

RESUME OF DANIEL N. MATHESON III

November 15, 1984

PERSONAL

Home Address and Telephone - 3811 Green Trails South
Austin, Texas 78731
512/346-8763

Business Address and Telephone - Johnson & Swanson
1000 Norwood Tower
114 West Seventh Street
Austin, Texas 78701
512/474-4829

Born April 12, 1949 in Fort Worth, Texas
Married to Jane A. Matheson May 26, 1973
Two daughters (Sarah and Claire, born February 21, 1977), and
one son (Clay, born March 3, 1983)

EDUCATION

Law - University of Texas School of Law, J.D. with Honors, May 1974
Associate Editor, Texas Law Review, 1973-74

Undergraduate - Tulane University, 1967-69
University of Texas at Austin, B.A., May 1971

PROFESSIONAL EMPLOYMENT

Partner, Johnson & Swanson, Dallas, Texas, October 1, 1979 to
April 30, 1981, and Austin, Texas, January 1, 1983 to Present
Director, State of Texas Office of State-Federal Relations,
Washington, D.C., November 1981 to December 1982
(Acting capacity from November 1981 to April 1982)
Energy Coordinator, State of Texas Office of State-Federal
Relations, Washington, D.C., May 1981 to November 1981
Associate, Hewett Johnson Swanson & Barbee (now Johnson & Swanson),
Dallas, Texas, August 1, 1974 - September 30, 1979
Summer Intern, Vinson, Elkins, Searles, Connally & Smith
(now Vinson & Elkins), Houston, Texas,
July and August, 1973
Summer Intern, Thompson, Knight, Simmons & Bullion
(now Thompson & Knight), Dallas, Texas, June 1973
Summer Intern, Law Office of Tom M. Snow, Terrell, Texas,
June - August 1972

PROFESSIONAL EXPERIENCE

LEGAL

Admitted to Practice, State Bar of Texas, December 1974

Partner in the Austin, Texas office of Johnson & Swanson, a 170 lawyer full service law firm based in Dallas, Texas

Practice in the general banking, corporate, and securities areas, with experience in the following areas: Organization and On-going representation of banks and savings and loan associations, including corporate, regulatory, commercial and real estate lending, and equipment leasing transactions; organization and on-going representation of corporations and other business entities involved in high-technology, equipment leasing, real estate investment and management, and other businesses; public and private placement of debt instruments and equity securities; and mergers and acquisitions involving corporations and financial institutions

GOVERNMENT

Director of State of Texas Office of State-Federal Relations November 1981 to December 1982. The Office of State-Federal Relations is a Texas state agency with offices in Washington, D.C. and Austin, Texas which serves as a liasion between the Texas state government and the federal government, coordinates the development of state policy with respect to federal legislative and regulatory initiatives with the Governor and other senior Texas officials, monitors federal government activities of interest to Texas, and coordinates the communication of Texas' positions to members of Congress and other federal officials. The Director of the Office is appointed by the Governor and confirmed by the Texas Senate. I was appointed Director of the Office by Governor William P. Clements. In 1982, the Office maintained a professional and clerical staff of 20 and had a budget of approximately \$1,000,000.

While serving as Director of the Office of State-Federal Relations, I served as Governor Clements' staff representative to the National Governors Association and the Southern Governors Association and certain of their committees. In 1982, I served as Chairman of the Southern Governors Association Staff Advisory Committee and as Vice-Chairman of the National Governors Association Energy and Environment Committee Staff Advisory Committee.

Member, Texas State Board of Registration for Professional Engineers, 1983-1984 (appointed by Governor William P. Clements)

PROFESSIONAL ACTIVITIES

Member, Dallas, Travis County, Texas, American, and International Bar Associations

Member, Committee on Banking Law - Corporation, Banking, and Business Law Section, Texas Bar Association

Member, Texas Association of Bank Counsel

POLITICAL CAMPAIGN ACTIVITIES

Reagan-Bush '84 Campaign in Texas

*Director, Texans for Reagan-Bush '84 (the focal point for coalition development and voter outreach among Democrats and Independents for the Reagan-Bush Campaign in Texas; as Director, I took a leave of absence from law practice to assume responsibility for planning and implementing coalition development and outreach activities and coordinating the recruitment and activities of a statewide and several regional Democrat and Independent steering committees)

*Coordinator of business get-out-the-vote effort (as such I was responsible for the recruitment and a statewide business steering committee and its activities as the focal point for the get-out-the-vote effort among Texas business leaders)

*Member, Texas Attorneys for Reagan-Bush '84 Steering Committee and Texas Business for Reagan-Bush '84 Steering Committee

Phil Gramm for U.S. Senate Campaign, 1984

*Member, Texas Attorneys for Gramm Steering Committee and Travis County Steering Committee

Joe Barton for Congress Campaign, 1984

*Member, Steering Committee and Host Committee for several fund-raising events

COMMUNITY ACTIVITIES

Member, Board of Directors, Texas Lyceum Association, Inc., 1984 - Present

Member, Steering Committee, Friends of the Archer M. Huntington Gallery at the University of Texas at Austin, 1983 - Present

Team Member, Salvation Army Capital Campaign, Austin, 1984

Team Member, Laguna Gloria Art Museum Annual Fund Campaign,
Austin, 1984

Membership Chairman and Member of the Board of Directors,
Texas State Society of Washington, 1982

Membership Chairman, Washington Chapter of the University of
Texas Ex-Students Association, 1982

Founder and Chairman of the Steering Committee, Texas Energy
Forum, Washington, D.C., 1981-1982

Member, Board of Directors, Dallas Theatre Center, 1980-1981

Member, Board of Directors, Shakespeare Festival of Dallas,
1980-1981

Participant, Leadership Dallas 1978-1979 (sponsored by the
Dallas Chamber of Commerce), and Member, Leadership
Dallas Alumni Association, 1979-Present

Member, 500, Inc., Dallas, 1975-1977

BUSINESS ACTIVITIES

Secretary and Member of the Executive Committee, Park Cities
Savings Association, Dallas

REFERENCE AVAILABLE UPON REQUEST

file
John C. Butler
1792 Hamilton Drive
Valley Forge, Pennsylvania 19481

Home: (215) 783-5372
Office: (215) 875-2448

OBJECTIVE: Chief Executive Officer/Chief Operating Officer of a computer product or computer related company at corporate or divisional level located in the U.S. or Europe with authority to make policy decisions in achievement of company objectives.

EXPERIENCE:

Sperry Computer Systems (formerly Sperry Univac), Blue Bell, Pennsylvania 1960-1984

For the past ten years, has held four of the five senior line management positions under the President in Sperry Computer Systems.

Vice President and General Manager, Japan 1983-1984
Blue Bell, Pennsylvania
Responsible for \$600 Million Revenues, 5,000 personnel;

Took this assignment to direct Sperry's successful effort to regain operational control of its extensive and long-standing Japanese operations and to revise Sperry's corporate strategy for dealing with Japan and Japanese companies.

* Responsible for all Sperry's business and government relations in Japan. The principal ones are (a) manufacturing joint venture with Oki Electric; (b) marketing joint venture with Mitsui; and (c) cooperation agreements with Mitsubishi for technology exchange, product development and marketing arrangements.

* Managed all "know-how" and technology exchanges with Japan, focusing on business opportunities for Japanese products to the U.S. and Europe: (e.g., Mitsubishi, Personal Computer marketed in the U.S. and Europe by Sperry) and U.S. Products in Japan: (e.g. manufacturing of Sperry Univac 1100's in Japan).

* Developed program for Japanese joint ventures to share cost of new product development while retaining Sperry's ownership rights in the products worldwide.

Vice President and General Manager, America's Division 1982 - 1983
Blue Bell, Pennsylvania
Responsible for \$1.25 billion Revenues, 9,000 personnel;

* Responsible for managing, controlling and planning all Sperry's U.S. marketing and service activities. This included recommendation and definition of new products, software development, systems engineering, customer engineering as well as standard marketing programs and the controller and personnel staff functions.

* During major recession period planned and implemented major reduction of force while increasing revenues and bookings.

* Responsible for the successful award of the single largest computer contract in the history of the industry. (U.S. Air Force Phase Four Procurement).

Executive Vice President Marketing and Services

1981 - 1982

Blue Bell, Pennsylvania

Responsible for \$2.8 Billion revenues, 21,600 personnel;

Number two job in Sperry Computer Systems. Planned and implemented successful reorganization to combine previous marketing and service organization into two divisions which reported to this job and ultimately to eliminate this job when reorganization fully implemented. Supervised these two divisions until organization fully into place and operating smoothly.

