

## THE GROVE CITY DECISION AND CIVIL RIGHTS

The immediate reaction to the Supreme Court's decision in the Grove City College case has been far out of proportion to the actual effect of the holding. In its ruling, the Court held 9-0 that scholarship aid to students who attend private colleges constitutes aid to those colleges. The Court also ruled 6-2 that "any education program or activity receiving federal financial assistance" (the language of Title IX of the 1972 Education Act) means only the specific program receiving the assistance (in this case the financial aid program of Grove City College, Pennsylvania), and not the entire institution.

Of the two parts of the decision, the former seems to have the potential for far wider impact. The number of institutions (educational and other) potentially affected by the "federal aid" question is much larger than the number actually affected by the "narrowing" of the scope of Title IX. Nevertheless the outcry has concerned almost exclusively the second part of the decision.

The charge has been made that this decision "guts" civil rights enforcement in the United States and that "it's the end of" the Office for Civil Rights at the Department of Education. These charges are without merit and show little regard for the facts. The decision in no way will impair the federal government's ability to enhance and defend civil rights.

In the first place, the federal government dispenses billions of dollars in different sorts of aid to many different kinds of educational programs and institutions. It awards billions more to individual students participating in a wide variety of programs. Under the Grove City ruling, even if this aid is indirect, it will bring the recipient institutions under the federal purview. These aid programs continue to provide for the government an important role in civil rights enforcement.

Federal "impact aid," for example, is a form of general federal aid going to entire school districts. Under the Grove City ruling, the entire district, including its athletic programs, will be subject to Title IX, unless the district can manage to show that the special program does not receive any benefit from the federal dollars--a difficult task indeed.

As another example, federal aid to several hundred colleges for the construction of athletic facilities establishes civil rights coverage for the athletic programs using the facilities. This coverage is unaffected by the Grove City ruling, or is perhaps even enhanced by it.

Discrimination in federally funded research projects, moreover, remains illegal and unaffected by Grove City. And of course, discrimination in admissions (with the limited exceptions explicitly written into the statute) is as illegal and unacceptable today as it was the day before the Grove City case came down. That is so because discrimination in admission "at the front door," so to speak, automatically entails discrimination in any other program operated by the institution. If the Department of Education bureaucrat who fears that his Office for Civil Rights is now obsolete cannot find anything to do under Grove City, he is not looking very hard.

In sum, the Grove City opinion is a reasonable interpretation of the scope of Title IX. It does not obliterate civil rights law in the United States. Before the Congress rushes to legislate in this difficult area, it should spend some time digesting the decision, its rationale and its implications. It should also look carefully at the first half of the decision, and decide whether it is happy with the potential implications for private institutions that follow from it.

While the second part of the Grove City ruling is no threat to civil rights enforcement, the Court's unanimous support of the notion of indirect federal aid is extremely disturbing. If an institution is deemed a recipient of federal aid because some of its customers or clients receive federal assistance, does that mean regulating every local supermarket that accepts food stamps--or even cash--from a person receiving federal aid? Must every private institution in the country scrutinize the means of support of its customers and systematically discriminate if it is to avoid coming under the control of the federal government?

If Grove City requires some legislative adjustment, it should come after mature reflection, and not under pressure from those anxious to find outrageous sexism even in a 6-2 Supreme Court decision.

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