federal funds in the amount of $1,860,000 between 1951 and 1964 to finance the construction of their school facilities, defendants, *inter alia*, assured the United States that their "school facilities . . . will be available to the children from whose education contributions are provided . . . on the same terms, in accordance with the laws of the State . . ., as they are available to other children" in defendants' school district. 20 U.S.C. 636(b)(1)(F).

Defendants urge that, notwithstanding this assurance and the receipt of these benefits, there is no judicially enforceable contract between the defendants and the United States and therefore no legal right in plaintiffs as third party beneficiaries to attend Bossier Parish schools. But it is well settled that one who receives and retains the benefits of an otherwise unenforceable agreement is estopped to deny his obligations under it. See the opinion of Cardozo, J., in Farnsworth v. Boro Oil & Gas Co., 216 N.Y. 40, 109 N.E. 860 (1915);[2]

2/ In Farnsworth, the plaintiff resided in the community serviced by the defendant gas company pursuant to a franchise created by the city which specified the rates at which gas was to be supplied. The plaintiff sought to enjoin the gas company from increasing its rates above those specified in the agreement. By way of defense the gas company asserted that the agreement between it and the city was not enforceable because the wrong officials granted the franchise. The court rejected this contention, stating (216 N.Y. at 46):

> In such circumstances, the defendant will not be heard to say, while retaining possession of the highway [where it laid its mains pursuant to authority granted under the agreement] that the consent under which it entered was valueless and void . . . I think the facts are sufficient to establish an estoppel.

The court continued (216 N.Y. at 48):

> Some point is made that the protection of the estoppel must be restricted to the town itself, and does not extend to the plaintiff as a resident of the town . . . There is no doubt that the inhabitants of a town may enforce a valid contract of this kind (Pond v. New Rochelle Water Co., 183 N.Y. 330). It can make no difference in principle whether the contract is held valid by force of estoppel or for any other reason.

see also City of Winona v. Cowdrey, 93 U. S. 612, 619 (1876); City of Jamestown v. Pennsylvania Gas Co., 263 Fed. 437, 439 (W.D.N.Y., 1920), modified 1 F. 2d 871 (C.A. 2, 1924).

For example, an assignee or a licensee of a patent, apparently valid and in force, who has acted under it and received profits from the sale of the patented article, is estopped to deny its validity in a suit for royalties due under the licensing agreement. Automatic Radio Mfg. Co. v. Hazeltine Research, 339 U.S. 827,836 (1950); United States v. Harvey Steel Co.,196 U. S. 310 (1905); Kinsman v. Parkhurst, 59 U. S. 289 (1855). A lessee having taken possession of the property cannot dispute the title of his lessor when called upon to perform his obligations under the lease. Stott v. Rutherford, 92 U. S. 107 (1875). So here, as the court below held (R.107), "having . . . obligated themselves defendants are now estopped by their contractual agreement, and their acceptance of funds paid pursuant thereto, to deny that plaintiffs are entitled to the same rights to school attendance as are resident children."

B. Plaintiffs Have a Legal Right to Attend Bossier Parish Schools.

When the United States makes a grant with the expectation of obtaining benefits in return and extracts promises in exchange, there is created an obligation on the part of the grantee which, as part of a binding contractual agreement, is enforceable in the courts. Thus, in United States v. Northern Pacific Ry. Co., 256 U.S. 51, 63-64 (1921), referring to a federal grant of land to a railroad, the Supreme Court wrote:

> The purpose of the granting act and resolution was to bring about the construction and operation of a line of railroad extending from Lake Superior to Puget Sound and Portland through what then consisted of great stretches of homeless prairies, trackless forests and unexplored mountains, and thus to facilitate the development of that region, promote commerce, and establish a convenient highway for the transportation of mails, troops, munitions and public stores to and from the Pacific coast, with all the resultant advantages to the Government and the public. To that end the act and resolution embodied a proposal to the company to the effect that if it would undertake and perform that vast work it should receive in return the lands comprehended in the grant. The company accepted the proposal and at enormous cost constructed the road and put the same in operation; and the road was accepted by the President. Thus, the proposal was

> converted into a contract, as to which the company by performing its part became entitled to performance by the Government. (emphasis added).

See also Burke v. Southern Pacific Ry. Co., 234 U.S. 669, (1914); Helvering v. Northwest Steel Rolling Mills, 311 U.S. 46 (1940); Oregon & California Ry. Co. v. United States, 238 U.S. 393 (1915); United States v. Northern Pacific Railway, 311 U.S. 317 (1940); United States v. San Francisco, 23 F. Supp. 40, 45 (N.D. Calif. 1938), rev'd, aff'd, District Court, 310 U.S. 16, 30-31 (1940). And in United States v. Prince George County School Board, 221 F. Supp. 93, 100 (E.D. Va., 1963) the court held:

> There is no essential difference between the grants to the railroads and the grants to the School Board. The Court concludes that the arangement by which the School Board obtained money from the United States for assistance in construction of schools constituted a contract. The United States agreed to make certain payments to the School Board in exchange for certain assurances. The School Board in order to receive the funds, gave the assurances required by the statute. The United States made the payments, and the contract is executed on its part.

