

LC 14.2:IB87123

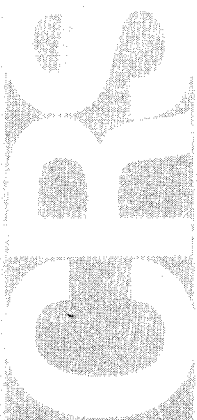
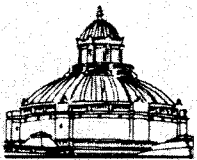
THE UNIVERSITY
OF TEXAS AT AUSTIN
JUL 29 1988
GENERAL LIBRARIES
DEPOSITORY

Issue Brief

Order Code IB87123

CIVIL RIGHTS LEGISLATION: RESPONSES TO GROVE CITY COLLEGE V. BELL

Updated May 27, 1988



by

Robert F. Lyke

Education and Public Welfare Division

Congressional Research Service

CONGRESSIONAL
RESEARCH
SERVICE
THE LIBRARY
OF CONGRESS

CONTENTS

SUMMARY

ISSUE DEFINITION

BACKGROUND AND ANALYSIS

Grove City College Decision

Legislation in the 100th Congress

Should Coverage Be Broad or Narrow?

Should Coverage Occur Through Assistance to Individuals?

Should Legislation Change or Limit Provisions about Abortion?
Danforth and Weicker Amendments

LEGISLATION

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

CHRONOLOGY

CIVIL RIGHTS LEGISLATION: RESPONSES TO GROVE CITY COLLEGE V. BELL

SUMMARY

How broad should the coverage of Federal civil rights laws be? This was the central issue in the debate over legislation introduced in response to the February 1984 U.S. Supreme Court decision in Grove City College v. Bell. In that case, the Court ruled that the prohibition against sex discrimination in Title IX of the Education Amendments of 1972 covers only the particular education "program or activity" receiving Federal financial assistance, not institutions as a whole. The Court's decision also affected three other civil rights laws with "program or activity" language: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act (prohibiting discrimination on the basis of race, handicap, and age, respectively).

The House and Senate both passed an amended version of S. 557, the "Civil Rights Restoration Act of 1987," which would ensure a broad definition of "program or activity" for Title IX and the other three civil rights laws. President Reagan vetoed the legislation and urged adoption of a substitute measure, the "Civil Rights Protection Act of 1988," under which coverage would be less extensive. However, both the Senate and House voted to override the veto on Mar. 22, 1988, thus enacting the legislation into law (P.L. 100-259).

Proponents of S. 557 argued that a broad scope of coverage is essential for effective civil rights laws. They cited examples of discrimination in federally funded institutions and agencies that cannot be addressed because of the Supreme Court's decision. The narrow interpretation of coverage, they believed, caused uncertainty and delay and ignored the way that institutions as a whole benefit from Federal funding.

Opponents of S. 557 argued that broad coverage would make civil rights requirements disproportional to the benefits institutions receive from Federal aid. Broad coverage, they contended, would enable the Government to use a small grant to one school program as justification for extending Federal regulations to everything else the school does. They also argued that Federal funds rarely are given for unrestricted use by institutions as a whole; instead, they generally are given just for particular purposes that can be separately identified.

One key issue during the debate on overriding the President's veto was the extent to which coverage would extend to churches and other religious organizations. Another issue concerned the employment of people with contagious disease or infection. Other important issues were whether coverage should occur through assistance extended to individuals (for example, should schools be covered if their students receive aid) and whether the Title IX regulations pertaining to abortion should be changed or limited.

ISSUE DEFINITION

How broad should the coverage of Federal civil rights laws be? This was the central issue in the debate over legislation Congress passed in response to the February 1984 U.S. Supreme Court decision in Grove City College v. Bell. In that case, the Court ruled that the prohibition against sex discrimination in Title IX of the Education Amendments of 1972 covers only the particular education "program or activity" receiving Federal financial assistance, not institutions as a whole. Also affected were three civil rights laws prohibiting discrimination due to race, handicap, and age.