Responsible for managing, controlling and planning Sperry Univac's Marketing and Service organization worldwide which included the same functions listed for Vice President and Manager of the Americas Division.

Vice President and General Manager, America's National Division

1980 - 1981

Blue Bell, Pennsylvania

Responsible for \$490 Million Revenues, 3,800 personnel

Responsible for several special vertical marketing organizations for specific markets including certain major national accounts of the company, the federal government, worldwide airline accounts and a special development center for airline software development and hardware integration. Responsible for managing, controlling and planning all Sperry's marketing and service functions for these organizations which included the same functions listed for Vice President and Manager of the Americas Division.

* National accounts - Bell System: Increased bookings to over \$100 million per year.

* Airline accounts: Developed state-of-the-art software system covering all aspects of airline operations, now used in whole or in part by Lufthansa, Iberia, SAS, Cathay Pacific, Trans-Australian, Northwest, Eastern, United, Air France, All Nipon, Sita and others. Increased Sperry's market share in this industry to over 30 percent.

* Federal Government: Reestablished Sperry's position as a major supplier to the federal government moving from a loss position to the highest profitability in its history.

Vice President and General Manager, International Division

London, England

1974 - 1980

Responsible for \$1.2 Billion Revenues, 10,500 personnel;

Responsible for the establishment of the International Division by combining the activities of Sperry in Northern, Central and Southern Europe, Asia, Africa, Australia and New Zealand (25 wholly owned subsidiaries, 8 distributors, 2 joint ventures).

* Responsible for managing, controlling and planning all Sperry's international marketing and service activities, which included the same functions performed in the U.S. as Vice President and General Manager of the Americas Division plus the legal staff function and foreign development centers.

* Responsible for local content requirements for hardware and software; independent pricing of products and sales lease mix in light of foreign exchange rates and foreign exchange controls, country quotas, tariffs and interest rates, as well as competitive factors; assessment of country political and economic risks; etc.

* Increased revenue from \$250 million to \$1.2 billion while achieving the highest return on revenue and the highest bookings growth in company.

* Opened markets for Sperry in USSR, China and Iran where Sperry had previously no sales.

* Developed highly successful joint venture with SAAB Scania of Sweden to market and service computers in Demark, Norway, Finland and Sweden (SAAB UNIVAC).

* Planned and directed secret evacuation of approximately 50 personnel in Iran after collapse of government there.

* Instituted major counter trade program for East Bloc countries to facilitate sale of Sperry equipment

Vice President and General Manager,
Northern European Division
London, England 1973 - 1974

Responsible for all Sperry activity in Northern Europe.

Vice President and General Manager, Series 70 1971 - 1973
Series 70
Blue Bell, Pennsylvania

Part of a two-man team responsible for the acquisition of the RCA's computer business which at a time was the largest computer-acquisition in history. Developed a plan to integrate the RCA business into Sperry's business and managed the RCA operation until it could be fully merged into Sperry. In approximately 5 years, RCA operations generated profits more than four times total purchase price.

Vice President, Field Operations, West 1970 - 1971

Responsible for all computer marketing and services activity Central, South West and Far West Region, headquartered in Chicago, Illinois.

Regional Manager, Central Region, Chicago, Illinois 1967 - 1970

Branch Manager, Boston, Massachusetts 1965 - 1967

Major Systems Sales Manager, Eastern Region
Philadelphia, Pennsylvania 1964 - 1965

National Accounts Manager, Pittsburgh, Pennsylvania 1962 - 1964

Sales Executive, Pittsburgh, Pennsylvania 1960 - 1962

BOARD MEMBERSHIPS:

Saab Univac, Stockholm	past
Sperry Rand International Corporation, Chairman and President	past
Sperry Rand Holland, NV, Amsterdam	past
Oki-Univac-Kaisha	past
Nippon-Univac-Kaisha	past
Trustee Kiskiminetas Springs School	past

EDUCATION:

Kiskiminetas Springs School, Saltsburg, Pennsylvania
Dickinson College, Carlisle, Pennsylvania
University of Pittsburgh, Pittsburgh, Pennsylvania
Aspen Institute for Humanistic Studies

MILITARY:

U.S. Army, Army Security Agency, Cryptographer

LINDA CHAVEZ

6403 Hillmead Road
Bethesda, Maryland 208

301/469-9107 (H)
202/523-5571 (O)

ADC
Let's keep this
on file: I may
need in Jan.
JC 11/29

PERSONAL INFORMATION

Born: Albuquerque, New Mexico; June 17, 1947

Married: Christopher Gersten; June 15, 1967; three children

EDUCATION

University of Colorado, B.A., 1970
English Literature

UCLA, 1970-1972, English Literature

University of Maryland, 1974-1975,
American Studies

PROFESSIONAL EXPERIENCE

August 1983 - Present:

Staff Director, U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, fact-finding agency whose mission is to study discrimination on the basis of race, sex, national origin, religion, age and handicap; to issue reports; to hold public hearings; and to make recommendations to Congress and the President.

The staff director is responsible for the management of the agency and the implementation of policy and is the chief executive officer of the agency. Since its reconstitution, the Civil Rights Commission has embarked on an ambitious plan of research projects including a major national study of school

Professional Experience (Continued)

desegregation; a study of income differences of Americans by race, sex and national origin and the factors that account for such differences; a public consultation on the controversial subject of equal pay for so-called comparable worth; and future hearings on housing discrimination, affirmative action, and the rights of severely handicapped newborn infants. The staff director has initiated these projects, later approved by the Commission members, and has directed the work of agency staff and consultants. The staff director represents the agency before public fora and the Congress.

March 1982 - August 1983:

Assistant to the President, American Federation of Teachers; Editor, American Educator; Washington, D.C.

Responsible for coordinating and supervising the work of the national professional staff of the American Federation of Teachers. Editor of the American Educator, national award-winning quarterly journal of opinion and ideas published by the American Federation of Teachers.

American Educator routinely published articles by authors such as Jeanne Kirkpatrick, Thomas Sowell, William Bennett, James Stockdale, Diane Ravitch and others and pioneered in serious examination and discussion of such important issues as moral education, the survival of the American family, student discipline and violence in the schools, and the decline in standards in education.

Lectured extensively on the subject of moral education in school districts and at education conferences throughout the United States.

Professional Experience (Continued)

Represented the American Federation of Teachers at international meetings of education leaders and democratic trade unionists in Panama, Costa Rica, Guatemala, Honduras, Mexico and Brazil. On behalf of the American Federation of Teachers president, routinely met with elected representatives of teacher organizations from the United Kingdom, Federal Republic of Germany, France, Japan and other democracies.

Developed education policy for the American Federation of Teachers in higher education, bilingual education, international education, teacher preparation, and non-discriminatory affirmative action.

July 1981 - December 1981:

Consultant, ACTION, Washington, D.C.

Responsible for advising the Director of VISTA on training materials for use in the agency's service learning projects and for evaluating whether materials were consistent with Administration policy.

September 1977 - March 1982:

Editor, American Federation of Teachers, Washington, D.C.

Responsible for editing American Educator, American Teacher (December 1978 - March 1982), Action, the quarterly, monthly and weekly publications of the American Federation of Teachers.

Professional Experience (Continued)

July 1977 - September 1977:

Consultant; President's Reorganization Project, Office of Management and Budget; Washington, D.C.

Responsible for research on developing a reorganization plan for the federal equal employment effort administered by the Civil Service Commission.

February 1977 - July 1977:

Special Assistant to the Deputy Assistant Secretary for Legislation (Education): Department of Health, Education, and Welfare; Washington, D.C.

Represented the Department's views on education legislation to Members of Congress and Congressional Committee staff.

September 1975 - February 1977:

Assistant Director of Legislation; American Federation of Teachers; AFL-CIO; Washington, D.C.

Responsible for preparation and presentation of testimony and for liaison with Senate and House members on education, tax reform, pension, civil rights and energy legislation.

September 1974 - August 1975:

Lobbyist; National Education Association; Washington, D.C.

Maintained liaison with members of the House and Senate, federal agencies, civil rights organizations and public interest groups.

Professional Experience (Continued)

July 1972 - September 1974:

Professional Staff; Committee on the
Judiciary, Subcommittee on Civil Rights
and Constitutional Rights; U.S. House
of Representatives

Responsible for all staff work on Congres-
sional oversight hearings on civil rights.