Similarly, in United States v. Sumter County School District No. 2, 232 F. Supp. 945, 950 (E.D. S.C., 1964) the court rejected the argument of a local School Board that it did not have to provide facilities for "federal" children after having signed an assurance to the effect that it would, stating (232 F. Supp. at 950):

> The applications for financial assistance by the School District and the approval of such applications, together with the commitment of Federal funds by the Commissioner, contain all the elements of a contract.

The contract involved here was intended to benefit plaintiffs. Chapter 19 of Title 20, section 631 provides:

> The purpose of this Chapter is to provide assistance for the construction of urgently needed minimum school facilities in school districts which have had substantial increases in school membership as a result of new or increased Federal activities. . . .

Sections 634 and 635 establish the measure of assistance to be afforded local agencies in the construction of school facilities to accommodate "federal" children. The computation is tied to the number and percentage of "federal" children who attend local schools. If there is any doubt after a cursory reading of these sections that the agreement between the United States and Bossier Parish officials under this chapter was for the benefit of "federal" children, it is fully resolved by the assurance required of the school board pursuant to section 636(b)(1)(F). Under this section the Bossier Parish School Board explicitly assured the United States that its facilities will be available to "federal" children in accordance with the laws of Louisiana as they are available to other children of their school district.

The rule is well settled that one for whose benefit a promise is made, through not himself the promisee, may sue for the enforcement of the promise.

Princess Amusement Co. v. Wells, 271 Fed. 226 (C.A. 6, 1921). This principle loses none of its force when applied to a contract between a sovereign and public corporation which imposes a duty on the corporation to render a public service for the benefit of a class of persons. Thus, where by a contract with a municipality, a corporation in return for a franchise promises to supply water, gas, or telephone at a fixed rate, an inhabitant of the community in which the service is to be rendered may require the corporation to perform its contractual obligation. Pond v. New Rochelle Water Co., 183 N.Y. 330, 76 N.E. 211 (1906); Farnsworth v. Boro Oil Co., 216 N.Y. 40 109 N.E. 860 (1915); Henderson v. Shreveport Gas Electric Light & Power Co., 134 La. 39, 63 So. 616 (1913); Washington Water Co. v. Pope Mfg. Co., 176 Ga. 155, 167 S.E. 286 (1932); Alabama Water Co. v. City of Jasper, 211 Ala. 280, 100 So. 486 (1924). While damages for breach of such a contract may not ordinarily be recovered by a third party, an action to require specific performance of the agreement is readily available. Thus, the court in Washington Water Co. v. Pope Mfg. Co., supra, 176 Ga. at 161-62, 167 S.E. at 290, wrote:

> While the plaintiffs could not sue the defendant for damages for a mere failure to furnish water to the municipality for the purpose of extingishing fires (Fowler v. Athens Waterworks Co., 83 Ga. 219, 9 S.E. 673, 20 Am. St. R. 313; Holloway v. Macon Water Co. 132 Ga. 387, 64 S.E. 330; Moch v. Rensselaer Water Co., 247 N.Y. 160, 159 N.E. 896 62 A.L.R. 1199) this does not mean that the plaintiffs as inhabitants owning and operating business establishments therein cannot invoke the contract between the water company and the municipality, so far as the same may apply to rates for any service or subject-matter falling within the purview of the contract. Where the service or subject-matter in controversy has been covered by a valid contract between the water company and the municipality, such inhabitants may rely upon the agreement in regard to rates. (citations).

See also, Alabama Water Company v. City of Jasper, supra, 211 Ala. at 281, 100 So. at 488.

A third party beneficiary to a contract in which the United States exacts a promise on his behalf may seek enforcement of its provisions under the same principle. H.B. Deal & Co. v. Head, 221 Ark. 47, 251 S.W. 2d 1017 (1952); Novosk v. Reznick, 323 Ill. App. 544, 56 N.E. 2d 318 (1944). So here, plaintiffs, in order to enjoy the benefits flowing from the agreement between the United States and Bossier Parish officials, possess all the legal rights accorded any third party beneficiary and may enforce such rights in the courts. 3/

The decision of this Court in United States v. Madison County Board of Education, 326 F. 2d 237 (C.A. 5, 1964) in no way suggests that plaintiffs have no legal right to admittance to the Bossier Parish schools. As the court noted in United States v. Sumter County School District No. 2, 232 F. Supp. 945, 951 (E.D. S.C., 1964):

> The Court there [in Madison County] said nothing inconsistent with the conclusions here reached that the school board's promise to educate the Federal children is a legally binding contract obligation and that the contract is breached by refusing to educate the children living on Federal property. The Fifth Circuit denied the Government specific enforcement upon the narrow ground that the doctrine of "primary jurisdiction" [footnote omitted] required that the Commissioner of Education use the remedies available to him before the courts could grant the equitable remedy of specific enforcement.