The legislation passed by Congress, the "Civil Rights Restoration Act of 1987" would ensure broad coverage for Title IX and the other three civil rights laws. President Reagan vetoed the legislation on Mar. 16, 1988, but the Senate and House both voted to override the veto on Mar. 22, 1988, thus enacting the bill into law (P.L. 100-259). The President had proposed alternative legislation, the "Civil Rights Protection Act of 1988," under which there would be less extensive coverage of the civil rights laws for entities receiving Federal financial assistance. One key issue during the veto override debate was the extent to which coverage would extend to churches and other religious organizations. Another issue concerned the employment of people with contagious disease or infection. Other important issues were whether coverage should occur through assistance extended to individuals (for example, should schools be covered if their students receive aid) and whether the Title IX regulations pertaining to abortion should be changed or limited.

BACKGROUND AND ANALYSIS

The Grove City College Decision

The first section of Title IX of the Education Amendments of 1972 begins as follows:

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....(Section 901)

The statute refers to the "program or activity" receiving assistance, not to institutions as a whole. Nonetheless, as the Department of Health, Education, and Welfare and later the Department of Education in practice interpreted this phrase, generally all parts of an institution or agency were considered to be covered by the prohibition against discrimination if any part received Federal funds. (Among the parts not covered were programs or activities expressly deleted by the statute, such as undergraduate admissions in private colleges, or by the regulations, such as textbooks). One rationale given for this broad definition of coverage was that parts of schools not receiving Federal funding directly may still be integral to their educational process.

Originally the Department of Justice concurred in this broad interpretation of "program or activity." However, in August of 1983, after raising the issue in several other cases, it filed a brief with the U.S. Supreme Court in the case of Grove City College v. Bell arguing that Title IX coverage generally should be restricted to the specific program or activity that receives assistance. On Feb. 28, 1984, the Supreme Court ruled that a restrictive interpretation is correct and that all of Grove City College did not come under Title IX just because it received assistance from Basic Educational Opportunity Grants (called Pell Grants beginning in 1981). Instead, the Court held that Title IX's prohibition against discrimination covered only the College's student aid program.

The Grove City College case originated in 1977 when the Department of Health, Education, and Welfare (HEW) began proceedings against the College because it had not executed an "assurance of compliance" form as required by Title IX regulations. By this form, the College had to acknowledge that applicable programs and activities would be operated in compliance with the regulations and that remedial action would be undertaken if needed to eliminate existing discrimination or the effects of past discrimination. After an administrative law judge upheld HEW and terminated Federal student aid, the College filed suit on a number of grounds to nullify the order. The district court ruled in favor of the College on some issues and in favor of the Government on others. When the Supreme Court considered the case, it decided, as described above, that the phrase "program or activity" should not be interpreted broadly. At the same time, the Court rejected the other arguments put forth by the College that would have further lessened Title IX coverage or restricted its enforcement:

- the Court ruled that the College was a "recipient" of Federal financial assistance for purposes of Title IX even though that assistance was received only indirectly through Federal grants to students. (See the discussion of this issue below.)
- the Court held that Federal aid could be terminated just for failure of the College to sign an assurance of compliance form (if it were limited to programs receiving Federal financial assistance), even though there had not been a finding of discrimination.
- the Court also held that requiring the College to comply with Title IX in order to receive Federal student grants did not infringe first amendment rights of either the College or its students.

The Department of Justice successfully argued against the College on each of these matters.

Grove City College dealt only with Title IX. However, it was generally assumed that its interpretation about scope of coverage applied as well to three other civil rights statutes that also have "program or activity" language: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

While Title IX prohibits discrimination on the basis of sex in most education programs and activities receiving Federal financial assistance, the other three laws prohibit certain discrimination in any program or activity receiving such assistance: Title VI of the Civil Rights Act, discrimination on the basis of race, color, or national origin; Section 504 of the Rehabilitation Act, discrimination on the basis of handicapping condition; and the Age Discrimination Act, certain discrimination on the basis of age. These four laws are important provisions in the U.S. Code protecting the civil rights of women and girls, racial and ethnic minorities, handicapped persons, and older Americans.

Federal departments and agencies providing grants, loans, or contracts (other than contracts of insurance or guaranty) to relevant programs are required to issue rules for enforcing the civil rights acts. To achieve compliance, they may terminate financial assistance or use other means authorized by law. (Although such other means are not specified in the civil rights statutes, they could include law suits brought by the Government or private parties.) However, termination of funding may only be what is called "pinpointed." In Title IX, for example, termination

...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...

Since this language explicitly limits the scope of fund terminations to particular programs or parts of programs, it generally was argued that it, unlike the language defining scope of coverage, was not affected by Grove City College. By "pinpointing," the termination language has always implied narrowness rather than breadth. Nonetheless, questions sometimes were raised about whether proposed legislation might also alter the scope of termination provisions.

