ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3745 HSTA HJR 32

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02-519 (REV 8/78)

HJR

32

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

4/3/85

Date: 4/18/85

The Committee on STATE AFFAIRS has had HJR 32
Relating to the Civil Rights Restoration Act of 1985.

under consideration and recommends:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ____________ [ ] same title [ ] new title

and recommends ____________

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ____________ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

ALASKA WOMEN'S LOBBY
POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

April 8, 1985

The Resolution before you, HJR 32, urges support for the Civil Rights Restoration Act of 1985, now under consideration in the U.S. Senate and House of Representatives.

This legislation would restore the legal protections against discrimination granted by four civil rights laws: Title VI of the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975.

In 1984 a Supreme Court ruling (Grove City College v. Bell) indicated flaws in the coverage of our civil rights laws. While the intention of these laws had been to make the prohibition of discrimination extend to an entire institution, such as a college, the Supreme Court ruled that only the specific program receiving federal funds, such as the student aid program was protected under Title IX and the rest of the college was free to discriminate.

Because the language of Title IX was modeled on Title VI of the Civil Rights Act of 1964 and then repeated in later civil rights statutes, this decision has broad implications.

The Civil Rights Restoration Act of 1985 would define " program or activity " to ensure that federal civil rights laws apply to the entire agency or institution receiving funds as was originally intended by Congress.

The Civil Rights Act passed by Congress in 1964 prohibited discrimination on the basis of race, color and national origin in schools, voting, public accommodations and housing and provided in Title VI of the Act stiff penalties to abolish this discrimination. The possibility of terminating federal funding to local school districts was a powerful threat. As a result educational opportunities and access to social services increased greatly for minorities. Title

VI remains an important vehicle to achieving an equitable society.

Title IX of the Education Amendments of 1972 is the only comprehensive law prohibiting sex discrimination in education. It applies to athletics, treatment of students, counseling, admissions, scholarships and financial aid, housing and facilities, health and insurance benefits and employment. It is a law concerned with sex discrimination against both males and females. Title IX has opened the doors of opportunity but only it's full enforcement will ensure that the next generation will be allowed to enter them.

Section 504 of the Rehabilitation Act of 1973 prohibits recipients of federal funding from discriminating against disabled individuals. Roughly one in six or 37 million Americans are disabled. Since the law was passed, opportunities for the disabled have increased in education and employment, enabling disabled persons to move from being tax-supported to being self sufficient tax-payers.

The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in the delivery of services and benefits supported by federal funds with the exception of employment practices.

Under these four laws, our country has flourished. In 1971, very few colleges or Universities offered athletic scholarships to women. In 1984, 10,000 women athletes were on scholarship. In fact, every member of the 1984 Olympic gold medal-winning U.S. Women's Basketball team attended college on athletic scholarships.

In 1975, few disabled people were visable in our society. Today you will see disabled people taking advantage of their newly won access to get to work, to shop for themselves and to make valuable contributions to our society.

Civil Rights have been good for America.

The resolution before you, HJR 32, is most timely because the Civil Rights Restoration Act of 1985 is expected to reach the House floor later this month for a full vote.

Alaska Women's Lobby - Comments on HJR 32 - Civil Rights Restoration Act

The Alaska Women's Lobby urges you to affirmatively pass HJR 32 from this committee and asks you to urge your collegues to move it swiftly to Washington to put Alaska's commitment to equality of opportunity for all citizens on record once again.

Sincerely,

Sherrie Goll

Sherrie Goll
for the Alaska Women's Lobby

ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

April 10, 1985

The Alaska Women's Lobby urges the passage of HJR 32, a resolution in support of federal legislation known as the Civil Rights Restoration Act of 1985.

Passage of this resolution would re-affirm Alaska's commitment to equality of opportunity for all citizens by placing the Alaska State Legislature in support of restoring the full legal protections against discrimination intended by Congress and granted by four civil rights laws.

The Civil Rights Restoration Act of 1985 responds to a Supreme Court ruling (Grove City College v. Bell) which indicated flaws in the coverage of our civil rights laws. While the intention of these laws had been to make the prohibition of discrimination extend to an entire institution, such as a college, the Supreme Court ruled that only each specific program receiving federal funds was protected under Title IX and the rest of the college was free to discriminate.

Because the language of Title IX was modeled on Title IV of the Civil Rights Act of 1964 and then repeated in later civil rights statutes, this decision has broad implications for minorities, women, the disabled and the aged.

The Civil Rights Restoration Act of 1985 would define " program or activity " to ensure that federal civil rights laws apply to the entire agency or institution receiving funds as was originally intended by Congress.

This legislation is currently before both bodies of Congress and is expected to reach the floor of the House for a full vote later this month.

It is supported by a coalition of 164 national organizations representing Blacks, Hispanics, women, disabled persons, Asians and Native Americans, senior citizens, religious and labor groups.

We urge you to pass HJR 32 and move it swiftly to Washington, to again place Alaska on record in support of the civil rights of all citizens of the United States.

REPRESENTATIVE
PETER GOLL

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

M E M O R A N D U M April 3, 1985

TO: Representative Katie Hurley

FROM: Representative Peter Goll

SUBJECT: HJR 32

Enclosed are documents relating to what is known as the Civil Rights Restoration Act of 1985 under consideration by the Congress of the United States.

This federal legislation makes identical changes in four separate federal laws (Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of the 1972; Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975).

In essence these changes in federal law set forth three standards for determining coverage under these laws:

1. When a state or local government agency or department receives federal funds, the entire agency or department is covered.

2. When a university, higher education system, local education agency, or other elementary and secondary school system receives federal funds, the entire entity is covered.

3. When a corporation, partnership, or other private organization receives federal funds, the entire entity is covered.

By setting forth these standards, the Congress of the United States is restoring the broad scope of coverage of these four federal laws which the United States Supreme Court erroneously invalidated.

HJR 32 would place the Alaska State Legislature in support of these changes and would urge that the Congress of the United States pass the proposed legislation. HJR 32 would also urge the Alaska delegation in Congress support the proposed legislation.

Impact of *Grove City* decision one year later

Leslie R. Wolfe and Theresa Cusick

What has been the impact of the *ove City* decision? ... The Supreme Court's ruling, one ar ago, meant that federal funds—xpayer's dollars—can go to recipi-ts that openly discriminate. That de-ion specifically related to Title IX, d therefore, virtually gutted the fed-l ban on sex discrimination in edu-tion. However, several other groups are o affected. The language of Title was modeled closely after that of tle VI of the Civil Rights Act of 64 (prohibiting race discrimina-n), and then repeated in later civil hts statutes, including Section 504 the Rehabilitation Act of 1973 rohibiting disability discrimination) d the Age Discrimination Act of 75.

Thus, the *Grove City* decision has broad and adverse implications for all persons protected under these civil rights statutes. The decision affects almost every recipient of federal funds —including hospitals, correctional facilities, airport authorities, state highway departments, municipal utilities, and local school districts.

The impact of the *Grove City* decision was almost immediate. On March 8, 1984—a little more than a week after the Court's ruling—the Department of Education dropped sex discrimination charges against the University of Maryland's intercollegiate athletics program because the athletics program did not receive direct federal funding. The case was dropped despite the fact that the Department had earlier announced that it had uncovered sex discrimination in several areas—including travel and per diem allowances, provision of locker rooms and support services, recruitment of student athletes, and accommodation of student interests and abilities. Yet female athletes at the University of Maryland and other universities no longer have federal protection against this discrimination.

This case was just the beginning. In the wake of the *Grove City College* decision, more than 60 cases have been closed, limited or suspended by the Education Department—including Title VI and Section 504 cases as well as Title IX cases. The following real-life examples—taken from actual cases —show how the *Grove City College* decision already has affected many women, persons of color and disabled persons who had filed complaints of discrimination.

- A student at Hill Top Beauty School in Dale City, California complained to the Office for Civil Rights (OCR) that clients were more often assigned to White students than Black students, that Black students were assigned to Black clients and that clean-up duties not properly the responsibility of students were given to Black students.

Even though many students attend Hill Top with the help of federal grants and loans, OCR decided it could not investigate the complaint because the practical training program in which the discrimination occurred did not receive direct federal funds. The case was closed, so there will never be any investigation to determine whether Hill Top discriminates against Black students.

- A woman instructor at the Fashion Institute of Technology in New York City complained to OCR that she was discriminated against in employment because of sex. But OCR did not investigate her complaint because it could not show that federal funds went directly to the department in which she worked.

Even though the Fashion Institute received almost a quarter of a million dollars in federal funds in 1983 and 1984, sex discrimination was no longer prohibited institution-wide. Prior to a *Grove City College* decision, where the woman worked would not have made any difference, as long as the Institute itself received federal funds. Now the case is on "policy hold" at OCR.

- A former corrections officer at the Perryville, Arizona Correctional Center filed a complaint charging that he had been fired because of his disability. The Arizona Department of Corrections received nearly half a million dollars in federal funds under the Education of All Handicapped Children Act and another grant under the Vocational Education Act.

Even though these federal funds went to the Department, OCR declined to investigate the complaint because the man was not employed in, nor did he have any "substantial" contact with, any federally assisted education program at Perryville. OCR closed the case, leaving this individual completely unprotected by federal law requiring non-discrimination in the employment of disabled persons.

- A Northeastern University student filed a Title IX complaint charging that the university failed to redress her sexual harassment complaint and had no grievance procedure, as required by Title IX.

Even though the University had received over $2 million under the College Housing Loan Program to renovate student housing, and $9.9 million in student aid for 1983-84, OCR decided that it could not investigate the complaint because Lake Hall — the building in which the alleged harassment occurred — had not been built or renovated with federal loans. Ironically, if her sexual harassment had occurred in student dorms renovated with federal funds, the complaint would have been investigated. The case is on "policy hold" at OCR.

These examples are just the tip of the iceberg. The potential for federally funded discrimination under the *Grove City College* ruling is virtually limitless. Already federal enforcement efforts have been severely restricted. The coverage that was comprehensive is

Please turn to Pg. 8, Col. 1

economic viability of their companies, or "bankrupt" any industry.

The 1984 study was undertaken to examine the patterns and cost of implementing pay equity among employ- ciated with lawsuits) has erate and manageable (sota's appropriation of state's payroll budget over to correct sex-based wage tion).

Impact of *Grove City* decisi

Continued from Pg. 3, Col. 4

now a legal patchwork. As a woman, a person of color, a disabled person or an older person moves through an institution, the degree of civil rights protection will wax and wane, depending on the nature and extent of federal funding.

The following examples describe the limited reach of our civil rights laws in the wake of the Supreme Court's decision. They illustrate the discrimination that was illegal before the decision but could be legal today—as long as the *Grove City* ruling stands as the law of the land.

- A women's intercollegiate athletics program could be limited or abolished, while the men's program was maintained or expanded. C universities could refuse travel or could pay less athletes. Institutions would offer women fewer coach tunities, inferior equipmen and uniforms, and inconve tice schedules.

- If a hospital has one ward where none of the doc Medicaid patients and no eral funds are received, t could argue that the ward ered by Title VI and cou Black or Hispanic patients.

- Unless a class progra partment in a college or un ceived federal funds direct could be excluded, or prefer

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Virginia Avenue, NW
on, DC 20037
85-7712

An employee with outstanding evaluations is suddenly fired—when his employer learns he has epilepsy.

Your daughter is put on the waiting list for an advanced mathematics class until all the boys who want to enroll have a chance to do so.

A public high school insists on separate proms for Blacks and Whites.

An elderly couple is denied immunization by the city clinic which decides to reserve vaccine for the working-age population.

This is 1985 and these cases can happen today—legally—in towns and cities across the United States. Maybe, like many other Americans, you thought we'd taken care of discrimination long ago.

It's not a complex constitutional issue. It's a matter of simple justice.

We must face the facts and go about the necessary business of making basic civil rights the birthright of all Americans. That is the purpose of the Civil Rights Restoration Act of 1985, now under consideration in the U.S. Senate and House of Representatives.

If you thought we'd taken care of this, you're right. The principal civil rights laws governed our land effectively for many years. Title VI of the Civil Rights Act of 1964 outlawed discrimination on the basis of race, color and national origin. Title IX of the Education Amendments of 1972 championed the rights of girls and women in educational institutions. Section 504 of the Rehabilitation Act of 1973 advanced the rights of disabled persons. And the Age Discrimination Act of 1975 holds significant promise for protecting the elderly.

Under these four laws, our country has flourished. In 1971, very few colleges or universities offered athletic scholarships to women. In 1984, ten thousand women athletes were on scholarship. The result: the 1984 Olympic gold medal-winning U.S. women's basketball team, all of whose members attended college on athletic scholarships. In 1975, few disabled people were visible in our society, because they were prevented from leaving their homes or institutions by extensive physical and attitudinal barriers. Today, wherever you see curb cuts and ramps or braille in elevators, you will see disabled people taking advantage of their newly won access to get to work, to shop for themselves and to make other valuable contributions to our society. Civil rights have been good for America.

Then, in 1984, a restrictive Supreme Court ruling (*Grove City College v. Bell*) dramatically narrowed the coverage of civil rights laws, reversing years of previous enforcement practices by both Republican and Democratic Administrations.

Under these four laws, "programs or activities" that receive federal funds are prohibited from discriminating against women, minorities, the disabled or the elderly. While the intention of the laws had been to make this application extend to an entire institution, such as a college, the Supreme Court ruled that only the specific program receiving federal funds, such as the student aid program, was protected under Title IX of the Education Amendments of 1972. The rest of the college was free to discriminate. And because the language of Title IX was modeled closely after Title VI of the Civil Rights Act of 1964, and then repeated in later civil rights statutes including Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, the Grove City decision has broad and sinister implications. The Civil Rights Restoration Act of 1985 would define "program or activity" to make sure that federal civil rights laws apply to the entire agency or institution receiving federal funds.

In the meantime, the Federal government is subsidizing discrimination. That's right—your tax dollars are now being used to fund colleges, corporations, state and local agencies and hospitals that discriminate against your daughters, your neighbors, your parents, your friends and you.

We think America has better ways to spend its money. The Civil Rights Restoration Act of 1985 has one simple purpose: it will make federally assisted discrimination illegal. It will restore Title IX, Section 504, the Age Discrimination Act and Title VI to their full meaning as previously enforced.

The Civil Rights Restoration Act will bring the law back to the original intent of Congress, back to the purpose which President John Kennedy envisioned:

"Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination..."

Simple justice. It's all your organization is asking.

THE CIVIL RIGHTS RESTORATION ACT OF 1985

on the basis of race, color or national
d programs or activities. Title VI was
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discrimination in schools, voting,
and housing, Congress passed the Civi
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prohibits sex discrimination in educational programs or activities receiving federal funds. It is the only comprehensive federal law prohibiting sex discrimination in education. Title IX applies to athletics, treatment of students, counseling admissions, scholarships and financial aid, housing and facilities, health and insurance benefits, and employment. It is also a law concerned with sex discrimination against both males and females.

Title IX has dealt a severe blow to a variety of sex barriers in education. For many years, sex discrimination in testing, applications, tracking, and hiring produced an educational system with both sexes in traditionally defined and stereotypical roles. Title IX has rapidly changed much of that. In 1970-71, there were only 300,000 girls participating in interscholastic athletics on the high school level. By 1978-79, the number had reached 2 million. In 1972, only 16,000 women were participating in intercollegiate athletics. By 1984, the number had topped 150,000. In short, as American Olympian Cheryl Miller put it, "without Title IX, I wouldn't be here." Dramatic but less media-conscious increases of women in other careers formerly reserved for males is but another sign of the dramatic impact of Title IX. For example, the percentage of women receiving MBA degrees rose from less than 4 percent in 1970 to 25 percent by 1980. Not to be ignored is the Title IX-inspired elimination of barriers to male participation in educational programs. For example, male enrollment in consumer and homemaking courses rose from over 4 percent in 1969 to over 18 percent in 1978. Similarly, men have entered nursing programs in increasing numbers.

While Title IX has abolished many discriminatory practices, there is still a long way to go. Women still head only one percent of our schools. Surveys of classroom enrollment patterns consistently show that girls are not participating on an equal basis with boys in computer programming courses. Many young women are still advised against entering training programs for careers traditionally reserved for men, and older women are just beginning to return to school as a result of more open admissions policies. Title IX has opened the doors of opportunity but only its full enforcement will ensure that the next generation will be allowed to enter them.

prohibits recipients of Federal funding from discriminating against disabled individuals. Roughly one out of six or 37 million Americans are disabled. Some have physical disabilities, such as orthopedic, neurological or sensory problems. Others have mental disabilities—retardation, emotional illness, learning disabilities. Still others have "hidden" disabilities—cancer, epilepsy, respiratory and cardiovascular conditions. As intended by Congress, the coverage of the law is broad, insuring that programs receiving federal financial assistance shall be operated without discrimination on the basis of handicap. Section 504 prohibitions therefore apply to such areas as employment, housing, transportation, education, health services or any other federally aided programs.

Section 504, more than any other piece of legislation, has been viewed by disabled Americans as a clear reflection of this nation's full commitment to integration and equal opportunity. It is no surprise that since the law was passed, opportunities for the disabled have increased in education and employment, enabling disabled persons to move from being tax-supported to self-sufficient individuals who pay taxes. Indeed, the law is a bill of rights providing dignity to a significant proportion of our population and in turn providing them opportunities to be productive citizens.

The costs of discrimination against disabled individuals are substantial. To begin with, the segregation of the disabled from the critical life-sustaining activities of our society belies our claim as a society of opportunity for all. Studies have found that lack of employment opportunities for the disabled have little to do with the ability of a disabled person to perform a regular, full time job. For the most part, it's a simple case of discrimination. And discrimination is bad economics, especially in an age of diminishing resources. For example, a major government study has estimated that eliminating employment discrimination against disabled people would yield $1 billion annually in increased employment and earnings for disabled people. Tax revenues would increase as well. In short, equal opportunities for the disabled yield substantial economic benefits by reducing the need for institutionalization, increasing future earnings and decreasing the likelihood of public assistance.

prohibits discrimination on the basis of age in the delivery of services and benefits supported by federal funds, with the exception of employment practices. The Act, part of the Older Americans Act, was motivated by the belief that there are discriminatory policies which impair the ability of older persons to take advantage of federally supported services and benefits because of their age. The Act, however, applies to persons of all ages. Congress intended the Act to apply broadly to all federally funded areas such as education, health services, housing and social services. An investigation by the U.S. Commission on Civil Rights authorized by the Act found that, indeed, federal dollars were being spent to discriminate on the basis of age. The Commission concluded that "based on the evidence developed through its study of selected programs and activities receiving Federal funds, . . . discrimination on the basis of age is widespread." Those aged 65 and over were "consistently adversely affected."

