U. S. Department of Justice
Civil Rights Division

[redacted]

MICHAEL A. WERMUTH
Legislative Counsel

Room 5539
Tenth and Constitution Ave., NW
Washington, DC 20530

(202) 633-1703

[redacted]

MARK R. DISLER
DEPUTY ASSISTANT ATTORNEY GENERAL

CIVIL RIGHTS DIVISION
ROOM 5639
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

(202) 633-3845

Religious Institutions and Grove City Legislation

1. Q: Are entire churches, synagogues, and other religious institutions covered by S.557, if just one program at such an entity receives Federal aid?

A: Yes. Subparagraph (3)(B) of the operative sections of the bill covers "all of the operations of" every "private organization" which is a "geographically separate facility . . . any part of which is extended Federal financial assistance . . . ." (Emphasis supplied.) Obviously, a church or synagogue fits easily within that definition. The bill's sponsors acknowledged at the Committee markup that such coverage of entire churches and synagogues will exist.*

Therefore, if a church or a synagogue operates any federally-aided program, such as "hot meals" for the elderly, a surplus food distribution program for the needy, a shelter for the homeless, or assistance to help legalize immigrants, not only will those assisted programs be covered, but, for the first time, all other activities of the church or synagogue, including prayer rooms and other purely religious components, educational classes, church or synagogue schools (even though conducted in separate facilities), or a summer camp for youngsters, will be covered as well.

Further, if the church or synagogue conducts a school which receives any federal aid, even in a separate building, the entire church or synagogue, as well as the entire school, will be covered.

---

* No one should be misled by references in the Committee Report to the applicability of other provisions in the bill to religious organizations. The Committee Report at page 17 notes that a religious organization will not be covered in its entirety under subparagraphs (3)(A)(i) of the bill if it receives aid for just one program "among a number of activities . . ." The Committee Report states at page 18 that a church, synagogue, or other religious institution will not be covered under subparagraphs (3)(A)(ii) of the bill because such entities are not "principally engaged in the business of providing education, health care, housing, social services, or parks or recreation . . ." Even if such report language will be deemed persuasive by all reviewing federal courts, these references are irrelevant to interpreting the scope of subparagraphs (3)(B). It is (3)(B) which causes coverage of entire churches and synagogues.

2. Q: How broad is the coverage of a "geographically separate facility?"

A: The Committee Report at page 18 says that coverage in "the bill refers to facilities located in different localities or regions. Two facilities that are part of a complex or that are proximate to each other in the same city would not be considered geographically separate."

Examples:

a) If a synagogue or church has a piece of property with several buildings, and one program located in one building or operated from that building receives any federal assistance, all activities in all buildings will be covered in their entirety.

b) If a Baptist church in Birmingham, Alabama, operates an apartment building for the elderly located 3 blocks from the church, and the apartment building or just one tenant in the building receives any federal housing assistance, not only will the apartment building be covered, but all of the activities of the church itself will be covered as well. Similarly, in this example, if the church receives federal aid for a surplus food program for the needy operated from the church building, the apartment building for the elderly will be covered even if it received no direct or indirect federal aid.

3. Q: Have sponsors of S.557 provided evidence that such coverage existed prior to the Grove City decision?

A: No. The fact is that the scope of these civil rights laws, as originally enacted, did not cover entire churches, synagogues, or other religious entities, when just one of their programs received federal financial assistance. No one in Congress at that time suggested otherwise. That is not surprising due to the long-standing reluctance on the part of Congress and federal agencies to entangle the government with religion, potentially running afoul of the First Amendment. Moreover, case law concerning private sector coverage under the civil rights statutes prior to the Grove City decision held these statutes to be "program-specific." Simpson v. Reynolds Metals Co., 629 F.2d 1226 (7th Cir. 1980); Bachman v. American Society of Clinical Pathologists, 577 F. Supp. 1257 (D. N.J. 1983).

4. Q: What are the consequences of such coverage?

A: Expanded federal jurisdiction under these four statutes brings with it:

- Increased federal paperwork;
- Exposure to federal bureaucratic compliance reviews and on-site reviews even in the absence of an allegation of discrimination;
- Thousands of words of federal regulations;
- The need to adhere, not to an equality-of-opportunity standard, but to an equality of result standard under federal regulations which forbid conduct, including standards not adopted for a discriminatory purpose, just because it falls with a disproportionate impact on particular groups -- a basis for quotas and similar federal intrusions;
- The need to adhere to accessibility requirements under Section 504, which for a church or synagogue could mean requirements to widen aisles and space between pews, additional modifications to prayer rooms and other parts of the church or synagogue, equipment modifications, job restructuring, modifications of work schedules, provision of auxiliary aids including readers and sign language interpreters, and other extensive requirements;
- The requirement to attempt to accommodate persons, including employees, with infectious diseases such as tuberculosis and AIDS;
- Increased exposure to costly private lawsuits.

Such coverage represents a fundamental mistrust of religious institutions and expresses a desire to extend federal control over all of the operations of every aspect of the private sector that touches federal dollars. When a particular program at a church or synagogue receives federal aid, that program itself should be covered, but the rest of the church or synagogue should not be covered by all of these federal regulations. Many churches or synagogues heretofore willing to take federal social welfare aid may stop providing these important social services, or may reduce their efforts by the amount of the federal aid, rather than subject themselves to coverage of their entire institutions. In light of the value of pluralism and diversity in our society, the value of independent religious institutions, and in view of the complete absence of any case for the expansion of coverage over religious institutions, S.557 is seriously flawed.

Questions and Answers Concerning the Grove City Legislation

Background

1. What statutes are amended by the bills dealing with the Grove City College v. Bell decision?

   a. Title VI of the Civil Rights Act of 1964, which forbids discrimination "on the ground of race, color, or national origin . . . under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

   b. Title IX of the Education Amendments of 1972, which forbids discrimination "on the basis of sex . . . under any education program or activity receiving Federal financial assistance. . . ." 20 U.S.C. § 1681(a).

   c. Section 504 of the Rehabilitation Act of 1973, which forbids discrimination against an "otherwise qualified handicapped individual . . . solely by reason of . . . handicap . . . under any program or activity receiving Federal financial assistance. . . ." 29 U.S.C. § 794.

   d. The Age Discrimination Act of 1975, which forbids discrimination "on the basis of age . . . under any program or activity receiving Federal financial assistance." 42 U.S.C. § 6102.

2. What did the Supreme Court hold in the Grove City case?

   a. Even though the College refused all direct federal financial assistance, it was not entirely free from Title IX coverage because it enrolled students who themselves received federal education aid.

   b. The only "program or activity" receiving federal financial assistance was the College's student aid program, and not the entire College.

Flaws in "The Civil Rights Restoration Act of 1987"

3. Why is the Civil Rights Restoration Act of 1987 not an appropriate measure to overturn the Grove City decision?

   The Civil Rights Restoration Act of 1987 (S.557) -- like the Civil Rights Act of 1984 -- specifies extremely broad coverage principles for any entity which receives federal funds, regardless of the amount or purpose of the funding.

In fact, S.557 does not merely "restore" the pre-Grove City scope of coverage under the four civil rights statutes. This bill would vastly expand such coverage over local and State governments, private organizations including churches and synagogues, businesses, farmers, private and religious schools, and higher education.

4. In what specific ways would S.557 expand pre-Grove City coverage?

Without being exhaustive, some examples are:

- o An entire church or synagogue will be covered under Title VI, Section 504, and the Age Discrimination Act, if it operates one federally-assisted program or activity, as well as under Title IX if the religious institution conducts an education program or activity (with exceptions under Title IX in those circumstances where Title IX requirements conflict with religious tenets).

- o Every school in a religious school system will be covered in its entirety if any one school within the school system receives even one dollar of federal financial assistance.

- o Grocery stores and supermarkets participating in the federal Food Stamp program will be subject to coverage solely by virtue of their participation in that program.

- o Farmers receiving crop subsidies and price supports will be subject to coverage.

- o Every division, plant, store, and subsidiary of a corporation principally engaged in the business of providing education, health care, housing, social services, or parks and recreation will be covered in its entirety whenever one portion of one plant, facility, store, or subsidiary receives any federal financial assistance.

- o Thus, if one program at one nursing home or hospital in a chain receives federal aid, not only is the entire nursing home or hospital covered, but all other nursing homes or hospitals in the chain are automatically covered in their entirety even if they don't receive federal aid.

- o Further, if the tenant of one unit in one apartment building owned by an entity principally engaged in providing housing receives federal housing aid, not only is the entire apartment building covered, but all other

apartment buildings, all other housing operations, and all other non-housing businesses of the owner are covered even though they receive no direct or even indirect federal aid.

- o The entire plant or separate facility of all other corporations and private organizations not principally engaged in the five specified activities will be covered if one portion of, or one program at, the plant or facility receives any federal financial assistance. This includes all other plants or facilities in the same locality or region as the facility which receives federal aid for one of its programs.