Legislation in the 100th Congress

Several bills were introduced in the 100th Congress to overturn the Supreme Court's narrow interpretation of "program or activity" in Grove City College. The principal bill, S. 557 (Kennedy), the "Civil Rights Restoration Act of 1987," would ensure a broad interpretation of that phrase with respect to any relevant recipient of Federal financial assistance not only for Title IX of the Education Amendments of 1972 but also for Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act. An amended version of S. 557 was passed by the Senate on Jan. 28, 1988, and by the House without further amendment on Mar. 2, 1988. President Reagan vetoed S. 557 on Mar. 16, 1988, but both the House and Senate voted to override on Mar. 22, 1988, enacting the legislation into law (P.L. 100-259). H.R. 1214 (Hawkins) was identical to S. 557 as the latter was introduced. Prior to the passage of S. 557, the Administration supported enactment of H.R. 1881 (Sensenbrenner), which applied only to educational institutions. Upon vetoing S. 557, President Reagan urged the adoption of a substitute

measure, "The Civil Rights Protection Act of 1988" which was introduced in the House as H.R. 4203 (Sensenbrenner) and in the Senate as S. 2184 (Hatch).) For summaries of S. 557 and H.R. 4203/S. 2184, see **Legislation** section, below.

Supporters of S. 557 argued that it would restore the broad interpretation of "program or activity" that was applied to the civil rights laws before Grove City College. However, there was some question whether the proposed legislative language would simply return the scope of coverage to what it was before the Court decision or whether coverage would be expanded. As the wording of S. 557 reflected debates in previous Congresses about expansion, it is important to review what occurred on this issue.

In the 98th Congress, the principal legislation to ensure broad coverage (H.R. 5490/S. 2468) would have deleted the phrase "program or activity" in the four civil rights laws and replaced it with the term "recipient," which in turn was defined similarly, though not identically, to the way it was defined in the laws' regulations. Opponents of H.R. 5490/S. 2468 argued that parts of the proposed statutory definition of recipient were so ambiguous that they would have greatly expanded coverage from what it had been before the Supreme Court decision. In their view, coverage would have "trickled down" to all subunits within an entity that received Federal assistance (to all municipalities within an aided county, for example), "trickled up" to an entity one of whose subunits received aid, and even "trickled around" to all parts of State or local government when only one State or local agency is assisted. Proponents maintained that the definition of recipient would not be ambiguous upon application, just as the regulatory language had not been, and that legislative history would clearly show that the intention of Congress was to restore, not expand, coverage. H.R. 5490 passed the House in June 1984. (See **Chronology** section, below.)

In the closing days of the 98th Congress, Senate supporters of S. 2468 attempted to resolve the controversy over coverage by new legislative language included in an amendment to a resolution for continuing appropriations. Among other things, the amendment had a "grandfather" clause providing that the term "recipient" would include an entity that would have been considered such under agency regulations one day prior to the Supreme Court decision in Grove City College, but would exclude an entity that would not have been so considered on that day. After floor debate, the proposed amendment was tabled. (See **Chronology** section, below.)

In the 99th Congress, the principal Grove City College legislation (H.R. 700/S. 431) attempted to avoid criticism that coverage would expand beyond what it had previously been by defining the phrase "program or activity" to mean "all the operations of" entities (such as State agencies, universities, etc.) any part of which receives Federal financial assistance. "Recipients" was not mentioned. Nonetheless, debate over coverage was rekindled when the legislation was introduced. Before the House Committee on Education and Labor and the House Committee on the Judiciary reported H.R. 700, they both adopted the same substitute version that tried to clarify the issue of coverage:

- they deleted a provision, criticized as open-ended, that would have provided coverage for all the operations of "any other entity" in a manner like those that had previously been named in the bill (State agencies, universities, etc.)
- they added a provision exempting "ultimate beneficiaries" who had been excluded before Grove City College. (One example of an ultimate beneficiary is an individual, such as a mother receiving Aid for Families With Dependent Children (AFDC) benefits, who is served by a federally funded program.);
- they included all the operations of systems of higher education only if they were public systems;
- they included all the operations of corporations and other private organizations only if they were principally involved in the business of providing education, health care, housing, social services, or parks and recreation; otherwise, only the operations of the particular plant, etc., would be covered.