While the enforcement of the Age Discrimination Act of 1975 has been hampered by the reluctance of Federal agencies either to issue regulations or to inform recipients of federal monies of their obligations, the Act provides a potentially significant remedy for a "widespread" problem. The Act is part of an increasing national awareness that many unreasonable barriers to full opportunity continue to exist. As the U.S. Commission on Civil Rights found, age discrimination was explained by Federal, State and local administrators on the basis of "stereotypical assumptions, incomplete information and misinterpretation." The Act promises to put some teeth in the effort to prevent the use of federal monies to support policies based on wrong thinking.

Noted anthropologist Margaret Mead once stressed that so-called civilized societies actually treat their elderly much worse than the "primitive" societies she had studied. Indeed, if this is a critical part of a society's image, ours is tarnished by the numerous arbitrary and irrational age distinctions we allow our public monies to maintain. Second, these irrational practices mean both wasted tax dollars and squandered human resources. From the veteran denied educational opportunities to the displaced homemaker prevented access to government training programs by maximum age rules, age discrimination makes bad economic sense.

From: Senator Ted Kennedy
OFFICE OF THE GOVERNOR OF ALASKA
444 North Capitol Street, N.W. #518
Washington, D. C. 20001
(202)624-5858

XEROX TELECOPIER 485
AUTOMATIC (202) 624-5857

TELECOPIER TRANSMITTAL INFORMATION SHEET

PHONE # SENT TO: 465-3585

DELIVER TO/
HOLD FOR PICK UP: State Rep. Peter Goll

COMMENTS: Please call his office and have them pick this up for the Representative Thanks

SUBJECT: S.431

DATE: 4/3/85

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THANK YOU!

99TH CONGRESS
1ST SESSION

S. 431

To restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, JANUARY 21), 1985

Mr. KENNEDY (for himself, Mr. WEICKER, Mr. CRANSTON, Mr. MATHIAS, Mr. LEAHY, Mr. PACKWOOD, Mr. METZENBAUM, Mr. STAFFORD, Mr. PELL, Mr. CHAFEE, Mr. SIMON, Mr. DURENBERGER, Mr. BIDEN, Mr. ANDREWS, Mr. MOYNIHAN, Mr. BAUCUS, Mr. BENTSEN, Mr. BINGAMAN, Mr. BRADLEY, Mr. BURDICK, Mr. CHILES, Mr. COHEN, Mr. DIXON, Mr. DODD, Mr. EAGLETON, Mr. EVANS, Mr. EXON, Mr. GLENN, Mr. GORE, Mr. HARKIN, Mr. HART, Mr. HOLLINGS, Mr. INOUYE, Mr. KERRY, Mr. LAUTENBERG, Mr. LEVIN, Mr. MATSUNAGA, Mr. MELCHER, Mr. PROXMIRE, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SPECTER, Mr. MITCHELL, Mr. DECONCINI, and Mrs. JOHNSTON) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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A BILL

To restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Civil Rights Restoration Act of 1985".

FINDINGS OF CONGRESS

SEC. 2. The Congress finds that—

(1) certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; and

(2) legislative action is necessary to restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered.

EDUCATION AMENDMENTS AMENDMENT

SEC. 3. (a) Title IX of the Education Amendments of 1972 is amended by adding at the end the following new section:

"INTERPRETATION OF 'PROGRAM OR ACTIVITY'

"SEC. 908. For the purposes of this title, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such depart-

ment or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

(b) The third sentence of section 902 of the Education Amendments of 1972 is amended—

(1) by striking out "program, or part thereof, in which" and inserting in lieu thereof "assistance which supports"; and

(2) by striking out "has been so found" and inserting in lieu thereof "so found".

REHABILITATION ACT AMENDMENT

SEC. 4. Section 504 of the Rehabilitation Act of 1973 is amended—

(1) by inserting "(a)" after "SEC. 504."; and

(2) by adding at the end the following new subsection:

"(b) For the purposes of this section, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

AGE DISCRIMINATION ACT AMENDMENT

SEC. 5. (a) Section 309 of the Age Discrimination Act of 1975 is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting "; and" in lieu thereof; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) the term 'program or activity' means all of the operations of—

"(A)(i) a department or agency of a State or of a local government; or

"(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(B)(i) a university or a system of higher education; or

"(ii) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(C) a corporation, partnership, or other private organization; or

"(D) any other entity determined in a manner consistent with the coverage provided

with respect to entities described in subparagraph (A), (B), or (C);

any part of which is extended Federal financial assistance.".

(b) The second sentence of section 305(b) of the Age Discrimination Act of 1975 is amended by striking out "particular program or activity, or part of such program or activity, with respect to which such finding has been made" and inserting in lieu thereof "assistance which supports the noncompliance so found".

CIVIL RIGHTS ACT AMENDMENT

SEC. 6. (a) Title VI of the Civil Rights Act of 1964 is amended by adding at the end the following new section:

"SEC. 606. For the purposes of this title, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

(b) The third sentence of section 602 of the Civil Rights Act of 1964 is amended—

(1) by striking out "program, or part thereof, in which" in paragraph (1) and inserting in lieu thereof "assistance which supports"; and

(2) by striking out "has been so found" in paragraph (1) and inserting in lieu thereof "so found".

O

THE CIVIL RIGHTS RESTORATION ACT OF 1985

This year's bill seeks the same result we sought to achieve in 1984--the restoration of four major civil rights statutes--Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975--to the broad scope of coverage which the Supreme Court in Grove City College v. Bell, 104 Sup. Ct. 1211 erroneously invalidated.

To achieve this goal, each of the four laws is amended--and they are amended in exactly the same way. However, in order to answer the criticism that S. 2568 was too complex, and, therefore, unclear, we have taken a different approach this year.

The definition of the term recipient, which was the core of S. 2568 and was used in lieu of the term "program or activity" is not included in this year's bill. Instead the term "program or activity" (the phrase narrowly interpreted by the Supreme Court in Grove City) is retained and a definition of that term is added to each of the four laws.

Our definition of "program or activity" is simple and clear. It sets out three important standards for determining coverage under these laws which are consistent with the prior coverage:

1. When a state or local government agency or department receives federal funds, the entire agency or department is covered.

2. When a university, higher education system, local education agency, or other elementary and secondary school system receives federal funds, the entire entity is covered.

3. When a corporation, partnership, or other private organization receives federal funds, the entire entity is covered.

The same institution-wide principles used to determine coverage for the state and local government, educational institution and corporate categories will also be used to determine coverage for any entity which does not fit one of these three categories.

The bill will also make clear that when a state or local government receives federal financial assistance for distribution to agencies, only that unit (e.g. the Governor's office) to which the funds were extended, and those agencies that actually receive funds, would be covered.

The bill also includes last year's amendment to the enforcement sections of the four statutes which is designed to insure that the pinpointed fund termination remedy is retained.

99th CONGRESS
1st SESSION

S. ______

(Note.—Fill in all blank lines except those provided for the date, number, and reference of bill.)

IN THE SENATE OF THE UNITED STATES

Mr. Kennedy (for himself and Mr. Weicker, Mr. Cranston, Mr. Mathias, Mr. Metzenbaum, Mr. Packwood, Mr. Leahy, Mr. Chafee, Mr. Biden, Mr. Durenberger, Mr. Hart, Mr. Pell, Mr. Eagleton, Mr. Dodd, Mr. Riegle, and Mr. Simon)
introduced the following bill; which was read twice and referred to the Committee on ________

A BILL

To restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the ''Civil Rights Restoration Act of 1985''.

Findings of Congress

Sec. 2. The Congress finds that--

(1) certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; and

(2) legislative action is necessary to restore the prior consistent and long standing executive branch interpretation and broad, institution-wide application of those laws as previously administered.

Education Amendments Amendment

Sec. 3. (a) Title IX of the Education Amendments of 1972 is amended by adding at the end the following new section:

''Interpretation of 'Program or Activity'

''Sec. 908. For the purposes of this title, the term 'program or activity' means all of the operations of--

''(1)(A) a department or agency of a State or of a local government; or

''(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance

was extended, in the case of assistance to a State or local government;

''(2)(A) a university or system of higher education; or

''(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

''(3) a corporation, partnership, or other private organization; or

''(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.''.

(b) The third sentence of section 902 of the Education Amendments of 1972 is amended--

(1) by striking out ''program, or part thereof, in which'' and inserting in lieu thereof ''assistance which supports''; and

(2) by striking out ''has been so found'' and inserting in lieu thereof ''so found''.

Rehabilitation Act Amendment

Sec. 4. Section 504 of the Rehabilitation Act of 1973 is amended--

(1)(A) a department or agency of a State or of a

local government; or

''(B) by inserting ''(a)'' after ''Sec. 504.''; and

(2) by adding at the end the following new subsection:

''(b) For the purposes of this section, the term 'program or activity' means all of the operations of--

''(1)(A) a department or agency of a State or of a local government; or

''(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance was extended, in the case of assistance to a State or local government;

''(2)(A) a university or system of higher education; or

''(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

''(3) a corporation, partnership, or other private organization; or

''(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.''.

Age Discrimination Act Amendment

Sec. 5. (a) Section 309 of the Age Discrimination Act of 1975 is amended--

(1) by striking out ''and'' at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting ''; and'' in lieu thereof; and

(3) by inserting after paragraph (3) the following:

''(4) the term 'program or activity' means all of the operations of--

''(A)(i) a department or agency of a State or of a local government; or

''(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance was extended, in the case of assistance to a State or local government;

''(B)(i) a university or system of higher education; or

''(ii) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

''(C) a corporation, partnership, or other private organization; or

''(D) any other entity determined in a manner consistent with the coverage provided with respect to entities described in subparagraph (A), (B), or (C); any part of which is extended Federal financial assistance.''.

(b) The second sentence of section 305(b) of the Age Discrimination Act of 1975 is amended by striking out ''particular program or activity, or part of such program or activity, with respect to which such finding has been made'' and inserting in lieu thereof ''assistance which supports the noncompliance so found''.

Title VI Amendment

Sec. 6. (a) Title VI of the Civil Rights Act of 1964 is amended by adding at the end the following new section:

''Sec. 606. For the purposes of this title, the term 'program or activity' means all of the operations of--

''(1)(A) a department or agency of a State or of a local government; or

''(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance was extended, in the case of assistance to a State or local government;

''(2)(A) a university or system of higher education; or

''(2) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

''(3) a corporation, partnership, or other private organization; or

''(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.''.

(b) The third sentence of section 602 of the Civil Rights Act of 1964 is amended—

(1) by striking out ''program, or part thereof, in which'' in paragraph (1) and inserting in lieu thereof ''assistance which supports''; and

(2) by striking out ''has been so found'' in paragraph (1) and inserting in lieu thereof ''so found''.

such as the Recommendations to Governments and Rules of Conduct to Combat Extortion and Bribery developed by the International Chamber of Commerce.

Mr. CHAFEE. Mr. President, I am pleased to join my colleagues, Senators HEINZ, GARN, and D'AMATO in introducing the Business Accounting and Foreign Trade Simplification Act.

This bill is identical to the Senate-passed version of S. 708, a bill which I authored and introduced in the 97th Congress.

Mr. President, I have been committed to achieving these vital changes in the Foreign Corrupt Practices Act for 4 years now. The changes this bill makes in the Foreign Corrupt Practices Act are critical to maintaining our position in the world export market. Ambassador Brock, U.S. Trade Representative, has referred to the need for these changes as being at least as great as the need for addressing foreign subsidies, local content laws, hidden taxes, or nontariff barriers.

Mr. President, this bill is intended to preserve the purposes of the Foreign Corrupt Practices Act—that is, putting an end to large-scale bribery of foreign officials by American corporations. What we propose is to reduce some of the confusion that the act has generated. The bill had had strong support from the business community, the agencies responsible for its enforcement, the administration, and other Members of Congress from both political parties.

Specifically, the bill would do as follows:

First, change the name of the act. The Foreign Corrupt Practices Act would become the Business Practices and Records Act. This reflects the fact that the accounting standards are not limited to international companies or transactions. It also would not make a presumption that corruption exists.

Second, enforcement: With regard to the bribery provisions, the Department of Justice, which has sole jurisdiction under the FCPA for criminal enforcement of both privately and publicly held companies and civil enforcement of privately held companies, would be given sole jurisdiction of civil enforcement for publicly held companies as well. Thus, any company with questions about the bribery provisions could get them answered in one place. The Securities and Exchange Commission would retain responsibility for civil enforcement of the accounting standards provisions.

Third, bribery provision: Congress made clear its intent to exclude so-called facilitating payments from the reach of the Foreign Corrupt Practices Act. However, the statute is not clear as to what constitutes such payments. They are defined as payments to secure or expedite the performance of a routine governmental action as distinguished from action involving the exercise of discretion. The reference to the exercise of judgment is also deleted. Payments which are lawful in the country where they are made, and which are intended to secure prompt performance of a foreign official's duties, would not be actionable under this bill. There is also a clarifying exclusion for token courtesy gifts and incidental benefits received by foreign officials in the course of marketing activities or product presentations.

The bill also makes it clear that there is no violation in making payment if they are legal under the laws and regulations of the foreign country involved.

Under the Foreign Corrupt Practices Act, companies are liable if they have a reason to know that a bribe may be paid by a third party or intermediary. This provision was identified in the 1980 executive branch study of export disincentives as the area of greatest concern to business. The bill replaces this provision with language that makes U.S. companies liable if they corruptly pay a bribe directly or if they directed or authorized the bribe expressly or by a course of conduct.

Fourth, accounting standards: The books and records provision is deleted. The bill also defines the terms "reasonable assurances" and "reasonable detail," which exist in the current law. Thus, it is made explicit that the use of cost/benefit evaluation is to be applied to internal accounting controls. This makes it clear that companies are not expected to design control systems whose costs exceed the benefit to the companies and to their stockholders. Currently, the Securities and Exchange Commission says the cost/benefit evaluation is to be applied. But the law does not say so. The bill would put it into the law.

Fifth, international agreement: This bill contains extensive provisions on the desirability of international agreements to establish standards for international business practices. The President would be required to submit a report to Congress within 1 year of enactment of this legislation explaining steps that the United States could take to promote cooperation by other countries to prevent bribery.

Let us not waste another Congress, another year, or another month. We are losing overseas business and jobs each day we delay. U.S. Trade Representative Brock has testified before the Senate that this law alone has cost U.S. industry billions of dollars in sales and thousands of jobs. Our mounting trade deficit makes further delay unjustifiable.

In countries such as Indonesia, and the Philippines, U.S. companies are hamstrung by the fact that Japanese and South Korean firms frequently make large payments or provide special deals to local officials or businessmen in return for import licenses or approval of investments. Such payments are subject to stiff penalties under the U.S. law.

I am certainly not advocating bribery but as presently worded, the law is vague and cumbersome and has become a severe impediment to American trade.

I do hope that the House Subcommittee on Telecommunications, Consumer Protection, and Finance will procure a bill this spring so as to make full congressional approval a reality before the end of this year. Action of this matter is long overdue.

I remain committed to the enactment of this bill and will do all I can to achieve that goal this year.

Mr. D'AMATO. Mr. President, today, the Business Accounting and Foreign Trade Simplification Act, a bill which would amend and clarify the Foreign Corrupt Practices Act of 1977, is being reintroduced and I am pleased to be an original cosponsor.

The Foreign Corrupt Practices Act was enacted to prevent U.S. corporations from committing acts of bribery outside the boundaries of the United States. Certainly no one will disagree with the spirit of the Foreign Corrupt Practices Act; however, some of the provisions of the act tended to have a chilling effect on legitimate international business operations of some of our domestic companies. At times, the Foreign Corrupt Practice Act has caused confusion when corporations have attempted to comply with its overbroad prohibitions and unclear accounting standards. The Business Accounting and Foreign Trade Simplification Act will remedy this by narrowing some of the prohibitions and by providing a clearer standard regarding the state of mind of the person committing the violative act.

During the 97th Congress, Senator Heinz held hearings on the Business Accounting and Foreign Trade Simplification Act in the International Finance and Monetary Policy Subcommittee of which he is the chairman, while I conducted hearings in the Securities Subcommittee regarding the enforcement standards for the accounting sections of the FCPA which are administered by the SEC. These hearings made a compelling case for passage of this legislation; and the Senate wisely passed S. 708 in the 97th Congress. Joint hearings were held between Senator Heinz and myself; however, we were unable to enact S. 414 in the 98th Congress. I am hopeful that we can expedite consideration and send the bill to the House of Representatives so that the Foreign Corrupt Practices Act no longer puts a damper on American corporations doing business abroad.

In today's economy, we need to encourage international trade rather than hamper it with ambiguous laws.

By Mr. KENNEDY (for himself, Mr. WEICKER, Mr. CRANSTON, Mr. MATHIAS, Mr. LEAHY, Mr. PACKWOOD, Mr. METZENBAUM, Mr. STAFFORD, Mr. PELL, Mr. CHAFEE, Mr. SIMON, Mr. DURENBERGER, Mr. BIDEN, Mr. AN-

DREWS, Mr. MOYNIHAN, Mr. BAUCUS, Mr. BENTSEN, Mr. BINGAMAN, Mr. BRADLEY, Mr. BUMPERS, Mr. CHILES, Mr. COHEN, Mr. DIXON, Mr. DODD, Mr. EAGLETON, Mr. EVANS, Mr. EXON, Mr. GLENN, Mr. GORE, Mr. HARKIN, Mr. HART, Mr. HOLLINGS, Mr. INOUYE, Mr. KERRY, Mr. LAUTENBERG, Mr. LEVIN, Mr. MATSUNAGA, Mr. MELCHER, Mr. PROXMIRE, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SPECTER, Mr. MITCHELL, Mr. DECONCINI and Mr. JOHNSTON):

S. 431. A bill to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; to the Committee on Labor and Human Resources.

CIVIL RIGHTS RESTORATION ACT

Mr. KENNEDY. Mr. President, today Senator WEICKER and I, together with 42 of our Senate colleagues are introducing legislation that will complete the most important unfinished business of the past Congress and restore the full force and effectiveness of our Nation's civil rights laws.

Last October, a small minority used a filibuster to prevent the Senate from enacting legislation designed to reaffirm that Federal financial assistance may not be used to support discrimination against any person on the basis of race, color, national origin, sex, disability or age. That legislation was designed to undo the unfortunate consequences of the Supreme Court's decision last year in *Grove City College v. Bell*, 104 S. Ct. 1211 (1984), which left a serious loophole in the four basic laws that protect millions of women, the elderly, minorities, and the handicapped from discrimination.

This year we are introducing the Civil Rights Restoration Act of 1985, which will reverse that decision—and all of its effects—and restore title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 to the broad scope of coverage which characterized their application under the four prior administrations.