- o A state, county, or local government department or agency will be covered in its entirety, whenever one of its programs receives federal aid. Thus, if a state health clinic is built with federal funds in San Diego, California, not only is the clinic covered, but all activities of the state's health department in all parts of the state are also covered.

- o A private, national social service organization will be covered in its entirety, together with all of its local chapters, councils, or lodges, if one local chapter, council, or lodge receives any federal financial assistance.

- o Every college or university in a public or private system of higher education will be covered in its entirety if just one department at one school in that system receives federal financial assistance.

- o A school, college, or university investment policy and management of endowment will be covered if the institution receives even one dollar of federal education assistance.

- o The commercial, non-educational activities of a school, college, or university, including rental of commercial office space and housing to those other than students or faculty, will be covered if the institution receives even one dollar of federal education assistance.

- o A new, vague catch-all provision would provide additional coverage.

5. (a) Weren't grocery stores participating in the Food Stamp program always covered; and (b) isn't there an exemption for grocers with less than 15 employees in the Department of Agriculture Section 504 regulations?

(a) Grocery stores and other stores participating in the Food Stamp Program were not subjected to coverage under Section 504 or the other statutes prior to Grove City. See, e.g., Letter of Daniel Oliver, General Counsel, Department of Agriculture to Senator Jesse Helms, July, 1984.

(b) Department of Agriculture Section 504 regulations cover all entities deemed recipients, even ones with less than 15 employees. The regulations, however, provide for slightly reduced compliance burdens in just a few areas for a recipient with less than 15 employees. Therefore, if S.557 is enacted, all grocers, including small ones, will have to comply with all but a few of the Department of Agriculture's extensive Section 504 regulations. Among the regulations applicable even to the smallest grocery store are:

- o paperwork and notice requirements;
- o a requirement to consult with disabled persons or disability rights groups and to make a record of such consultations;
- o extensive employment regulations, including equipment modifications, job restructuring, and modifications of work schedules;
- o regulations applicable to new construction or alteration of an existing building;
- o a requirement to "take appropriate steps" to guarantee that communications with hearing-impaired and vision-impaired applicants, employees, and customers can be understood;
- o a requirement to undertake home deliveries or install wheelchair ramps.

Moreover, grocers with 15 or more employees --which includes numerous small businesses -- have added burdens under the regulations such as:

- o the requirement of adopting "grievance procedures that incorporate appropriate due process standards";
- o the requirement of providing auxiliary aids for hearing-impaired and vision-

impaired persons if necessary for them to work or shop at the store.

These requirements are generally applied to all other covered programs by all other federal agencies, as well.

6. What would be the consequences of an expansion of coverage under these federal civil rights statutes?

More sectors of American society will be subject to: increased federal paperwork requirements; random on-site compliance reviews by federal agencies even in the absence of an allegation of discrimination; thousands of words of federal regulations, including the Section 504 regulations mentioned above and the imposition of equality-of-result rather than equality-of-opportunity standards that can lead to quotas and proportionality requirements; the need to attempt to accommodate persons with contagious diseases such as tuberculosis and AIDS; and increased exposure to costly private lawsuits that will inevitably seek the most expansive interpretation of the already overbroad language of the bill.

Title IX and Abortion

The Department of Education's Title IX regulations require an educational institution to treat termination of pregnancy by employees like any other temporary disability "for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment." 34 C.F.R. 106.57(c). Moreover, the same treatment of termination of pregnancy applies to the provision of "a medical, hospital, accident or life insurance benefit to any of its students." 34 C.F.R. 106.39; id. at 106.40(b)(4) ("A recipient shall treat . . . termination of pregnancy . . . in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy" of the recipient with respect to students). Moreover, a recipient must provide leave for termination of pregnancy for both students and employees even when "a recipient . . . does not maintain a leave policy for its students [or employees, 34 C.F.R. 106.57(d)], or when a student [or employee] does not otherwise qualify for such leave under the recipient's leave policy." 34 C.F.R. §106.40(b)(5); id. 106.57(d).

Even if S. 557 did not expand the scope of these regulations, abortion-neutral language would still be a necessary part of Grove City legislation. S. 557 would, in fact, expand the reach of these pro-abortion regulations.

Prior to Grove City, Title IX applied only to education programs or activities receiving federal aid. Under S. 557, if any entity conducts an education program, and the entity receives federal aid in any of its operations, Title IX and the mandatory abortion regulations will apply throughout the entity, even when the federal aid is not to the education program. Thus, if a hospital conducting an education program for interns or nurses received federal aid to its emergency room, prior to Grove City the education program would not have been covered under Title IX. Under S. 557, not only will the education program be covered, as admitted by the bill's sponsors, Committee Report at 18, so will all of the non-educational operations of the hospital, including, for example, surgery and obstetrics activities. This coverage will occur because the bill expressly applies to "all of the operations of" covered entities, including those "principally engaged in the business of providing . . . health care . . . any part of which is extended Federal financial assistance . . . ." (Emphasis supplied.)

Similarly, if federal aid went only to an education program at a hospital, prior to Grove City only the education program would have been covered. Under the sweeping coverage of S. 557, the non-educational operations of the hospital, including, for example, surgery and obstetrics activities, would all be covered.

Moreover, not only will insurance coverage for abortion have to be extended to students and all employees throughout the hospital, but abortions will have to be provided to the general public that is served by the hospital. This is a clear consequence of coverage of "all of the operations of" a covered entity such as a hospital, whenever "any part of" the hospital "is extended federal financial assistance." If it is illegal sex discrimination under Title IX to provide insurance coverage or fringe benefits without covering abortions, it follows that it is illegal sex discrimination to provide surgery or obstetrical services without providing abortions.

An administrative repeal of the pro-abortion regulations, even if temporarily successful, could be overturned in a subsequent pro-abortion Administration by reinstatement of the regulations. The clearest, surest, and most appropriate way to make Title IX abortion-neutral is through Congressional action in connection with Grove City legislation.

In response to these pro-abortion regulations and their expansion under a predecessor bill in the 99th Congress, the House Education and Labor Committee adopted the following language as an amendment to Grove City legislation on May 21, 1985: "Nothing in this title shall be construed to grant or secure or deny any right relating to abortion or the funding thereof, or to require or prohibit any person, or public or private entity or organization, to provide any benefit or service relating to abortion." This is the Tauke-Sensenbrenner amendment. A similar abortion-neutral amendment is being sponsored in the Senate by Senator John Danforth.

Title IX and Religious Tenets

When Congress adopted Title IX in 1972, Congress also adopted language which excluded from Title IX coverage those practices of institutions controlled by religious entities which are based on religious tenets but which would conflict with Title IX. At that time, many institutions were directly controlled by religious entities. Many of these institutions today retain their religious mission but are controlled by lay boards and receive less financial support from religious organizations, even though affiliation with religious entities and identification with religious values continue. To address the desire to assure tolerance for religiously based deviations from Title IX requirements, the House Education and Labor Committee adopted language in 1985 excluding from Title IX coverage "any operation of an entity which is controlled by a religious organization, or affiliated with such an organization when the religious tenets of that organization are an integral part of such operation, if the application of Section 901 to such operation would not be consistent with the religious tenets of such organization."

In the 100th Congress, the language which is proposed is slightly different: the language will exempt from coverage a policy of an entity which is controlled by, or closely identifies with the tenets of, a religious organization when that policy conflicts with Title IX. This language is based on language in a ban on religious discrimination enacted in the Higher Education Act of 1986. The language is supported by the National Association of Independent Colleges and Universities (NAICU) (over 800 independent colleges and universities with two million students); the United States Catholic Conference; Agudath Israel, an orthodox Jewish group; the National Society for Hebrew Day Schools (approximately 500 elementary and secondary schools); and the Association of Advanced Rabbinical and Talmudic Schools (approximately 60 schools).

S. 557

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Rights Restoration Act of 1987".

FINDINGS OF CONGRESS

SEC. 2. The Congress finds that—

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

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

EDUCATION AMENDMENTS AMENDMENT

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

"INTERPRETATION OF 'PROGRAM OR ACTIVITY'

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

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

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

"(2)(A) a college, university, or other post-secondary institution, or a public system of higher education; or

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

"(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 901 to such operation would not be consistent with the religious tenets of such organization.".

(b) Notwithstanding any provision of this Act or any amendment adopted thereto:

"NEUTRALITY WITH RESPECT TO ABORTION

"SEC. 909. Nothing in this title shall 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. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.".

REHABILITATION ACT AMENDMENT

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

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

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

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

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

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

"(2)(A) a college, university, or other post-secondary institution, or a public system of higher education; or

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

"(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

"(c) Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on the date of the enactment of this subsection.".

AGE DISCRIMINATION ACT AMENDMENT

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

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

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

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

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

"(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

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

"(B)(i) a college, university, or other post-secondary institution, or a public system of higher education; or

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

"(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(II) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(D) any other entity which is established by two or more of the entities described in subparagraph (A), (B), or (C);

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

CIVIL RIGHTS ACT AMENDMENT

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

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

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

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

"(2)(A) a college, university, or other post-secondary institution, or a public system of higher education; or

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

"(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

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

RULE OF CONSTRUCTION

SEC. 7. Nothing in the amendments made by this Act shall be construed to extend the application of the Acts so amended to ultimate beneficiaries of Federal financial assistance excluded from coverage before the enactment of this Act.