3/ Indeed these plaintiffs may well have been entitled to attend Bossier Parish public schools even if the United States had not exacted the assurances given under 20 U.S.C. 636. Under Louisiana Revised Statutes 17.151, parish school boards are authorized to establish "adequate school facilities for the children of the parish." An opinion of the attorney general of the State indicates that actual residence in the parish establishes the right to attend public schools in the parish. Op. Atty. Gen. 1946-48, p. 854. Since plaintiffs in this suit reside at Barksdale Air Force Base in Bossier Parish, Louisiana, it seems that they are, as a matter of state law, entitled to attend Bossier Parish Schools.

The plaintiffs--unlike the United States--are not afforded any administrative remedies under the statute or the contract. They may neither terminate funds to the school board nor demand repayment of funds. Their sole means of redress is to secure judicial relief. Thus, in Randall v. Sumter School District No. 2, 232 F. Supp. 786 (E.D.S.C. 1964), the court, in a suit brought by "federal" children ordered the desegregation of the public schools of the district.

Defendants' reliance on State ex rel Moore v. Board of Education of Euclid City School Dist., 57 N.E. 2d 118 (Ohio App. 1944), Schwartz v. O'Hara Township School District, 375 Pa. 440, 100 A. 2d 621 (1953) and Rockwell v. Independent School Dist. of Rapid City, 48 S.D. 137, 202 N.W. 478 (1925), is entirely misplaced. In those cases there were no payments by the United States to assist local authorities in maintaining and operating their school systems, and no assurances given that the "federal children" would be admitted to the public schools involved.

IV. Section 601 of the Civil Rights Act of 1964 Confers Judicially Enforceable Rights on Persons Participating in or Beneficiaries of Programs Receiving Federal Financial Assistance

In November 1964, defendant school board received $157,302 and $446,388 for maintenance and operation of its schools during the 1963-64 and 1964-65 school years respectively (R. 108). These grants were made under the authority of 20 U.S.C. 236 et seq., and were received by the school board after passage of the Civil Rights Act of 1964. Relying on section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d,[4/] the district court held (R. 110):

> When defendants received and accepted federal funds for maintenance and operation of their schools under 20 U.S.C. §§236-244 after the passage of the Civil Rights Act of 1964, they became bound by section 601 and are now obligated to provide the education for which the payments were received, without racial discrimination. Plaintiffs as

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4/ Section 601 of the Civil Rights Act of 1964 provides:

> 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.

pupils attending schools operated and maintained by these funds, are recipients of the rights conferred by section 601, and as such are entitled to bring suit.

Defendants contend that plaintiffs' rights under title VI are not cognizable by the courts and may not be judicially remedied. Their argument is centered on the administrative sanctions afforded the United States under section 602 of the Act,[5] and the absence of a statutory

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5/ Section 602 of the Civil Rights Act of 1964 provides:

> 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 order 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 recipient as to

(continued on following page)

remedy by which these plaintiffs may obtain relief. Defendants claim that the administrative remedies afforded the United States are the exclusive means of enforcing compliance with the statutory duty imposed by section 601. This position is untenable.

Section 601 is intended to ensure that no person who participates in or is the beneficiary of any program or activity receiving federal financial assistance will be subject to discrimination on the ground of race, color

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5/ (continued from preceding page)

> whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

or national origin. Plaintiffs, who attend schools receiving federal financial assistance, are persons whom this statute is designed to protect. While the statute does not expressly afford plaintiffs a remedy for violation of its prohibition, they are not thereby precluded from obtaining appropriate relief. On the contrary, under such circumstances the Supreme Court in Texas & Pacific Ry v. Rigsby, 241 U.S. 33, 39 (1916) declared:

> A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose special benefit the statute was enacted, the right to recover the damages from the party in default is implied, according to a doctrine of the common law expressed in 1 Com. Dig., Tit. Action upon Statute (F), in these words: 'So, in every case, where a statute enacts, or prohibits a thing for the benefit of a person, he shall have a remedy upon the same statute for the thing enacted for his advantage, or for the recompense of a wrong done to him contrary to the said law.

