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Point of View

By Neal Devins

Federal Courts Are Becoming Reluctant to Take the Lead in Civil-Rights Reform

In two recent decisions, judges have served notice they are shifting the burden to other branches of government

COURTS ARE BEGINNING to play a less significant role in civil-rights reform in higher education. In February, the Supreme Court ruled in *Grove City College v. Bell* that the prohibition in Title IX of the Education Amendments of 1972 against sex discrimination extends only to the specific "education program or activity" receiving federal financial assistance. In September, a federal appeals court suggested in *Adams v. Bell* that the Department of Education's nondiscrimination standards are not subject to judicial challenge. Taken together, the two cases demonstrate an increasing reluctance on the part of federal courts to take the lead in civil-rights reform.

In *Grove City*, the Supreme Court refused to read systemwide coverage into statutory language that spoke in terms of any "program or activity" receiving federal money. Since the only federal dollars that Grove City College received came through its student-aid office, the Court concluded that Title IX's prohibition against sex discrimination applied only to that office.

In its interpretation, the Court ignored events subsequent to the passage of the 1972 Education Amendments that suggested that Congress was aware of the "systemwide" application of Title IX under the Ford and Carter Administrations. Instead of making use of such evidence to extend Title IX's coverage, the Court ruled that a more limited reading was necessitated by the "plain language" of the statute and the legislative activity related to its passage. This portion of the *Grove City* decision follows generally accepted judicial practice, since courts' statutory interpretations are supposed to determine Congress's intent at the time it enacted a piece of legislation.

The *Grove City* Court can be criticized for deciding this issue at all since there was no dispute between the government and the college on this matter. Yet, the Court's statutory interpretation was unremarkable. The *Grove City* ruling, however, was the cause of great ire in the civil-rights community, because, unlike a host of earlier federal-court decisions broadly interpreting civil-rights legislation, the Court refused to extend Title IX coverage beyond Congress's original intent. The Court thus left it for Congress either to modify or to leave alone the *Grove City* decision.

Adams v. Bell also demonstrates the judiciary's current reluctance to supply legislative judgments. In *Adams*, the Court of Appeals for the District of Columbia questioned—for the first time in this 14-year-old lawsuit—the ability of the NAACP Legal Defense Fund and others to challenge the adequacy of the Department of Education's enforcement of civil-rights laws. The appellate court said that civil-rights groups might lack "standing"—that is, their claims might lack the concreteness necessary to justify judicial relief.

Federal courts cannot order relief under a number of circumstances. At a minimum, for example, adversary parties must exist and the plaintiff must have suffered an injury. The courts are supposed to insist that those minimum requirements be met: the judiciary functions to settle disputes, not to make federal policy.

These limiting considerations are especially pertinent in lawsuits challenging the particular programs that agencies establish to carry out their legal obligations. In fact, the Supreme Court held in a July 1984 decision that "such suits, even when premised in allegations of several instances of violations of law, are rarely if ever appropriate for federal-court adjudica-

tion." The Court based that ruling on its belief that courts should not serve as "continuing monitors of the wisdom and soundness of Executive action." Such supervision, according to the Court, is appropriate for Congress.

The federal appeals court that heard the *Adams* case closely followed the Supreme Court's ruling and nullified a 1983 district-court order that set deadlines for the Department of Education's Office for Civil Rights to handle complaints and compliance reviews. Those deadlines applied to all of the civil-rights office's responsibilities, including enforcement of Title VI of the 1964 Civil Rights Act (prohibiting race discrimination), Title IX of the 1972 Education Amendments (prohibiting sex discrimination), and Section 504 of the 1973 Rehabilitation Act (prohibiting discrimination against the handicapped).

The Department of Education had said that the district court's requirements violated the fundamental principles of separation of powers, usurped legitimate management functions belonging to the executive branch, and were unworkable and counterproductive. Civil-rights groups, however, felt that judicial monitoring of executive functions was necessary to insure adequate enforcement of civil-rights legislation. The appellate court, by suggesting that the plaintiffs were without standing, did not have to address the government's complaint that the deadlines were unworkable and unconstitutional.