WHY THIS LEGISLATION IS NECESSARY

In Grove City the Supreme Court dramatically narrowed title IX's prohibition against sex discrimination in education. While the Court held unanimously that Grove City is a recipient of Federal financial assistance because of basic educational opportunity grants (BEOG) provided to its students, a 6 to 3 majority construed title IX's "program or activity" language to reach only the school's student financial aid office. As a result, many schools throughout the country are now free to discriminate in many, if not all, of their course offerings, extracurricular activities, or student programs and effective enforcement has become virtually impossible. During the last year, the Department of Education alone halted work on over 60 cases involving educational institutions and is in the process of reviewing many more.

But title IX is only one of four major civil rights laws that prohibit discrimination by those receiving Federal funds. Congress expressly modeled title IX after title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race or national origin. Similarly, section 504 of the 1973 Rehabilitation Act and the Age Discrimination Act of 1975 contain the same "program or activity" language. Each of these statutes is therefore susceptible to the same limitation applied to education in Grove City. In fact, the Supreme Court clearly indicated its intention to apply the Grove City reasoning to the other statutes in deciding a section 504 case on the same day Grove City was handed down, *Consolidated Rail Corp. v. Darrone*, 104 S. Ct. 1248 (1984). And the administration has proceeded to apply Grove City to these other laws. The Department of Education has not only dropped title IX cases, but also cases under title VI, section 504, and the Age Discrimination Act.

Similarly, while title IX is limited to discrimination in education and while the Grove City case dealt with a college, it is clear that the Court's restrictive interpretation of "program or activity" is applicable to noneducation institutions as well. Thus, restoration of a broad interpretation "program or activity" must reach beyond education to forestall Federal funding of discrimination in such areas as health, transportation, social service, and economic development. The Darrone case, for example, applied Grove City to a section 504 case dealing with employment by a railroad. And Assistant Attorney General for Civil Rights William Bradford Reynolds has stated that from the outset that he intends to apply to the Grove City holding to other civil rights laws in all of the areas they cover.

In short, unless we amend all four laws, we cannot eliminate all of the effects of the Grove City case and will not restore these laws to the broad scope of coverage and protection which Congress originally intended and which characterized their administration for over 20 years.

WHAT THE BILL DOES

Coverage. The Civil Rights Restoration Act of 1985 amends each of the affected statutes by adding a section defining the phrase "program or activity" to make clear that discrimination is prohibited throughout entire agencies or institutions if any part receives Federal financial assistance. Thus, the language of the 4 statutes will conform to the enforcement practices of previous Republican and Democratic administrations.

The definition of "program or activity" contains four applications of the principle of institution-wide coverage:

First, the operations of a department or agency of a State or local government are covered when Federal funds are extended to any part of the department or agency. For example, if Federal health assistance is extended to a part of the State health department, the entire health department would be covered in all of its operations. In the case of assistance to a State or local government, as distinguished from aid to a designated department or agency, the particular entity that distributes the Federal assistance is covered as well as any departments or agencies to which the assistance goes. For example, if the office of a mayor receives Federal financial assistance and distributes it to local departments or agencies, all of the operations of the mayor's office are covered along with the departments or agencies which actually get the aid.

Second, both individual universities and systems of higher education are covered in their entirety if any part receives Federal financial assistance. Under the bill, if a part of a university receives Federal aid, the entire university is covered. When a campus which is part of a "system of higher education" is receiving Federal financial assistance, then the entire system of which the campus is a part is covered.

Under the bill, local education agencies and other school systems are covered entirely when any part receives Federal funds. "Local education agency" is defined in the manner set forth in section 198(a)(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2354(a)(10)) and includes any agency, seen as a board of education, with administrative control and direction over a public elementary or secondary school or group of schools and the schools themselves.

Third, corporations, partnerships, and other private organizations which receive Federal financial assistance also are fully covered by the nondiscrimination requirements. For example, if a private hospital corporation gets Federal assistance for its emergency room, all of the operations of the hospital, including, for example, the operating rooms, pediatrics department, admissions and discharge offices are covered.

Fourth, appropriate applications of the institution-wide principle must be made to determine coverage of entities not specifically listed. Thus, for example, a college which receives any Federal assistance would be covered in its entirety. A local water district which receives aid would be covered in its entirety just as a water department of a State or local government would be. And an individual who gets a Federal research grant would be required not to discriminate just as a group of indi-

viduals in a private organization would be.

Enforcement. The enforcement section of each statute is also amended to include the same proposal on fund termination that was in last year's bill.

The reason for this change lies in the recision determination to maintain a distinction that was the essence of these four laws prior to Grove City—a distinction between broad institution wide coverage on the one hand and effective, but narrowly targeted fund termination, on the other.

Though Grove City did not deal expressly with the fund termination issue we have changed the language because dictum in *North Haven Board of Education v. Bell*, 545 U.S. 512 (1982), might permit opponents of this legislation to argue that leaving the language unamended could well result in a broadening of fund termination.

The new fund termination language assures that the prior practice will be maintained. Fund termination will continue to be applied as a last resort after efforts to achieve voluntary compliance have failed. Other enforcement provisions remain unchanged. Funding agencies will continue to have the option of securing enforcement through referral to the Department of Justice for suit. The right of individuals to sue privately also is undisturbed.

WHAT THE NEW LEGISLATION DOES NOT DO

The Civil Rights Restoration Act of 1985 will not create any new obligations for those who receive Federal assistance.

The regulatory definition of who or what is a "recipient" of Federal financial assistance under these laws remains unchanged and the bill does not require any changes in it. For example, entities or persons, such as farmers, which were determined not to be recipients under prior law because they were the ultimate beneficiaries of Federal assistance would not have their status changed.

The constitutionally and statutorily protected rights of private individuals and organizations are not affected by the bill. All existing exemptions, including the title IX "religious tenet" exemption would be preserved.

HOW THE BILL DIFFERS FROM LAST YEAR'S BILL

The bill we are introducing today achieves the institutionwide coverage which was the purpose of the measure that passed the House of Representatives last year and was almost adopted by the Senate. Like its predecessor, this bill amends all four statutes in exactly the same way. However, in order to answer the criticism that last year's bill was too complex and, therefore, unclear, this year we have taken a different approach.

Last Year, S. 2568 would have deleted the term "program or activity" from the four civil rights statutes and replaced it with the term "recipient" defined along the lines of the definitions of that term in the involuntary regulations. Opponents of retaining the laws' vitality used the lengthy recipient definition to raise many questions and charges of ambiguity. By retaining the term "program or activity" and explicitly defining its meaning in the major contexts where the law is applied, the valid charges of ambiguity can now be ended.

Mr. President, no Congress that adheres to the principle of equal justice under law can permit the Grove City College decision to stand. I welcome Senator Dole's initiative in introducing his own legislation because it indicates that the Grove City issue will be a high priority in the 99th Congress. But, his bill is not an adequate response to the problems created by Grove City. Proposals that would restore the law only for certain beneficiaries of Federal aid, and leave millions of others subject to discrimination are simply unacceptable. We will also strongly resist attempts by the administration and opponents in Congress to misuse this important legislative initiative as an excuse to cut back on the protections of prior law.

Twenty years ago it was common practice for Federal aid to be used to support racially segregated schools and medical facilities. Women were systematically excluded from professional schools. And scant attention was paid to the special needs of the disabled and senior citizens. Today, because of these statutes and Federal efforts to enforce them, substantial progress has been made. Further progress will not be possible unless we act to restore the full force and effect of the laws prohibition bias because of race, sex, age, or handicap. That is our goal and intention.

I ask unanimous consent that the full text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 431

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Restoration Act of 1985".

FINDINGS OF CONGRESS

SEC. 2. The Congress finds that—

(1) certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; and

(2) legislative action is necessary to restore the prior consistent and longstanding executive branch interpretation and broad, institutionwide application of those laws as previously administered.

EDUCATION AMENDMENTS AMENDMENT

SEC. 3. (a) Title IX of the Education Amendments of 1972 is amended by adding at the end the following new section:

"EXPLANATION OF "PROGRAM OR ACTIVITY"

"SEC. 909. For the purposes of this title, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

(b) The third sentence of section 902 of the Education Amendments of 1972 is amended—

(1) by striking out "program or part thereof in which" and inserting in lieu thereof "assistance which supports"; and

(2) by striking out "has been so found" and inserting in lieu thereof "so found".

REHABILITATION ACT AMENDMENT

SEC. 4. Section 504 of the Rehabilitation Act of 1973 is amended—

(1) by inserting "(a)" after "SEC. 504."; and

(2) by adding at the end the following new subsection:

"(b) For the purposes of this section, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

AGE DISCRIMINATION ACT AMENDMENT

SEC. 5. (a) Section 309 of the Age Discrimination Act of 1975 is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting "; and" in lieu thereof; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) the term 'program or activity' means all of the operations of—

"(A)(i) a department or agency of a State or of a local government; or

"(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(B)(i) a university or a system of higher education; or

"(ii) a local educational agency (as defined in section 198(a)(10) of the Elementary and

GROVE CITY COLLEGE, Individually and on behalf of its students, et al., Petitioners

v

TERREL H. BELL, SECRETARY OF EDUCATION, et al.

— US —, 79 L Ed 2d 516, 104 S Ct —

[No. 82-792]

Argued November 29, 1983. Decided February 28, 1984.

Decision: Prohibition against sex discrimination held applicable to private college that receives no direct federal assistance but enrolls students who receive federal grants for educational purposes.

SUMMARY

A private college declined to participate in direct institutional aid programs and in federal student assistance programs under which it would have had to assess students' eligibility and determine the amount of funds they should receive, but enrolled a large number of students who received Basic Educational Opportunity Grants (BEOGs) through the Department of Education's Alternate Disbursement System, under which the Secretary of Education calculates awards and makes disbursements directly to eligible students. The Department concluded that the college was a recipient of federal financial assistance, and after the college refused to execute an assurance of compliance with Title IX of the Education Amendments of 1972 (20 USCS §§ 1681 et seq.), which, inter alia, prohibits sex discrimination in any education program or activity receiving federal financial assistance, the Department initiated administrative proceedings to declare the college and its students ineligible to receive BEOGs. The administrative law judge found in favor of the Department and entered an order terminating assistance to the college. The college and four of its students brought suit in the District Court for the Western District of Pennsylvania, which concluded that the students' BEOGs constituted federal financial assistance to the college, but held that the Department could not terminate aid due to the college's refusal to execute the assurance. The Court of Appeals for the Third Circuit reversed, holding that the Department could terminate the

students' BEOGs to force the college to execute an assurance of compliance (687 F2d 684).

On certiorari, the United States Supreme Court affirmed. In an opinion by WHITE, J., joined by BURGER, Ch. J., and BLACKMUN, POWELL, REHNQUIST and O'CONNOR, JJ., it was held that (1) Title IX applied to the college, even though it accepted no direct assistance, since it did enroll students who received BEOGs, (2) for Title IX enforcement purposes, the education program or activity at the college receiving federal financial assistance was the college's financial aid program, and not the entire college, (3) federal assistance to the college's financial aid program could be terminated solely because the college had refused to execute an assurance of compliance with Title IX, and (4) the application of Title IX to the college did not infringe the First Amendment rights of the college or its students.

POWELL, J., joined by BURGER, Ch. J., and O'CONNOR, J., concurred, expressing the view that the above holdings were dictated by the language and legislative history of Title IX and the regulations of the Department of Education.

STEVENS, J., concurred in part and concurred in the result, stating that he was unable to join in holding 2 above because he considered it an advisory opinion unnecessary to the overall decision and because it was predicated on speculation rather than evidence.

BRENNAN, J., joined by MARSHALL, J., concurred in part and dissented in part, expressing the view that the program-specific language in Title IX was designed to insure that the reach of the statute is dependent upon the scope of federal financial assistance provided to the college, so that when the financial assistance is clearly intended to serve as federal aid for the entire college, the college as a whole should be covered by the prohibition on sex discrimination.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Civil Rights § 56 — Federally funded education programs — sex discrimination — application of Title IX — indirect federal assistance

1a-1h. Based on the structure of the Education Amendments of 1972 (20 USCS §§ 1001 et seq.), the language of § 901(a) of Title IX of the Amendments (20 USCS § 1681(a)), which prohibits sex discrimination in any education program or activity receiving federal financial assistance, the congressional intent with respect to the Amendments, the legislative history of Title IX, the postenactment history of Title IX, and a long-standing and coherent administrative construction of § 901, Title IX applies to a college that accepts no direct federal assistance but that enrolls students who receive federal grants that must be used for educational purposes.

Civil Rights § 56 — Federally funded education programs — sex discrimination — determination of what program or activity is receiving aid

2a-2e. For purposes of § 901 of Title IX of the Education Amendments of 1972 (20 USCS § 1681), which prohibits sex discrimination in any education program or activity receiving federal financial assistance, a college which accepts no direct federal assistance but which enrolls students who receive federal grants that may be used for educational purposes is not itself a "program or activity" that may be regulated in its entirety by the Department of Education, the federal agency responsible for insuring compliance with Title IX; rather, it is the college's financial aid program that is such a program or activity. (Brennan and Marshall, JJ., dissented from this holding.)

Civil Rights § 56 — Federally funded education programs — sex discrimination — refusal to execute compliance assurance — termination of aid

3a-3c. A refusal by a college receiving federal financial assistance to execute a proper program-specific assurance of compliance with Title IX of the Education Amendments of 1972 (20 USCS §§ 1681 et seq.), which prohibits sex discrimination in any education program or activity receiving federal financial assistance, warrants termination of federal assistance to the program receiving the assistance; such termination need not be preceded by a finding of actual discrimination.

Civil Rights § 56 — Federally funded education programs — sex discrimination — conditions on aid — First Amendment rights

4a, 4b. Federal financial assistance to a college may be conditioned on compliance with Title IX of the Education Amendments of 1972 (20 USCS §§ 1681 et seq.), which prohibits sex discrimination in any education program or activity receiving federal financial assistance, without infringing the First Amendment rights of the college and its students; Congress is free to attach reasonable and unambiguous conditions to federal financial assistance that educational institutions are not obligated to accept.

Civil Rights § 56 — Federally funded education programs — sex discrimination — treatment of BEOGs as assistance

5. With respect to § 901 of Title IX of the Education Amendments of 1972 (20 USCS § 1681), which prohibits sex discrimination in any education program or activity receiving federal financial assistance, a Title IX enforcement decision which treats Basic Educational Opportunity Grants as "federal financial assistance" can be reconciled with Title IX's program-specific language even though such Grants are not tied to any specific "education program or activity."

Civil Rights § 56 — Federally funded education programs — sex discrimination — BEOGs under regular disbursement system — particular program or activity receiving aid

6a, 6b. If a college participates in the Basic Educational Opportunity Grant program through the Regular Disbursement System, under which the Secretary of Education estimates the amount that an institution will need for grants and advances that sum to the institution, which itself selects eligible students, calculates awards, and distributes the grants by either crediting students' accounts or issuing checks, the "education program or activity receiving federal financial assistance" for purposes of § 901 of Title IX of the Education Amendments of 1972 (20 USCS § 1681), which prohibits sex discrimination in any education program or activity receiving federal financial assistance, would be the college's student financial aid program, not the entire college; the fact that funds eventually reach the college's general operating budget cannot subject the college to institutionwide Title IX coverage.

Civil Rights § 56 — Federally funded education programs — sex discrimination — BEOGs under alternate disbursement system — particular program or activity receiving aid

7. If a college participates in the Basic Educational Opportunity Grant program through the Alternate Disbursement System, under which schools minimize their involvement in the administration of the Grant program and the Secretary of Education calculates awards and makes disbursements directly to eligible students, the "education program or activity receiving federal financial assistance" for purposes of § 901 of Title IX of the Education Amendments of 1972 (20 USCS § 1681), which prohibits sex discrimination in any education program or activity receiving federal financial assistance, would be the college's student financial aid program, not the entire college; the fact that funds eventually reach the college's general operating budget cannot subject the college to institutionwide Title IX coverage.

Civil Rights § 56 — Federally funded education programs — sex discrimination — systems to administer funds — effect of choice between systems

8. For purposes of § 901 of Title IX of the Education Amendments of 1972 (20 USCS § 1681), which prohibits sex discrimination in any education program or activity receiving federal financial assistance, a college's choice of which mechanism it decides to use to administer Basic Educational Opportunity Grants, be it the Regular Disbursement System, under which the Secretary of Education estimates the amount that an institution will need for grants and advances that sum to the institution, which itself selects eligible students, calculates awards, and distributes the grants by either crediting students' accounts or issuing checks, or the Alternate Disbursement System, under which schools minimize their involvement in the administration of the Grant program and the Secretary calculates awards and makes disbursements directly to eligible students, does not expand or contract the breadth of the covered "program or activity," namely the college's financial aid program, that receives federal assistance and that may be regulated under Title IX.

Civil Rights § 56 — Federally funded education programs — sex discrimination — execution of compliance assurance

9. When a college operates an "education program or activity receiving federal financial assistance," the Department of Education may properly demand that the college execute an assurance of compliance with Title IX of the Education Amendments of 1972 (20 USCS §§ 1681 et seq.), which prohibits sex discrimination in any education program or activity receiving federal financial assistance.

Civil Rights § 56 — Federally funded education programs — sex discrimination — conditions on aid

10. With respect to enforcement of § 901 of Title IX of the Education Amendments of 1972 (20 USCS § 1681), which prohibits sex discrimination in any education program or activity receiving federal financial assistance, the Department of Education may properly condition federal financial assistance on the recipient's assurance that it will conduct the aided program or activity in accordance with Title IX and applicable regulations.

SYLLABUS BY REPORTER OF DECISIONS

Section 901(a) of Title IX of the Education Amendments of 1972 prohibits sex discrimination in "any education program or activity receiving Federal financial assistance," and § 902 provides that a recipient's compliance with regulations of a federal agency awarding assistance may be secured by termination of assistance "to the particular program, or part thereof, in which . . . noncompliance has been . . . found." Under the statute a federally assisted program must be identified before Title IX coverage is triggered. Petitioner Grove City College (College), a private, coeducational, liberal arts college, accepts no direct federal assistance, nor does it participate in the Regular Disbursement System (RDS) of the Department of Education (Department), whereby amounts for federal grants to students are advanced to the institution, which then itself selects eligible students and calculates and distributes the grants. However, the College enrolls students who receive direct federal Basic Educational Opportunity Grants (BEOG's) under the Department's Alternative Disbursement System (ADS). The Department concluded that, under applicable regulations, the College was a "recipient" of "Federal financial assistance," and when the College refused to execute an Assurance of Compliance with Title IX's nondiscrimination provisions, as required by the regulations, the Department initiated administrative proceedings, which resulted in an order terminating assistance until the College executed an Assurance of Compliance and satisfied the Department that it was in compliance with the regulations. The College and four of its students then filed suit in Federal District Court, which held that the students' BEOG's constituted "Federal financial assistance" to the College but that the Department could not terminate the students' aid because of the College's refusal to execute an Assurance of Compliance. The Court of Appeals reversed, holding that the Department could terminate the students' BEOG's to force the College to execute an Assurance of Compliance.