As introduced, S. 557 of the 100th Congress was based upon the substitute version of H.R. 700 that was adopted by the House committees of previous Congress. Thus the legislation reflected responses to criticism that coverage was being expanded beyond what it had been prior to the Supreme Court decision. Nonetheless, doubts remained. Opponents of S. 557, noting all the different ways legislation has been drafted, wondered whether the current proposal was complete and final. Some saw no precedent for the language that included all the operations of corporations involved in education, health care, and certain other activities. Some were troubled by the absence of definite answers to questions about whether particular activities would be covered. In addition, they asked what restoration meant when prior to Grove City College there sometimes were conflicting rulings about coverage.

On the other hand, supporters of S. 557 generally viewed the different legislative proposals as attempts to clarify, not change, coverage; for them, legislative purpose has always been the same. They saw the proposed rule of coverage as clear and thought it inappropriate, if not misleading, to try to specify how it would be applied to different recipients of the myriad forms of Federal financial assistance. For them, the legislation will resolve whatever previous differences there were in rulings about coverage. Continual questioning about coverage, they thought, was motivated by attempts to delay consideration of the legislation.

Should Coverage Be Broad or Narrow?

Proponents of interpreting "program or activity" language broadly argued that narrow coverage undermines the effectiveness of the civil rights laws. If coverage was restricted just to the particular programs

or activities receiving Federal financial assistance, institutions getting Federal funds would not be prohibited by these laws from maintaining discriminatory policies and practices in other matters. For example, schools could legally exclude girls from athletics while accepting Federal assistance for their science or special education classes. Municipal agencies could legally dismiss handicapped employees while using Federal funds for duties other employees performed. (For summaries of numerous administrative and court decisions in which there have been rulings that the civil rights laws do not cover the programs or activities in which discrimination was alleged to occur, see Federal Funding of Discrimination: The Impact of Grove City College v. Bell, by Marcia Greenberger of the National Women's Law Center.)

Proponents of broad coverage also argued that with a narrow interpretation of program and activity it is not clear what the civil rights laws cover. If a company receives a Federal grant to provide on-the-job training to disadvantaged workers, for example, is just their training covered? What about the other work they do? What about their employee benefits? Would other workers the company is training be included as well? If Federal funds are provided through block grants, are all programs for which funds could be spent covered? Would only those programs that actually receive support be? With the narrow interpretation of program or activity, it is claimed, there would be uncertainty about rights and delays in enforcement.

In addition, advocates of broad coverage argued that the benefits of Federal financial assistance are not restricted to the particular program or activity that receives aid directly. Outside assistance for one program often frees up institutional funds for others. Proponents of broad coverage claimed that discrimination in one program of an institution or agency "infects" others, even if the latter in theory are protected by the civil rights laws' guarantees.

On the other hand, opponents of giving a broad interpretation to "program or activity" argued that such a change would make the nondiscrimination requirements disproportional to the benefits institutions and agencies receive from Federal aid. Broad coverage, they contended, would enable the Government to use small grants to individual programs as pretexts for implementing Federal regulations for everything institutions and agencies do. A grant to the chemistry department of a school, for example, could be used to justify extending Federal rules to music programs, gym classes, health services, employee compensation, and so on. Support for libraries could trigger coverage for parks and swimming pools. The restraint in Justice White's opinion in Grove City College could be cited: "we have found no persuasive evidence suggesting the Congress intended that the Department's regulatory authority follow federally aided students from classroom to classroom, building to building, or activity to activity."

Opponents of broad coverage also argued that it is not difficult to identify the particular program or activity that receives Federal financial assistance. With few exceptions, Federal aid is provided expressly for stated purposes; it rarely is given for unrestricted use. Applications for aid typically require organizations to designate programs

or activities that will be funded and to ensure that others will not be supported. Even if a Federal grant to one program does free up institutional funds for others, that does not mean the latter programs receive "Federal" funds. Similarly, even if institutions and agencies as a whole benefit from Federal grants, that does not mean that as a whole they "receive" financial assistance.

