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"CIVIL RIGHTS" CAN BE A DECEPTIVE LABEL

INTRODUCTION

> I am a cosponsor, but I did not read it before I co-sponsored it and I doubt if many of the 63 [other cosponsors] did. I am not even certain if the principals did.[1]

So said Senator Robert Dole last year at hearings on the so-called Civil Rights Act of 1984. He apparently backed the measure, as did many of his colleagues, because they assumed that any bill bearing the civil rights label is worthy of passage. At one time that might have been the case, but no longer. The meaning of the term "civil rights" has been stretched far beyond what logic supports or public policy should tolerate. The definition has come to include quotas, affirmative action, and measurements of racial or sexual composition in student bodies and workforces. Much of this was embodied in the proposed bill to which Dole referred.

While this bill failed to pass the 98th Congress, a version of it is certain to be reintroduced this month as the 99th Congress gets down to work. This new bill almost surely will be based on a flawed interpretation of the meaning of "civil rights." As such, legislators this year should not repeat the mistake to which Dole referred; they instead should read and study the bill before cosponsoring it or voting for it.

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1 Senator Robert Dole, Hearings Before the Senate Judiciary Subcommittee on the Constitution on the Civil Rights Act of 1984, June 5, 1984.

BACKGROUND

Title IX of the Education Amendments of 1972 bars sex discrimination in education programs or activities receiving federal financial assistance. On February 28, 1984, the Supreme Court ruled in what is known as the Grove City case that federal scholarship assistance to students subjects the college enrolling those students to Title IX. The Court added, however, that Title IX coverage extends only to the federally assisted program itself--the college's student aid program--and not to the entire institution.

This seemed a correct decision in the view of the statute's plain language and its legislative history. Some federal bureaucrats had extended vastly the authority given to them by Congress and had subjected entire institutions to federal civil rights jurisdiction even if only one part of the institution received federal aid. This, said the Supreme Court in last year's decision, contravened the program-specific language of the 1972 statute.

An attempt to overturn the Court ruling, led by Senator Edward Kennedy (D-MA) last April, introduced what they shrewdly, but misleadingly entitled the "Civil Rights Act of 1984." It was said by its supporters that the bill had a very limited aim, simply to overturn the program-specific portion of the Grove City decision. In truth, however, it expanded enormously federal civil rights coverage not only under Title IX, but also under Title VI of the Civil Rights Act of 1964 (banning racial discrimination in federally assisted programs or activities), Section 504 of the Rehabilitation Act of 1973 (banning discrimination against qualified handicapped persons in federally assisted programs or activities), and the Age Discrimination Act of 1975 (banning age discrimination in federally assisted programs or activities).

The bill additionally would have mandated a breadth of civil rights coverage that never before had been introduced in Congress or even advocated by the federal civil rights bureaucracy. Among other things, the Kennedy bill would require numerous businesses and entities never before covered to meet federal guidelines. Few elements of American society would have escaped the jurisdiction of the federal rights bureaucracy, with their quotas, social engineering schemes, and burdensome and costly paperwork and compliance requirements.

This bill was barely analyzed in the House and passed there 375-32. The Senate, however, took much more time with it. As its flaws were recognized and its greatly expansive scope became clear, opposition mounted. Numerous organizations, including the American Farm Bureau Federation, National Grocers Association, U.S. Chamber of Commerce, National Association of Manufacturers, religious school groups and many others, voiced criticism of the bill. Finally, Senator Orrin G. Hatch, the Utah Republican, and others blocked passage.

LESSONS OF THE 1984 BILL

A number of lessons have been learned from what became an acrimonious debate over the 1984 bill. Among them:

1) The name "Civil Rights" in the title of a bill does not automatically mean it is well drafted or advances civil rights. Even if its intentions are laudable, the bill itself may be seriously flawed.

2) Bills submitted in the 99th Congress to address the Supreme Court's Grove City decision must be carefully and rigorously scrutinized. There should be no stampede on a matter as important as this. It is not enough to be beguiled by a title and uncritically endorse a bill, as Dole's remark suggests may have happened in the 98th Congress.

3) Analyses of civil rights legislation by its liberal proponents and lobbying groups must be regarded with skepticism. When independent, objective analysts first began to raise questions and concerns about the unprecedented scope of the 1984 bill, the legislation's supporters derided these concerns. They repeatedly assured the Congress that their bill was a mere technical adjustment to reverse the Court's Grove City ruling. Yet a New Republic article observed on November 26, 1984, that:

> [Hatch's] objections to the bill's ambiguous language were legitimate. Even Kennedy conceded that groups and individuals who were not covered prior to Grove City might conceivably have been forced to bear a host of bureaucratic burdens such as federal compliance reviews....
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> [Moreover, the] initial language of the bill was so vague, and the clarifications by the bill's supporters so many, that a judge could well have had difficulty deciding how to apply the law.

4) Principled opposition to a "civil rights" bill need not result in political disaster. Ronald Reagan told a news conference in the spring, shortly after the bill was introduced, that the measure went too far. This emboldened lawmakers opposed to the bill. As a result, Senators Hatch, Grassley, Hecht, and Thurmond, Assistant Attorney General for Civil Rights William Bradford Reynolds, Staff Director of the U.S. Commission on Civil Rights Linda Chavez, and others began expressing serious reservations with the bill and exposing its flaws. The bill's backers countered that the opponents would suffer at the polls, particularly among minorities and women. Yet the bill's opponents all did well at the ballot box and Ronald Reagan won 57 percent of the women's vote.

5) To be challenged in the 99th Congress are the underlying liberal assumptions: (a) that the part of the Grove City decision holding that federal aid to students is federal aid to the college

must be affirmed by a civil rights bill and (b) that vast civil rights coverage is today needed. With respect to the first point, a college that refuses all direct federal aid to preserve its independence from government control and merely enrolls students who themselves accept federal education aid, such as Grove City College, ought to be entirely free of federal oversight, even its student-aid policies. Three Justices of the Supreme Court noted that no one had ever accused the college of discriminating against anyone. As for the second point, it is no longer 1964 with respect to equal opportunity for racial minorities nor 1972 or 1973 with respect to equal opportunity for women and handicapped citizens.

CONCLUSION

The Grove City decision gives Congress an excellent opportunity to examine carefully the scope of civil rights laws needed today. Tremendous strides have been made in civil rights. There is a much greater acceptance of the moral imperative of equal opportunity for all citizens.

There also has been a proliferation of other federal, state, and local civil rights laws which protect citizens' rights. In view of this, Congress should question whether there is a need for a civil rights statute to overturn Grove City. Such a law's attendant meddlesome and costly paperwork and compliance inspections, its thousands of words of regulations, its requirements for quotas, color and gender-conscious behavior, and similar schemes by federal aid recipients may well be counterproductive in achieving a society of equal opportunity today.

If Members of Congress respond to the Grove City decision with careful and reasoned scrutiny and a willingness to examine underlying assumptions honestly, a sound piece of legislation can emerge. If they continue to assume that any piece of legislation with the name "civil rights" on it should be passed, the goal of a society where individuals are judged on their merits, rather than on extraneous characteristics may well be set back.

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