Held:

1. Title IX coverage is triggered because some of the College's students receive BEOG's to pay for their education. In view of the structure of the Education Amendments of 1972, the clear statutory language, the legislative history (including postenactment history) showing Congress' awareness that the student assistant programs established by the Amendments significantly aided colleges and universities, and the longstanding administrative construction of the phrase "receiving Federal financial assistance" as including assistance to a student who uses it at a particular institution, Title IX coverage is not foreclosed merely because federal funds are granted to the students rather than to the College's educational programs.

2. However, the receipt of BEOG's by some of the College's students does not trigger institutionwide coverage under Title IX. In purpose and effect, BEOG's represent financial assistance to the College's own financial aid program, and it is that program that may properly be regulated under Title IX's nondiscrimination provision. Under the program-specific limitations of §§ 901 and 902, the College's choice of participating in the ADS rather than the RDS mechanism for administering the BEOG program neither expands nor contracts the breadth of the "program or activity receiving Federal financial assistance." The fact that federal funds eventually reach the College's general operating budget cannot subject it to institutionwide coverage.

3. A refusal to execute a proper program-specific Assurance of Compliance warrants the Department's termination of federal assistance to the student financial aid program. The College's contention that termination must be preceded by a finding of actual discrimination is not supported by § 902's language.

4. Requiring the College to comply with Title IX's prohibition of discrimination as a condition for its continued eligibility to participate in the BEOG program infringes no First Amendment rights of the College or its students.

687 F2d 684, affirmed.

White, J., delivered the opinion of the Court, in which Burger, C.J., and Blackmun, Powell, Rehnquist, and O'Connor, JJ., joined, and in all but Part III of which Brennan, Marshall, and Stevens, JJ., joined. Powell, J., filed a concurring opinion, in which Burger, C. J., and O'Connor, J., joined. Stevens, J., filed an

opinion concurring in part and concurring in the result. Brennan, J., filed an opinion concurring in part and dissenting in part, in which Marshall, J., joined.

APPEARANCES OF COUNSEL

David M. Lascell argued the cause for petitioners.

Paul M. Bator argued the cause for respondents.

OPINION OF THE COURT

Justice White delivered the opinion of the Court.

Section 901(a) of Title IX of the Education Amendments of 1972, Pub L 92-318, 86 Stat 373, 20 USC § 1681(a) [20 USCS § 1681(a)], prohibits sex discrimination in "any education program or activity receiving Federal financial assistance,"[1] and § 902 directs agencies awarding most types of assistance to promulgate regulations to ensure that recipients adhere to that prohibition. Compliance with departmental regulations may be secured by termination of assistance "to the particular program, or part thereof, in which . . . noncompliance has been . . . found" or by "any other means authorized by law." § 902, 20 USC § 1682 [20 USCS § 1682].[2]

[1a, 2a, 3a, 4a] This case presents several questions concerning the scope and operation of these provisions and the regulations established by the Department of Education. We must decide, first, whether Title IX applies at all to Grove City College, which accepts no direct assistance but enrolls students who receive federal grants that must be used for educational purposes. If so, we must identify the "education program or activity" at Grove City that is "receiving Federal financial assistance" and determine whether federal assistance to that program may be terminated solely because the College violates the Department's regulations by refusing to execute an Assurance of Compliance with Title IX. Finally, we must consider whether the application of Title IX to Grove City infringes the First Amendment rights of the College or its students.

I

Petitioner Grove City College is a private, coeducational, liberal arts college that has sought to preserve its institutional autonomy by consistently refusing state and federal financial assistance. Grove City's desire to avoid federal oversight has led it to decline to participate, not only in direct institutional aid programs, but also in federal student assistance programs under which the College would be required to assess students' eligibility and to determine the amounts of loans, work-study funds, or grants they should receive.[3] Grove City has, however, enrolled a large number of students who receive Basic Educational Opportunity Grants (BEOGs), 20 USC § 1070a [20 USCS § 1070a], under the Department of Education's[4] Alternate Disbursement System (ADS).[5]

The Department concluded that Grove City was a "recipient" of "Federal financial assistance" as those terms are defined in the regulations implementing Title IX, 34 CFR §§ 106.2(g)(1), (h) (1982),[6] and, in

1. Section 901(a), 20 USC § 1681(a) [20 USCS § 1681(a)], provides, in pertinent part:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ."

Nine statutory exemptions, none of which is relevant to the disposition of this case, follow. See §§ 901(a)(1)-(9), 20 USC §§ 1681(a)(1)-(9) [20 USCS §§ 1681(a)(1)-(9)].

2. Section 902, 20 USC § 1682 [20 USCS § 1682], provides:

"Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section [901] with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient, as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report." (emphasis in original)

3. See, e. g., 20 USC §§ 1071 et seq. [20 USCS §§ 1071 et seq.]; 34 CFR pt 674 (1982) (National Direct Student Loans); 42 USC §§ 2751 et seq. [42 USCS §§ 2751 et seq.]; 34 CFR pt 675 (1982) (College Work Study Program); 20 USC § 1070b [20 USCS § 1070b]; 34 CFR pt 676 (1982) (Supplemental Educational Opportunity Grants).

4. The Department of Health, Education, and Welfare's functions with respect to BEOGs were transferred to the Department of Education by § 301(a)(3) of the Department of Education Organization Act, Pub L 96-88, 93 Stat 678, 20 USC § 3441(a)(3) [20 USCS § 3441(a)(3)]. We will refer to both HEW and DOE as "the Department."

5. The Secretary, in his discretion, has established two procedures for computing and disbursing BEOGs. Under the Regular Disbursement System (RDS), the Secretary estimates the amount that an institution will need for grants and advances that sum to the institution, which itself selects eligible students, calculates awards, and distributes the grants by either crediting students' accounts or issuing checks. 34 CFR §§ 690.71-.85 (1982). Most institutions whose students receive BEOGs participate in the RDS, but the ADS is an option made available by the Secretary to schools that wish to minimize their involvement in the administration of the BEOG program. Institutions participating in the program through the ADS must make appropriate certifications to the Secretary, but the Secretary calculates awards and makes disbursements directly to eligible students. 34 CFR §§ 690.91-.96 (1982).

6. The Title IX regulations were recodified in 1980, without substantive change, at 34 CFR pt 106 in connection with the establishment of the Department of Education. 45 Fed Reg 30802, 30962-30963 (1980). All references herein are to the currently effective regulations.

"Federal financial assistance" is defined in 34 CFR § 106.2(g)(1) (1982) to include:

"A grant or loan of Federal financial assistance, including funds made available for:

. . . .

(iii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to

July 1977, it requested that the College execute the Assurance of Compliance required by 34 CFR § 106.4 (1982). If Grove City had signed the Assurance, it would have agreed to

> "[c]omply, to the extent applicable to it, with Title IX . . . and all applicable requirements imposed by or pursuant to the Department's regulation . . to the end that . . . no person shall, on the basis of sex, be . . . subjected to discrimination under any education program or activity for which [it] receives or benefits from Federal financial assistance from the Department." App to Pet for Cert 126–127.[7]

When Grove City persisted in refusing to execute an Assurance, the Department initiated proceedings to declare the College and its students ineligible to receive BEOGs.[8] The Administrative Law Judge held that the federal financial assistance received by Grove City obligated it to execute an Assurance of Compliance and entered an order terminating assistance until Grove City "corrects its noncompliance with Title IX and satisfies the Department that it is in compliance" with the applicable regulations. App to Pet for Cert 97.

Grove City and four of its students then commenced this action in the District Court for the Western District of Pennsylvania, which concluded that the students' BEOGs constituted "Federal financial assistance" to Grove City but held, on several grounds, that the Department could not terminate the students' aid because of the College's refusal to execute an Assurance of Compliance. Grove City College v Harris, 500 F Supp 253 (1980).[9] The Court of Appeals reversed, 687 F2d 684 (CA3 1982). It first examined the language and legislative history of Title IX and held that indirect, as well as direct, aid triggered coverage under § 901(a) and that institutions whose students financed their educations with BEOGs were recipients of federal financial assistance within the meaning of Title IX. Although it recognized that Title IX's provisions are program-specific, the court likened the assistance flowing to Grove City through its students to nonearmarked aid, and, with one judge dissenting, declared that "[w]here the federal government furnishes indirect or non-earmarked aid to an institution, it is apparent to us that the institution itself must be the 'program.'" 687 F2d, at 700.[10] Finally, the Court of Appeals concluded that the Department could condition financial aid upon the execution of an Assurance of Compliance and that the Department had acted properly in terminating federal financial assistance to the students and Grove City despite the lack of evidence of actual discrimination.

[3b] We granted certiorari, 459 US ——, 75 L Ed 2d 429, 103 S Ct 1181 (1983), and we now affirm the Court of Appeals' judgment that the Department could terminate BEOGs received by Grove City's students to force the College to execute an Assurance of Compliance.

II

In defending its refusal to execute the Assurance of Compliance required by the Department's regulations, Grove City first contends that neither it nor any "education program or activity" of the College receives any federal financial assistance within the meaning of Title IX by virtue of the fact that some of its students receive BEOGs and use them to pay for their education. We disagree.

[1b] Grove City provides a well-rounded liberal arts education and a variety of educational programs and student services. The question is whether any of those programs or activities "receiv[es] Federal financial assistance" within the meaning of Title IX when students finance their education with BEOGs. The structure of the Education Amendments of 1972, in which Congress both created the BEOG program and imposed Title IX's nondiscrimination requirement, strongly suggests an affirmative conclusion. BEOGs were aptly characterized as a "centerpiece of the bill," 118 Cong Rec 20297 (1972) (Rep. Pucinski), and Title IX "relate[d] directly to [its] central purpose." 117 Cong Rec 30112 (1971) (Sen. Bayh). In view of this connection and Congress' express recognition of discrimination in the administration of student financial aid pro-

that entity, or extended directly to such students for payment to that entity."

A "recipient" is defined in 34 CFR § 106.2(h) (1982) to include:

"[A]ny public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or indirectly or through another recipient, and which operates an education program or activity which receives or benefits from such assistance . . . ."

See also 34 CFR §§ 106.11, 106.31(a) (1982).

7. The Assurance of Compliance form currently in use differs somewhat from the version quoted in the text. See Brief for Federal Respondents in Hillsdale College v Department of Education, O. T. 1982, No. 1538, p 1a-2a. The substance, however, is the same in that it refers to "education programs and activities receiving Federal financial assistance."

8. The Department also sought to terminate Guaranteed Student Loans (GSLs), 20 USC § 1071 [20 USCS § 1071], received by Grove City's students.

9. The District Court held, first, that GSLs were "contract[s] of insurance or guaranty" that could not be terminated under § 902 of Title IX. The Department did not challenge this conclusion on appeal, and we express no view on this aspect of the District Court's reasoning. The court also concluded that Grove City could not be required to execute an Assurance of Compliance because Subpart E of the Title IX regulations, which prohibits discrimination in employment, was invalid. As the Court of Appeals recognized, we have since upheld the validity of Subpart E. North Haven Board of Education v Bell, 456 US 512, 72 L Ed 2d 299, 102 S Ct 1912 (1982). The District Court held, in the alternative, that § 902 permitted termination only upon an actual finding of sex discrimination and that Grove City's refusal to execute an Assurance could not justify a termination of assistance. Finally, the court reasoned that affected students were entitled to hearings before their aid could be discontinued.

10. In reaching this conclusion, the Court of Appeals accepted the position argued by respondents. As respondents acknowledged in the oral argument before this Court, the Department's position has not been a model of clarity. Tr of Oral Arg 33-35. The Department initially took the position that the receipt of student financial aid would trigger institution-wide coverage under Title IX and construed its regulations to that effect. It pressed that position in the lower courts. In their brief in opposition to the petition for certiorari, respondents did not defend this aspect of the Court of Appeals' opinion, but argued instead that the question need not be resolved to decide this case. In their brief on the merits and in the oral argument, however, respondents conceded that the Court of Appeals erred in holding that Grove City itself constituted the "program or activity" subject to regulation under Title IX. The Department's regulations, it was represented, may be construed in a program-specific manner and hence are not inconsistent with the statute. This concession, of course, is not binding on us and does not foreclose our review of the judgment below.

grams," it would indeed be anomalous to discover that one of the primary components of Congress' comprehensive "package of federal aid," id., at 2007 (Sen. Pell), was not intended to trigger coverage under Title IX.

[1c] It is not surprising to find, therefore, that the language of § 901(a) contains no hint that Congress perceived a substantive difference between direct institutional assistance and aid received by a school through its students. The linchpin of Grove City's argument that none of its programs receives any federal assistance is a perceived distinction between direct and indirect aid, a distinction that finds no support in the text of § 901(a).[12] Nothing in § 901(a) suggests that Congress elevated form over substance by making the application of the nondiscrimination principle dependent on the manner in which a program or activity receives federal assistance. There is no basis in the statute for the view that only institutions that themselves apply for federal aid or receive checks directly from the federal government are subject to regulation. Cf. Bob Jones University v Johnson, 396 F Supp 597, 601–604 (SC 1974), aff'd 529 F2d 514 (CA4 1975). As the Court of Appeals observed, "by its all inclusive terminology [§ 901(a)] appears to encompass *all* forms of federal aid to education, direct or indirect," 687 F2d, at 691 (emphasis in original). We have recognized the need to "'accord [Title IX] a sweep as broad as its language,'" North Haven Board of Education v Bell, 456 US 512, 521, 72 L Ed 2d 299, 102 S Ct 1912 (1982) (quoting United States v Price, 383 US 787, 801, 16 L Ed 2d 267, 86 S Ct 1152 (1966)), and we are reluctant to rend into § 901(a) a limitation not apparent on its face.

[1d] Our reluctance grows when we pause to consider the available evidence of Congress' intent. The economic effect of direct and indirect assistance often is indistinguishable, see Mueller v Allen, 463 US ——, ——, 77 L Ed 2d 721, 103 S Ct 3062 (1983); id., at ——, 77 L Ed 2d 721, 103 S Ct 3062 (Marshall, J., dissenting); Committee for Public Education v Nyquist, 413 US 756, 783, 37 L Ed 2d 948, 93 S Ct 2955 (1973); Norwood v Harrison, 413 US 455, 463–465, 37 L Ed 2d 723, 93 S Ct 2804 (1973), and the BEOG program was structured to ensure that it effectively supplements the College's own financial aid program.[13] Congress undoubtedly comprehended this reality in enacting the Education Amendments of 1972. The legislative history of the amendments is replete with statements evincing Congress' awareness that the student assistance programs established by the amendments would significantly aid colleges and universities.[14] In fact, one of the stated purposes of the student aid provisions was to "provid[e] assistance to institutions of higher education." Pub L 92-318, § 1001(c)(1), 86 Stat 381, 20 USC § 1070(a)(5) [20 USCS § 1070(a)(5)].

[1e] Congress' awareness of the purpose and effect of its student aid programs also is reflected in the sparse legislative history of Title IX itself. Title IX was patterned after Title VI of the Civil Rights Act of 1964, Pub L 88-352, 78 Stat 252, 42 USC §§ 2000d et seq. (1976 and Supp V) [42 USCS §§ 2000d et seq.]. Cannon v University of Chicago, 441 US 677, 684–685, 60 L Ed 2d 560, 99 S Ct 1946 (1979); 118 Cong Rec 5807 (1972) (Sen. Bayh). The drafters of Title VI envisioned that the receipt of student aid funds would trigger coverage,[15] and, since they approved identical language, we discern no reason to believe that the Congressmen who voted for Title IX intended a different result.

[1f] The few contemporaneous statements that attempted to give content to the phrase "receiving

11. See, e.g., Discrimination Against Women: Hearings on Section 805 of HR 16098 Before the Special Subcomm on Education of the House Comm on Education and Labor, 91st Cong, 2d Sess 235 (1970) (Rep. May); id., at 433 (Rep. Mink); id., at 739 (Rep. Griffiths); 118 Cong Rec 3935–3940, 5803–5809 (1972) (Sen. Bayh).

12. Grove City itself recognizes the problematic nature of the distinction it advances. Although its interpretation of § 901(a) logically would exclude from coverage under Title IX local school districts that receive federal funds through state educational agencies, see, e. g., 20 USC §§ 3801 et seq. [20 USCS §§ 3801 et seq.], Grove City wisely does not attempt to defend this result. In fact, the College concedes that "[b]ecause federal assistance is often passed through state agencies, this type of indirect assistance leads to Title IX jurisdiction *over the education program or activity* which ultimately receives the assistance." Brief for Petitioners 17, n 17 (emphasis in original). Grove City has proposed no principled basis for treating differently federal assistance received through students and federal aid that is disbursed by a state agency.

13. Grove City's students receive BEOGs to pay for the education they receive at the College. Their eligibility for assistance is conditioned upon continued enrollment at Grove City and on satisfactory progress in their studies. 20 USC §§ 1091(a)(1), (3) [20 USCS §§ 1091(a)(1), (3)]. Their grants are based on the "cost of attendance" at Grove City, 20 USC § 1070(a)(2)(B)(i) [20 USCS § 1070(a)(2)(B)(i)], which includes the College's tuition and fees, room and board, and a limited amount for books, supplies, and miscellaneous expenses. 34 CFR § 690.51 (1982). The amount that students and their families can reasonably be expected to contribute is subtracted from the maximum BEOG to ensure that the assistance is used solely for educational expenses. 20 USC § 1070(a)(2)(A)(i) [20 USCS § 1070(a)(2)(A)(i)], and students are required to file affidavits stating that their awards will be "used solely for expenses related to attendance" at Grove City. 20 USC § 1091(a)(5) [20 USCS § 1091(a)(5)]; see 34 CFR §§ 690.79, 690.94(a)(2) (1982).

Grove City's attempt to analogize BEOGs to food stamps, Social Security benefits, welfare payments, and other forms of general-purpose governmental assistance to low-income families is unavailing. First, there is no evidence that Congress intended the receipt of federal money in this manner to trigger coverage under Title IX. Second, those general assistance programs, unlike student aid programs, were not designed to assist colleges and universities. Third, educational institutions have no control over, and indeed perhaps no knowledge of, whether they ultimately receive federal funds made available to individuals under general assistance programs, but they remain free to opt out of federal student assistance programs. Fourth, individuals' eligibility for general assistance is not tied to attendance at an educational institution.