ABORTION NEUTRALITY

SEC. 18. No provision of this Act or any amendment made by this Act shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal Funds to perform or pay for an abortion.

CLARIFICATION OF INDIVIDUALS WITH HANDICAPS IN THE EMPLOYMENT CONTEXT

SEC. 9. (a) Section 7(8) of the Rehabilitation Act of 1973 is amended by adding after subparagraph (B) the following:

"(C) For the purpose of sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.".

100TH CONGRESS
1ST SESSION

H. R. 1214

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 1986

Mr. HAWKINS (for himself, Mr. JEFFORDS, Mr. EDWARDS of California, Mr. FISH, Mr. ACKERMAN, Mr. AKAKA, Mr. ANDREWS, Mr. ATKINS, Mr. BATES, Mr. BERMAN, Mr. BIAGGI, Mr. BOEHLERT, Mr. BONKER, Mr. BOSCO, Mr. BOUCHER, Mrs. BOXER, Mr. BROOKS, Mr. BROWN of California, Mr. BRYANT, Mr. BUSTAMANTE, Mr. CARDIN, Mr. CARR, Mr. CLAY, Mr. CLINGER, Mr. COELHO, Mrs. COLLINS, Mr. CONYERS, Mr. CROCKETT, Mr. DELLUMS, Mr. DE LUGO, Mr. DIXON, Mr. DORGAN of North Dakota, Mr. DYMALLY, Mr. ESPY, Mr. EVANS, Mr. FASCELL, Mr. FAUNTROY, Mr. FAZIO, Mr. FEIGHAN, Mr. FLAKE, Mr. FLORIO, Mr. FORD of Tennessee, Mr. FORD of Michigan, Mr. FRANK, Mr. FROST, Mr. FUSTER, Mr. GARCIA, Mr. GLICKMAN, Mr. GONZALEZ, Mr. GRAY of Illinois, Mr. GRAY of Pennsylvania, Mr. GREEN, Mr. GUARINI, Mr. HAYES of Illinois, Mr. HORTON, Mr. HOWARD, Mr. HOYER, Mr. HUGHES, Mr. JACOBS, Mrs. JOHNSON of Connecticut, Mr. JOHNSON of South Dakota, Ms. KAPTUR, Mr. KASTENMEIER, Mrs. KENNELLY, Mr. KILDEE, Mr. KLECZKA, Mr. KOLTER, Mr. LANTOS, Mr. LEHMAN of Florida, Mr. LELAND, Mr. LEVIN of Michigan, Mr. LEVINE of California, Mr. LEWIS of Georgia, Mr. LOWRY of Washington, Mr. MCKINNEY, Mr. MANTON, Mr. MARTINEZ, Mr. MFUME, Mr. MILLER of California, Mr. MINETA, Mr. MOODY, Mr. MORRISON of Connecticut, Mr. MRAZEK, Mr. NEAL, Mr. OLIN, Mr. OWENS of New York, Mr. PEASE, Mr. PEPPER, Mr. PRICE of North Carolina, Mr. RAHALL, Mr. RANGEL, Mr. RICHARDSON, Mr. RODINO, Mr. ROYBAL, Mr. SAVAGE, Mr. SCHEUER, Miss SCHNEIDER, Mrs. SCHROEDER, Mr. SMITH of Florida, Mr. STARK, Mr. STOKES, Mr. STUDDS, Mr. SYNAR, Mr. TORRES, Mr. TORRICELLI, Mr. TOWNS, Mr. TRAFICANT, Mr. VENTO, Mr. VISCLOSKY, Mr. WAXMAN, Mr. WEISS, Mr. WHEAT, Mr. WYDEN, and Mr. YATES) introduced the following bill; which was referred jointly to the Committees on Education and Labor and the Judiciary

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Restoration Act of 1987".

SEC. 2. FINDINGS OF CONGRESS.

The Congress finds that—

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

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

SEC. 3. EDUCATION AMENDMENTS AMENDMENT.

Title IX of the Education Amendments of 1972 is amended by adding at the end the following new section:

"INTERPRETATION OF 'PROGRAM OR ACTIVITY'

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

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

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

"(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

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

"(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(4) any combination comprised of two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance, except that such terms do not include any operation of an entity which is controlled by a religious organization if the application of section 901 to such operation would not be consistent with the religious tenets of such organization.".

SEC. 4. REHABILITATION ACT AMENDMENT.

Section 504 of the Rehabilitation Act of 1973 is to amended—

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

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

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

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

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

"(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

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

"(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(4) any combination comprised of two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

"(c) Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on the date of the enactment of this subsection.".

SEC. 5. AGE DISCRIMINATION ACT AMENDMENT.

Section 309 of the Age Discrimination Act of 1975 is amended—

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

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

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

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

"(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

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

"(B)(i) a college, university, or other postsecondary institution, or a public system of higher education; or

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

"(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(II) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(D) any combination comprised of two or more of the entities described in subparagraph (A), (B), or (C);

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

SEC. 6. CIVIL RIGHTS ACT AMENDMENT.

Title VI of the Civil Rights Act of 1964 is amended by adding at the end the following new section:

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

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

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

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

"(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

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

"(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(4) any combination comprised of two or more of the entities described in paragraph (1), (2), or (3);

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

SEC. 7. RULE OF CONSTRUCTION.

Nothing in the amendments made by this Act shall be construed to extend the application of the Acts so amended to ultimate beneficiaries of Federal financial assistance excluded from coverage before the enactment of this Act.

O

THE WHITE HOUSE

WASHINGTON

MEETING ON GROVE CITY
February 9, 1988
OEOB-248 4:00 p.m.

Dave Addington
Special Assistant to the President for
Legislative Affairs
Office of Legislative Affairs
456-7092

Mariam Bell
Deputy Associate Director for
Public Liaison
Office of Public Liaison
456-6585

Mark Disler
Deputy Assistant Attorney General for
Civil Rights
Department of Justice
633-1703

Dinesh D'Sousa
Senior Domestic Policy Analyst
Office of Policy Development
456-7084

Juanita D. Duggan
Special Assistant to the President
for Public Liaison
Office of Public Liaison
456-2164

Rich Hansen
Staff writer
Office of Public Affairs
456-7170

Carol Hayes
Researcher
Office of Speechwriting
456-7750

Bob Kruger
Associate Council to the President
Office of the Counsel to the President
456-7953

David McIntosh
Assistant to the President for
Office of Domestic Affairs
Domestic Affairs
456-2421

Rebecca G. Range
Deputy Assistant to the President
and Director of the Office of
Public Liaison
456-2270

Michael Wermuth
Legislative Counsel
Department of Justice
633-1703

Jim Warner
Senior Policy Analyst
Office of Policy Development
456-6252

Absent

Robert Sweet
Deputy Executive Secretary
Domestic Policy Council
456-2564

Gwen King
Deputy Assistant to the President and
Director of Intergovernmental Affairs
456-2577

State and Local Governments and Grove City Legislation

1. Q: What was the scope of coverage that existed prior to the Grove City decision?

A: Coverage applied to the specific program or activity of a state or local agency or other entity that actually received the federal aid, not the entire state or local agency or entity. See Brown v. Sibley, 650 F.2d 760 (5th Cir. 1981), addressing a business operated by a State. The court in that case held:

> [O]n the basis of the language of section 504 and its legislative history, and on the strength of analogies to Title VI and Title IX, we hold that it is not sufficient, for purposes of bringing a discrimination claim under section 504, simply to show that some aspect of the relevant overall entity or enterprise receives or has received some form of input from the federal fisc. A private plaintiff in a section 504 case must show that the program or activity with which he or she was involved, or from which he or she was excluded, itself received or was directly benefited by federal financial assistance.

650 F.2d at 769 (Emphasis supplied; footnotes omitted). In this case, the Mississippi Industries for the Blind received federal aid for its social services program and for its day care center, but not for its production departments. The court held that the production departments were, therefore, not covered by Section 504.

2. Q: Will S.557 significantly expand coverage over State and local governments, and their subunits?

A: Yes. Where there is Federal assistance to any State or local government, subparagraph (1)(A) of the bill's operative sections covers "all of the operations of . . . a department, agency, special purpose district, or other instrumentality . . . any part of which is extended Federal financial assistance . . ." Furthermore, (1)(B) covers ". . . the entity . . . that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended . . . any part of which is extended Federal financial assistance . . ." (Emphasis supplied.)

For example, if a state health clinic is built with federal funds in San Diego, California, not only is the clinic covered, as was the case before Grove City, but all activities of the state's health department in all parts of the state will also be covered. Indeed, the Committee

Report at page 16 makes clear how sweeping subparagraph (1) is:

> If the office of a mayor receives Federal financial assistance and distributes it to local departments or agencies, all of the operations of the mayor's office are covered along with the departments or agencies which actually get the aid.