One question that received much attention during the debate overriding President Reagan's veto is the extent to which coverage would be extended to churches and other religious institutions. A church that receives Federal financial assistance for a social service program operated in its basement, for example, apparently would be covered, not only for the program itself but also for other functions in that facility. (See Paragraph 3(B) in Sections 3 through 6 of the legislative language.) A parochial school system in which one school receives Federal financial assistance would be covered in its entirety. (See Paragraph 2(B) in Sections 3 through 6.) Proponents of S. 557 argued that covering churches and parochial schools in this manner is appropriate since otherwise they would be treated differently from nonreligious institutions receiving Federal assistance. If churches object to complying with the nondiscrimination requirements, they should not accept Federal funds. Opponents argued that such coverage of religious organizations is inappropriate and unprecedented. They claimed that the legislation should not force religious organizations to choose between preserving their independence from governmental control and continuing to run social service programs. (H.R. 4203/S.2184, the "Civil Rights Protection Act of 1988," would have explicitly limited coverage of churches to the particular program receiving Federal financial assistance, and of parochial schools to the particular school receiving such assistance.)

Another question of coverage that received attention during the veto override debate is whether S. 557 would change previous law pertaining to the employment of persons with a currently contagious disease or infection under Section 504 of the Rehabilitation Act. The question may be of great importance with respect to the employment of people who test positive for AIDS. The issue arose because of the Humphrey-Harkin amendment, which was added to the legislation on the Senate floor. Some observers argued that the amendment would only codify existing standards of coverage for such persons, while other observers argued that the amendment would extend coverage, beyond what the U.S. Supreme Court had specifically held, to persons who are contagious or infectious but have not yet manifested physical symptoms of disease. For an analysis of this issue, see CRS Report 88-214, Legal Implications of the Contagious Disease or Infections Amendment to the Civil Rights Restoration Act, S. 557, by Nancy Lee Jones.

Should Coverage Occur Through Assistance to Individuals?

One argument Grove City College made when its suit was heard in Federal district court was that certain Federal student aid -- Basic Educational Opportunity Grants (BEOGs, now called Pell Grants) and Guaranteed Student Loans (GSLs) -- should not be considered as financial assistance to institutions for purposes of Title IX coverage. In the College's view, these programs provide support directly to students and to

banks, not to schools, in as much as schools are not responsible for disbursing the aid made available. The district court disagreed with the College's argument. In a revised opinion issued on June 28, 1980, the court ruled that both BEOGs and GSLs constitute Federal financial assistance to schools whose students receive them, thus bringing them under the nondiscrimination provisions of Title IX.

The Supreme Court subsequently upheld this finding with respect to BEOGs (the College chose not to appeal the finding with respect to GSLs). Among other things, the Supreme Court noted that BEOGs were created by the same legislation that imposed the Title IX requirements and that nothing in Title IX "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." The Court found that both congressional intent and administrative practice appeared to include aid to students within the scope of "financial assistance" for purpose of Title IX. The Court also stated in a footnote that Title IX coverage of educational institutions was not triggered by "food stamps, Social Security benefits, welfare payments, and other forms of general-purpose governmental assistance."

Whether schools should be covered under the civil rights laws because of student aid is but one example of a larger issue of whether any institution should be covered through Federal payments made directly to individuals for that institution's services. For example, should grocery stores be covered when they accept food stamps? Should pharmacies be covered when they fill Medicare or Medicaid prescriptions? A related question is how one is to tell when institutions are covered through such payments: Does it depend upon the amount of Federal funds they receive? Does it depend on whether the funds are for a particular purpose, not just general income? Is it relevant whether the institutions have administrative responsibilities, such as reporting requirements? Whether Congress expressly intended that the institutions be aided by the funds?

Proponents of S. 557 pointed out that the legislation does not affect whether institutions are covered under the civil rights laws by the extension of Federal financial assistance to individuals. S. 557 addressed only the question of how much of an institution would be covered, not whether it is covered at all. However, opponents of S. 557 argued that the expansion of coverage that would occur under the legislation made it important to clarify which institutions are covered and which are not. (H.R. 4203/S.2184, the "Civil Rights Protection Act of 1988," explicitly provided that coverage would not be extended to grocery stores through food stamps.)

Proponents of the view that institutions ought to be covered under the civil rights laws through Federal assistance to individuals argued that such aid often provides institutions with substantial revenue. For example, they claimed that some colleges could not survive without Pell Grants and GSLs and that few would enroll as many students. (For FY88, Congress has appropriated nearly \$4.3 billion for Pell Grants and \$2.6 billion for GSL subsidies and other costs. The annual GSL new loan volume from non-Federal sources currently exceeds \$9 billion.) It is only appropriate, they argued, that programs this important for postsecondary

education be accompanied by Federal civil rights guarantees. In addition, proponents argued that if coverage did not occur through student aid, the basic principle behind the civil rights laws would be violated: Federal aid ought not support discrimination.