14. See, e.g., HR Rep No. 554, 92d Cong, 1st Sess 244 (1972) (Supplemental Views); 117 Cong Rec 2007 (1971) (Sen. Pell); id., at 37778, 37782 (Rep. Quie); id., at 39256 (Rep. Steiger); 118 Cong 20295 (1972) (Rep. Reid); id., at 20297 (Rep. Pucinski); id., at 20312 (statement of Isaac K. Beckes); id., at 20315 (letter from Kingman Brewster, Jr.); id., at 20321 (Rep. Mitchell).

15. See, e.g., HR Rep No. 914, 88th Cong, 1st Sess 104–105 (1963); 110 Cong Rec 13388 (1964) (Sen. McClellan). Appendix A to the initial Title VI regulations identified several programs making assistance available through payments to students among those to which the regulations applied, 29 Fed Reg 16298, 16301 (1964), as did the version in force when Title IX was enacted, 45 CFR pt 80, app A (1972). See Bob Jones University v Johnson, 396 F Supp 597 (SC 1974), aff'd, 529 F2d 514 (CA4 1975). The current list of programs covered by Title VI includes BEOGs and GSLs, 34 CFR pt 100, app A (1982), and Grove City's assumption that Congress would have excluded BEOGs from coverage under Title VI if the program had been operational in 1964 is baseless.

Federal financial assistance," while admittedly somewhat ambiguous, are consistent with Senator Bayh's declaration that Title IX authorizes the termination of "all aid that comes through the Department of Health, Education, and Welfare." 117 Cong Rec 30408 (1971).[16] Such statements by individual legislators should not be given controlling effect, but, at least in instances where they are consistent with the plain language of Title IX, Senator Bayh's remarks are "an authoritative guide to the statute's construction." North Haven Board of Education v Bell, 456 US, at 527, 72 L Ed 2d 299, 102 S Ct 1912. The contemporaneous legislative history, in short, provides no basis for believing that Title IX's broad language is somehow inconsistent with Congress' underlying intent. See also 20 USC § 1094(a)(3) [20 USCS § 1094(a)(3)].

[1g] Persuasive evidence of Congress' intent concerning student financial aid may also be gleaned from its subsequent treatment of Title IX. We have twice recognized the probative value of Title IX's unique postenactment history, North Haven Board of Education v Bell, supra, at 535, 72 L Ed 2d 299, 102 S Ct 1912; Cannon v University of Chicago, supra, at 687, n 7, 702-703, 60 L Ed 2d 560, 99 S Ct 1946, and we do so once again. The Department's sex discrimination regulations made clear that "[s]cholarships, loans, [and] grants . . . extended directly to . . . students for payment to" an institution constitute federal financial assistance to that entity. 40 Fed Reg 24137 (1975); see n 6, supra. Under the statutory "laying before" procedure of the General Education Provisions Act, Pub L 93-380, 88 Stat 567, as amended, 20 USC § 1232(d)(1) [20 USCS § 1232(d)(1)], Congress was afforded an opportunity to invalidate aspects of the regulations it deemed inconsistent with Title IX.[17] The regulations were clear, and Secretary Weinberger left no doubt concerning the Department's position that "the furnishing of student assistance to a student who uses it at a particular institution . . . [is] Federal aid which is covered by the statute."[18]

16. See 117 Cong Rec 30158-30159 (1971) (Sen. McGovern); id., at 39260 (Rep. Erlenborn); 118 Cong Rec 5814 (1972) (Sen. Bentsen). Grove City relies heavily on a colloquy between Senators Bayh and Dominick:

"Mr. Dominick: The Senator is talking about every program under HEW?

"Mr. Bayh: Let me suggest that I would imagine that any person who was sitting at the head of [HEW], administering the program, would be reasonable and would use only such leverage as was necessary against the institution.

"It is unquestionable, in my judgment, that this would not be directed at specific assistance that was being received by individual students, but would be directed at the institution, and the Secretary would be expected to use good judgment as to how much leverage to apply, and where it could best be applied." 117 Cong Rec 30408 (1971).

Grove City contends that Senator Bayh's statement demonstrates an intent to exclude student aid from coverage under Title IX. We believe that his answer is more plausibly interpreted as suggesting that, although the Secretary is empowered to terminate student aid, he probably would not need to do so where leverage could be exerted by terminating other assistance. The students, of course, always remain free to take their assistance elsewhere.

17. The statutory "laying before" procedure and the actions taken by Congress pursuant to it were more completely summarized in North Haven Board of Education v Bell, 456 US, at 531-534, 72 L Ed 2d 299, 102 S Ct 1912.

18. Sex Discrimination Regulations: Hearings Before the Subcomm on Postsecondary Education of the House Comm. on Education and Labor, 94th Cong, 1st Sess 482 (1975) (1975 Hearings). The Secretary added:

"Our view was that student assistance, assistance that the Government furnishes, that goes directly or indirectly to an institution, is Government aid within the meaning of title IX. If it is not, there is an easy remedy. Simply tell us that it is not. We believe it is and base our assumption on that." Id., at 481.

Yet, neither House passed a disapproval resolution. Congress' failure to disapprove the regulations is not dispositive, but, as we recognized in North Haven Board of Education v Bell, supra, at 533-534, 72 L Ed 2d 299, 102 S Ct 1912, it strongly implies that the regulations accurately reflect congressional intent. Congress has never disavowed this implication and in fact has acted consistently with it on a number of occasions.[19]

[1h] With the benefit of clear statutory language, powerful evidence of Congress' intent, and a longstanding and coherent administrative construction of the phrase "receiving Federal financial assistance," we have little trouble concluding that Title IX coverage is not foreclosed because federal funds are granted to Grove City's students rather than directly to one of the College's educational programs. There remains the question, however, of identifying the "education program or activity" of the College that can properly be characterized as "receiving" federal assistance through grants to some of the students attending the College.[20]

19. Although "Congress has proceeded to amend § 901 when it has disagreed with HEW's interpretation of the statute," North Haven Board of Education v Bell, supra, at 534, 72 L Ed 2d 299, 102 S Ct 1912, it has acquiesced in the Department's longstanding assessment of the types of federal aid that trigger coverage under Title IX. In considering the 1976 Education Amendments, for example, Congress rejected an amendment proposed by Senator McClure that would have defined federal financial assistance as "assistance received by the institution directly from the federal government." 122 Cong Rec 28144 (1976). Senator Pell objected that the amendment would remove from the scope of Title IX funds provided under the BEOG program and pointed out that, "[w]hile these dollars are paid to students they flow through and ultimately go to institutions of higher education . . . ." Id., at 28145. Senator Bayh raised a similar objection, id., at 28145-28146, and the amendment was rejected. Id., at 28147. See also id., at 28013-28016 (treatment of Hatfield amendment).

It is also significant that in 1976 Congress enacted legislation clarifying the intent of the Privacy Act to ensure that institutions serving as payment agents for the BEOG program are not considered contractors maintaining a system of records to accomplish a function of the Secretary. Pub L 94-328, § 2(b), 90 Stat 727, 20 USC § 1070a-6(c) [20 USCS § 1070a-6(c)]. This legislation responded to concerns expressed by educational institutions over "the additional and unnecessary administrative burdens which would be imposed upon them if [they] were deemed 'contractors.'" S Rep No. 954, 94th Cong, 2d Sess 3 (1976). In sharp contrast, Congress has failed to respond to repeated requests by colleges in Grove City's position for legislation exempting them from coverage under Title IX.

The statutory authorization for BEOGs, moreover, has been renewed three times. Pub L 94-482, § 121(a), 90 Stat 2091; Pub L 95-566, § 2, 92 Stat 2402; Pub L 96-374, § 402(a), 94 Stat 1401. Each time, Congress was well aware of the administrative interpretation under which such grants were believed to trigger coverage under Title IX. The history of these reenactments makes clear that Congress regards BEOGs and other forms of student aid as a critical source of support for educational institutions. See, e. g., Reauthorization of the Higher Education Act and Related Measures: Hearings Before the Subcomm on Postsecondary Education of the House Comm on Education and Labor, 96th Cong, 1st Sess, pt 3, 109 (1979) (Rep. Ford). In view of Congress' consistent failure to amend either Title IX or the BEOG statute in a way that would support Grove City's argument, we feel fully justified in concluding that "the legislative intent has been correctly discerned." North Haven Board of Education v Bell, supra, at 535, 72 L Ed 2d 299, 102 S Ct 1912.

20. Justice Stevens' assertion that we need

III

[2b, 5] An analysis of Title IX's language and legislative history led us to conclude in North Haven Board of Education v Bell, supra, at 538, 72 L Ed 2d 299, 102 S Ct 1912, that "an agency's authority under Title IX both to promulgate regulations and to terminate funds is subject to the program-specific limitations of §§ 901 and 902." Although the legislative history contains isolated suggestions that entire institutions are subject to the nondiscrimination provision whenever one of their programs receives federal assistance, see 1975 Hearings 178 (Sen. Bayh), we cannot accept the Court of Appeals' conclusion that in the circumstances present here Grove City itself is a "program or activity" that may be regulated in its entirety. Nevertheless, we find no merit in Grove City's contention that a decision treating BEOGs as "Federal financial assistance" cannot be reconciled with Title IX's program-specific language since BEOGs are not tied to any specific "education program or activity."

[6a] If Grove City participated in the BEOG program through the RDS, we would have no doubt that the "education program or activity receiving Federal financial assistance" would not be the entire College; rather, it would be its student financial aid program.[21] RDS institutions receive federal funds directly, but can use them only to subsidize or expand their financial aid programs and to recruit students who might otherwise be unable to enroll. In short, the assistance is earmarked for the recipient's financial aid program. Only by ignoring Title IX's program-specific language could we conclude that funds received under the RDS, awarded to eligible students, and paid back to the school when tuition comes due represent federal aid to the entire institution.

[6b, 7, 8] We see no reason to reach a different conclusion merely because Grove City has elected to participate in the ADS. Although Grove City does not itself disburse students' awards, BEOGs clearly augment the resources that the College itself devotes to financial aid. As is true of the RDS, however, the fact that federal funds eventually reach the College's general operating budget cannot subject Grove City to institution-wide coverage. Grove City's choice of administrative mechanisms, we hold, neither expands nor contracts the breadth of the "program or activity"—the financial aid program—that receives federal assistance and that may be regulated under Title IX.

[2c] To the extent that the Court of Appeals' holding that BEOGs received by Grove City's students constitute aid to the entire institution rests on the possibility that federal funds received by one program or activity free up the College's own resources for use elsewhere, the Court of Appeals' reasoning is doubly flawed. First, there is no evidence that the federal aid received by Grove City's students results in the diversion of funds from the College's own financial aid program to other areas within the institution.[22] Second, and more important, the Court of Appeals' assumption that Title IX applies to programs receiving a larger share of a school's own limited resources as a result of federal assistance earmarked for use elsewhere within the institution is inconsistent with the program-specific nature of the statute. Most federal educational assistance has economic ripple effects throughout the aided institution, and it would be difficult, if not impossible, to determine which programs or activities derive such indirect benefits. Under the Court of Appeals' theory, an entire school would be subject to Title IX merely because one of its students received a small BEOG or because one of its departments received an earmarked federal grant. This result cannot be squared with Congress' intent.

[2d] The Court of Appeals' analogy between student financial aid received by an educational institution and nonearmarked direct grants provides a more plausible justification for its holding, but it too is faulty. Student financial aid programs, we believe, are sui generis. In neither purpose nor effect can BEOGs be fairly characterized as unrestricted grants that institutions may use for whatever purpose they desire. The BEOG program was designed, not merely to increase the total resources available to educational institutions, but to enable them to offer their services to students who had previously been unable to afford higher education. It is true, of course, that substantial portions of

not and have no jurisdiction to decide this question is puzzling. Title IX coverage is triggered only when an "education program or activity" is receiving federal aid. Unless such a program can be and is identified, there is no basis for ordering the College to execute an Assurance of Compliance. The Court of Appeals understood as much and ruled that the entire College is the covered educational program. Until and unless that view of the statute is overturned, there will be outstanding an authoritative Court of Appeals' judgment that the certificate Grove City must execute relates to the entire College and that without such a certificate, the Department would be entitled to terminate grants to Grove City students.

Grove City asks to be relieved of that judgment on the grounds that none of its educational programs is receiving any federal aid and that if any of its programs is receiving aid, it is only its administration of the BEOG program. Grove City is entitled to have these issues addressed, for otherwise it must deal with the undisturbed judgment of the Court of Appeals that the entire College is subject to Federal oversight under Title IX. Even though the Secretary has changed his position and no longer agrees with the expansive construction accorded the statute by the Court of Appeals, it is still at odds with Grove City as to the extent of the covered program; and in any event, its modified stance can hardly overturn or modify the judgment below or eliminate Grove City's legitimate and substantial interest in having its submissions adjudicated.

21. There is no merit to Grove City's argument that the Department may regulate only the administration of the BEOG program. Just as employees who "work in an education program that receive[s] federal assistance," North Haven Board of Education v Bell, supra, at 540, 72 L Ed 2d 299, 102 S Ct 1912, are protected under Title IX even if their salaries are "not funded by federal money," ibid., so also are students who participate in the College's federally assisted financial aid program but who do not themselves receive federal funds protected against discrimination on the basis of sex.

22. Until 1980, institutions whose students received BEOGs and other forms of assistance were required to provide assurance that they would "continue to spend on [their] own scholarship and student-aid program[s], from sources other than funds received under [the federal programs], not less than the average expenditure per year made for that purpose during the most recent period of three fiscal years." 20 USC § 1088c (1976) [20 USCS § 1088c]. This requirement was altered in the Education Amendments of 1980, Pub L 96-374, § 451(a), 94 Stat 1451, 20 USC § 1091(a)(2) [20 USCS § 1091(a)(2)], and no longer applies to schools whose students receive only BEOGs.

the BEOGs received by Grove City's students ultimately find their way into the College's general operating budget and are used to provide a variety of services to the students through whom the funds pass. However, we have found no persuasive evidence suggesting that Congress intended that the Department's regulatory authority follow federally aided students from classroom to classroom, building to building, or activity to activity. In addition, as Congress recognized in considering the Education Amendments of 1972, the economic effect of student aid is far different from the effect of nonearmarked grants to institutions themselves since the former, unlike the latter, increases both an institution's resources and its obligations. See Pub L 92-318, § 1001(n), 86 Stat 375, 20 USC § 1070e [20 USCS § 1070e]; S Rep No. 346, 92d Cong, 1st Sess 43 (1971); 118 Cong Rec 20331 (1972) (Rep. Badillo). In that sense, student financial aid more closely resembles many earmarked grants.

[2c] We conclude that the receipt of BEOGs by some of Grove City's students does not trigger institution-wide coverage under Title IX. In purpose and effect, BEOGs represent federal financial assistance to the College's own financial aid program, and it is that program that may properly be regulated under Title IX.

IV

[9] Since Grove City operates an "education program or activity receiving Federal financial assistance," the Department may properly demand that the College execute an Assurance of Compliance with Title IX. 34 CFR § 106.4 (1982). Grove City contends, however, that the Assurance it was requested to sign was invalid, both on its face and as interpreted by the Department, in that it failed to comport with Title IX's program-specific character. Whatever merit that objection might have had at the time, it is not now a valid basis for refusing to execute an Assurance of Compliance.

The Assurance of Compliance regulation itself does not, on its face, impose institution-wide obligations. Recipients must provide assurance only that "each education program or activity operated by . . . [them] *and to which this part applies* will be operated in compliance with this part." 34 CFR § 106.4 (1982) (emphasis added). The regulations apply, by their terms, "to every recipient and to *each education program or activity* operated by such recipient *which receives or benefits from Federal financial assistance*." 34 CFR § 106.11 (1982) (emphasis added). These regulations, like those at issue in North Haven Board of Education v Bell, 456 US 512, 72 L Ed 2d 299, 102 S Ct 1912 (1982), "conform with the limitations Congres enacted in §§ 901 and 902." Id., at 539, 72 L Ed 2d 299, 102 S Ct 1912. Nor does the Department now claim that its regulations reach beyond the College's student aid program. Furthermore, the Assurance of Compliance currently in use, like the one Grove City refused to execute, does not on its face purport to reach the entire College; it certifies compliance with respect to those "education programs and activities receiving Federal financial assistance." See n 2, supra. Under this opinion, consistent with the program-specific requirements of Title IX, the covered education program is the College's financial aid program.

[3c, 10] A refusal to execute a proper program-specific Assurance of Compliance warrants termination of federal assistance to the student financial aid program. The College's contention that termination must be preceded by a finding of actual discrimination finds no support in the language of § 902, which plainly authorizes that sanction to effect "[c]ompliance with any requirement adopted pursuant to this section." Regulations authorizing termination of assistance for refusal to execute an Assurance of Compliance with Title VI had been promulgated, 45 CFR § 80.4 (1964), and upheld, Gardner v Alabama, 385 F2d 804 (CA5 1967), cert denied, 389 US 1046, 19 L Ed 2d 839, 88 S Ct 773 (1968), long before Title IX was enacted, and Congress no doubt anticipated that similar regulations would be developed to implement Title IX. 118 Cong Rec 5807 (1972) (Sen. Bayh). We conclude, therefore, that the Department may properly condition federal financial assistance on the recipient's assurance that it will conduct the aided program or activity in accordance with Title IX and the applicable regulations.

V

[4b] Grove City's final challenge t the Court of Appeals' decision—tha conditioning federal assistance o compliance with Title IX infringe First Amendment rights of the Co lege and its students—warrants onl brief consideration. Congress is fre to attach reasonable and unambigu ous conditions to federal financia assistance that educational institu tions are not obligated to accept. E g., Pennhurst State School & Hosp tal v Halderman, 451 US 1, 17, 67 Ed 2d 694, 101 S Ct 1531 (1981 Grove City may terminate its parti ipation in the BEOG program an thus avoid the requirements o § 901(a). Students affected by the D partment's action may either tak their BEOGs elsewhere or atten Grove City without federal financia assistance. Requiring Grove City t comply with Title IX's prohibition o discrimination as a condition for it continued eligibility to participate i the BEOG program infringes n First Amendment rights of the Co lege or its students.

Accordingly, the judgment of th Court of Appeals is affirmed.

SEPARATE OPINIONS

Justice Powell, with whom Chief Justice Burger and Justice O'Connor join, concurring.

As I agree that the holding in this case is dictated by the language and legislative history of Title IX, and the Regulations of the Department of Education, I join the Court's decision. I do so reluctantly and write briefly to record my view that the case is an unedifying example of overzealousness on the part of the Federal Government.