Thus, in Fitzgerald v. Pan American World Airways, 229 F. 2d 499 (C.A. 2, 1956), plaintiff sued Pan American for civil damages alleging that defendants had discriminated against her because of race in the operation of its airlines. She predicated her claim on 49 U.S.C. 484(b), (now 49 U.S.C. 1374(b)), which as interpreted by the court, prohibited the conduct of which she complained. There was, however, no civil remedy provided by the Act to redress her grievance--only a provision making a violation of section 484(b) a crime. 49 U.S.C. 622(a), (now 49 U.S.C. 1492(a)). A complaint procedure authorized any person to notify the Civil Aeronautics Board of any violation 49 U.S.C. 642(a),(as amended 49 U.S.C. 1482(a)). The Board had the power to investigate the claim and, upon finding a violation, issue an appropriate order to compel compliance. 49 U.S.C. 642(b)(c)(amended 49 U.S.C. 1482(b)(c)). Fully cognizant of this procedure, the court held that a violation of 49 U.S.C. 484(b) created "an actionable civil right for the vindication of which a civil action may be maintained by any such person who has been harmed by the violation." 229 F. 2d at 501.

Section 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C. 78j (b)prohibits certain fraudulent practices in the purchase or sale of securities. The Securities and Exchange Commission may issue regulations to enforce the provisions of the section, 15 U.S.C. 78 w(a), and may bring an action to enjoin acts or practices in violation of its mandate, 15 U.S.C. 78 u(e). But omitted is a statutory provision allowing private parties to seek redress for damages resulting from such violations. Nonetheless, the courts have held that the prohibitions of this section confer rights on persons protected by this section and have fashioned appropriate judicial remedies. _Hooper_ v. _Mountain States Securities Corp._, 282 F. 2d 195 (C.A. 5, 1960) _cert. denied_ 365 U.S. 814 (1961); _Ellis_ v. _Carter_, 291 F. 2d 270 (C.A. 9, 1961); _Matheson_ v. _Armbrust_, 284 F. 2d 670 (C.A. 9, 1960) _cert. denied_ 365 U.S. 870 (1961); _Fischman_ v. _Raytheon_, 188 F. 2d 783, 787 (C.A. 2, 1951).

Section 605 of the Communications Act of 1934 47 U.S.C. 605, prohibits anyone from publishing a telephone message. For violation of this section there are criminal sanctions. 47 U.S.C. 501. Nonetheless, this section may be invoked to recover civil damages. _Reitmeister_ v. _Reitmeister_, 162 F. 2d 691 (C.A. 2, 1947). Indeed, the court may enjoin an unauthorized publishing and disclosure of a telegraph message under this section. _Newfield_ v. _Ryan_, 91 F. 2d 700, 703 (C.A. 5, 1937).

The Railway Labor Act, 45 U.S.C. 151 _et seq._, imposes a duty on statutory representatives to protect equally the interests of all members of the craft or class of employees represented. Thus, statutory representatives are forbidden to discriminate on grounds of race or color in carrying out their statutory duties. Steele v. Louisville and Nashville Railroad Co., 323 U.S. 192 (1944). No remedy is provided by the Railway Labor Act to employees who suffer the consequences of racial discrimination at the hands of bargaining representatives. This does not preclude such employees from securing appropriate relief. Indeed, this is precisely why they may resort to the courts. As the Supreme Court wrote in Steele, supra, (323 U.S. 192, 207):

> 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. . . .
>
> We conclude that . . . the statute contemplates resort to the usual judicial remedies of injunction and award of damages when appropriate for the breach of the duty

See also Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U.S. 210 (1944); Brotherhood of

Railroad Trainmen v. Howard, 343 U.S. 768 (1952); Conley v. Gibson, 355 U.S. 41 (1957).

So here, the benefits accorded and the rights conferred on these plaintiffs under section 601 would be empty and illusory if the courts do not compel the performance of defendants' statutory obligation.[6/] Redress of plaintiffs' grievance cannot depend upon whether the Government elects to invoke the sanctions available under section 602. Indeed, termination of federal funds, while it will redress the Government's right to have its funds used in a manner consistent with section 601, could leave these plaintiffs in a worse position than that in which they now find themselves. In any case, it would not effectively redress plaintiffs' grievance. The Congressional policy expressed in section 601, moreover, will be furthered by allowing parties to bring actions to secure rights under that section. For these reasons, we submit, the district court properly held that section 601 conferred a judicially enforceable right upon plaintiffs to compel the desegregation of the Bossier Parish School system.

6/ Although--as we have argued--plaintiffs may obtain relief by virtue of the equal protection clause, persons whose rights under section 601 were violated by private parties would be remediless.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the district court be affirmed.

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AUGUST 1965.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief for Appellee-Intervenor has been served by official United States mail in accordance with the rules of this Court to each of the attorneys for appellants and appellees addressed as follows:

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