Opponents of the view that institutions ought to be covered under civil rights laws through Federal assistance to individuals argued that it is imperative to distinguish direct from indirect recipients. Principal recipients, who initially get the aid, must be distinguished from secondary ones, just as legal recipients must be distinguished from economic ones. Otherwise, the opponents claimed, institutions cannot be certain whether they are covered or not. Opponents also pointed out that while some colleges may receive substantial support from students who have Pell Grants or GSLs, that support comes from students by their choice, not the Government's. If a school discriminates against students, they can enroll in other institutions, taking their Federal aid with them.

Should Legislation Change or Limit Provisions about Abortion?

One important issue regarding broadening the scope of coverage of Title IX was whether this would result in noncompliance by schools with policies against abortion. While the Title IX statute did not refer to pregnancy or abortion, the Department of Education's regulations contained several provisions on these matters. The provisions were promulgated by the Department of Health, Education, and Welfare in 1975 as part of the original Title IX regulations. In general, the provisions prohibited recipients of Federal financial assistance from discriminating against any student, or excluding any student from an education program or activity, "on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom" unless the student voluntarily requests to participate in a separate program. Leaves of absence must be granted for these conditions, at the conclusion of which the student must be reinstated to the status she held when the leave began. Moreover, recipients must treat these conditions in the same manner "as any other temporary disability" with respect to any medical or hospital benefit, service, plan or policy that they administer, operate, offer, or participate in. Similar requirements pertained to employees. (34 CFR 106)

The abortion provisions, like other Title IX rules, did not apply to educational institutions that qualify for the religious exemption stated in the statute:

...this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;... (Section 901(a)(3))

However, not all schools with abortion policies conflicting with Title IX regulations could qualify for this exemption. Some of these schools are not religious (public schools and public colleges and universities are not, nor are many private schools and colleges); others neither are controlled by a religious organization nor have religious tenets

inconsistent with the regulations. S. 557 would extend the religious exemption to operations of an "entity" controlled by a religious organization, not just an educational institution, provided the religious tenets test was also met. (Museums or hospitals with education programs would be examples.)

With the Supreme Court's narrow interpretation of coverage in Grove City College, schools could have policies about abortion that would be found discriminatory under Title IX regulations as long as those policies do not apply to programs or activities receiving Federal financial assistance. For example, if schools' health insurance plans had no Federal funding, they would not have to provide coverage for abortions. However, with the amendment of Title IX to ensure that institutions as a whole were covered if any part received Federal financial assistance, then the policies of such schools presumably would violate the regulations. Some people argued that S. 557, as introduced, by expanding coverage of Title IX to "all the activities of" institutions receiving Federal funds, would even have required hospitals with teaching programs to provide abortions to the general public as well as students and faculty members.

The Danforth and Weicker Amendments

Two floor amendments pertaining to abortion were added to S. 557 prior to its passage by the Senate. (The House retained both amendments when it later passed the legislation.) The Danforth amendment provided (1) that Title IX could not be construed "to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion" and (2) that this provision could not be used to impose penalties on anyone who is seeking or has received any benefit or service related to a legal abortion. The Weicker amendment provided that no provision of the Civil Rights Restoration Act (i.e., S. 557) or amendment made by it should be construed to require recipients of Federal funds to perform or pay for an abortion. In effect, the Danforth amendment repealed Title IX regulations requiring institutions to include abortion in the medical services or insurance plans they offer (though discrimination in other forms with respect to legal abortions would still be prohibited). In contrast, the Weicker amendment did not affect those abortion requirements; it only clarified that the legislation to overturn Grove City College, by itself, did not establish such requirements.

Supporters of the Danforth amendment principally argued that the Federal government ought not require educational institutions to provide or pay for abortion simply because they receive Federal financial assistance. They contended that when Congress enacted Title IX in 1972 (one-half year before the U.S. Supreme Court ruled in Roe v. Wade that women have a constitutional right to decide whether to terminate certain pregnancies) it would not have intended that regulations issued pursuant to the statute contain such requirements.

Opponents of the Danforth amendment principally argued that Congress should simply restore to Title IX and the other civil rights laws the broad coverage they had before Grove City. In no other respect than abortion, they added, would the legislation change what constitutes "discrimination" or "nondiscrimination."

