The Heritage Foundation

Backgrounder UPDATE

214 Massachusetts Avenue N.E. Washington, D.C. 20002 (202)546-4400

2/24/87 | Number 38

MAKING SENSE OF THE GROVE CITY DECISION

(Updating Issue Bulletin No. 112, "Civil Rights Can Be A Deceptive Label," January 18, 1985.)

A bill that died last year in the 99th Congress is certain to be resuscitated this year. Appealingly entitled the Civil Rights Restoration Act of 1985 (H.R. 700), the bill had little to do with what generally is regarded by most Americans as civil rights. Instead, the bill sought to extend significantly the reach of the federal government into the affairs of states, localities, and individuals. The bill's main flaws are three: it would extend the coercive arm of the federal government into every private endeavor touched by a federal dollar; it needlessly would add a federal legal remedy to address nonexistent problems of discrimination; and it would impose an extremely costly burden of compliance on small business, private charities, and social organizations.

The bill was introduced as a liberal reaction to the 1984 Supreme Court decision in Grove City College v. Bell. For this reason, the bill often is called the Grove City bill. In its decision, the Supreme Court held that under Title IX of the Education Act Amendments of 1972, only an educational program or activity that directly receives federal funds is subject to federal administrative oversight to prevent gender discrimination. This decision was welcomed by the Reagan Administration as a statement of restrained government intrusion on private activities. One problem with Grove City, however, was that it permitted elusive accounting rules to dictate what part of a recipient's activities were subject to Title IX. To address this, Representative Dan Lungren, the California Republican, introduced the Civil Rights Amendments Act of 1985 (H.R. 2061); a companion Senate bill (S. 272) was introduced by GOP leader Robert Dole of Kansas and others.

The Civil Rights Amendments Act would have expanded the coverage of four major civil rights statutes as applied to educational institutions that receive federal funds: the Civil Rights Act of 1964; Title IX of the Education Act Amendments of 1972; section 504 of the

Rehabilitation Act of 1973; and the Age Discrimination Act of 1975. If the Amendments Act were enacted, then no program or activity conducted by an educational institution receiving federal money could have discriminated on the basis of race, gender, handicap, or age. The nondiscrimination norm would have applied even if the particular program or activity were not federally funded, so long as the supervising educational institution received federal monies.

The Amendments Act recognized the rich array of federal civil rights laws that guarantee equal opportunity for all Americans are achieving their goals. By contrast, the Civil Rights Restoration Act of 1985, sponsored by California Democrat Congressmen Don Edwards and Augustus Hawkins, would have needlessly added legal requirements of nondiscriminatory behavior, increased federal paperwork requirements, random on-site compliance reviews by federal agencies, the complexities of prolix federal regulation, and expensive lawsuits on a broad spectrum of non-educational entities. The obligations of the bill would have been imposed on farmers receiving crop subsidies or price support money; grocery stores and supermarkets participating in the Food Stamp Program; all components of vast corporations that receive federal funds to support one tiny program or activity; and all of the local chapters, councils, or lodges of a private, national social service organization if any component receives federal monies.

If dramatic expansion of the scope of federal civil rights laws entailed no costs and cured widespread evils, then perhaps the Civil Rights Restoration Act would have deserved serious consideration. But the Act would have been very costly. Its effect on grocery store participants in the Food Stamp Program is illustrative. All such stores, no matter how small, would have been subject to numerous anti-discrimination provisions and regulatory burdens imposed by Department of Agriculture rules. Thus, a store with only one employee would have been required to undertake home deliveries or install wheelchair ramps, affirmatively foster communications with hearing-impaired and vision-impaired employees or customers, comply with building construction regulations, and consult with disability rights groups. If the store employed 15 or more persons, grievance procedures incorporating due process standards and provision of auxiliary aids for hearing-impaired or vision-impaired workers or customers would have been mandatory.

Does Congress want to impose such burdensome regulations on mom-and-pop grocery stores? Does Congress believe that there is widespread discrimination by grocery stores in treating customers that cries out for federal involvement? Have handicapped individuals complained of callousness, indifference, or personal discrimination by grocery stores? Similar questions can be raised about countless other applications of the Civil Rights Restoration Act. Simply raising these questions exposes the bill's many flaws.

Bruce E. Fein
Visiting Fellow for
Constitutional Studies