June 1972 - July 1972:

Analyst, Department of the Spanish Speaking,
Democratic National Committee, Washington, D.C.

February 1972 - May 1972:

Program Development Specialist; Interstate
Research Association; Washington, D.C.

October 1970 - January 1972:

Lecturer; Department of English, University
of California, Los Angeles

January 1969 - September 1970:

English Program Instructor Coordinator;
United Mexican-American Students--Educational
Opportunity Program; University of Colorado

ADVISORY PANELS, HONORS, AWARDS

Administrative Conference of the United
States, 1984, Council Member, Appointed
by President Reagan, August 1984

Monitoring Panel on UNESCO, Department of
State, 1984, Appointed by Secretary of
State to monitor change in UNESCO policy
and management, proceeding the announcement
of United States intention to withdraw.

Advisory Panels, Honors, Awards (Continued)

Chairman, American Catholic Conference,
present

Council for the Advancement of Citizenship,
1980 - present

Panelist, National Endowment for the Humanities,
1982 - 1983

National Woodrow Wilson Fellowship
Honorable Mention, 1969

Writers Conference of the Rockies,
Colorado Scholar, 1967



STAFF DIRECTOR

June 29, 1984

Honorable Chic Hecht
United States Senate
Washington, D.C. 20510

Dear Senator Hecht:

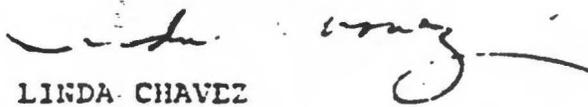
Thank you for your recent letter requesting technical assistance from the Commission staff in clarifying some of the ambiguities that have been identified in the scope of the four civil rights statutes if they are amended by S. 2568, the proposed Civil Rights Act of 1984. The staff is drafting language that should clarify certain sections of the bill, and this language will be sent to you shortly.

In the meantime, I can report to you that the Commission has previously adopted the position that the scope of an agency's authority to terminate Federal funding should not be modified. Thus, it is the Commission's view that the termination of Federal financial assistance should be, "limited to the particular political entity or part thereof, or other recipient as to whom [a finding of non-compliance] has been made, and should be limited in its effect to the particular program, or part thereof, in which non-compliance has been found." This language is currently contained in Section 602 of Title VI, Section 902 of Title IX, and similar language also currently appears in Section 305 of the Age Discrimination Act.

It will be necessary to delete the following provisions of S. 2568 in order to achieve this objective: (1) Page 3, lines 22-24; page 6, lines 23-25; page 7, lines 1-2; and page 9, lines 6-8. The staff believes that S. 2568's amendments to the termination language now in the statutes may alter the current reach of an agency's authority to terminate its Federal financial assistance to a recipient. Since the bill's language is susceptible to a variety of conflicting interpretations, we believe that it is advisable to retain the existing statutory language.

Let me add that while the Commission supports both broad institution-wide coverage under these civil rights laws, and retention of the current scope of the statute's pinpoint financial assistance termination clause, it has not taken any position on S. 2568.

Sincerely,



LINDA CHAVEZ



STAFF DIRECTOR

JUL 20 1984

Honorable Chic Hecht
United States Senate
Washington, D.C. 20510

Dear Senator Hecht:

In my letter of June 29, 1984, I offered you a suggestion for a possible amendment to the 1984 Civil Rights Act, S. 2568. The amendment was intended to preserve the current scope of an agency's termination-of-funds authority under the four civil rights statutes that the pending legislation proposes to amend.

I also indicated in my letter that the Commission's staff was drafting additional language which could form the basis of amendments that would clarify the substantive scope of the 1984 Civil Rights Act. Pursuant to your request, the purpose of the suggested language is to ensure that coverage under the four civil rights statutes would be restored to the broad scope thought to have existed before the Supreme Court's Grove City decision but would not extend that coverage any further.

The Commission's staff has drafted two sets of alternative amendments. The first set of amendments (Alternative I) contains general language that further clarifies Congressional intent in this matter. In the event that the general language does not reflect an approach you wish to pursue, the staff has prepared a second set of amendments (Alternative II). The second set of amendments uses thirteen specific examples of persons, institutions, or programs that will be exempted from the coverage of the pending bill.

This is a difficult area in which to draft legislative language. Our suggestions may require refinement in order to achieve the intended result, and you may wish to make further revisions to them. Should you have any further questions, please do not hesitate to contact me.

Please note that the Commission on Civil Rights has neither reviewed nor approved any of the proposed amendments, nor has it taken a position on S. 2568 itself. These amendments are being submitted to you in response to your previous request for our assistance in this matter. As I mentioned to you earlier, the Commission does favor a broad interpretation of the scope of these statutes but also favors retention of the "pinpoint" limitation on an agency's fund termination authority.

Sincerely yours,

A handwritten signature in cursive script, reading "Linda Chavez". The signature is written in dark ink and is positioned to the left of the typed name.

LINDA CHAVEZ

Introduction

I have concluded that the legislative history in the House confirms: (1) the ambiguous scope of some of the bill's provisions (2) that the bill fails to restore the breadth of coverage of anti-discrimination provisions on the basis of religion and sex using "program or activity" language in federal funding statutes; (3) that many supporters of the bill do not understand the scope of broad coverage thought to have existed before Grove City and thus are unable to understand how the bill provides less civil rights coverage in a few respects and significantly broader civil rights coverage in other respects than was the case even under the earlier broad interpretation; (4) the bill expands coverage of the four civil rights statutes well beyond that which had been thought to exist before Grove City, authorizing agencies (and courts) to exercise power over recipients of Federal aid they have never exercised before; and (5) the scope of the termination power is ambiguous and may well exceed its pre-Grove City scope, contrary to the explanations and assurances of the bill's sponsors.

Part of the confusion stems not only from a congressional lack of understanding of what was regarded to be broad coverage prior to Grove City, but a serious misunderstanding of the bill's changes in the definition of "recipient" from the definition in agency regulations. Many members of the House believed the bill's definition of "recipient" is essentially unchanged from agency definitions of "recipient." E.g., H 6799 (Cong. Rodino); H 6810 (Cong. Bartlett); H 6815 (Cong. Sensenbrenner); H 7033 (Cong. Edwards). Indeed, some Congressmen appeared to be under the erroneous assumption that the bill's definition of "recipient" is identical to agency definitions of "recipient". H 6806 (Cong. Coleman) ("A definition of 'recipient' taken directly from Department of Education Title IX regulations is added.")

I note, first, that identical language in a regulation may take on a different meaning if adopted by Congress. This can occur because Congress adds its own gloss to the language through its legislative history. Moreover, courts may defer more to the acts and words of Congress than to an agency's regulation in interpreting a statute.

Second, and even more important, the bill makes material changes in the definition by adding entirely new language and reordering and recasting language that is present in agency definitions. The bill's definition of "recipient" is:

For the purpose of this section, the term "recipient" means --

(1) any State or political subdivision thereof, or any public or private agency, institution, or organization, or other entity (including any subunit of any such State, subdivision, instrumentality, agency, institution, organization, or entity), and (2) any successor, assignee, or transferee of any such State, subdivision, instrumentality, agency, institution, organization, or entity or of any such subunit,

to which Federal financial assistance is extended (directly or through another entity or a person), or which receives support from the extension of Federal financial assistance to any of its subunits.

The underlined portion is entirely new, and Members of the House are clearly divided over what this new phrase in the definition means (see discussion at pages 6-9).

There are other key changes. For example, the Department of Education's Title IX regulatory definition of "recipient" includes entities which receive Federal financial assistance "directly [from the Federal government] or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof." 34 C.F.R. § 106.2(h). (emphasis supplied).

H.R. 5490's definition makes a subtle but potentially material change by making an entity a recipient if it receives Federal financial assistance, not through another recipient, but "through another entity or person." Coupled with the deletion of the exclusion of ultimate beneficiaries from the definition, 1/ the definition raises the possibility,

1/ This exclusion occurs in a number of agency definitions of "recipient." E.g., 45 C.F.R. § 84.3 (Department of Health and Human Services' Section 504 regulation).

confirmed by Congressman Simon (see discussion at pages 12-14), that a grocery store's participation in the Food Stamp Program and receipt of food stamps from a food stamp beneficiary (presumably a "person" within the bill's definition of "recipient" in the "indirect aid" part of said definition) subjects the grocery store to coverage under Title VI, Section 504, and the Age Discrimination Act.