LEGISLATION**P.L. 100-259, H.R. 1214/S. 557**

Civil Rights Restoration Act of 1987. Amends Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act to ensure that the phrase "program or activity" means "all the operations of" the following (stated generally), any part of which is extended Federal financial assistance:

- State and local governmental units (including those that extend Federal financial assistance and those to which they extend it);
- schools and school systems;
- postsecondary education institutions and systems of public higher education; and
- certain private organizations: those to which assistance is extended as a whole, and those principally engaged in providing education, health housing, social services, or parks and recreation. (For other private organizations, only the operations of "the entire plant or other geographically separate facility" to which Federal assistance is extended are covered.

Provides that the amendments do not extend application of any of the four acts to ultimate beneficiaries not previously covered. Extends the religious exemption provision of Title IX of the Education Amendments of 1972 to operations of entities (not just educational institutions) controlled by religious organizations, provided they also meet the religious tenets test. Also makes clear with respect to Section 504 of the Rehabilitation Act that small providers are not required to make significant structural alterations to their existing facilities so that their programs are accessible, if other means of providing the services are available. H.R. 1214 introduced Feb. 24, 1987; referred to Committees on Education and Labor, and on the Judiciary. S. 557 introduced Feb. 19, 1987; referred to Committee on Labor and Human Resources. Hearings began Mar. 19. Amended and ordered reported May 20. Further amended with two provisions pertaining to abortion (the Danforth and Weicker amendments) and one pertaining to employment of persons with infectious diseases (the Humphrey-Harkin amendment). Passed Senate Jan. 28, 1988. Passed House, without further amendment, Mar. 2. Vetoed by President Reagan Mar. 16. Passed House and Senate over presidential veto Mar. 22, 1988.

H.R. 4203/S. 2184 (Sensenbrenner/Hatch)

Civil Rights Protection Act of 1988. Amends Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act to ensure that the phrase "program or activity" means, with some exceptions, "all the operations of" entities (similar to those listed above for S. 557), any part of which is extended Federal financial assistance. In contrast to S. 557, corporations and other private organizations would be covered in their entirety only if the assistance were provided to them as a whole; only the part of the church that participates in the federally-assisted program would be covered; only the

individual religious school receiving assistance would be covered (not the entire religious school system) and only the State or local programs receiving assistance would be covered (not the entire State or local agency). In addition, explicitly provides that coverage is not extended to grocery stores through the receipt of food stamps or to farms and ranches through the receipt of Federal agricultural assistance. Broadens the Title IX religious exemption to include entities "closely identified" with tenets of religious organizations. Otherwise includes other provisions of S. 557 as passed by the House and Senate, including the Danforth, Weicker, and Humphrey-Harkin amendments. H.R. 4203 introduced Mar. 17, 1988; referred jointly to Committees on Education and Labor, and on the Judiciary. S. 2184 introduced Mar. 17, 1988; referred to Committee on Labor and Human Resources.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

- U.S. Congress. House. Committee on Education and Labor. Civil Rights Restoration Act of 1985. Oct. 7, 1986. Washington, U.S. Govt. Print. Off., 1986. 23 p. (99th Congress, 2d session. House. Report no. 99-963, Part 2).
- U.S. Congress. House. Committee on Education and Labor and Committee on the Judiciary. Subcommittee on Civil and Constitutional Rights. Civil Rights Restoration Act of 1985. Joint hearings, 99th Congress, 1st session. Mar. 4, 7, 11, 15, 22, 25, 27-28, and Apr. 4, 1985. Washington, U.S. Govt. Print. Off., 1986. 1329 p.
- U.S. Congress. House. Committee on the Judiciary. Civil Rights Restoration Act of 1985. Oct. 3, 1986. Washington, U.S. Govt. Print. Off., 1986. 43 p. (99th Congress, 2d session. House. Report no. 99-963, Part 1).
- U.S. Congress. Senate. Committee on Labor and Human Resources. The Civil Rights Restoration Act of 1987. June 5, 1987. Washington, U.S. Govt. Print. Off., 1987. 38 p. (100th congress, 1st session, Senate. Report no. 100-64)
- Civil Rights Restoration Act of 1987. Hearings, 100th Congress, 1st session. Mar. 19 and Apr. 1, 1987. Washington, U.S. Govt. Print. Off., 1988. 679 p.
- Proposed Grove City legislation, religious liberty, and private education. Hearings, 99th Congress, 1st session. July 17 and Sept. 20, 1985. Washington, U.S. Govt. Print. Off., 1986.