Grove City College (Grove City may be unique among colleges i our country; certainly there are fe others like it. Founded more than century ago in 1876, Grove City an independent, coeducational lib eral arts college. It describes itself a having "both a Christian world vie and a freedom philosophy," perceiv ing these as "interrelated." Join Appendix, at A-22. At the time o

this suit, it had about 2,200 students and tuition was surprisingly low for a private college.[1] Some 140 of the College's students were receiving Basic Educational Opportunity Grants (BEOGs),[2] and 342 had obtained Guaranteed Student Loans (GSLs).[3] The grants were made directly to the students through the Department of Education, and the student loans were guaranteed by the federal government. Apart from this indirect assistance, Grove City has followed an unbending policy of refusing all forms of government assistance, whether federal, state or local. It was and is the policy of this small college to remain wholly independent of government assistance, recognizing—as this case well illustrates—that with acceptance of such assistance one surrenders a certain measure of the freedom that Americans always have cherished.

This case involves a Regulation adopted by the Department to implement § 901(a) of Title IX (20 USC § 1681(a) [20 USCS § 1681(a)]). It is well to bear in mind what § 901(a) provides:

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance . . . ."

The sole purpose of the statute is to make unlawful *"discrimination"* by recipients of federal financial assistance on the "basis of sex." The undisputed fact is that Grove City does not discriminate—and so far as the record in this case shows—never has discriminated against anyone on account of sex, race, or national origin. This case has nothing whatever to do with discrimination past or present. The College therefore has complied to the letter with the sole purpose of § 901(a).

As the Court describes, the case arises pursuant to a Regulation adopted under Title IX that authorizes the Secretary to obtain from recipients of federal aid an "Assurance of Compliance" with Title IX and regulations issued thereunder. At the outset of this litigation, the Department insisted that by accepting students who received BEOG awards, Grove City's entire institution was subject to regulation under Title IX. The College, in view of its policies and principles of independence and its record of non-discrimination, objected to executing this Assurance. One would have thought that the Department, confronted as it is with cases of national importance that involve actual discrimination, would have respected the independence and admirable record of this college. But common sense and good judgment failed to prevail. The Department chose to litigate, and instituted an administrative proceeding to compel Grove City to execute an agreement to operate all of its programs and activities in full compliance with all of the regulations promulgated under Title IX—despite the College's record as an institution that had operated to date in full

1. Yearly tuition for 1983 for fees, room, and board was $4270. Petitioner's Brief at 3, n 2.

2. Grove City College v Bell, 500 F Supp 253, 259 (WD Pa 1980).

3. Grove City College, supra, 500 F Supp, at 259.

accordance with the letter and spirit of Title IX. The Administrative Law Judge who heard the case on September 15, 1978, did not relish his task.

On the basis of the evidence, which included the formal published statement of Grove City's strong "non-discrimination policy," he stated:

> It should also be noted that there is *not the slightest hint of any failure to comply with Title IX*, save the refusal to submit an executed Assurance of Compliance with Title IX. This refusal is obviously a matter of conscience and belief. J A, 94. (emphasis added)[4]

The Administrative Law Judge further evidenced his reluctance by emphasizing that the Regulations were "binding" upon him. J. A. 95. He concluded that the scholarship grants and student loans to Grove City constituted indirect "federal financial assistance," and in view of the failure of Grove City to execute the Assurance, the Regulation required that the grants and loans to its students must be "terminated." J. A., 96. The College and four of its students then instituted this suit in 1978 challenging the validity of the Regulations and seeking a declaratory judgment.

The effect of the Department's termination of the student grants and loans would not have been limited to the College itself. Indeed, the most direct effect would have been upon the students themselves. Absent the availability of other scholarship funds, many of them would have had to abandon their college education or choose another school. It was to avoid these serious consequences that this suit was instituted. The College prevailed in the District Court but lost in the Court of Appeals. Only after Grove City had brought its case before this Court did the Department retreat to its present position that Title IX applies only to Grove City's financial aid office. On this narrow theory, the Department has prevailed, having taken this small independent college, which it acknowledges has engaged in no discrimination whatever, through six years of litigation with the full weight of the federal government opposing it. I cannot believe that the Department will rejoice in its "victory."

Justice Stevens, concurring in part and concurring in the result.

For two reasons, I am unable to join part III of the Court's opinion. First, it is an advisory opinion unnecessary to today's decision, and second, the advice is predicated on speculation rather than evidence.

The controverted issue in this litigation is whether Grove City College may be required to execute the "Assurance of Compliance with Title IX" tendered to it by the Secretary, in order to continue receiving the benefits of the federal financial assistance provided by the BEOG program. The Court of Appeals affirmed the District Court's decision that Grove City is a "recipient" of federal financial assistance, and reversed its decision that the Secretary could not terminate federal financial assistance because Grove City refused to execute the Assurance. The Court today holds (in part II of its opinion

4. These findings of the Administrative Law Judge have not been questioned.

that Grove City is a recipient of federal financial assistance within the meaning of Title IX, and (in part IV) that Grove City must execute the Assurance of Compliance in order to continue receiving that assistance. These holdings are fully sufficient to sustain the judgment the Court reviews, as the Court acknowledges by affirming that judgment.

In part III of its opinion, the Court holds that Grove City is not required to refrain from discrimination on the basis of sex except in its financial aid program. In so stating, the Court decides an issue that is not in dispute. The Assurance of Compliance merely requires that it comply with Title IX "to the extent applicable to it." See ante, at ——, 79 L Ed 2d 524. The Secretary, who is responsible for administering Title IX, construes the statute as applicable only to Grove City's financial aid program. All the Secretary seeks is a judgment that Title IX requires Grove to promise not to discriminate in its financial aid program. The Court correctly holds that this program is subject to the requirements of Title IX, and that Grove City must promise not to discriminate in its operation of the program. But, there is no reason for the Court to hold that Grove City need not make a promise that the Secretary does not ask it to make, and that it in fact would not be making by signing the Assurance, in order to continue to receive federal financial assistance. It will be soon enough to decide the question discussed in part III when and if the day comes that the Secretary asks Grove City to make some further promise in order to continue to receive federal financial assistance.

Moreover, the record in this case is far from adequate to decide the question raised in part III. See Consolidated Rail Corp. v Darrone, post, at ——, 79 L Ed 2d 568, 104 S Ct ——. Assuming for the moment that participation in the BEOG program could not in itself make Title IX applicable to the entire institution, a factual inquiry is nevertheless necessary as to which of Grove City's programs and activities can be said to receive or benefit from federal financial assistance. This is the import of the applicable regulation, upheld by the Court today, ante, at ——, 79 L Ed 2d 532, which states that Title IX applies "to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance." 34 CFR § 106.11 (1982). The Court overlooks the fact that the regulation is in the disjunctive; Title IX coverage does not always depend on the actual receipt of federal financial assistance by a given program or activity. The record does not tell us how important the BEOG program is to Grove City, in either absolute or relative terms; nor does it tell us anything about how the benefits of the program are allocated within the institution. The Court decides that a small scholarship for just one student should not subject the entire school to coverage. Ante, at ——, 79 L Ed 2d 531. But why should this case be judged on the basis of that hypothetical example instead of a different one? What if the record showed—and I do not suggest that it does—that all of the BEOG money was reserved for, or merely happened to be used by, talented athletes and that their tuition payments were sufficient to support an entire athletic program that would

otherwise be abandoned? Would such a hypothetical program be covered by Title IX?[1] And if this athletic program discriminated on the basis of sex, could it plausibly be concluded that Congress intended that BEOG money could be used to enable such a program to survive? Until we know something about the character of the particular program, it is inappropriate to give advice about an issue that is not before us.

Accordingly, while I subscribe to the reasoning in parts I, II, and IV of the Court's opinion, I am unable to joint part III.

Justice Brennan, with whom Justice Marshall joins, concurring in part and dissenting in part.

The Court today concludes that Grove City College is "receiving Federal financial assistance" within the meaning of Title IX of the Education Amendments of 1972, 20 USC § 1681(a) [20 USCS § 1681(a)], because a number of its students receive federal education grants. As the Court persuasively demonstrates in Part II of its opinion, that conclusion is dictated by "the need to accord [Title IX] a sweep as broad as its language," ante, at ——, 79 L Ed 2d 526; by reference to the analogous statutory language and legislative history of Title VI of the Civil Rights Act of 1964, ante, at ——, 79 L Ed 2d 527; by reliance on the unique postenactment history of Title IX, ante, at ——–——, 79 L Ed 2d 528-529; and by recognition of the strong congressional intent that there is no "substantive difference between direct institutional assistance and aid received by a school through its students," ante, at ——, ——, ——, 79 L Ed 2d 526, 527, 529, and nn 12-14, 19. For these same reasons, however, I cannot join Part III of the Court's opinion, in which the Court interprets the language in Title IX that limits application of the statute to "any education program or activity" receiving federal monies. By conveniently ignoring these controlling indicia of congressional intent, the Court also ignores the primary purposes for which Congress enacted Title IX. The result—allowing Title IX coverage for the College's financial aid program, but rejecting institution-wide coverage even though federal monies benefit the entire College—may be superficially pleasing to those who are uncomfortable with federal intrusion into private educational institutions, but it has no relationship to the statutory scheme enacted by Congress.

I

The Court has twice before had occasion to ascertain the precise scope of Title IX. See North Haven Board of Education v Bell, 456 U 512, 72 L Ed 2d 299, 102 S Ct 1912 (1982); Cannon v University of Chicago, 441 US 677, 60 L Ed 2d 560, 9

1. Indeed, if we are to speculate about hypothetical cases, why not consider a school comparable to the private institutions discussed in Blum v Yaretsky, 457 US 991, 73 L Ed 2d 534, 102 S Ct 2777 (1982), in which over 90% of the patients received funds from public sources? See id., at 1011, 73 L Ed 2d 534, 102 S Ct 2777. It is at least theoretically possible that an educational institution might be financed entirely by tuition, and that virtually all of the students at an institution could receive a federal subsidy. Again, I do not suggest that Grove City College is such an institution, but I do suggest that it is improper for the Court to decide a legal issue on the basis of hypothetical examples that are selected to support a particular result.

S Ct 1946 (1979). In both cases, the Court emphasized the broad congressional purposes underlying enactment of the statute. In Cannon, while holding that Title IX confers a private cause of action on individual plaintiffs, we noted that the primary congressional purpose behind the statute was "to avoid the use of federal resources to support discriminatory practices," and that this purpose "is generally served by the statutory procedure for the termination of federal financial support for institutions engaged in discriminatory practices." Id., at 704, 60 L Ed 2d 560, 99 S Ct 1946. In North Haven, while holding that employment discrimination is within the reach of Title IX, we expressed "no doubt that 'if we are to give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language.'" 456 US, at 521, 72 L Ed 2d 299, 102 S Ct 1912 (quoting United States v Price, 383 US 787, 801 (1966), 16 L Ed 2d 267, 86 S Ct 1152). And although we acknowledged that an agency's authority "both to promulgate regulations and to terminate funds is subject to the program-specific limitation of §§ 901 and 902," 456 US, at 538, 72 L Ed 2d 299, 102 S Ct 1912, we explicitly refused to define "program" at that time, id., at 540, 72 L Ed 2d 299, 102 S Ct 1912.

When reaching that question today,[1] the Court completely disregards the broad remedial purposes of Title IX that consistently have controlled our prior interpretations of this civil rights statute. Moreover, a careful examination of the statute's legislative history, the accepted meaning of similar statutory language in Title VI, and the postenactment history of Title IX will demonstrate that the Court's narrow definition of "program or activity" is directly contrary to congressional intent.

A

The statute that was eventually enacted as Title IX had its genesis in separate proposals considered by the House and the Senate, in 1970 and 1971, respectively. In the House, the Special Subcommittee on Education, under the leadership of Representative Edith Green, held extensive hearings during the summer of 1970 on "Discrimination Against Women." See Hearings before the Special Subcommittee on Education of the House Committee on Education and Labor on § 805 of HR 16098, 91st Cong, 2d Sess (1970) (1970 Hearings). At that time, the subcommittee was considering a package of legislation that included a simple amendment adding the word "sex" to the list of discriminations prohibited by Title VI of the Civil Rights Act of 1964, 42 USC § 2000d [42 USCS § 2000d].[2] See

1. There is much to commend the suggestion, made by Justice Stevens, that Part III of the Court's opinion is no more than an advisory opinion, unnecessary to the resolution of this case and unsupported by any factual findings made below. See ante, p. ——, 79 L Ed 2d —— (concurring in part and concurring in the result). Because the Court has not heeded that suggestion, however, I feel compelled to express my view on the merits of the issue decided by the Court.

2. The prohibitory section of Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." For reasons explained infra, at ——, 79 L Ed 2d 540, the version of Title IX that was eventually enacted by Congress is for all relevant purposes identical to this provision. See ante, at —— n. 1, 79 L Ed 2d 522 for the text of Title IX.

North Haven, supra, at 523 n 13, 72 L Ed 2d 299, 102 S Ct 1912; Cannon, supra, at 694 n 16, 60 L Ed 2d 560, 99 S Ct 1946. Testimony offered during those hearings, however, focused on the evidence of pervasive sex discrimination in educational institutions.[3] It therefore was not surprising that the version of the subcommittee's proposal that was eventually passed by the full House was limited in its application to federally assisted *education* programs or activities. See 117 Cong Rec 39248–39261, 39353–39354 (1971). More important for present purposes, however, the House-passed bill retained the overall format of the subcommittee proposal, and therefore continued to incorporate the "program or activity" language and its enforcement provisions from Title VI. Id., at 39364–39365.

In the Senate, action began on Title IX in 1971, when Senator Bayh first introduced a floor amendment to the comprehensive education legislation then being considered. Amendment No. 398 to Higher Education Act of 1971, reprinted in 117 Cong Rec 30156 (1971). As then written, Senator Bayh's proposal was clearly intended to cover an entire institution whenever any education program or activity conducted by that institution was receiving federal monies. In particular, the amendment expressly prohibited discrimination on the basis of sex "under any program or activity conducted by a public institution of higher education, or any school or department of graduate education, which is a recipient of Federal financial assistance for any education program or activity." As explained by its sponsor, the amendment would have prohibited sex discrimination "by any public institution of higher education or any institution of graduate education receiving Federal educational financial assistance." Id., at 30157.[4]

The 1971 amendment was eventually ruled nongermane, id., at 30115, so Senator Bayh was forced to renew his efforts during the next session. When reintroduced, the amendment

3. Also during those hearings, representatives of the executive branch first raised objections about the expansive reach of the proposal being considered by the subcommittee. Specifically, it was noted by witnesses testifying on behalf of the Department of Health, Education, and Welfare that the proposed legislation would apply to institutions that were traditionally noneducational and to facilities and services within an institution, such as dormitories or physical recreation areas, that might properly be limited to one sex. See, e.g., 1970 Hearings, supra, at 675 (statement of Peter Muirhead, Associate Commissioner for Higher Education). See also id., at 674 (statement of Frankie M. Freeman, Commissioner, US Commission of Civil Rights). To eliminate this alleged overreaching, the Department of Justice offered its own legislation that was recognized at the time as far *narrower* in its reach than the subcommittee's proposal. Nonetheless, even with this more limited scope, the alternative offered by the administration would have prohibited sex-based discrimination by a "recipient of Federal financial assistance for any education program or activity." HR 5191, 92d Cong, 1st Sess § 1001(a) (1971), and would have covered facilities or services at educational institutions that did not themselves receive direct educational grants. See, e.g., 1970 Hearings, supra, at 678 (testimony of Jerris Leonard, Assistant Attorney General, Civil Rights Division). The administration proposal was eventually rejected by the full House in favor of the bill reported by Representative Green and her subcommittee.

4. See also 117 Cong Rec 30408 (1971) ("I doubt very much whether even one institution of higher education today, private or public, is not receiving some Federal assistance.") (remarks of Sen. Bayh).

had been modified to conform in substantial part with the version of Title IX that had been passed by the House. See 118 Cong Rec 5803 (1972). This change was apparently made to ensure adoption of the antidiscrimination provisions by the Conference Committee that would soon convene. See id., at 5813 (remarks of Sen. Pell, principal Senate Manager of the bill) ("As [Senator Bayh] knows, I said to him earlier that I intended to support the position he has advocated in conference with the House. He has chosen to bring the amendment before the Senate now."). There is thus nothing to suggest that the Senate had retreated from the underlying premise of the original amendment proposed by Senator Bayh in 1971—that sex discrimination would be prohibited in any educational institution receiving Federal financial assistance. Indeed, Senator Bayh's willingness to conform the language of his amendment to the bill already enacted by the House proved successful, as Title IX was approved by the Conference Committee, see S Conf Rep No. 92-798, pp. 221-222 (1972), and enacted into law.

In sum, although the contemporaneous legislative history does not definitely explain the intended meaning of the program-specific language included in Title IX, it lends no support to the interpretation adopted by the Court. What is clear, moreover, is that Congress intended enforcement of Title IX to mirror the policies and procedures utilized for enforcement under Title VI.

B

"Title IX was patterned after Title VI of the Civil Rights Act of 1964." Cannon, supra, at 694, 60 L Ed 2d 560, 99 S Ct 1946. Except for the substitution of the word "sex" in Title IX to replace the words "race, color, or national origin" in Title VI, and for the limitation of Title IX to "education" programs or activities, the two statutes use identical language to describe their scope. The interpretation of this critical language as it already existed under Title VI is therefore crucial to an understanding of congressional intent in 1972 when Title IX was enacted using the same language.

The voluminous legislative history of Title VI is not easy to comprehend, especially when one considers the emotionally and politically charged atmosphere operating at the time of its enactment. And there are no authoritative committee reports explaining the many compromises that were eventually enacted, including the program-specific limitations that found their way into Title VI. Moreover, as might be expected, statements were made by various Members of Congress that can be cited to support a whole range of definitions for the "program or activity" language. For every instance in which a legislator equated the word "program" with a particular grant statute,[5] there is an example of a legislator defining "program or activity" more broadly.[6]

Without completely canvassing

5. See, e.g., 110 Cong Rec 7100-7101 (1964) (remarks of Sen. Javits); 8359-8361 (remarks of Sen. Eastland); 13331 (remarks of Sen. Gore).

6. See, e.g., 110 Cong Rec 7059 (1964) (remarks of Sen. Pastore); 7063 (remarks of Sen. Pastore); 7067 (remarks of Sen. Ribicoff); 8507-8508 (remarks of Sens. Smathers and Allott); 12714-12715 (remarks of Sen. Humphrey); 12818 (statement of Sen. Dirksen); 14330-14331 (remarks of Sen. Williams).

several volumes of the Congressional Record, I believe it is safe to say that, by including the programmatic language in Title VI, Congress sought to allay fears on the part of many legislators that one isolated violation of the statute's antidiscrimination provisions would result in the wholesale termination of federal funds. In particular, "Congress was primarily concerned with two facets of the termination power: the possibility that noncompliance in a single school district might lead to termination of funds to the entire state; and the possibility that discrimination in the education program might result in the termination of federal assistance to unrelated federally financed programs, such as highways." Comment, 118 U Pa L Rev 1113, 1119-1120 (1970) (footnotes omitted). See id., at 1116-1124. See also 687 F2d 684, 697-698 (CA3 1982).