Moreover, the inclusion of "transferees" in current agency definitions is meant to include only transferees of Federal financial assistance -- not transferees of recipients of Federal financial assistance. By failing to make this clear, the bill's definition of "recipient" opens the door wide for an expansion of coverage exceeding that which was thought to have existed before Grove City.

I also note that a number of agency definitions of "recipient" do not include "subunits." E.g., 45 C.F.R. 80.13(i) (Department of Health and Human Services' Title VI regulations).

Coverage of Entire States and Localities by Virtue of Categorical or Block Grant Federal Financial Assistance

The concerns expressed in your testimony concerning the scope of coverage of states and localities by virtue of their receipt of categorical or block grants are borne out by the House's legislative history. Given the bill's definition of "recipient," which includes states and political subdivisions of states, it is unclear, on the bill's face, whether only those departments for which the aid is intended and used are covered by the bill, as was the case under the broad pre-Grove City approach, or whether the entire state or locality is so covered. The legislative history suggests it is the latter.

The Committee Report states:

A recipient is covered in its entirety, including its subunits. Political subdivisions (such as cities) are legal entities unto themselves and should not be treated as subunits of their states. Thus, the receipt by a state of Federal funds would not necessarily lead to coverage of all political subdivisions, but it would lead to coverage of all state agencies and departments. A political subdivision must itself receive assistance in order to be covered. This may happen through the direct receipt of Federal funds, or through the

receipt of Federal funds from a state or other recipient, but it is not the automatic result of a state's coverage. In summary, entire states may be covered and so may entire political subdivisions, but there is no automatic coverage from one to another. Committee Report at 26 (emphasis supplied). 2/

This passage reflects a serious misunderstanding of the scope of broad coverage before Grove City and demonstrates the expansion of coverage of these statutes beyond even the broad coverage thought to exist prior to Grove City. No single Federal financial assistance program or set of programs, however broad, whether in the form of categorical grants, block grants, or general revenue sharing, 3/ subjected all departments and agencies of the state or locality to coverage under these civil rights statutes. If a state received a categorical health grant to build a clinic, the broad approach prior to Grove City would have subjected all of the programs and activities of the state health department to coverage -- it would not have subjected the state's highway department, prison system or licensing boards (such as those which license barbers, electricians, speech pathologists, etc.) to coverage. Even if some money from the grant went to the controller's office or the governor's office for "administrative

2/ See also, H 7033 (remarks by Cong. Edwards, a principal co-sponsor and floor manager of H.R. 5490). These flat statements in the Committee Report might seem to be mitigated by other, contradictory, parts of the legislative history indicating that only if the state's subunit receiving Federal aid provides general overhead or other federal aid to the state would all of the state's departments and agencies be covered. See H 7022 (Cong. Fish); H 7034 (Cong. Schneider). The legislative history, however, appears to obfuscate the issue rather than clarify it. Further, while a comparison of the Committee Report's language on page 26 with the remarks of Congressman Fish and Congresswoman Schneider demonstrates the clear inconsistency with which members of the House viewed this coverage issue, the key point is that pre-Grove City broad coverage never went as far as Congressman Fish and Congresswoman Schneider indicated even as a result of overhead expenses being paid from the Federal aid to a state agency. See text at pages 4-6.

3/ Even the General Revenue Sharing program contains an express provision permitting recipients of such funds to show, by clear and convincing evidence, that certain parts of their activities did not receive the funds and, thus, were not subject to the civil rights statutes. 31 U.S.C. § 6716(c)(1).

overhead", these other agencies, departments and boards would not be covered. While the controller's office and the governor's office would have been covered, at least in part, as a result of the receipt of Federal funds for administrative overhead, this is a far cry from adding coverage "of all state agencies and departments", as suggested by the Committee Report and some House members. The same is true of block grants. Social service or health block grants to a state would subject to coverage all state departments and agencies which receive the block grant funds -- as well as subrecipients of those funds. The number of such state agencies may be large -- but they do not include all agencies and departments of a state. Even the most general, broad Federal financial assistance program, general revenue sharing, which provides funds for the unrestricted use of localities, does not subject departments and agencies of the locality to civil rights coverage if they do not spend any of the revenue sharing funds. All departments and agencies of a state would be covered only if they all received Federal financial assistance, but not by virtue of the receipt by the state of a health grant -- which goes to, and is used by, health department(s).

Indeed, in an effort to explain what H.R. 5490 does in this very circumstance, Congressman Fish, ranking Republican on the House Judiciary Committee, demonstrates how far beyond pre-Grove City coverage H.R. 5490 goes:

Cong. Fish: ... Question. 1...(A) If a State receives a categorical health grant for its health department, is the State government itself the recipient, thereby subjecting all of its activities to these four civil rights laws? Or is the recipient only the State Health Department?

. . . .

In the scenario described the State agency is a recipient -- unless the funding goes to the State and the State may use it for a whole variety of purposes. The State agency receiving the categorical aid grant is covered in its entirety. Other agencies in the State government are not covered unless the grant funds are used to support the State government -- parent entity -- as a whole through assignment of some portion of the Federal grant fund to the Governor's office or for other central State services. H 7022 (Cong. Fish) (emphasis supplied). 4/

4/ See also, H 7023 (Cong. Fish) (addressing a block grant funding scenario).

The first observation to be made about Congressman Fish's response is that it misses a key point about the scope of the bill's definition of "recipient." Even before one addresses the impact of the "trickle up" theory in response to the question, one needs to discuss the impact of the inclusion of "state or political subdivision thereof" on coverage in this situation. Congressman Fish does not do so. Rather, he says the bill could subject agencies other than the state health department to coverage under a "trickle-up" theory derived from the "support from a subunit" clause added to the bill's definition of "recipient." As I have mentioned, while the governor's office might have been covered in this circumstance under the broad approach thought to exist prior to Grove City, all other agencies of the state were not covered by virtue of funds from the grant going to the governor's office or to other central state offices. Congresswoman Schneider also described the effect of H.R. 5490 in terms similar to Congressman Fish. H 7034 (Cong. Schneider) To the extent that Congressman Fish, Congresswoman Schneider, and other House members believed that these responses to the categorical and block grant scenarios stated enforcement practice as it existed before Grove City under a broad approach, they voted for H.R. 5490 under a significantly mistaken impression.

I might add that there are a number of passages in the legislative history that call for broad interpretation of the bill, e.g., Committee Report at 26 ("The Committee intends to clarify that agency and judicial interpretations of this legislation should be guided by the concept of broad rather than narrow application of these coverage provisions"); H 6809 (Cong. Bartlett); H 6813 (Cong. Simon). These passages, when serving as a gloss on the specific examples mentioned earlier and described below, lend support to an interpretation of H.R. 5490 which is not only broad, but which exceeds the breadth of coverage thought to have existed before Grove City.

Thus, the question you raised in your testimony as to whether all activities of state government would be covered if the state receives a categorical or block grant, is apparently "yes."

Scope of "Support from Subunit" Clause

Again, the ambiguities in H.R. 5490 which arise from the addition of entities "which receive[] support from the extension of Federal financial assistance to any of its subunits" to the definition of "recipient" appear to be resolved: this part of the bill also expands coverage beyond that which existed under the pre-Grove City broad approach.

The Committee Report states, at page 26:

If a subunit of a state or political subdivision is the recipient, such as a state department of health or a city fire department, coverage of the parent entity and all of its operations is not automatic. A subunit's receipt of federal financial assistance will trigger coverage for the parent entity of which it is a part, if the assistance to the subunit supports the larger entity as well. This is expressed by the phrase "directly or through another recipient" (45 CFR 80.13(i), 34 CFR 106.2(5)(h)). So, for example, administrative overhead from federal assistance which a subunit gives to its parent entity will "support" the larger entity and lead to coverage. The result would be the same under the regulations because the assistance is extended to the parent entity through the recipient subunit. (emphasis supplied). 5/

The Committee Report's remark that coverage of a parent throughout its operations is not "automatic" sounds like a concession to the pre-Grove City broad approach, but it is no concession at all. Prior to Grove City, as mentioned earlier, the receipt of overhead expenses by the mayor's office or governor's office from a Federal grant to a particular subunit or subunits such as departments or agencies did not subject "all of [the state's or city's] operations" to coverage under the civil rights statutes.