This broad language raises the likelihood that if a mayor's office "funnels" a health grant to the municipal health department, or merely is reimbursed overhead expenses from the grant, and the mayor's office is also overseeing, or is in any way involved in, social welfare programs, parks programs, police, fire, and sanitation functions, all of these latter activities, totally unconnected to the grant, will be covered under S. 557. This is a version of the "trickle-down" approach of this bill's predecessors.

The Committee Report at 18 gives, as a further example of the broad coverage of the bill, the hypothetical case of a General Motors plant being extended federal aid for first aid training through a state department of health. The Committee Report notes that not only will the GM plant be covered in its entirety, but that the "state health department is also covered as a state agency to which federal financial assistance is extended." Prior to Grove City, coverage of the state department of health would have extended only to the assisted program, not the entire department.

3. Q: Is such expanded coverage really needed to ensure that federal dollars are not used for a discriminatory purpose?

A: No. The court's footnote in Sibley, supra, at the conclusion of the foregoing passage, is highly enlightening and particularly relevant to this debate. The court noted:

> This burden should be slight. Contrary to popular belief in certain quarters, federal financial assistance does not materialize out of thin air. Requests in writing must be submitted by the applicant entity to some federal funding authority with respect to a proposed program or activity. If federal financial assistance is approved for the particular program or activity, it cannot be gainsaid that recordkeeping requirements will be imposed on the entity responsible for the expenditure of the federal funds. Discovery of the receipt and utilization of those funds

with respect to particular programs and activities will be the least of plaintiffs' burdens.

650 F.2d at 769 fn 14 (emphasis supplied).

4. Q: What are the consequences of such expanded coverage under S.557?

A: Coverage under these federal statutes brings with it:

- o Increased federal paperwork;
- o Exposure to federal bureaucratic compliance reviews and on-site reviews even in the absence of an allegation of discrimination;
- o Thousands of words of federal regulations;
- o The need to adhere, not to an equality-of-opportunity standard, but to an equality-of-result standard under federal regulations which forbid conduct, including standards not adopted for a discriminatory purpose, just because it falls with a disproportionate impact on particular groups -- a basis for quotas and similar federal intrusions;
- o The need to adhere to accessibility requirements under Section 504, which can include structural modifications, equipment modifications, job restructuring, modifications of work schedules, provision of auxiliary aids including readers and sign language interpreters, and other extensive requirements;
- o The requirement to attempt to accommodate persons with infectious diseases such as tuberculosis and AIDS, including employees and persons seeking to participate in any activity of the covered state or local entity;
- o Increased exposure to costly private lawsuits.

Religious Tenets and Grove City Legislation

1. Q: Why is religious tenets language needed in Title IX?

   A: Such language in Title IX is a necessary part of Grove City legislation in order to protect an institution's policy which is based upon tenets of a religious organization where the institution is controlled by, or closely identifies with the tenets of, the religious organization.

   In 1972, when Congress enacted Title IX, Congress included several exceptions to its coverage, including: "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. . . ." 20 U.S.C. § 1681(a)(3).

   At that time, many educational institutions were controlled outright by religious entities. Some of these institutions today, while retaining their identification with religious tenets, are controlled by lay boards and receive less financial support from religious organizations. Thus, many institutions which may have previously qualified are now outside the scope of the religious tenets exception of current law.

   Thus, language must be included in any Grove City bill to protect a policy of an educational institution based on religious tenets when the institution is not controlled by a religious organization but closely identifies with the tenets of such an organization. This same protection should also be afforded to other institutions, such as hospitals, covered under Title IX by Grove City legislation when they have such a close identification with the tenets of a religious organization.

2. Q: Can an institution claim protection under this language for racial, handicap, or age discrimination?

   A: No. The exception exists only under Title IX, which addresses gender discrimination. The exception recognizes that the tenets of some religious organizations differentiate in some ways between the sexes. In the spirit of diversity and pluralism in education and other parts of the private sector covered by Title IX under Grove City legislation, the exception respects the independence of an institution's conduct in carefully delineated circumstances when the institution is controlled by, or is closely identified with the religious tenets of, a religious organization.

3. Q: Is a covered institution exempt in its entirety from Title IX if just one of its policies is based on religious tenets and conflicts with Title IX?

   A: No. The exception applies only to the specific policy or policies, based on religious tenets of those institutions able to avail themselves of the exception, when Title IX would conflict with such policy or policies.

4. Q: Will this exception have any application in public schools or other public institutions?

   A: No. The First Amendment, as applied to states and localities, effectively prohibits public schools or other public institutions from basing any policies or conduct squarely on the religious tenets of a religious organization.

   This exception applies only to private institutions -- for example, to schools where students are in attendance because they have freely chosen to attend the institution.

5. Q: What is the origin of this language?

   A: In May, 1985, in response to concerns described in the answer to question one, the House Education and Labor Committee first strengthened the current religious tenets exception when considering Grove City legislation.

   The particular language described in this document is virtually identical to language in the Higher Education Amendments of 1986, adopted by Congress and signed into law in October, 1986. There, a prohibition against religious discrimination in the construction loan program was enacted with an exception using virtually the same language recommended for Title IX. This provision, in short, is modeled on language used by the 99th Congress.

THIS LANGUAGE HAS BROAD SUPPORT

This language is supported by such organizations as the National Association of Independent Colleges and Universities (NAICU), with over 800 college and university members (enrolling over two million students); the United States Catholic Conference; Agudath Israel, a national Orthodox Jewish movement with tens of thousands of members; National Society for Hebrew Day Schools (approximately 500 elementary and secondary schools); and the Association of Advanced Rabbinical and Talmudic Schools (approximately 60 schools).

Private and Religious School Systems and Grove City Legislation

1. Are entire private elementary and secondary school systems, including religious school systems, covered by S.557 if just one school in the system receives any federal aid?

   A: Yes. Subparagraph (2)(B) of the bill's operative sections covers "all of the operations of . . . a local educational agency (as defined in Section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system . . . any part of which is extended Federal financial assistance . . . ." (Emphasis supplied.) The term "local educational agency" refers to a public school district. Thus, the term "other school system" can only apply to all private elementary or secondary school systems, including religious systems, whenever one activity in one school receives any federal aid. The sponsors have acknowledged that in the Committee Report at page 17.

   Thus, for example, if one elementary school in a diocesan school system or system of Jewish Yeshivas receives any Federal financial assistance, not only is the entire school covered, but every other school in the diocesan or Yeshiva school system will be covered in its entirety.

   The Committee Report at page 17 makes it clear that coverage will not only extend to all "traditional" educational activities of the entire school system, but that coverage applies to all of its non-educational activities as well. This would include any commercial, social, or religious activity.

2. Q: Did such coverage of private school systems exist prior to the Grove City decision?

   A: No. At most, in a private system of schools, the one school which itself received federal aid was covered -- not the entire system of which it was a part. Consider the Department of Education Title IX regulations' definition of "educational institution":

   > "Educational institution" means a local educational agency (LEA) as defined by Section 1001(f) of the Elementary and Secondary Education Act of 1965, a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

34 C.F.R. sec. 106.2(j) (emphasis supplied). An LEA is a public school system. The schools referred to in paragraphs (k), (l), (m), and (n) are institutions of higher education.

No mention is made of coverage of an entire private or religious school system. Coverage of "other school system" or "private school system" or "religious school system" is conspicuously absent. No real evidence of broader prior coverage was ever presented in hearings before the Committee.*

4. Q: What are the consequences of such coverage?

A: Many private and religious schools operate under very tight financial conditions. Broader coverage will create additional financial and other burdens through:

- o Increased federal paperwork;
- o Exposure to federal bureaucratic compliance reviews and on-site reviews even in the absence of an allegation of discrimination;
- o Thousands of words of federal regulations;
- o The need to adhere, not to an equality-of-opportunity standard, but to an equality of result standard under federal regulations which forbid conduct, including admission standards and teacher qualifications not adopted for a discriminatory purpose, just because it falls with a disproportionate impact on particular groups -- a basis for quotas and similar federal intrusions;

---

* A brief, unexplained reference in the Committee Report at page 26 to four Catholic dioceses in Louisiana submitting system-wide desegregation plans to HEW in 1969 is not to the contrary. No mention of the Louisiana matter was made during hearings on the bill. It may well be that every school in these systems received federal aid, or for some other reason the case has no application to the current debate. Regardless, the matter predates by six years the Department of Education's Title IX regulation which clearly defines "education institution" as not including an entire private or religious elementary or secondary school system; application of that definition has clearly been the practice of the federal government for more than a decade.

- The need to adhere to accessibility requirements under Section 504, which can include equipment modifications, job restructuring, modifications of work schedules, provision of auxiliary aids including readers and sign language interpreters, and other extensive requirements;

- The requirement to attempt to accommodate students, teachers, and other employees with infectious diseases such as tuberculosis and AIDS;

- Increased exposure to costly private lawsuits.