But even accepting that there is some uncertainty concerning the 1964 understanding of "program or activity," we need not be overly concerned with whatever doubt surrounds the precise intent, if any, of the 88th Congress. For what is crucial in ascertaining the meaning of the program-specific language included in Title IX is the understanding that the 92d Congress had at the time it enacted the identical language. Cf. Cannon, supra, at 696-698, 60 L Ed 2d 560, 99 S Ct 1946. And there were two principal indicators of the accepted interpretation of the program-specific language in Title VI that were available to Members of Congress in 1972 when Title IX was enacted—the existing administrative regulations promulgated under Title VI, and the available judicial decisions that had already interpreted those provisions.

The Title VI regulations first issued by the Department of Health, Education, and Welfare during the 1960's, and remaining in effect during 1972, could not have been clearer in the way they applied to educational institutions. See generally 45 CFR Part 80 (1972). For example, § 80.4(d) explained the assurances required from, among others, institutions of higher education that received Federal financial assistance:

"(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for a special training project, for a student loan program, or for any other purpose), the assurance required by this section shall extend to admission practices *and to all other practices relating to the treatment of students.*

"(2) The assurance required with respect to an institution of higher education, . . . insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, . . . or to the opportunity to participate in the provision of services or other benefits to such individuals, *shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance*

is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith." (Emphasis added.)

A list of illustrative applications followed that further demonstrated the broad scope of these regulations. One of the illustrations was aimed particularly at institutions of higher education:

"In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school." Id., § 80.5(c).[7]

It must have been clear to the Congress enacting Title IX, therefore, that the administrative interpretation of that statute would follow a similarly expansive approach. Nothing in the legislative history suggests otherwise; and "[i]t is always appropriate to assume that our elected representatives, like other citizens, know the law." Cannon, supra, at 696-697, 60 L Ed 2d 560, 99 S Ct 1946.

Nor were there any outstanding court decisions in 1972 that would have led Congress to believe that Title VI was much narrower in scope. The principal judicial interpretations of Title VI prior to 1972 were announced by the United States Court of Appeals for the Fifth Circuit. In a school desegregation case, for example, the court expressly approved the Department's desegregation guidelines, while noting the broad purposes underlying the prohibitory section of Title VI. United States v Jefferson County Board of Education, 372 F2d 836, 881-882 (CA5 1966), adopted en banc, 380 F2d 385 (CA5 1967) (per curiam) ("The legality is based on the general power of Congress to apply reasonable conditions. . . . In general, it seems rather anomalous that the Federal Government should aid and abet discrimination on the basis of race, color or national origin by granting money and other kinds of financial aid.'") (quoting Congressman Celler). In another desegregation case, the court noted that

7. Another illustration included in the Department's Title VI regulations referred explicitly to federal monies granted to elementary and secondary schools:

"In the Federally-affected area programs . . . for construction aid and for general support of the operation of elementary or secondary schools, or in programs for more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students . . . includes the prohibition of discrimination among the students . . . in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient." 45 CFR § 80.5(h) (1972).

Title VI "states a reasonable condition that the United States may attach to any grant of financial assistance and may enforce by refusal or withdrawal of federal assistance." Bossier Parish School Board v Lemon, 370 F2d 847, 852 (CA5 1967). More significantly, the court went on to equate a local school system with a "program or activity" receiving federal aid, noting that the "School Board accepted federal financial assistance in November 1964, and thereby brought its school system within the class of programs subject to the section 601 prohibition against discrimination." Ibid.

Finally, in Board of Public Instruction v Finch, 414 F2d 1068 (CA5 1969), the court spoke more directly to the program-specific limitation in Title VI. Although the court refused "to assume . . . that defects in one part of a school system automatically infect the whole," id., at 1074, and rejected the definition of the term program offered by the Department, id., at 1077, the court also noted that "the purpose of the Title VI cutoff is best effectuated by separate consideration of the use or intended use of federal funds under each grant statute," id., at 1078. In particular, although "there will . . . be cases from time to time where a particular program, within a state, within a county, within a district, even within a school . . ., is effectively insulated from otherwise unlawful activities," termination of federal funds is proper "if they are administered in a discriminatory manner, or if they support a program which is infected by a discriminatory environment." Ibid. To this end, the court remanded the case to the Department for specific findings on the relationship, if any, between the three types of federal grants received by the school system (federal aid for the education of children from low-income families, for supplementary education centers, and for adult education) and the system's discriminatory practices.

In short, the judicial interpretations of Title VI existing in 1972 were either in agreement with the expansive reach of the Department's regulations. Bossier Parish, supra; Jefferson County, supra, or sanctioned a broad-based termination of federal aid if the funded programs were affected by discriminatory practices. Finch, supra. See also Note, 55 Geo LJ 325, 344-345 (1966) (supporting Department's treatment of a school district as an individual program). Cf. Lau v Nichols, 414 US 563, 568, 39 L Ed 2d 1, 94 S Ct 786 (1974) (treating an entire school system or school district as an "educational program" under Title VI). Like the existing administrative regulations, therefore, they provide strong support for the view that Congress intended an expansive interpretation of the program-specific language included in Title IX. Because Members of Congress "repeat-ed[ly] refer[ed] to Title VI and its modes of enforcement, we are especially justified in presuming both that those representatives were aware of the prior interpretation of Title VI and that that interpretation reflects their intent with respect to Title IX." Cannon, supra, at 697-698, 60 L Ed 2d 560, 99 S Ct 1946.

C

If any doubt remains about the congressional intent underlying the program-specific language included in Title IX, it is removed by the

unique postenactment history of the statute. "Although postenactment developments cannot be accorded the weight of contemporary legislative history, we would be remiss if we ignored these authoritative expressions concerning the scope and purpose of Title IX. . . ." North Haven, supra, at 535, 72 L Ed 2d 299, 102 S Ct 1912 (quoting Cannon, supra, at 687, n 7 60 L Ed 2d 560, 99 S Ct 1946). See also ante, at ——, 79 L Ed 2d 528-529.

Regulations promulgated by the Department to implement Title IX, both as proposed, 39 Fed Reg 22228 (1974), and as finally adopted, 40 Fed Reg 24128 (1975), included an interpretation of program specificity consistent with the view of Title VI and with the congressional intent behind Title IX outlined above. In particular, the regulations prohibited sex discrimination "under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance." Id., at 24140 (now codified at 34 CFR § 106.31 (1983)). Introductory remarks explained the basis for the agency's decision:

"[T]itle IX will be consistent with the interpretation of similar language contained in title VI of the Civil Rights Act of 1964. . . . Therefore, an education program or activity or part thereof operated by a recipient of Federal financial assistance administered by the Department will be subject to the requirements of this regulation if it receives or benefits from such assistance.[*] This interpretation is consistent with the only case specifically ruling on the language contained in title VI, which holds that Federal funds may be terminated under title VI upon a finding that they 'are infected by a discriminatory environment.'" 40 Fed Reg, at 24128 (quoting Finch, supra, 414 F2d, at 1078–1079).

Thus, the agency charged with the statute's implementation initially interpreted the program-specific language of Title IX in a manner consistent with the view of Congress' intent outlined above—to allow for application of the statute to an entire institution if the institution is comprised of education programs or activities that receive or benefit from federal monies.

Moreover, pursuant to § 431(d)(5) of the General Education Provisions Act, Pub L 93-380, 88 Stat 567, these regulations were submitted to Congress for review. As we explained in North Haven, supra, at 531–532, 72 L Ed 2d 299, 102 S Ct 1912 (quoting 20 USC § 1232(d)(1) [20 USCS § 1232(d)(1)], this "laying before" procedure afforded Congress an opportunity to disapprove any regulation that it found to be "inconsistent with the Act from which it derives its authority." And although the regulations interpreting the program-specific limitations of Title IX were explicitly considered by both Houses of Congress, no resolutions of disapproval were passed by the Legislature.

In particular, two resolutions to invalidate the Department's regulations were proposed in the Senate, each specifically challenging the regulations because of the program-specificity requirements of Title IX. One resolution would have provided a blanket disapproval of the regulations, S Con Res 46, 94th Cong, 1st Sess (1975), premised in part on the view that "[t]he regulations are inconsistent with the enactment in that they apply to programs or activities not receiving Federal funds such as athletics and extracurricular activities." 121 Cong Rec 17300 (remarks of Sen. Helms). The other resolution was aimed more particularly at the regulation of athletic programs and activities not receiving direct federal monies, but also was premised on the program-specific limitations in the statute. See S Con Res 52, 94th Cong, 1st Sess (1975).[*] Neither resolution, however, was acted upon after referral to the appropriate committee.

In the House, extensive hearings were held by two separate subcommittees of the Committee on Education and Labor. Of primary interest are the six days of hearings held by the Subcommittee on Postsecondary Education to review the Department's regulations "solely to see if they are consistent with the law and with the intent of the Congress in enacting the law." See Sex Discrimination Regulations: Hearings before

8. In North Haven, we concluded that the word "it" in this sentence refers to "education program or activity" rather than "recipient." 456 US, at 539 n 30, 72 L Ed 2d 299, 102 S Ct 1912. Even with this limiting construction, however, the regulations still apply to any education program or activity which "receives *or benefits*" from federal assistance. In any event, given the Department's own interpretation of the words quoted in the text, our limiting construction may have been unjustified. See HEW Fact Sheet Accompanying Final Title IX Regulation Implementing Education Amendments of 1972, at 3 (June 1975) ("Except for the specific limited exemptions set forth below, the final regulation applies to all aspects of all education programs or activities of a school district, institution of higher education, or other entity which receives Federal funds for any of those programs.").

9. The sponsor of this second resolution explained the basis for his proposal to his Senate colleagues:

"[T]here is not a college athletic department anywhere in the country that receives Federal funds. The intercollegiate athletics provisions of the regulations are thus inconsistent with the statute in that they impose requirements on college programs not receiving Federal assistance.

"HEW attempts to surmount this obvious inconsistency through recourse to semantics. The statute clearly refers to programs receiving Federal assistance and the courts have established that programs are in fact separable. Yet, HEW argues, when pressed, that its authority includes not only those actually receiving Federal assistance but those which indirectly benefit from that assistance as well. Thus, according to this tortious logic, college football receives Federal assistance because it may benefit indirectly from federally guaranteed student loans unrelated to athletics or a student athlete may use the school library whose construction was assisted by Federal funding. Needless to say, this is a rather slender reed upon which to base a social policy of this magnitude." 121 Cong Rec 22941 (1975) (remarks of Sen. Laxalt).

Despite this rhetorical flourish, Congress has consistently endorsed the Department's regulation of college athletic programs, and indeed has affirmatively required such regulations. See, e.g., Pub L 93-380, § 844, 88 Stat 612 (1974) ("The Secretary shall prepare and publish . . . proposed regulations implementing the provisions of title IX . . . relating to the prohibition of sex discrimination in federally assisted education programs which shall include with respect to intercollegiate athletics reasonable provisions considering the nature of particular sports."). See also Brief for Council of Collegiate Women Athletic Administrators as Amicus Curiae 4-16. Cf. Haffer v Temple University, 521 F Supp 531 (ED Pa 1981), aff'd, 688 F2d 14 (CA3 1982). The opinion for the Court, limited as it is to a college that receives only "[s]tudent financial aid . . . [that] is sui generis," ante, at ——, 79 L Ed 2d 531, obviously does not decide whether athletic programs operated by colleges receiving other forms of federal financial assistance are within the reach of Title IX. Cf. 688 F2d, at 15, n 5 (discussing the many forms of federal aid received by Temple University and its athletic department).

the Subcommittee on Postsecondary Education of the House Committee on Education and Labor, 94th Cong, 1st Sess, 1 (1975) (1975 Hearings) (remarks of Rep. O'Hara). Among the numerous witnesses testifying about the programmatic reach of the Department's regulations were Senator Bayh, the chief Senate sponsor of the legislation, see supra, at ——— ———, 79 L Ed 2d 539-540, and HEW Secretary Weinberger. Both strongly supported the scope of the regulations as consistent with the intent evidenced by the 92d Congress in 1972. See, e. g., 1975 Hearings, at 169-171 (statement of Sen. Bayh); 178 (testimony of Sen. Bayh); 438, 485 (testimony of Sec. Weinberger); 487-488 (letter from Sec. Weinberger).[10] Specifically focusing on the legal basis for the Department's regulations, the Secretary noted that

> "[o]ne of the places you look for guidance is in the interpretation that the courts have given to similar statutes. Title VI, in the Finch case, was interpreted in a way . . . that programs that have any educational value or any educational meaning are the ones that are covered regardless of whether the Federal funds go specifically to those programs.
>
> "In other words, if the Federal funds go to an institution which has educational programs, then the institution is covered throughout its activities. That essentially was the ruling with respect to similar language in title VI, and that is why we used this interpretation in title IX." Id., at 485.

Then, in a subsequent letter submitted to the subcommittee, Secretary Weinberger addressed the precise issue posed by Grove City College in this case:

> "[I]f students attending an institution of higher education are receiving benefits under the various Federal educational assistance programs, then *all* of the institution's activities that are supported by tuition payments of the students can be said to be receiving Federal financial assistance." Id., at 488 (emphasis in original).[11]

10. See also, e.g., id., at 90 (testimony of Kathy Kelly, President, US National Student Association); 163-166 (testimony of Rep. Mink); 187-191 (memorandum of American Law Division, Library of Congress); 191-196 (memorandum of Center for National Policy Review); 284-285 (statement of Norma Raffel, Head, Education Committee, Women's Equity Action League); 385-388 (testimony of Dr. Bernice Sandler, Director, Project on the Status and Education of Women, Association of American Colleges). But see, e.g., id., at 49 (testimony of Darrell Royal, President, American Football Coaches Association); 98-99 (testimony of John A. Fuzak, President, National Collegiate Athletic Association); 231-232 (statement of Dallin H. Oaks, President, Brigham Young University); 403-406 (testimony of Janet L. Kuhn).

11. The Secretary specifically cited and quoted from Bob Jones University v Johnson, 396 F Supp 597 (SC 1974), summarily aff'd, 529 F2d 514 (CA4 1975), a decision interpreting the application of Title VI to a college that enrolled students receiving veterans' educational benefits. The court in Bob Jones offered several reasons to justify its finding that the college's educational program was receiving federal assistance:

"First, payments to veterans enrolled at approved schools serve to defray the costs of the educational program of the schools thereby releasing institutional funds which would, in the absence of federal assistance, be spent on the student. . . .

"[S]econd, . . . the participation of veterans who—but for the availability of federal funds—would not enter the educational programs of the approved school, benefits the school by enlarging the pool of qualified applicants upon which it can draw for its educational program.

"Finally, . . . [g]rant programs frequently use institutions as conduits through which federal funds or other assistance pass to the ultimate beneficiaries. Clearly, Title VI attaches to a recipient acting in that capacity. . . . The altered method of payment under the current statutes [under which federal monies go directly to the students] does not change the nature of the program or the basic role of the schools participating in the program. . . . [T]he nondiscriminatory participation of these schools is essential if the benefits of these statutes are to flow to beneficiaries without regard to race." Id., at 602-603 (footnotes omitted).

The court also explained that coverage of the college's educational program was fully consistent with the congressional purpose underlying Title VI. See id., at 604.

Despite the attention focused upon, and the strong defense offered in support of, the programmatic reach of the Department's regulations at these hearings, the House offered no formal resistance to the regulations. Indeed, among the several resolutions of disapproval introduced in the House, only one directly mentioned this aspect of the regulations, and this resolution was not acted upon either by committee or by the full House. HR Con Res 311, 94th Cong, 1st Sess (1975) (disapproving regulations that "would apply to athletic programs and grants which neither receive nor benefit from Federal financial assistance"); see 121 Cong Rec 19209 (1975).

Although the failure of Congress to disapprove the Department's regulations is not itself determinative, it does "len[d] weight to the argument" that the regulations were consistent with congressional intent. North Haven, supra, at 534, 72 L Ed 2d 299, 102 S Ct 1912. Moreover, "the relatively insubstantial interest given the resolutions of disapproval that were introduced seems particularly significant since Congress has proceeded to amend [Title IX] when it has disagreed with [the Department's] interpretation of the statute." North Haven, supra, at 534, 72 L Ed 2d 299, 102 S Ct 1912. Indeed, those amendments, by exempting from the reach of Title IX various facilities or services at educational institutions that themselves do not receive direct federal aid, strongly suggest that Congress understands the statute otherwise to encompass such programs or activities.[12]

Other congressional developments since the issuance of the Department's regulations, which have not resulted in amendments to the statute, lend even more support to the broader view of Title IX. After the Department's final regulations went into effect in 1975, for example, Senator Helms introduced amendments to Title IX which would have defined "education programs and activities" to mean "only programs or activities which are an integral part of the required curriculum of an educational institution." S 2146, § 2(1), 94th Cong, 1st Sess (1975); see 121 Cong Rec 23845-23847 (1975). No action was taken on the bill. Similarly, in 1976, Senator McClure sponsored an amendment to define "education program or activity" as "such programs or activities as are curriculum or grad-

12. In 1974, after the Department had published its proposed regulations for Title IX, the Congress excepted social fraternities and sororities and voluntary youth service organizations from the statute's reach. Pub L 93-568, § 3(a), 88 Stat 1862 (codified at 20 USC § 1681(a)(6) [20 USCS § 1681(a)(6)]; see 120 Cong Rec 41390-41394 (1974). Later, in 1976, Congress provided statutory exemptions for activities related to Boys/Girls State/Nation conferences, father-son or mother-daughter activities (if reasonable opportunities exist for the opposite sex), and collegiate scholarships awarded to "beauty" pageant winners. Pub L 94-482, § 412(a), 90 Stat 2234 (codified at 20 USC § 1681(a)(7)-(9) [20 USCS § 1681(a)(7)-(9)]; see 122 Cong Rec 27979-27987 (1976). Obviously, since none of these activities receive direct federal support, these amendments would have been superfluous unless Title IX was otherwise to be applied to such activities when conducted by educational institutions receiving federal funds.

In conclusion, each of the factors relevant to the interpretation of the program-specificity requirements of Title IX, taken individually or collectively, demonstrates that the Court today limits the reach of Title IX in a way that was wholly unintended by Congress. The contemporaneous legislative history of Title IX, the relevant interpretation of similar language in Title VI, and the administrative and legislative interpretations of Title IX since the statute's original enactment all lead to the same conclusion: that Title IX coverage for an institution of higher education is appropriate if federal monies are received by or benefit the entire institution.

