December 22, 2009

EDITORIAL

Restoring Access to the Courts

In a lamentable 5-to-4 decision earlier this year, the Supreme Court discarded 50 years of legal precedent to make it significantly harder for Americans to assert their legal rights in federal court.

The ruling, in the case of Ashcroft v. Iqbal, involved a Muslim man swept up on immigrations charges after the Sept. 11 attacks. The court’s conservative majority decided that he could not sue the high-ranking federal officials he deemed responsible for setting the policies behind the terrible abuse he said he suffered in detention.

But the ruling’s damage went beyond the case or the national security sphere. The court altered the procedural rules for initiating a lawsuit, raising the bar in a fashion destined to make it far harder to bring valid actions and to allow wrongdoers to avoid accountability.

For decades, a plaintiff filing a lawsuit needed to file only a short, clear statement of his claim and its legal grounds. That standard recognized that much of the evidence needed to prove claims may be in the hands of the defendant and not available before the pretrial discovery process. The Iqbal ruling, which followed a similar 2007 ruling applying to antitrust claims, abandoned that approach. Under the court’s new regimen, judges must assess the “plausibility” of the facts of an allegation before allowing the plaintiff to begin collecting evidence. That gives judges excessive latitude to bury cases based on their subjective views before the evidence emerges and can be fairly weighed.

The practical impact in, say, an employment discrimination case, is to disadvantage the wronged employee, who is unlikely to have access at the outset to the records needed to prove wrongful conduct. Testifying at a Senate Judiciary Committee hearing earlier this month, John Payton, the president of the NAACP Legal Defense and Education Fund, expressed doubt that some of the major cases of the civil rights era could have survived the heightened standard. The courts have already applied Iqbal to dismiss numerous lawsuits prematurely.

Representative Jerrold Nadler, a Democrat of New York, has introduced corrective legislation in the House. Senator Arlen Specter, a Pennsylvania Democrat, has introduced another bill targeting the problem. It is the responsibility of Congress to reopen the courthouse doors.