Thus, such coverage was not "automatic", and it rarely, if ever, occurred unless the subunit passed along the Federal financial assistance to another entity, such as another subunit of the state or of the city. Further, while some members of the House stressed that coverage under this "subunit/trickle-up theory" is not automatic, their elucidation of the theory demonstrates such coverage will be frequent and, in any event, will occur in circumstances when such coverage was not triggered under the pre-Grove City broad approach. The Committee Report's suggestion that past regulatory practice

5/ See also H 6810 (Cong. Bartlett); H 7033 (Cong. Edwards).

would "lead to coverage" of an entire state or locality, in all of its agencies, departments, and boards, by the mere use of "overhead" funds by some central office(s) from a categorical or block grant or revenue sharing grant is simply erroneous.

Indeed, the Committee Report starkly illustrates the growth in federal civil rights jurisdiction which this clause portends. The Committee Report says, "[t]he term 'support' is a new term in the 'recipient' definition. 'Federal financial assistance' and 'support' are similar concepts. The current regulations defining 'federal financial assistance' which remain unchanged, are guidance for the meaning of 'support'. Both federal financial assistance and support should be interpreted broadly." Committee Report at 30 (emphasis supplied). 6/

By describing "support" as similar to Federal financial assistance, which can include equipment, services, facilities, and use of personnel, and the admonition to interpret "support" "broadly", the Committee Report would seem to indicate that a subunit will provide coverage over other entities even if it is not merely serving as a conduit for actual Federal financial assistance. It appears that the provision of support from a subunit extends to all of the forms of aid which would constitute "Federal financial assistance" from a Federal agency. The language of the definition of "recipient" also suggests this result.

Indeed, several House members also stated that "support" is to be interpreted broadly. H 6810 (Cong. Bartlett); H 6813 (Cong. Simon) ("Likewise a subunit receiving Federal assistance will trigger coverage of its parent entity if the Federal funds benefit the parent entity; once coverage is triggered the parent entity is covered throughout its operations") (emphasis supplied); 7/ H 7024 (Cong. Fish). There is further

6/ Agency regulations define "Federal financial assistance" as far more than mere funds. E.g., 34 C.F.R. § 106.2(g) (Department of Education, Title IX regulation).

7/ Note here that Congressman Simon, a principal co-sponsor and co-floor manager of H.R. 5490, uses the term "benefit" rather than "support" and that once there is "benefit" to the parent entity from the subunit's receipt of Federal funds, all of the operations of the parent are covered. This would undoubtedly include the licensing and certification activities of state and municipal boards. Such coverage would subject those activities to the "effect" regulations which implement these statutes. The Commission has urged the Congress to take cognizance of the "intent" or "effect" issue, but the Commission has not taken a position on it.

evidence of the House's confusion over the meaning of what it was voting on. Congressman Edwards, a principal co-sponsor and floor manager of the bill, construed "support" more narrowly than did the Committee Report and other colleagues during the floor debate: "A larger entity is not automatically covered simply because its subunit is a recipient of Federal financial assistance. Moreover, coverage of the larger entity does not result from the fact that Federal financial assistance to the subunit 'frees up' funds to the parent entity. Rather, identifiable assistance from the actual Federal funds, such as a part of the overhead for the parent, is required for coverage to result under the concept of 'supports'. In other words, some tangible financial assistance must actually be received by the parent (not just a saving of funds the parent might otherwise expend)." H 7024 (emphasis supplied); see also H 7033 (Cong. Edwards). The Committee Report, at 30, however, analogized "support" to Federal financial assistance, as did Congressman Bartlett (H 6810). As mentioned earlier, Federal financial assistance means far more than funds or fiscal support, it includes services, facilities, equipment, supplies, and personnel. 8/ The weight of authority on the meaning of "support" clearly favors the broad interpretation, rather than Congressman Edwards' interpretation. What Congressman Edwards' comment does illustrate, however, is the confusion the definition of "recipient" generated in the House.

In short, this additional clause, in light of the legislative history in the House, appears clearly to expand coverage of the civil rights statutes well beyond that which existed under the broad interpretation prior to Grove City.

Specific Examples in the Committee Report

The resolution of the coverage issue with respect to a number of hypotheticals listed in the Committee Report accurately reflects, in my opinion, the correct result under the pre-Grove City broad approach. Other examples, however, do not seem to

8/ See footnote 6. Senator Cranston, like the Committee Report and Congressman Bartlett, also took a broad view of the meaning of "support" in the definition of "recipient". S 4594, S 4595 (April 12, 1984) ("the concept of 'support' [in both the definition of 'recipient' and the termination of funds clause] is intended to refer to a not immaterial support having monetary value which could include, for example, services").

me to reflect that earlier approach and, as such, are a further illustration of how the bill exceeds the scope of pre-Grove City broad coverage in many ways, and falls short of such coverage in a few other ways.

A corporation receives a federal grant for defense research and operates a nonfederally funded vocational education program in one of its plant sites. Are all the functions of the corporation covered under Title IX? No. The corporation is an education recipient only to the extent of its education functions. All of the activities related to the educational functions conducted by the corporation are covered, without regard to site or whether they receive federal funding.

NOTE: Coverage under Title VI, Sec. 504 and the Age Discrimination Act would be triggered.

Committee Report at 28..

I do not believe, even under the broad pre-Grove City approach, that all of a corporation's activities would be subject to Title VI, Section 504, and the Age Discrimination Act, "without regard to site or whether they receive federal funding," or that all of the corporation's education activities would be covered by Title IX "without regard to site or whether they receive federal funding." Suppose the corporation had several divisions or subsidiaries which do different business than the defense work for which the grant was provided? For example, suppose a major automobile manufacturer had a separate division producing tanks for the Army and receives a research grant to explore improvements to the tank. H.R. 5490 apparently would subject the automobile manufacturer's car -- and other -- divisions, and perhaps subsidiaries as well, in their entirety to coverage under Title VI, Section 504, and the Age Discrimination Act, and would cover all of its educational activities under Title IX. Since the defense research grant is unrelated to these other activities, and the other activities are distinct, discrete, and apart from the defense division, it is highly unlikely that the Defense Department would have covered the auto manufacturer in its entirety, and even less likely that courts would have sustained such coverage. See generally Simpson v. Reynolds Metals Company, Inc. 649 F. 2d 1226 (7th Cir. 1980) You warned in your testimony that Congress must be aware of the many funding programs and the variety of recipients receiving federal aid so that legislation drafted to overturn Grove City not focus too heavily on

educational institutions — which are not the only kind of private recipient of federal aid. The drafters of the Committee Report have fallen prey to this tendency. Use of the "recipient-wide" or "institution-wide" concept when speaking of restoring broad coverage to these statutes makes sense when speaking of educational institutions and education aid. 9/ Broad coverage does not necessarily include an entire corporation, however, in the circumstances described in the Committee Report.

A private university receives federal funds and provides a significant amount of assistance to a semi-autonomous institute. Is the institute covered under the anti-discrimination provisions?

Yes. The institute is covered because of the "significant" assistance from a recipient.

Committee Report at 31.

The Department of Education's Title IX regulation contains a provision which subjects to coverage an entity receiving "significant assistance" from a recipient of Federal financial assistance and which discriminates against students or employees. 34 CFR 106.31(a)(6) (emphasis supplied). The Education Department's regulation was applied in a situation where a university-recipient provided significant assistance (but not federal aid itself) to an all-male honor society. While lower courts upheld the regulation as valid, the Supreme Court first remanded the case in light of its North Haven Board

9/ Even in the education context, a recipient's activities substantially unrelated to the broad, general purposes of the aid which the recipient received were not subjected to coverage under the civil rights statutes. A college's commercial rental properties, for example, if not occupied by students or faculty, were not subject to the Age Discrimination Act, Title VI, Section 504, or Title IX by virtue of the college's receipt of federal student aid funds or dormitory construction funds. See generally 34 CFR 100.4(d)(2). But all of the college's educational activities would have been so covered under the pre-Grove City broad approach.

of Education v. Bell decision. On remand, the appellate court again upheld the validity of the regulations and its application to the case. The Supreme Court then declared the case moot and vacated the appellate court's judgment. 10/

The "significant assistance" concept clearly extends coverage beyond a recipient-institution to other entities even when the recipient is not serving as a conduit of federal aid. While it is unclear, in light of the Supreme Court's action in Iron Arrow, whether this concept was overbroad even before Grove City, some agency regulations encompass the concept. The Committee Report, however, endorses it without limitation, in contrast to the Department of Education's regulation. Thus, even if an entity does not receive Federal financial assistance, the entity may be covered solely by virtue of receiving "significant assistance" from a recipient of such Federal aid. While the "facts" in the Committee Report's hypothetical are at least somewhat narrow (i.e. the entity is already connected in some way to the recipient), the rationale for coverage -- the "significant assistance" concept -- is not narrow. Therefore, I draw it to your attention. Under this concept, if a college student volunteer program at a federally-assisted college helped raise money from students for a private social welfare charity such as an inner-city tutoring program or donated students' time 11/ to such a project, depending on the amount of such assistance, those private charities might become subject to the civil rights statutes by virtue of the receipt--not of Federal aid--but of significant assistance from a recipient of Federal aid.