Private and religious schools provide much needed diversity in the education of our children. Moreover, people send children to such schools voluntarily -- and often at great expense, in addition to the taxes that they must pay -- in an effort to obtain a quality education for their children. Such school systems provide an essential adjunct to public systems already burdened by soaring costs. Where a clear need for greatly-expanded federal coverage, with all of its attendant burdens, has not been shown, the application of these statutes should not be extended.

The Private Sector and Grove City Legislation

1. Q: Does S.557 significantly expand the pre-Grove City private sector coverage under the civil rights statutes that it amends?

A: Yes. Coverage was "program-specific" before Grove City and court decisions reflect that such was the case. In Simpson v. Reynolds Metals Co., 629 F.2d 1226 (7th Cir. 1980), the court held that only the federally-assisted job training program at the company's plant was covered by Section 504, and not the entire plant, let alone the entire corporation. The Court noted that it could find nothing to show "an intent by Congress that § 504 impose a general requirement upon recipients of federal grants not to discriminate against handicapped employees who are not involved in a program or activity receiving such assistance." 629 F.2d at 1233 (emphasis supplied). Thus, the plaintiff, who worked on the company's production line and who had no connection with the job-training program, could not maintain an action under Section 504.

In Bachman v. American Society of Clinical Pathologists, 577 F. Supp. 1257 (D. N.J. 1983), a non-profit medical association received approximately $50,000 in federal money to conduct three seminars on alcohol abuse and to publish the proceedings of the seminars. The court ruled that the receipt of such federal aid did not subject to coverage the association's Board of Registry, which develops standards and procedures for entry and promotion in medical laboratories and certifies and registers those who meet competency requirements, including the use of an examination. Had the court ruled otherwise, as it would have to do under S.557, the standards for certifying clinical pathologists would have been subjected to an equality-of-result rather than an equality-of-opportunity analysis by federal agencies and courts and the likely debasement of these certifying standards under such an analysis. The court said:

> It is not enough . . . to show that a person has been discriminated against by a recipient of federal funds. Plaintiff must also show that she was subject to discrimination under the program or activity for which those funds were received . . . Section 504 of the Rehabilitation Act imposes a program-specific requirement limiting claims brought pursuant to this section to those programs or activities which are federally funded.

577 F. Supp. 1262-1263 (emphasis supplied; citations omitted). See also Brown v. Sibley, 650 F.2d 760 (5th Cir. 1981).

Even proponents of the bill grudgingly acknowledge, in contradiction to the bill's findings, that such case law exists. Committee Report at 10-11.

2. Q: How does the bill expand such pre-Grove City coverage?

A: For certain private sector entities, coverage will extend to "all of the operations of" every division, plant, store, subsidiary, and facility of any "corporation, partnership, or other private organization, or an entire sole proprietorship" if such entity is "principally engaged in the business of providing education, health care, housing, social services, or parks and recreation", whenever just one portion of one division, plant, store, subsidiary, or facility receives any Federal financial assistance. Subparagraph (3)(A)(ii) of the operative sections of the bill.

For all other entities, coverage will extend to "all of the operations of . . . the entire plant or other comparable, geographically separate facility" any part of which receives federal aid. Subparagraphs (3)(B).

3. Q: Did such "two-tier" coverage of the private sector exist prior to Grove City?

A: No. The sponsors openly admit this in the Committee Report at page 18, but wrongly assert that sweeping corporation-wide coverage existed for all types of corporations receiving federal financial assistance prior to the Grove City decision.

4. Q: How does the bill cover these five particular types of private entities even more broadly than others, even to coverage of activities well beyond the funded operation?

A: Examples:

a) If one program at one nursing home or hospital in a chain receives federal aid, not only is the entire nursing home or hospital covered, but all other nursing homes or hospitals in the chain are automatically covered in their entirety even if they don't receive federal aid.

b) If the tenant of one unit in one apartment building, owned by an entity 51% of whose activities are providing housing, receives a federal rent subsidy, not only is the entire apartment building covered, but all other apartment buildings, all other housing operations, and all other non-housing activities of the entity are covered even though they receive no direct or even indirect federal aid.

c) If a housing builder constructs one housing project with federal aid, all of the builder's other housing projects and all non-housing activities will be covered.

d) In a situation such as Bachman, supra, receipt of federal aid to conduct alcohol abuse seminars would subject all of the medical association's programs, including its certifying and competency standards, to federal regulations, including equality-of-result analysis. Similarly, if one of the association's state units received such aid, all state units and the national organization would be covered.

5. Q: Why are these particular types of private entities singled out for especially broad coverage?

A: The amazing reply is indicative of the "big government" vision of S.557. These private entities are treated so harshly, according to the Committee Report at page 4, because they "provide a public service. . . ." (Emphasis supplied.) Indeed, the activities listed in 3(A)(ii) "are traditionally regarded as within the public sector. . . ." Committee Report at 18 (emphasis supplied). In short, in the words of the Committee Report, "Even private corporations are covered in their entirety under [subparagraph] (3) if they perform governmental functions, i.e., are 'principally engaged in the business of providing education, health care, housing, social services, or parks and recreation.'" Committee Report at 20 (emphasis supplied).

Thus, certain activities in the private sector, such as hospitals operated by the Catholic church; individual private and religious elementary and secondary schools, as well as systems of such schools; private nursing homes; private, non-profit medical associations; private social welfare groups; private operators of amusement parks and recreational facilities; textbook publishers; doctors; dentists; housing builders; apartment owners and so much more, are regarded as essentially public and subjected to the most wide-ranging and unprecedented coverage ever contemplated under these civil rights statutes.

6. Q: What is the scope of coverage under the bill outside of the five broad categories?

A: The entire plant or geographically separate facility of corporations or other private entities not principally engaged in these five activities -- education, health care, housing, social services, or parks and recreation -- will be covered if one portion of, or one program at, the plant or facility receives any Federal financial assistance. Even this coverage will be very broad. For example, if a business falling outside the five categories has several plants in the same city or region, and one job training program at one plant receives federal job training assistance, all of the plants will be covered in their entirety; the Committee

Report at page 18 says that the term "geographically separate facility" is only intended to mean "facilities located in different regions or localities. Two facilities that are part of a complex or that are proximate to each other in the same city would not be considered geographically separate." Even coverage of the entire plant, where only one program at the plant receives assistance, is clearly much more expansive than the court holdings of "program-specificity." Simpson, supra; Bachman, supra; see also Brown, supra. And, of course, for those private businesses and private organizations consisting of only one "facility" -- as defined by the Committee Report -- coverage of the entire facility will constitute coverage of the entire business or organization.

7. Q: What are the burdens of such broad coverage?

A: Coverage under these federal statutes brings with it:

- o Increased federal paperwork;
- o Exposure to federal bureaucratic compliance reviews and on-site reviews even in the absence of an allegation of discrimination;
- o Thousands of words of federal regulations;
- o The need to adhere, not to an equality-of-opportunity standard, but to an equality-of-result standard under federal regulations which forbid conduct, including standards not adopted for a discriminatory purpose, just because it falls with a disproportionate impact on particular groups -- a basis for quotas and similar federal intrusions;
- o The need to adhere to accessibility requirements under Section 504, which can include structural modifications, equipment modifications, job restructuring, modifications of work schedules, provision of auxiliary aids including readers and sign language interpreters, and other extensive requirements;
- o The requirement to attempt to accommodate persons with infectious diseases such as tuberculosis and AIDS, including employees and those seeking to participate in any activity of the covered entity;
- o Increased exposure to costly private lawsuits.

During previous discussions of Grove City legislation, witnesses have said that such broad coverage will lead business entities to decline to participate in important federal programs, such as federal job training, rather than be subjected to such pervasive new federal regulation and exposure to costly litigation.

Abortion-Neutrality and Grove City Legislation

1. Q: Why is abortion-neutral language needed?

   A: Abortion-neutral language is a necessary part of Grove City legislation in order to ensure that no recipient of federal aid is required to provide or pay for abortions or abortion-related services as a condition of the receipt of such federal aid.

   Current Title IX regulations require an educational institution to treat abortion like any other temporary disability "for all job-related purposes, including . . . payment of disability income . . . and under any fringe benefit offered to employees. . . ." 34 C.F.R. § 106.57(c) (emphasis supplied). Moreover, the institution must treat abortion like any other temporary disability "with respect to any medical or hospital benefit, service, plan or policy" for its students. 34 C.F.R. § 106.40(b)(4).

   Indeed, the regulations actually require discrimination in favor of abortion: an institution must provide leave for an abortion for both students and employees even when it "does not maintain a leave policy for its students [or employees, and when] a student [or employee] . . . does not otherwise qualify for leave under" the institution's leave policy. 34 C.F.R. § 106.40(b)(5). See also 34 C.F.R. § 106.57(d).

2. Q: What does the abortion-neutral language achieve?

   A: The abortion-neutral language provides that no institution subject to Title IX must provide or pay for an abortion or abortion-related services as a condition of the receipt of federal aid.

3. Q: Does the language permit discrimination against a person who has had a legal abortion?

   A: No. Indeed, the language forbids discrimination against a person who has had a legal abortion.