CHRONOLOGY

- 03/22/88 --- Senate (73-24) and House (292-133) passed S. 557 over the President's veto, enacting it into law (P.L. 100-259).

- 03/17/88 --- Senate began debate on overriding the President's veto of S. 557.
- 03/16/88 --- President Reagan vetoed S. 557 and urged the adoption of a substitute measure that would broaden the Title IX religious exemption and have less extensive coverage of churches, religious schools, corporations, and State and local governments.
- 03/02/88 --- House passed (315-98) the version of S. 557 that the Senate passed in January.
- 01/28/88 --- Senate passed (75-14) the reported version of S. 557 after adding two amendments pertaining to abortion and a clarifying amendment about Section 504.
- 01/26/88 --- Senate began debate on S. 557.
- 05/20/87 --- Senate Committee on Labor and Human Resources amended and ordered reported S. 557 (S.Rept. 100-64).
- 10/21/86 --- President Reagan signed H.R. 4021, the Rehabilitation Act Amendments of 1986 (P.L. 99-506). Section 1003 provides that States are not immune under the Eleventh Amendment of the Constitution from suit in Federal court for violations of Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, and the Age Discrimination Act. The legislation overturned the June 28, 1985 Atascadero decision of the U.S. Supreme Court.
- 06/28/85 --- U.S. Supreme Court ruled in Atascadero State Hospital v. Scanlon, that, absent unequivocal statutory language to the contrary, the Eleventh Amendment bars suit in Federal court against State agencies under Section 504 of Rehabilitation Act of 1973 even though they receive Federal financial assistance.
- 05/22/85 --- House Committee on the Judiciary ordered reported H.R. 700 with two amendments: (1) a new version of the bill in the nature of a substitute and (2) a disclaimer that the amendments made by H.R. 700 "are not intended to convey either the approval or disapproval of Congress concerning the validity or appropriateness of Title IX regulations concerning health care insurance or services with regard to abortion." (This amendment was offered by Representative Edwards of California.)
- 05/21/85 --- House Committee on Education and Labor ordered reported H.R. 700 with three amendments: (1) a new version of the bill in the nature of a substitute (identical to the substitute version adopted the next day by the Committee on the Judiciary); (2) a provision stipulating that Title IX shall not be construed "to grant or secure or deny any right

relating to abortion or the funding thereof," or to require or prohibit any benefit or service relating to abortion (this amendment was offered by Representative Tauke); and (3) a provision broadening the Title IX religious exemption to include operations of an entity "affiliated" with a religious organization when the religious tenets of the organization are an integral part of such operations.

- 10/02/84 --- Senate agreed (53-45) to table the civil rights amendment to H.J.Res. 648 that Senator Byrd had proposed Sept. 27.
- 09/29/84 --- Senate agreed (92-4) to end further debate on the civil rights amendment to H.J.Res. 648.
- 09/27/84 --- During debate on H.J.Res. 648, making continuing appropriations for FY85, Senator Byrd introduced an amendment that was designed to be a substitute for S. 2568, the Civil Rights Act of 1984. Among other things, the proposed amendment, which had the support of Senators Kennedy and Packwood (two of the principal proponents of S. 2568) would have inserted a grandfather clause in the civil rights laws explicitly providing that the term "recipient" included an entity that would have been considered such under agency regulations one day prior to the Supreme Court's decision in Grove City College, but excluded an entity that would not have been so considered on that day.
- 06/26/84 --- House passed ((375-32) H.R. 5490 along with two amendments: (1) a provision stating that Members of Congress and the Federal judiciary may be considered recipients of Federal financial assistance for purposes of extending coverage of the four civil rights statutes and (2) a provision clarifying that nothing in the Act changes the status of black colleges and universities.
- 05/23/84 --- House Committees on Education and Labor and on the Judiciary both ordered reported H.R. 5490.
- 02/28/84 --- U.S. Supreme Court ruled in Grove City College v. Bell that the College was a recipient of Federal financial assistance for purposes of Title IX by way of the Basic Educational Opportunity Grants the Government made to its students. However, the Court held that Title IX coverage generally is limited to the specific program or activity receiving Federal financial assistance. The Court also held that Federal aid could be terminated for failure of the College to sign a program-specific assurance of compliance form, even though there had not been a finding of discrimination, and that compliance with Title IX in order to receive Federal student assistance does not infringe First Amendment rights of either the College or its students.