With respect to coverage of grocery stores and supermarkets under the Food Stamp program, the Committee Report carefully avoids this issue by merely noting that "the grocer who is paid for food from an SSI check is [not] covered as a result of that transaction." Committee Report at 31, 32.

10/ Iron Arrow Honor Soc'y v. Hufstedler, 499 F. Supp. 496 (S.D. Fla. 1980), aff'd sub nom. Iron Arrow Honor Soc'y v. Schweiker, 652 F.2d 445 (5th Cir. 1981), vacated, 102 S. Ct. 3475 (1982), aff'd on remand sub nom. Iron Arrow Honor Soc'y v. Heckler, 702 F.2d 549 (5th Cir. 1983), vacated per curiam as moot, 104 S. Ct. 373 (1983).

11/ Even if these students themselves are not federal student aid beneficiaries, the college is a recipient and the volunteer program is a student activity authorized and sanctioned by the college and governed by its rules.

Of course, the proper issue is: is the grocer covered as a result of being paid with Food Stamps, not from an SSI check. Congressman Simon, a principal co-sponsor and a floor manager of the bill, however, did not avoid this issue and answered a direct question concerning it:

Mr. BARTLETT...I would like to raise one more question. What effect does H.R. 5490 have on a supermarket which accepts food stamps in exchange for goods?

Mr. SIMON. The food stamp example must be treated differently. Given the factors identified by Justice White, a supermarket which accepts food stamps is covered; that is, the market has knowledge of and control over whether it accepts food stamps. It must apply to participate in the Food Stamp Program, and it must meet certain requirements.

Mr. BARTLETT. If the gentleman would yield further, would H.R. 5490 create new problems for the small neighborhood grocery store that is not so accessible to the handicapped?

Mr. SIMON. In almost all cases, the answer is "no." For example, if a business has less than 15 employees, the regulations governing section 504 provide an exemption from structural modifications. Moreover, these regulations include a broadly constructed concept of program accessibility which would permit home deliveries as well as other alternative means to assist shopping by a handicapped individual. With the enactment of H.R. 5490, we do not anticipate any change in the regulations governing structural modifications or program accessibility.

H 7038. 12/

12/ Notwithstanding this clear explanation, one page later, Congressman Miller asserts that food stamps used at a store would not subject the store to coverage. H 7039 (Cong. Miller). Although there seemed to be some confusion among House members concerning the effect of H.R. 5490 on grocery stores, Congressman Simon's view as a principal co-sponsor and floor manager would likely prevail, especially in view of how carefully the Committee Report avoids addressing this issue.

Many observers have asserted that grocery stores will not be so covered under the bill and to claim otherwise is merely a scare tactic and use of a "worst case scenario." In light of the legislative history of H.R. 5490 to date, however, any doubt as to coverage of grocery stores and supermarkets is largely removed. ^{13/} A litigation campaign under Section 504 may well be directed at these businesses if H.R. 5490 is adopted in its present form.

I also note that on the same theory that grocery stores are covered by participation in the Food Stamp program, drug stores and other businesses selling items authorized for medicaid reimbursement to medicaid beneficiaries, would be covered under the medicaid program.

Transferees

The bill's definition of "recipient" includes transferees of recipients of Federal financial assistance rather than transferees of Federal financial assistance from a recipient. This is a very important difference. ^{14/} Prior practice under a broad approach only covered the latter, i.e., a recipient "passing through" Federal financial assistance to another entity resulted in coverage of the latter entity. The explanations in the Committee Report at page 32 are insufficient to limit the bill to broad pre-Grove City coverage, given the language in the definition itself and other parts of the legislative history. Part of the explanation in the Committee Report, for example, casts doubt as to whether the "transferee" part of the definition will be consistently applied. The Committee Report refers to "secondary recipients" of federal funds like an electric company and explains that they would not be covered if the federal funds are transferred to them "for the performance of obligations flowing from transactions outside the purpose or character of the federal funds." Committee Report at 32. It is incorrect and unnecessary even to refer to such entities as "secondary recipients" and by so doing, in my view, the Committee Report itself creates ambiguity in the scope of the "transferee" clause.

^{13/} I might add that Congressman Simon's assessment of the impact of Section 504 on grocery stores and supermarkets is hardly definitive -- the impact may be far greater than Congressman Simon suggests.

^{14/} Members of the House claim the language in the definition is basically the same as that contained in agency regulations. Even aside from the additional "subunit/trickle up" clause, the bill's definition rearranges the wording of other parts of the definition. House members seemed to be oblivious to this rearrangement and its potential impact on coverage.

Title IX Coverage of Educational Programs or
Activities at Non-Education Recipients

Your testimony pointed out that the language of H.R. 5490 would not, on its face, cover federally funded education activities at a non-education recipient such as a state prison. The Committee Report addresses this issue.

The Illinois State Prison at Joliet receives federal support for a vocational education course for inmates. Is the prison a recipient of federal funds under title IX?

Yes. But it is an "education recipient" only as to those operations related to its education functions and activities.

NOTE: As a recipient of federal assistance all of the prison's operations would be covered by Title VI, Sec. 504 and the Age Discrimination Act.

Committee Report at 28.

While this example is a useful clarification, I am not persuaded that it will achieve the Title IX coverage intended when reviewed by courts. The bill would be much more likely to achieve this coverage if its language expressly encompasses education programs and activities at non-education recipients.

Scope of Agency Fund Termination Power

Currently, agency fund termination power is "limited to the particular political entity, or part thereof, or other recipient as to whom such a finding [of noncompliance] 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." E.g., Section 602 of Title VI (42 U.S.C. § 2000(d)(1)) (emphasis supplied). An agency may also refer a case to the Department of Justice which can seek injunctive and other judicial relief on a broader basis. The Commission favors retention of this enforcement scheme which narrowly restricts the fund termination power of an agency, but which permits broader litigation authority for the Department of Justice. Some sponsors of H.R. 5490 claim that the bill's new language is aimed at retaining this "pinpoint" termination provision. E.g. H 7021 (Cong. Simon).

One member of the House accurately described the termination power as it was thought to have existed before Grove City. H 7020 (Cong. Perkins). The language of the bill, 15/ however, not only raises ambiguities in the scope of the termination power, it almost certainly guarantees a different scope from that which existed before Grove City: If Congress intends to retain the same limits on the termination power as existed before Grove City, why is that part of each statute being changed?

Sponsors might argue that there is a need to remove "program" and "activity" language in the clause delineating an agency's termination power in order to make clear that substantive coverage under the civil rights statutes are not limited only to federally funded programs and activities, as narrowly construed in Grove City. In my opinion, the proper response is: once the substantive, operative provisions of these statutes are amended to provide for broad coverage, it is unnecessary to remove program-specific language in the separate termination clause. Retention of the current language is the best way to maintain the current scope of coverage of the termination power.

Moreover, other passages in the legislative history would clearly serve as a basis for altering -- and widening -- the scope of the termination power. Some House members described the fund termination provisions as being "clarified" by the bill. H 6806 (Cong. Coleman); H 6808 (Cong. Bartlett). But if the fund termination power is to remain unchanged in scope, a reviewing court may well wonder why clarification was required at all and what the "clarification" means. Comments by supporters of the bill that the "pinpointing principle" is retained, H 6808 (Cong. Bartlett), do not prevent an expansive interpretation of the new and more general language in the bill. The Committee Report itself states, in its section-by-section analysis that, "Section 4d(2)(A) conforms the language of the compliance section (Section 305(b)) by eliminating 'program or activity' and substituting language that assures that termination of funding will be allowed only to the limit of the federal assistance." Committee Report at 39." (emphasis supplied).