4. Q: Does the language forbid an institution from providing or paying for abortions or abortion-related services if it wishes to do so?

   A: No. The language simply nullifies those portions of current regulations requiring all institutions to do so as a condition of the receipt of federal aid; thus, an institution is free under this language either to pay or provide for abortions or abortion-related services or not to do so.

5. Q: Does the "Civil Rights Restoration Act of 1987" (S. 557) expand the scope of these pro-abortion regulations?

A: Yes. S. 557 dramatically expands their scope.

The need for abortion-neutral language in Title IX flows from two factors. First, even if S. 557 did not expand the reach of these pro-abortion regulations, Title IX should be neutral on abortion whatever its scope.

Second, S. 557 does, in fact, expand the scope of these pro-abortion Title IX regulations. Prior to Grove City, Title IX applied only to education programs or activities receiving Federal financial assistance. S. 557 expands this coverage in at least two ways. Before Grove City, if a hospital conducted an education program, and the hospital received federal aid to other parts of the hospital but not to the education program, Title IX applied neither to the education program nor to the rest of the hospital. Second, if the hospital instead received federal aid only to the education program, or both to the education program and to other programs at the hospital, only the education program itself was covered by Title IX.

S. 557 changes the scope of coverage in both instances. Its amendment to Title IX extends Title IX coverage to "all of the operations of . . . an entire corporation, partnership, or other private organization, or an entire sole proprietorship . . . which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation . . . any part of which is extended Federal financial assistance. . . ." (Emphasis supplied.) A hospital obviously is "principally engaged" in the business of providing "health care" and thus, under this sweeping language, whenever any part of the hospital receives federal aid, all of its operations are covered by Title IX under this bill, at least where the hospital has any education activity.

Accordingly, in contrast to pre-Grove City coverage, federal aid to the hospital's emergency room covers the hospital's education program even if it receives no federal aid. This much the Committee Report concedes. Committee Report at 18. What the Committee Report disingenuously refuses to acknowledge is, first, that all other operations of the hospital are, in fact, also covered by Title IX, and second, that such coverage also goes beyond provision of health and medical insurance for students and all employees, even those not in the education program, to coverage of hospital patients.

In further contrast to pre-Grove City coverage, if only the hospital's education program receives federal aid, or both the education program and other programs at the hospital receive federal aid, not only is the education program covered under Title IX, but so is the rest of the hospital in the same fashion just mentioned.

This expanded scope for Title IX is the clear consequence of coverage of "all of the operations" of a covered entity such as a hospital whenever "any part of" the hospital "is extended Federal financial assistance." Moreover, if it is illegal sex discrimination to provide disability, medical, or health insurance without covering abortions, then how can the hospital's refusal to provide abortions as part of a surgery or obstetrics program fail to be discriminatory?

Under S. 557, if an intern on federal education assistance participates in the obstetrics or surgery program of a hospital, a black person could not be turned away from either program because of race, nor could a woman be turned down because of gender. The pro-abortion principle of the Title IX regulations would have to be extended to these programs and abortions would have to be provided thereunder. Indeed, it is inherently incredible to assert that under S. 557 the hospital only needs to provide insurance coverage for abortions to the intern, but not provide an abortion on demand to the woman the same intern is treating.

In summary, under S. 557, Title IX and its mandatory abortion regulations will cover all of the operations of a hospital that has an education program, including the hospital's services to patients, if any part of the hospital receives any federal aid.

6. Q: Why can't the pro-abortion provisions of the regulations be removed by administrative action?

A: A subsequent, pro-abortion Administration may simply reinstate the regulations. The clearest, surest, and most appropriate way to make Title IX abortion-neutral is through Congressional action in connection with Grove City legislation.

7. Q: Is the abortion-neutral language consistent with the original meaning of Title IX when enacted?

A: Yes. In 1972, when Title IX was adopted, abortion was illegal in most states. The Roe v. Wade decision, nullifying such laws, was decided by the Supreme Court in the following year. The Title IX regulations became final in 1975. Thus, the pro-abortion elements of the regulations appear to look to the Roe decision -- decided after Title

IX's enactment -- rather than to Title IX itself. In short, there is virtually no reason to believe that Congress intended Title IX to overturn state bans on abortion, let alone to mandate abortion coverage by institutions receiving federal aid.

8. Q: What is the source of the abortion-neutral language?

A: The original amendment was sponsored by Congressmen Tom Tauke and F. James Sensenbrenner, Jr., in the 99th Congress. It was adopted by the House Education and Labor Committee in May, 1985 during consideration of a previous Grove City bill. Since then, the abortion-neutral language has been refined to make it even clearer that it creates no penalty for anyone who has had a legal abortion. It is supported by, inter alia, the American Hospital Association, the United States Catholic Conference, the Catholic Health Association, and the National Right to Life Committee.

9. Q: Is it adequate to provide abortion-neutral language only for religious and religiously oriented institutions?

A: No. Many non-religious hospitals and other institutions are morally opposed to providing abortions or abortion insurance. Such institutions should no more be required to provide abortions or abortion insurance than any other institution. The City of St. Louis, Missouri, for example, presented testimony during Committee hearings on just this point. The city governing body has adopted an ordinance prohibiting the provision of abortion-on-demand at the city's hospital. Because the hospital has an educational component that receives federal education financial assistance, the hospital will be covered in its entirety by Title IX's mandatory abortion regulations, against its own moral principles, if S. 557 passes in its present form.

Farms and Grove City Legislation

1. Q: Are farms that receive crop subsidies, price supports, or other forms of federal agricultural assistance, covered by S.557?

   A: Yes. Farms fall within the coverage of this bill in several ways:

   - o Crop subsidy and price support programs and other similar federal farm aid can be said to provide assistance to the farm "as a whole," and subject the farm to coverage under subparagraph (3)(A)(i) of the bill's operative sections.

   - o A farm consisting of contiguous fields, or even fields "that are proximate to each other" in the same geographical location (see Committee Report at page 18), will readily be deemed a "geographically separate facility" comparable to a plant, and thus covered in its entirety under subparagraphs (3)(B).

   - o Farming could even be regarded as a form of "social service" because it provides food not only for consumers but for those who receive food stamps and other welfare assistance, and therefore will be subject to coverage under subparagraphs (3)(A)(ii).

2. Q: How broad is coverage of farms?

   A: Every farm in the country that gets any type of federal aid will be covered in its entirety. Some might argue that the bill's Section 7 provides a "Rule of Construction" which, in effect, will exempt farmers as "ultimate beneficiaries" of federal aid. The Committee Report at pages 24-25 suggests that this section excludes farmers from coverage in certain circumstances. This reasoning is unpersuasive because:

   - o There is no indication in the bill itself as to which persons or entities are considered to be "ultimate beneficiaries" and under which federal aid programs. Section 7 may refer only to persons receiving Social Security, Medicare, Medicaid and the like, rather than to businesses such as farms.

   - o No one can presume that any entity is outside the sweeping coverage of this bill, unless specifically exempted. The civil rights statutes have been so completely rewritten by S. 557, and contain language so clearly covering farms, that express language in the bill is necessary to exclude farmers from coverage.

- Farms appear to be clearly covered by paragraph (3) of each of the bill's operative sections, as mentioned earlier, because farms are readily identified as business entities or private organizations or both.

- Moreover, as a separate, additional problem, even if farmers are regarded as ultimate beneficiaries of crop subsidies and similar federal funds who are exempt from coverage under Section 7, the section only applies to those ultimate beneficiaries "excluded from coverage before the enactment of [S. 557]" (emphasis supplied). Thus, even under this interpretation, ultimate beneficiaries of farm programs adopted after S. 557's enactment are not excluded from coverage. The Committee Report's suggestion at page 25 that "[n]othing in S. 557 would prohibit recipients of new forms of Federal financial assistance created after enactment of the bill from being exempted from coverage as 'ultimate beneficiaries', where the type of aid and the nature of the recipient is analogous to the existing categories of 'ultimate beneficiaries'", is completely at odds with the plain language of the bill.

3. Q: Were farms receiving such assistance covered prior to the Grove City decision?

A: No. Coverage of farmers receiving crop subsidies, price supports, or similar assistance did not exist before Grove City. Senator Hubert Humphrey stated, during consideration of Title VI in 1964: "It will not affect direct Federal programs, such as CCC price support operations, crop insurance, and acreage allotment payments. It will not affect loans to farmers, except to make sure that the lending agencies follow nondiscriminatory policies. It will not require any farmer to change his employment policies." 110 Cong. Rec. 6325 (Sen. Humphrey) (March 30, 1964).