THE APPEALS COURT that heard *Adams* was correct in its concern that courts should not serve as mechanisms "to seek a restructuring of the apparatus established by the Executive Branch to fulfill its duties." Although the 1964 Civil Rights Act unambiguously provides people the right to challenge an agency's decision to continue financing an allegedly discriminatory system or institution of higher education, that right should extend no further than challenges of a government decision affecting a particular institution, by a person directly affected by the institution's allegedly discriminatory practices. Otherwise, courts become superagencies, in effect running our government.

Adams, with its 14-year history, is a prime example of how judicial fiat can dominate agency practice. Under a consent decree during the Carter Administration between the Department of Education and civil-rights plaintiffs, federal courts were granted authority to monitor the program components and goals of desegregation plans. Each state was required to define the mission of each institution in the higher-education system; describe improvements to black institutions, including the dollar amount and timetable for each improvement; eliminate unnecessary program duplication in a way consistent with strengthening the mission of black institutions; give priority consideration for placement of new programs at black institutions; withhold state approval of any change that might thwart desegregation; and establish goals for faculty desegregation and black-student enrollment in predominantly white institutions.

In many respects, the scope of that consent decree made the judiciary the manager of the Department of Education's Office for Civil Rights. Although one could argue that without such judicial involvement the Department of Education might be less than vigorous in enforcing civil-rights laws, the real issue in *Adams* is the scope of permissible judicial authority. The appel-

late court's decision in *Adams* emphasized inherent constitutional limitations on judicial authority. The appeals court refused, as the Supreme Court had refused in its *Grove City* ruling, to create its own version of civil-rights laws and of mechanisms for enforcing those laws.

This trend toward judicial restraint should not be equated with abdication by the courts of their fundamental role in resolving conflicts. Instead, as exemplified in *Grove City* and *Adams*, it is a sign of the federal bench's growing awareness of the limits on the judiciary's role in our governmental scheme. In the past, courts have been willing both to hear lawsuits that, for varying reasons, were not the proper subjects for resolution by federal courts and to supply legislative judgments on vague language in legislation enacted by Congress.

In a moment of judicial candor, Skelly Wright, a federal appeals-court judge, said that judges "should be more reluctant than we have been to fault the other agencies of government and also more hesitant about filling the void when, in our judgment, the elected branches of government should have acted and failed." He went on to name "one important exception: the area of equal rights for disadvantaged minorities. As to that, I remain an uncompromising 'activist'."

The *Grove City* and *Adams* decisions contradict Judge Wright's assertion; in both cases the courts refused to extend their authority to provide greater protection to civil-rights interests. In the *Grove City* case, the Supreme Court refused to supply a legislative judgment on vague Congressional legislation. In the *Adams* case, a federal court of appeals similarly insisted that civil-rights plaintiffs, like other litigants, must prove that they have a concrete interest in a lawsuit.

Those courts, by recognizing the limits on judicial authority, have shifted the focus of civil-rights reform in higher education to the elected branches of government, where it belongs. Under the principle of separation of powers, courts are supposed to resolve concrete disputes, not write laws or implement policy. Donald Horowitz, a law professor at Duke University, has pointed out that the courts' necessary concentration on individual cases, which limits their capacity for ascertaining the social relevance of the facts, "unfits the courts for much of the important work of the government."

WHETHER Congress and the executive branch will prove to be capable managers of civil-rights reform in higher education is an open question. The amount of public scrutiny of Congress during its failed effort to respond legislatively to the *Grove City* decision suggests that the elected branches will be held accountable for their actions (or inaction). Although such accountability does not guarantee that Congress and the executive branch will handle civil-rights issues in higher education responsibly, our government was founded on the belief that the elected branches would, over time, address public-policy concerns in a responsible manner. The *Grove City* and *Adams* decisions reflect that belief and return the issue of civil rights in higher education to the branches of government properly concerned with policymaking.

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