II

A proper application of Title IX to the circumstances of this case demonstrates beyond peradventure that the Court has unjustifiably limited the statute's reach. Grove City College enrolls approximately 140 students who utilize Basic Educational Opportunity Grants (BEOGs) to pay for their education at the College. Although the grant monies are paid directly to the students, the Court properly concludes that the use of these federal monies at the College means that the College "receives Federal financial assistance" within the meaning of Title IX. The Court also correctly notes that a principal purpose underlying congressional enactment of the BEOG program is to provide funds that will benefit colleges and universities as a whole. It necessarily follows, in my view, that the entire undergraduate institution operated by Grove City College is subject to the antidiscrimination provisions included in Title IX.

A

In determining the scope of Title IX coverage, the primary focus should be on the purposes meant to be served by the particular federal funds received by the institution.[13] In this case, Congress has clearly indicated that BEOG monies are intended to benefit any college or university that enrolls students receiving such grants. As the Court repeatedly recognizes, "[t]he legislative history of the [Education Amendments of 1972] is replete with statements evincing Congress' awareness that the student assistance programs established by the amendments

uation requirements of the institutions." Amendment No. 389 to S 2657, 94th Cong, 2d Sess (1976); see 122 Cong Rec 28136 (1976). This amendment was rejected in a recorded vote. Id., at 28147. Finally, the 98th Congress has recently reaffirmed its commitment to Title IX and to the regulations originally issued thereunder. In particular, the House passed (414-8) a resolution expressing its belief that Title IX and its regulations "should not be amended or altered in any manner which will lessen the comprehensive coverage of such statute in eliminating gender discrimination throughout the American educational system." H Res 190, 98th Cong, 1st Sess (1983); 129 Cong Rec H10095-H10095, H10100-H10101 (Nov. 16, 1983). See HR Rep No. 98-418 (1983). See also S Res 149, 98th Cong, 1st Sess (1983). After today's Court decision, it will take another reaffirmation of congressional intent, in the form of a clarifying amendment to Title IX, to ensure that the original legislative will is no longer frustrated.

13. Because I believe that BEOG monies are intended by Congress to benefit institutions of higher education in their entirety, I find it unnecessary in this case to decide whether Title IX's reach would be the same when more targeted federal aid is being received by an institution. For such cases, it may be appropriate to examine carefully not only the purposes but also the actual effects of the federal monies received.

would significantly aid colleges and universities. In fact, one of the stated purposes of the student aid provisions was to 'provid[e] assistance to institutions of higher education.' Pub L 92-318, § 1001(c)(1), 86 Stat 381, 20 USC § 1070(a)(5) [20 USCS § 1070(a)(5)]." Ante, at ——, 79 L Ed 2d 527 (footnote omitted). See also ante, at ——, 79 L Ed 2d 526 (Title IX "contains no hint that Congress perceived a substantive difference between direct institutional assistance and aid received by a school through its students"); n 13 ("student aid programs . . . were . . . designed to assist colleges and universities"); n 19 ("The history of [the reenactments of the statutory authorization for BEOGs] makes clear that Congress regards BEOGs and other forms of student aid as a critical source of support for educational institutions").

In many respects, therefore, Congress views financial aid to students, and in particular BEOGs, as the functional equivalent of general aid to institutions. Given this undeniable and clearly stated congressional purpose, it would seem to be self-evident that Congress intended colleges or universities enrolling students who receive BEOGs to be covered, in their entirety, by the antidiscrimination provisions of Title IX. That statute's primary purpose, after all, is to ensure that federal monies are not used to support discriminatory practices. Cannon, supra, at 704, 69 L Ed 2d 560, 99 S Ct 1946.

Under the Court's holding, in contrast, Grove City College is prohibited from discriminating on the basis of sex in its own "financial aid program," but is free to discriminate in other "programs or activities" operated by the institution. Underlying this result is the unstated and unsupportable assumption that monies received through BEOGs are meant only to be utilized by the College's financial aid program. But it is undisputed that BEOG monies, paid to the institution as tuition and fees and used in the general operating budget, are utilized to support most, and perhaps all, of the facilities and services that together comprise Grove City College.[14]

The absurdity of the Court's decision is further demonstrated by examining its practical effect. According to the Court, the "financial aid program" at Grove City College may not discriminate on the basis of sex because it is covered by Title IX, but the College is not prohibited from discriminating in its admissions, its athletic programs, or even its various academic departments. The Court thus sanctions practices that Congress clearly could not have intended: for example, after today's decision, Grove City College would be free to segregate male and female

14. Although Justice Stevens properly notes that there have been no findings of fact on this particular point, see ante, at ——-——, 79 L Ed 2d 534-535 (concurring in part and concurring in the result), even the Court is forced to concede the obvious, see ante, at ——-——, 79 L Ed 2d 531-532 (it is true, of course, that substantial portions of the BEOGs received by Grove City's students ultimately find their way into the College's general operating budget and are used to provide a variety of services to the students through whom the funds pass."). The Court nonetheless ignores its own concession by claiming that there is "no persuasive evidence" that Congress intended to cover an entire institution of higher education in this situation. As I explain in Part II, however, the evidence of congressional intent is quite persuasive, if not convincing.

students in classes run by its mathematics department. This would be so even though the affected students are attending the College with the financial assistance provided by federal funds. If anything about Title IX were ever certain, it is that discriminatory practices like the one just described were meant to be prohibited by the statute.

B

The Court, moreover, does not offer any defensible justification for its holding. First, the Court states that it has "no doubt" that BEOGs administered through the Regular Disbursement System (RDS) are received, not by the entire College, but by its financial aid program. Thus, the Court reasons, BEOGs administered through the Alternate Disbursement System (ADS) must also be received only by the financial aid program. The premise of this syllogism, however, simply begs the question presented; until today's decision, there was considerable doubt concerning the reach of Title IX in a college or university administering BEOGs through the RDS. Indeed, the extent to which Title IX covers an educational institution receiving BEOGs is the same regardless of the procedural mechanism chosen by the College to disburse the student aid. With this argument, therefore, the Court is simply restating the question presented by the case.

Second, the Court rejects the notion that the federal funds disbursed under the BEOG program are received by the entire institution because they effectively "free up" the College's own resources for use by all programs or activities that are operated by Grove City College. But coverage of an entire institution that receives BEOGs through its students is not dependent upon such a theory. Instead, Title IX coverage for the whole undergraduate institution at Grove City College is premised on the congressional intent that BEOG monies would provide aid for the college or university as a whole. Therefore, whatever merit the Court's argument may have for federal monies that are intended solely to benefit a particular aspect of an educational institution, such as a research grant designed to assist a specific laboratory or professor, see n 13, supra, the freeing-up theory is simply irrelevant when the federal financial assistance is meant to benefit the entire institution.

Third, the Court contradicts its earlier recognition that BEOGs are no different from general aid to a college or university by claiming that "student financial aid programs . . . are sui generis." Ante, at ——, 79 L Ed 2d 531. Although this assertion serves to limit severely the effect of the Court's holding, it is wholly unexplained, especially in light of the forceful evidence of congressional intent to the contrary. Indeed, it would be more accurate to say that financial aid for students is the prototypical method for funneling federal aid to institutions of higher education.

Finally, although not explicitly offered as a rationale, the Court's holding might be explained by its willingness to defer to the Government's position as it has been represented to this Court. But until the Government filed its briefs in this case, it had consistently argued that Title IX coverage for the entire undergraduate institution operated by

Grove City College was authorized by the statute. See ante, at nn 10, 20. The latest position adopted by the Government, irrespective of the motivations that might underlie this recent change, is therefore entitled to little, if any, deference. Cf. North Haven, supra, at nn 12, 29 (deference not appropriate when "there is no consistent administrative interpretation of the Title IX regulations"). The interpretation of statutes as important as Title IX should not be subjected so easily to shifts in policy by the executive branch.

III

In sum, the program-specific language in Title IX was designed to ensure that the reach of the statute is dependent upon the scope of federal financial assistance provided to an institution. When that financial assistance is clearly intended to serve as federal aid for the entire institution, the institution as a whole should be covered by the statute's prohibition on sex discrimination. Any other interpretation clearly disregards the intent of Congress and severely weakens the antidiscrimination provisions included in Title IX. I therefore cannot join in Part III of the Court's opinion.

High court's decision deals a big blow to other civil-rights laws

By Cecelia Goodnow
P-I Reporter

When the U.S. Supreme Court limited the scope of Title IX last year, the decision was a major blow to three other civil rights laws that bar discrimination based on race, physical handicap or age.

In Grove City College vs. Bell, the high court ruled that schools and colleges are required to eliminate sex bias only in specific departments or programs that receive federal aid.

Previously, federal officials assumed that the sex-bias law — Title IX of the Education Amendments of 1972 — covered the entire institution, and that aid could be cut even if a program that didn't receive federal funds was biased.

By implication, the decision also struck at three other laws with similar wording, including Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973.

Major upset

Leslie R. Wolfe, executive director of the Project on Equal Education Rights (PEER), said the decision is a major upset for civil rights.

A recent PEER report concluded that the high court decision "affects almost every recipient of federal funds, including hospitals, correctional facilities, airport authorities, state highway departments, municipal utilities and county school systems."

According to the report, the ruling would allow a wide assortment of discriminatory practices to flourish. PEER charges, for instance, that a public high school receiving only federal vocational education funds could bypass the Civil Rights Act of 1964 and allow "racially separate science clubs, debate teams and glee clubs because these extracurricular programs and activities do not receive direct federal financial assistance."

Similarly, PEER states, "If a hospital has one maternity ward where none of the doctors accept Medicaid patients, the hospital could argue that that ward is not covered by Title VI and could exclude black or Hispanic patients or provide inferior treatment to patients in that ward."

Helen Remick, affirmative action officer at the University of Washington, agrees with PEER's interpretation.

"I am very concerned about the Grove City decision and think it has a great deal of room for backsliding (in civil rights enforcement). I think it's appalling and I think it's not received enough publicity."

However, Sen. Slade Gorton, R-Wash., scoffed at PEER's charges, saying they're "not even remotely true."

Gorton is backing a bill introduced by Senate Majority Leader Robert Dole that would correct Title IX but not the other three laws, except as they apply to education.

Gorton said there are adequate remedies, including state laws, that would prevent the kind of wholesale discrimination cited in the report.

Gorton's Republican colleague, Sen. Dan Evans, said, however, that the Dole bill is "an incomplete response to the implications of the Grove City case."

Evans is co-sponsor of the Civil Rights Restoration Act of 1985, which tries to clarify the language in all four laws. The bill is supported by the Leadership Conference on Civil Rights, a coalition of 165 national organizations representing minorities, women, labor and religious groups.

Although the court decision was aimed specifically at an education case, Evans said it had an equal effect on the related civil rights laws.

The Justice Department already is applying the Grove City College decision to all the laws in question, said John Wilson, assistant director of public affairs for the U.S. Justice Department.

"Yes, we do consider them all program-specific now," he said.

The Justice Department, however, supports the narrower Dole bill on the grounds that the Civil Rights Restoration Act of 1985 goes beyond the original intent of those laws and gives the federal government too much power.

Although Evans is concerned about the high court decision, he disputes the examples of potentially legal discrimination cited in the PEER report.

Similar bill died

"I think what they're doing is overstating the case, just as the (Reagan) administration is understating the case," he said.

Uncertain how the bill will fare, Evans said, "I'm sure a bill like (this) will be fought against very hard."

A similar bill died in the Senate last year.

Gorton said the final outcome probably will be a compromise that clarifies all the laws in question without broadening the original scope of those laws.

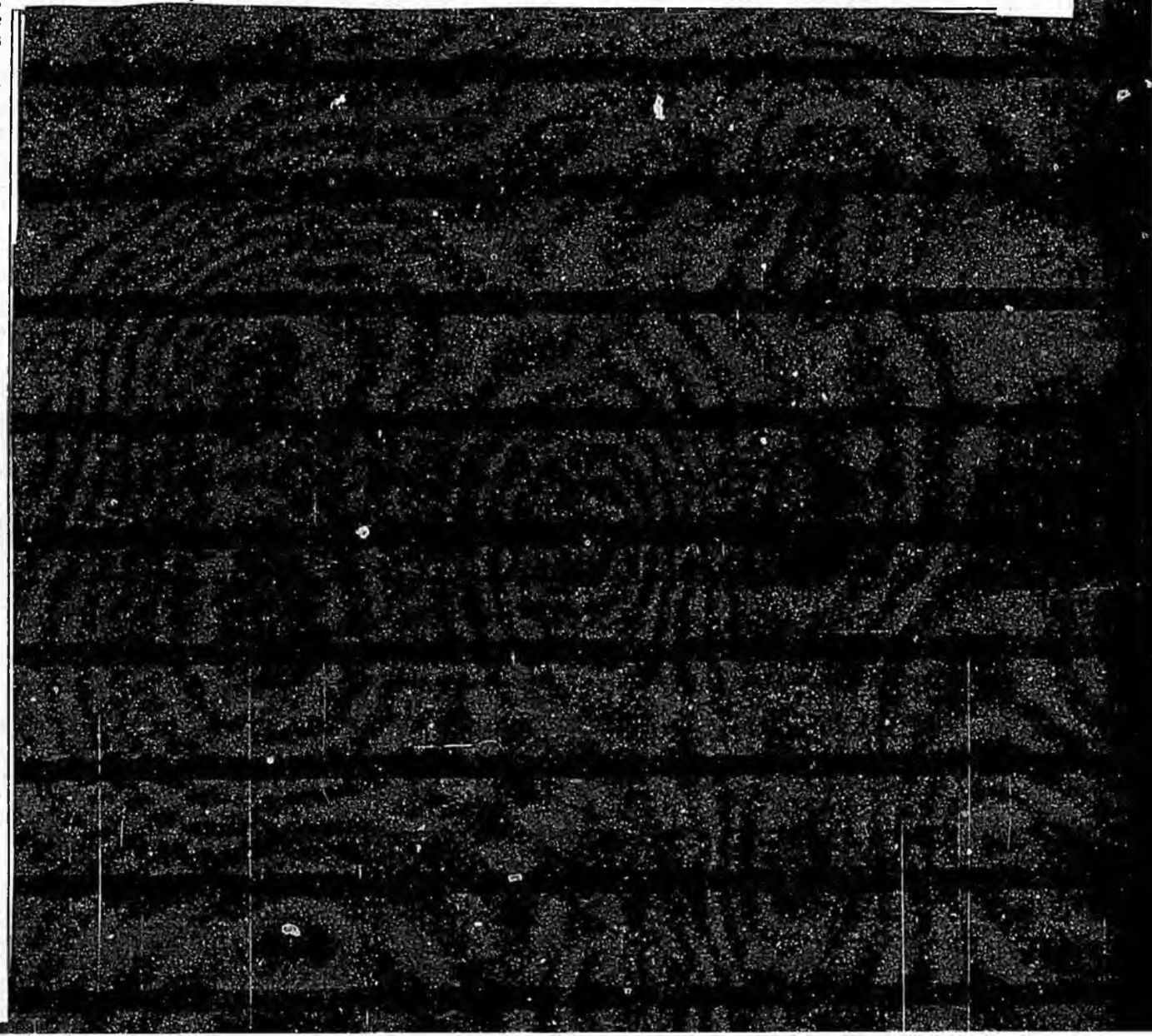
Even if Congress fails to correct the laws, Washington residents are protected by strong state civil rights laws, said Refernell Thompson of the Washington Human Rights Commission, who added, "We have one of the better laws in the country."

Even so, the national scene is still important, the UW's Remick contends.

"You could get in a car accident in another state and be refused admission to a hospital. Or you could try to go to school in another state and be denied admission."

Whatever the outcome of the two bills now in Congress, Remick said the Grove City College case is a warning against complacency.

"The real lesson of Title IX is that the gains in civil rights are very fragile, easily taken away," she said.



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irks owners of satellite dishes

TELEVISION
Susan
Paynter

"The next thing you know, somebody will be charging you for the moonlight, and if you don't pay, they'll shut that off, too!" said Margaret Bull of Kent yesterday, responding to Home Box Office pay TV's plan to scramble its signal to home satellite dishes starting this fall.

HBO says it has invested $100 million in a system to scramble HBO and Cinemax signals, now received free by home satellite dish owners. HBO says owners will have ample opportunity to buy a decoder box for about $395 and sign up for HBO and Cinemax for about $12.95 a month each, about what cable customers now pay for the services.

"It's not fair," Bull said. "They have no right. They don't own the heavens."

She and her husband, Jack, are elderly, retired and live on a fixed income. Margaret Bull is handicapped, and she said the satellite dish is her window on the world. She'll miss HBO and Cinemax but says she'll live without them. They have too many reruns, anyway, she says.

Like the majority of home satellite dish owners, Margaret Bull lives in an uncabled area, a spot in Kent between two TV transmitters where ordinary TV reception is terrible.

Many are irate

What really irks her is that, for 0 years, she has been trying to et area cable companies to run own pockets, said George Fitzsimmons of Pacific Satellite Systems, a seller of home satellite dishes.

Home TVROs (the industry term for television receive-only equipment) give people another choice, and he doesn't think HBO's plan to scramble two signals will hurt sales.

Arden Tyler, general manager of Seattle's Viacom Cablevision, worries that HBO's move is "not consumer-friendly" and may make enemies for local cable firms.

He said people with TVROs receive more than 100 channels. He wonders what the incentive will be for them to pay nearly $400 for a descrambler box and a monthly fee to get just two channels, although HBO spokesman Bob Gold said several other pay TV services — including the Disney Channel, ESPN, the Movie Channel and all three networks — also say they plan to scramble their signals soon.

TVRO owners receive previews of network shows not intended for broadcast, as well as 7 p.m. broadcasts of "The Tonight Show" without commercials.

Cable profits falling

first time, while still protecting the company's signals from theft. But Fitzsimmons thinks the move is a way for HBO to increase profits at a time when the cable market is flattening out.

Cable profits are falling, Fitzsimmons said, because, in the city of Los Angeles alone, HBO loses more revenue than the number of all TVROs combined. Fitzsimmons, who is an electrical engineer with Boeing Aerospace, said the sophistication of cable companies' protective coding systems is so low that bootleggers with some electrical expertise can easily steal signals.

And, he said, so many smaller cable companies don't pay their HBO bills that HBO "has a great big gushing hole in the bottom of their bucket." Fitzsimmons sees this scrambling move as a way of plugging that hole. With the scrambler, HBO can cut off a cable company for non-payment.

Refusing to pay

HBO's Bob Gold said the flattening of the cable market is no secret, but said even attracting 800,000 TVRO owners as potential paying cable customers wouldn't make HBO a profitable venture. At best, the system would break even.

He admitted there are cable companies taking and distributing HBO's signal but refusing to pay for it, challenging, "What are you going to do? Arrest us?"

Scrambling would allow HBO to cut those companies off. But Gold said many cable operators