4. Q: What are the consequences of the coverage of the nation's farms?

A: Such coverage will further strain the financial condition of our nation's farms through:

- Increased federal paperwork;

- Exposure to federal bureaucratic compliance reviews and on-site reviews even in the absence of an allegation of discrimination;

- Thousands of words of federal regulations;

- The need to adhere, not to an equality-of-opportunity standard, but to an equality-of-result standard under federal regulations which forbid conduct not adopted for a discriminatory purpose just because it falls with a disproportionate impact on particular groups -- a basis for quotas and similar federal intrusions;

- The need to adhere to accessibility requirements under Section 504, which for farms could mean structural modifications, equipment modifications, modification of work schedules, job restructuring, provision of auxiliary aids including readers and sign language interpreters -- and much more -- for workers with handicaps;

- The requirement to attempt to accommodate persons, including employees, with infectious diseases such as tuberculosis and AIDS;

- Increased exposure to costly private lawsuits.

Since there has been no evidence presented to indicate that there is any type of discrimination problem in the farm community, the application of these statutes should not be extended to farms.

Grocery Stores and Grove City Legislation

1. Q: Are grocery stores and supermarkets covered under S.557 in their entirety simply because they participate in the federal Food Stamp program?

   A: Yes. The language of subparagraph (3) of Sections 3 through 6 of the bill is broad enough to support the conclusion, reinforced by the interpretation of a number of supporters of the bill at the Committee mark-up, that grocers and supermarkets participating in the Food Stamp program are covered. A grocery store or supermarket accepting food stamps falls within the definition of "entire corporation, partnership . . . or an entire sole proprietorship" receiving Federal financial assistance extended to it "as a whole" under (3)(A)(i). It can also be covered under (3)(B) as a "geographically separate facility" comparable to a plant that receives Federal aid.

   Moreover, in 1984, during the debate on H.R. 5490, the House forerunner of S.557, Congressman (now Senator) Paul Simon admitted that grocery stores would be subject to coverage. Cong. Rec., H7038 (June 26, 1984). S.557 is intended to achieve the same objectives as its forerunner.

   Indeed, the Senate Committee's Report, by referring to grocery stores at pages 23 and 24, evinces the true intent of the bill's sponsors to add coverage of grocery stores.

2. Q: Were grocers covered prior to the Grove City decision?

   A: No. Prior to the Grove City decision, grocery stores and supermarkets that participated in the Food Stamp program were not, simply by virtue of their participation in that program, subject to these four civil rights laws. As stated by Daniel Oliver, General Counsel, Department of Agriculture, in a July 1984 letter to Senator Jesse Helms:

   > The Department does not currently treat food stores which redeem food stamps as recipients of Federal financial assistance which are subject to the requirements of Federal anti-discrimination laws. There are no regulations or instructions that define these stores as recipients and the agreement between the Department and the stores concerning their participation in the food stamp program does not contain any reference to the requirements of the anti-discrimination laws.
   >
   > This has been the practice of the Department since 1964 when the original legislation creating a food stamp program and the Civil Rights Act of 1964 were both enacted. Although a review of the Department's records has disclosed no program instruction or legal opinion confirming this position, it is clear from a review of the Department's records concerning enforce-

ment of the Federal anti-discrimination laws and from discussions with numerous program officials that the Department does not treat food stores which redeem food stamps as recipients of Federal financial assistance for purposes of the Federal anti-discrimination laws. It is also clear that it has consistently adhered to this position over the last twenty years.

There is a reference to "small providers" in the Department's regulations concerning nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance (7 C.F.R. 15b. 18(c)). That regulation has not been interpreted as referring to grocery stores, but only to the agencies and organizations that distribute food stamps to the ultimate beneficiaries. (Emphasis supplied.)

3. Q: What are the consequences of coverage of grocery stores and supermarkets?

A: With expanded federal jurisdiction will come:

- Increased federal paperwork;
- Exposure to federal bureaucratic compliance reviews and on-site reviews even in the absence of an allegation of discrimination;
- Thousands of words of federal regulations;
- The need to adhere, not to an equality-of-opportunity standard, but to an equality-of-result standard under federal regulations which forbid conduct not adopted for a discriminatory purpose just because it falls with a disproportionate impact on particular groups -- a basis for quotas and similar federal intrusions;
- The need to adhere to accessibility requirements under Section 504, which for many stores could mean widening aisles, lowering shelves, and other structural modifications;
- The requirement, under recent case law, to attempt to accommodate both employees and customers with infectious diseases such as tuberculosis and AIDS;
- Increased exposure to costly private lawsuits, brought by advocacy groups seeking the most burdensome reading of these laws, and exposure to the judgment of federal courts.

Just the Department of Agriculture Section 504 requirements (7 CFR 15b) for covered entities are significant. Among the regulations applicable even to the smallest grocery store are:

-- a requirement to consult with disabled persons or disability rights groups and to make a record of such consultation;

-- extensive employment regulations, which can include equipment modifications, modifications of work schedules, and job restructuring;

-- regulations applicable to new construction or alteration of an existing building;

-- a requirement to "take appropriate steps" to guarantee that communications with hearing-impaired and vision-impaired applicants, employees, and customers can be understood;

-- a requirement to undertake home deliveries or install wheelchair ramps;

-- a requirement to make significant structural alterations if alternative means are not available to provide services.

Moreover, grocers or supermarkets with 15 or more employees -- which includes numerous small businesses -- have added burdens under the regulations such as:

-- a requirement to adopt "grievance procedures that incorporate appropriate due process standards";

-- the requirement of providing auxiliary aids for hearing-impaired and vision-impaired persons if necessary for them to work or shop at the store.

In three years of testimony on Grove City legislation, no case has been made for subjecting grocery stores participating in the Food Stamp program to coverage. Not a single word of testimony was presented indicating that there is a discrimination problem for persons buying food in this country from grocery stores and supermarkets. The National Grocers Association testified on March 27, 1985, before a Joint Committee Hearing in the U. S. House of Representatives, that their members' profit margin is about one penny on the dollar. In the absence of any case for coverage of these entities, the federal government should not extract another portion of that penny for compliance with laws that are not needed in the grocery store.

Public Higher Education and Grove City Legislation

1. Q: Will S.557 now cover entire systems of public higher education?

   A: Yes. Every college or university in a public system of higher education will be covered in its entirety if just one department at one school in that system receives Federal financial assistance. Subparagraph (2)(A) of the operative sections of the bill covers "all of the operations of . . . a college, university, or other post-secondary institution, or a public system of higher education . . . any part of which is extended Federal financial assistance . . . ." (Emphasis supplied.)

   Thus, if one department at one institution in a system of public colleges or universities receives federal aid, not only is that college or university covered in its entirety, but every other institution in that system is also covered in its entirety. Moreover, all of the non-educational activities of the institutions in the system, such as commercial activities and summer recreational programs for the community, will be covered in their entirety as a result of the "all of the operations of" language, even though such activities receive no federal aid.

2. Q: Is such coverage much broader than it was prior to the Grove City decision?

   A: Yes. Secretary of Education T.H. Bell stated that, prior to the Grove City decision, coverage of one post-secondary institution did not result in coverage of an entire system of higher education: "Under our post-secondary programs will aid to a particular campus of a multi-campus university result in coverage of the entire university system, including all of its campuses? If so, the bill expands pre-Grove City coverage." Testimony of T.H. Bell, Civil Rights Act of 1984, Hearings on S. 2568, before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, 98th Cong., 2d Sess. 227-228 (June 5, 1984).

3. Q: What will be the burdens as a result of such coverage?

A: The application of these statutes to entire systems of higher education will bring:

- o Increased federal paperwork;
- o Exposure to federal bureaucratic compliance reviews and on-site reviews even in the absence of an allegation of discrimination;
- o Thousands of words of federal regulations;
- o The need to adhere, not to an equality-of-opportunity standard, but to an equality-of-result standard under federal regulations which forbid conduct, including admission and faculty standards, not adopted for a discriminatory purpose just because it falls with a disproportionate impact on particular groups;
- o The need to adhere to accessibility requirements under Section 504;
- o The requirement to attempt to accommodate persons, including students and employees, with infectious diseases such as tuberculosis and AIDS;
- o Increased exposure to costly private lawsuits.

Non-Educational Activities of Educational Institutions and Grove City Legislation

1. Q: Does S.557 cover the strictly non-educational activities of various educational institutions?

   A: Yes. Subparagraphs (2)(A) and (2)(B) of the bill's operative sections clearly cover "all of the operations of . . . a college, university, or other post-secondary institution, or a public system of higher education . . . [a] system of vocational education, or other school system . . . any part of which is extended Federal financial assistance . . . ." (Emphasis supplied.) Entire private elementary and secondary school systems, including religious school systems, are covered under subparagraph 2(A)'s reference to "other school system."

   Also, individual private elementary and secondary schools, not part of any larger system, are similarly covered by virtue of subparagraphs (3)(A)(ii), which apply to "all of the operations of . . ." any private organization "which is principally engaged in the business of providing education . . . ." (Emphasis supplied.)

2. Q: How broad will such coverage be?

   A: All of the commercial, non-educational activities of a school, college, or university, including rental of commercial office space and housing to those other than students or faculty, the school's investment policy, its management of endowment, and other commercial ventures will all be covered if the institution receives even one dollar of direct or indirect federal assistance for purely education programs. The Committee Report, at page 17, leaves no doubt that such broad coverage is intended:

   > The language "all of the operations of" an educational institution or system would include, but is not limited to, the following -- traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities. (Emphasis supplied.)