15/ The bill provides that fund termination "shall be limited to the particular political entity, or part thereof, or other recipient as to which such a finding [of noncompliance] has been made, and shall be limited in its effect to the particular assistance which supports such noncompliance so found." See e.g., H.R. 5490 at 3-4 (emphasis supplied). Given the recipient-wide substantive coverage provided by the bill, this provision, on its face, could lead to a much broader termination power. In some senses, all assistance to a recipient can be said to support the recipient's noncompliance.

At least one member of the House believes H.R. 5490 provides for institution-wide fund termination authority in circumstances where the "pinpointing" principle would lead to lesser coverage. H 6816-6817 (Cong. Fauntroy) ("Thus under this legislation if Grove City College were found to be discriminating...Federal funding would be cut off to the entire institution and not just to a particular program or activity in which the discrimination is found to have taken place"). (emphasis supplied).

In my opinion, H.R. 5490 clearly may expand an agency's fund termination power. Retention of the current language delineating that power is the best -- and probably the only -- method of fulfilling the Commission's policy on this issue.

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Conclusions

1. The scope of the bill is ambiguous in many respects.
2. Many House supporters of the bill do not understand the scope of broad coverage thought to have existed before Grove City. Thus, they are unable to understand how the bill provides: (a) less civil rights coverage in some respects under Title IX and (b) significantly broader civil rights coverage in other respects than was the case even under the broad pre-Grove City interpretation of these statutes.
3. The bill expands coverage of the four civil rights statutes well beyond that which had been thought to exist before Grove City, authorizing agencies (and courts) to exercise power over recipients of Federal aid that they have never exercised before.
4. The scope of the fund termination power is ambiguous and may well exceed its pre-Grove City scope, contrary to the explanations and assurances of the bill's sponsors.
5. The bill fails to restore the breadth of coverage of anti-discrimination provisions on the basis of religion and sex in Federal funding statutes using "program or activity" language.

Definition of Recipient

1. Many members of the House believed that the bill's definition of "recipient" is essentially unchanged from agency definitions of "recipient." In fact, however, the bill's definition:
 - (a) adds significant new language which creates a "trickle up" theory, i.e., support from an entity's subunit to its parent triggers coverage of all of the parent's activities;
 - b. reorders and rearranges other language in the agency's definition yielding different results than obtained under earlier agency interpretation;
 - c. deletes the exclusion of ultimate beneficiaries contained in many agency regulations;
 - d. deletes coverage of "persons" contained in many agency regulations.

Scope of Coverage

1. Entire states and localities can be covered under the bill by virtue of their mere receipt of categorical or block grants.

2. House supporters of the bill assert that if some portion of a federal grant to a city (or state) health department is used by the mayor's office (or governor's office) merely to defray overhead expenses related to that grant, then all of the activities of the city (or state) are covered by the bill. This presumably includes city (and state) licensing and certification activities (e.g., of taxicab drivers, beauticians, speech pathologists etc.), which all would be subject to the "discriminatory effects" regulations implementing these civil rights statutes.

3. Even under the broad approach prior to Grove City, the mayor's use (or governor's use) of a federal grant merely to defray overhead expenses did not result in coverage of all activities of the locality (or state). Even the most general, broad Federal aid program, general revenue sharing, which provides funds for the unrestricted use of localities, does not subject departments and agencies of the locality to civil rights coverage if they do not spend any of the revenue sharing funds. 31 U.S.C. §6716(c)(1).

4. If a subunit of a state or locality receives Federal financial assistance, it is likely, although not automatic in every case, that the entire state or locality (i.e., the parent) will be covered as a result of "support" provided to the state or locality by the subunit. This too is an expansion of civil rights coverage beyond that which existed even under the broad approach prior to Grove City.

5. Specific examples of coverage listed in the House Committee Report demonstrate how the bill expands coverage beyond the pre-Grove City approach in many ways and even contracts it in a few ways:

a. Contrary to the Committee Report at pages 27, 28, the bill removes coverage of a single, independent researcher using a Federal grant to support his or her research;

b. Under the bill, an entire corporation, in all of its activities at all of its locations, is covered by Title VI, section 504, and the Age Discrimination Act even if only one discrete activity, in one of its divisions, is Federally assisted. Further, all of the corporation's educational activities at all of its sites are covered by Title IX in similar circumstances. Committee Report at 28. This exceeds the scope of coverage thought to have existed even before Grove City.

c. All activities of an educational institution are covered by the four civil rights statutes if it receives any Federal education aid under the bill in its present form. Committee Report at 28. Thus, activities wholly unrelated to the educational purpose of the school and not involving students or faculty would be covered. For example, a college's commercial properties would be subject to section 504's accessibility requirements. Such utterly unlimited coverage generally did not obtain prior to Grove City. Indeed, the Department of Education's long-standing Title VI regulation requires an assurance from a recipient that it will abide by Title VI throughout its activities, "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 the Federal financial assistance is sought, or the beneficiaries of or participants in such program..." 34 CFR 100.4(d)(2) (emphasis supplied).

d. If an entity receives "significant assistance" from a recipient of Federal aid, the entity is covered -- even though the entity receives no Federal aid itself from either the Federal government or the recipient. Committee Report at 31. This is an expansion of coverage well beyond that which existed even under a broad interpretation of the civil rights statutes prior to Grove City.

e. As conceded by Congressman Paul Simon, a principal co-sponsor and co-floor manager of the House bill, grocery stores and supermarkets will be covered by Section 504, Title VI, and the Age Discrimination Act by virtue of their participation in the Food Stamp Program.

f. The bill covers transferees of recipients of Federal financial assistance. Prior to Grove City, agencies covered transferees of Federal financial assistance from recipients. This is an important difference. A recipient which serves as a conduit of Federal aid to another entity will cause the latter entity to be covered under the civil rights statutes. A mere transferee of a recipient of Federal aid (a virtually limitless number of entities) was not covered under these civil rights laws before Grove City.

Scope of an Agency's Fund Termination Power

1. a. Currently, agency fund termination power is "limited to the particular political entity, or part thereof, or other recipient as to whom such a finding [of noncompliance] 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." E.g., section 602 of Title VI (42 U.S.C. §2000d-1)(emphasis supplied). This is the "pinpoint" termination provision.

b. An agency may also refer a case to the Department of Justice for judicial enforcement.

2. The bill provides that fund termination "shall be limited to the particular political entity, or part thereof, or other recipient as to which such a finding [of noncompliance] has been made, and shall be limited in its effects to the particular assistance which supports such noncompliance so found." (Emphasis added). Given the recipient-wide substantive coverage provided by the bill, this provision, on its face, could lead to a much broader agency termination power. In some senses, all assistance to a recipient can be said to support the recipient's noncompliance.

3. The legislative history in the House reflects confusion as to the scope of an agency's fund termination power under the bill. Some parts of that legislative history provide support for a wider agency fund termination authority than existed prior to Grove City.

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Biographic Information

Robert M. Smalley has served as Deputy Assistant Secretary of State for Public Affairs since July of 1982. His foreign service previously included two years (1975-77) as United States Representative to the Development Assistance Committee (DAC) at the Organization for Economic Cooperation and Development (OECD) in Paris. He held the rank of Minister-Counselor.

As Deputy Assistant Secretary, Mr. Smalley has spoken extensively in Western Europe and the United States on nuclear arms control and other issues. In April, 1984, he was nominated for the Presidential Award for Senior Non-Career Employees.

In the Executive Branch of Government, Mr. Smalley served for three years (1969-72) as Special Assistant to the Secretary of Commerce, Maurice H. Stans, and accompanied him to twenty-two nations throughout the world, including the Soviet Union, on missions related to U.S. trade policies. In the Legislative Branch, he was both Administrative Assistant (1972-73) and Special Assistant (1977-78) to former United States Senator Robert P. Griffin of Michigan.

In political affairs, Mr. Smalley was one of the initial staff members (1979) of the Reagan for President Committee, serving as Assistant to the Campaign Manager; he wrote Senator Laxalt's statement announcing formation of the Committee in March of that year. He managed successful United States Senate political campaigns in Michigan in 1966 and 1972. He was Press Secretary to the (1964) Republican candidate for Vice President, William E. Miller, and Assistant Press Secretary for Vice Presidential candidate Spiro T. Agnew (1968). At the Republican National Committee (1964-65) he was Assistant Director and Director of Public Relations under Chairmen William E. Miller, Dean Burch and Ray C. Bliss. He is a former Vice President of the campaign management firm of Whitaker and Baxter (1966-1968).