3. Q: Did such expansive coverage exist prior to Grove City?

   A: No. As Harry M. Singleton, the Department of Education's Assistant Secretary for Civil Rights, testified in 1985:

   > "[Under the bill] financial assistance flowing to only one part of the university, one department, building, college, or graduate school, would create jurisdiction in all departments, buildings, colleges, and graduate schools of that university, wherever

> geographically located, as well as in non-educational operations in which the university might be engaged such as broadcasting, rental of non-student housing, or even the management of its endowment fund. In declaring that all such operations of a college or university, even those absolutely unrelated to educational activities, are to be within the jurisdiction of the federal government, [the bill] goes well beyond its announced purpose of merely restoring that jurisdiction, previously exercised."

Testimony of Harry M. Singleton, Civil Rights Restoration Act of 1985, Joint Hearings on H.R. 700, before the Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, 99th Cong., 1st Sess. 299-300 (March 7, 1985) (emphasis supplied).

4. Q: What will be the burdens as a result of such coverage?

A: The application of these statutes to all of the non-educational activities of educational institutions will bring:

- o Increased federal paperwork;
- o Exposure to federal bureaucratic compliance reviews and on-site reviews even in the absence of an allegation of discrimination;
- o Thousands of words of federal regulations;
- o The need to adhere, not to an equality-of-opportunity standard, but to an equality-of-result standard under federal regulations which forbid conduct, including standards not adopted for a discriminatory purpose, just because it falls with a disproportionate impact on particular groups;
- o The need to adhere to accessibility requirements under Section 504, including equipment modifications, modifications of work schedules, job restructuring, and provision of auxiliary aids such as readers and sign language interpreters;
- o The requirement to attempt to accommodate persons, including employees, with infectious diseases such as tuberculosis and AIDS;
- o Increased exposure to costly private lawsuits.

Private Social Service and Charitable Organizations

- S.557/H.R. 1214 would significantly expand coverage over private, non-profit organizations.

- Under subparagraph (3)(A)(ii) of the bill's operative sections, the legislation would cover "all of the operations of . . . an entire . . . private organization . . . which is principally engaged in the business of providing . . . social services . . . any part of which is extended Federal financial assistance . . . ." (Emphasis supplied.)

- A private, national social service organization will be covered in its entirety -- all of its operations -- together with all of its local chapters, councils, or lodges, if one local chapter, council, lodge, or any operation of the national office of the organization receives any Federal financial assistance.

Prior to the Grove City decision, coverage in the private sector was "program specific." Simpson v. Reynolds Metals Co., 629 F.2d 1226 (7th Cir. 1980); Bachman v. American Society of Clinical Pathologists, 577 F. Supp. 1257 (D. N.J. 1983); see Brown v. Sibley, 650 F.2d 760 (5th Cir. 1981). In Bachman, for example, the court made an explicit finding in a § 504 action:

> It is not enough . . . to show that a person has been discriminated against by a recipient of federal funds. Plaintiff must also show that she was subject to discrimination under the program or activity for which those funds were received . . . . Section 504 of the Rehabilitation Act imposes a program-specific requirement limiting claims brought pursuant to this section to those programs or activities which are federally funded.

577 F. Supp. 1262-1263 (emphasis supplied). Here, a nonprofit medical association received approximately $50,000 in federal aid to conduct three seminars on alcohol abuse and to publish the proceedings of the seminars. The court ruled that such federal aid does not subject to coverage the association's Board of Registry, which develops standards and procedures for entry and promotion in medical laboratories and certifies and registers those who meet competency requirements, including the use of an examination. Had the court ruled otherwise, as it would have to do under S.557, the standards for certifying clinical pathologists would have been subjected to an equality-of-result rather than to an equality-of-opportunity analysis by federal agencies and courts and the likely debasement of these certifying standards under such an analysis. If S.557 passes, however, decisions like Bachman

will be overruled legislatively, and organizations will be covered in their entirety. This will also discourage such organizations and their local units from participating in federal programs.

3. Q: What will be the burdens of such coverage?

A: The sweeping new coverage under S.557 will bring:

- Increased federal paperwork;
- Exposure to federal bureaucratic compliance reviews and on-site reviews even in the absence of an allegation of discrimination;
- Thousands of words of federal regulations;
- The need to adhere, not to an equality-of-opportunity standard, but to an equality-of-result standard under federal regulations which forbid conduct, including membership or other admission standards not adopted for a discriminatory purpose, just because it falls with a disproportionate impact on particular groups -- a basis for quotas and similar federal intrusions;
- The need to adhere to accessibility requirements under Section 504, which for a national organization with dozens of chapters or lodges could mean structural modifications to all of its chapter or lodge buildings, equipment modifications, job restructuring, modifications of work schedules, provision of auxiliary aids including readers and sign language interpreters, and other extensive requirements;
- The requirement to attempt to accommodate persons, including members and employees, with infectious diseases such as tuberculosis and AIDS;
- Increased exposure to costly private lawsuits.

CIVIL RIGHTS ACT OF 1987
(H.R. 1881)

- In response to the Grove City College v. Bell (1984) decision, "The Civil Rights Act of 1987" (H.R. 1881) amends four civil rights statutes banning discrimination on specified grounds under any "program or activity receiving federal financial assistance": Title VI of the Civil Rights Act of 1964 (race, color, national origin); Title IX of the Education Amendments of 1972 (sex) (limited to education); Section 504 of the Rehabilitation Act of 1973 (handicap); and the Age Discrimination Act of 1975 (age).

SCOPE

- The bill provides that where any educational program or activity of an educational institution (including a public school district) receives federal aid, the institution itself is the covered program under all four civil rights statutes.

- The bill also adds a "grandfather" provision to each of the four statutes which provides that in circumstances not involving education institutions, the meaning of the phrase "program or activity" remains the same as before Grove City and should be construed without consideration given to the Grove City decision -- or to the Supreme Court's earlier North Haven Board of Education v. Bell (1982) decision to the extent it contained language relied upon by the Supreme Court in reaching its "program specific" interpretation in Grove City.

- It is expected that coverage outside of educational institutions, under this grandfather provision, would generally be program specific. This approach reflects both the plain language and legislative history of the statutes, as well as the interpretation of many lower courts even before Grove City.

- Such an approach outside of education will, of course, yield significant coverage: there are numerous federal aid programs outside of education dispensing tens of billions of dollars in federal aid to large numbers of recipients, including block grant programs. Also, many recipients receive aid under more than one federal program.

- Indeed, in fiscal year 1963, the Federal government dispensed less than $11 billion in assistance under fewer than 200 programs. In F.Y. 1985, the Federal government dispensed more than $200 billion under nearly 1,400 programs.

- Since Grove City, the only area where demonstrated civil rights concerns have not been satisfactorily addressed has been education institutions, and this bill adequately addresses this problem.

- Proponents of a much broader Grove City bill have been unable, after more than 3 years, to demonstrate any similar need outside of education. Indeed, many federal agencies have indicated that Grove City has had virtually no impact on their enforcement programs.

- Further, numerous other federal laws, of course, such as Titles II (public accommodations) and VII (employment) of the 1964 Civil Rights Act; the Fair Housing Act; the Equal Credit Opportunity Act; the Voting Rights Act; and many others -- all of which comprise the broad mosaic of federal civil rights protections -- remain fully in place.

ABORTION; RELIGIOUS TENETS

- The bill also amends Title IX by adding "abortion-neutral" language which makes clear that no covered institution is required to perform or pay for abortions or abortion-related services, but which permits an institution to do so if it wishes. Discrimination against a person who has had an abortion is prohibited. The House Education and Labor Committee adopted this language in May, 1985.

- The bill also amends Title IX to strengthen its "religious tenets" exception which currently reads: "[Title IX] shall not apply to an educational institution which is controlled by a religious organization if the application of [Title IX] would not be consistent with the religious tenets of such organization. . . ." 20 U.S.C. § 1681(a)(3). Many institutions which have retained their religious character or mission but are now controlled by lay boards may no longer have their religious tenets exempted from the application of Title IX where such application conflicts with those tenets. In order to strengthen Title IX's acknowledgement of the importance of religious tenets and preserve diversity in education based on those tenets, the bill provides:

  > "[Title IX] shall not apply to an educational institution which is controlled by or which is closely identified with the tenets of a particular religious organization if the application of [Title IX] would not be consistent with the religious tenets of such organization."

- This exemption is applicable only under Title IX. Identical language ("controlled by or which is closely identified with the tenets of a particular religious organization") was endorsed by the 99th Congress in its enactment last fall of S. 1965, the Higher Education Amendments Act of 1986, with respect to the construction loan insurance program's ban on religious discrimination.

ADMINISTRATION SUPPORT

- The bill has been endorsed by President Reagan as the most responsible way to respond to the Grove City decision, and the most effective way to address the abortion and religious tenets issues.