Mr. Smalley was Confidential Secretary to the Mayor of San Francisco, George Christopher, 1961-64. He also has held senior corporate communications positions with Potomac Electric Power Company (1973-75) and IBM (1979-82).

Mr. Smalley was a network radio news writer-editor with the Mutual Broadcasting System in Los Angeles, 1950-1955. He also wrote for radio in Australia in 1949. He was born in Los Angeles, California in 1925, and served in the Pacific (U.S. Navy) in World War II. He is now a resident of Washington, D.C.

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REFERENCES

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United States Senator
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Former Assistant to the
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Peter Teeley

Press Secretary to the
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Deputy Assistant Secretary of State (Public Affairs) - 1982 to present.

Senior Advisor, Management Communications, IBM - 1979-1982.

Assistant to the Campaign Manager, Reagan for President Committee, Washington, D.C. - February-October, 1979.

Special Assistant to United States Senator Robert P. Griffin, R-Michigan, 1977 through 1978.

United States Representative to the Development Assistant Committee, O.E.C.D., Paris. Personal rank: Minister-Counselor. 1975-1977.

Director of Corporate Affairs, Potomac Electric Power Company, Washington, D.C. 1973-1975.

Administrative Assistant to United States Senator Robert P. Griffin, Assistant Minority Leader, United States Senate. 1972-1973.

Special Assistant to the Secretary of Commerce, Maurice H. Stans. 1969-1972.

Assistant Press Secretary to the Republican candidate for Vice President, Governor Spiro T. Agnew. 1968.

Vice President, Whitaker & Baxter, Political Campaign Management and Public Relations, San Francisco. 1966-1968. As such:

1966-67: Washington consultant to Senator Everett Dirksen on his national campaign for a proposed Constitutional amendment on apportionment.

1966: Campaign Manager for United States Senator Robert P. Griffin, Michigan.

1967-68: Political consultant to Republican organizations and campaigns in Pittsburgh, Pa., and Chicago, Illinois.

Director of Public Relations, Republican National Committee, under Chairmen Dean Burch and Ray C. Bliss. 1965.

Press Secretary to the Republican candidate for Vice President, Representative William E. Miller. 1964.

Assistant Director, Public Relations, Republican National Committee, William E. Miller, Chairman (media relations for the 1964 National Convention). 1964.

Confidential Secretary to the Mayor of San Francisco, George Christopher. 1961 through 1963.

Prior to 1961: Employment with Whitaker & Baxter, San Francisco; Manager, Agricultural Information, Inc., Sacramento; Radio News Editor for Mutual-Don Lee radio network correspondent Sam Hayes, 1950-1955, Mutual Broadcasting System, Los Angeles.

Born November 14, 1925, Los Angeles, California. Education UCLA. Two years Pacific Theatre, World War Two. Two children.

A. JOHN YOGGERST
136 Elizabeth Road
San Antonio, Texas 78209
(512) 824-0506
826-0955

RESUME OF PROFESSIONAL QUALIFICATIONS

PERSONAL: Born February 4, 1945...5'9"...165 lbs.. Single

ACCOMPLISHMENTS:

Restructured the financing of oldest clay products company in Southwest, managed the highest ranked Department of Commerce minority consulting project in the United States; capitalized two venture capital companies; successfully resolved four problem investments for MAUC Industries; negotiated the acquisition of a savings and loan; assisted in the development of the Hyatt Regency in San Antonio; and, designed and implemented a computer-based acquisition search program.

BUSINESS EXPERIENCE

D'Hanis Clay Products
Tile manufacturer, D'Hanis, Texas
March 1983 to Present

Vice President and Chief Financial Officer for the oldest brick and clay product manufacturer in Texas. Involved in strategic planning for the Company as it enters its second century. Structured a \$3 million refinancing package involving debt and equity.

Alexander Grant & Company
Certified Public Accountants. San Antonio, Texas
May 1981. to February 1983

Manager, started and managed the San Antonio Business Center for the U.S. Department of Commerce. In fifteen months of operations, the SABC provided 15,000 hours of general consulting services to 115 small business clients in South Texas. The SABC was ranked first out of twenty in the Dallas region. This project involved as many as twenty professional staff. Managed consulting contracts throughout South Texas for U.S. Small Business Administration.

A. John Yoggerst & Associates
Management Consultants, San Antonio, Texas
October 1980 to April 1981

Joint ventured with Alexander Grant & Company on a federal project. Consultant to Solutions Inc. - secured commitment for \$1.5 million venture capital for high technology start-up.

MESBIC of San Antonio, Small Business Investment Company
MAUC Industries Subsidiary

September 1979 to September 1980

Vice President and General Manager of this Minority Enterprise Small Business Investment Company. Raised the initial capitalization of \$750,000 of common stock and \$700,000 of preferred stock. Organized the seven member Board of Directors. Prepared the initial marketing plan to identify qualified entrepreneurs; and, designed a standardized investment application.

MAUC Industries of San Antonio

September 1978 to April 1980

Chief Financial Officer and Economic Development Director of a community development company serving a low income, minority area. Increased the capital base of MAUC Industries \$2,000,000 in first twelve months. Responsibilities included: portfolio management of \$10,000,000 of assets including operating companies financial institutions and real estate; generating financial reports and, presenting investment opportunities to Board of Directors. Accomplishments during this period included: Capitalized two venture capital companies; worked MAUC Industries out of four problem investments. negotiated the acquisition of a savings and loan; and participated in the development of the Hyatt Regency in San Antonio.

San Antonio Venture Group - SBIC

MAUC Industries Subsidiary

January 1978 to October 1978

General Manager and Chief Operating Officer for this venture capital firm. Prepared the offering circular and identified offerees for the private placement of the company at \$1,000,000; wrote the investment criteria; and, screened potential investments prior to presentation to the Board.

MAUC Industries of San Antonio

October 1975 to August 1978

As an Investment Analyst established an acquisition search program and evaluated more than twenty potential acquisitions. Negotiated three deals. Prepared reports and made recommendations to senior management and Board of Directors on potential acquisitions. Designed implemented, and managed the Revolving Loan Fund for minority entrepreneurs.

Financial Consultant

November 1974 to September 1975

Financial Consultant hired to structure the financial package and secured financing for a commuter airline serving South Texas which was certificated by the Texas Aeronautical Commission in 1977

Department Administrator - Obstetrics and Gynecology
Washington University Medical School, St. Louis, Missouri
July 1973 to October 1974

Administrator responsible for budgetary, personnel and administrative services for a medical department with a \$3,000,000 operating budget. Supervised approximately forty-five non-academic staff. Administered forty grants and contracts. Coordinated the remodeling of 80,000 square feet of office space including an out-patient surgical center. Department operating profits increased more than fifty percent in fifteen months.

Publisher, Student Life
Washington University, St. Louis, Missouri
June 1972 to June 1973

Quadrupled total revenue turned \$10,000 annual loss into \$10,000 annual profit.

EDUCATION

MBA Degree Management and Finance, May 1973
Washington University, St. Louis, Missouri

BSBA Degree with honors - International Business. May 1971
Washington University, St. Louis, Missouri

Continuing Professional Development:

CYMA microcomputer business systems, October 1982;

Twain Associates, executive development seminars effective writing and use of visual aids in oral presentation, April, 1982.
Alexander Grant, oil and gas accounting, December 1981. Advanced Management Research, seminar on acquisitions and mergers, April, 1977; NASBIC. management institute for venture capitalists, April, 1976.

MILITARY

U.S. Army. July 1965 to July, 1968
Information Specialist, wrote for Pacific Stars and Stripes and did interviews for Armed Forces Radio Network, awarded Army Commendation medal for broadcast work

PROFESSIONAL AND CIVIC ORGANIZATIONS

Member, San Antonio Society of Financial Analysts, 1977 to present.

Member, Region VI Advisory Council, Small Business Administration, 1980 to 1981.

Coordinator Alumni-Parent-Admissions Program in South Texas for Washington University 1976 to 1981.

Liaison, Consortium for Graduate Study in Management for
Minorities, 1975 to 1981.

Vice-President, Friends of the Strings, Alamo Heights Schools,
1977 to 1978 Board Member, 1976 to 1979.

HONORS

Certificate of Achievement, Johns Hopkins University

Deans List, Washington University

James Scholar, University of Illinois

HOBBIES AND SPORTS:

Tennis, racquetball, skiing, sailing, bridge (Master American
Contract Bridge Association), microcomputers.

July, 1984.