THE WHITE HOUSE

WASHINGTON

August 29, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft DOD Report on S. 2568
The Civil Rights Act of 1984

OMB has asked for comments by close of business today on a draft Defense Department report on S. 2568, the "Civil Rights Act of 1984." You will recall that S. 2568 is portrayed by its supporters as designed to overturn the Grove City decision, although in fact it would do much more. The draft Defense report declines to express a view on the need for the legislation. Consistent with prior agency reports, however, the Defense report does note that the bill would impose vast new burdens on Federal agencies administering grant or loan programs. In particular, Defense objects to the need to ensure non-discrimination at every organizational subunit of a grant or loan recipient, no matter how removed from the defense-related activity receiving Defense Department funds. Defense also notes that it would be troublesome to permit Defense funding (to, for example, a state national guard unit) to be terminated because of unrelated discrimination elsewhere (for example, at a state university).

I have reviewed the draft report and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

August 29, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Draft DOD Report on S. 2568
The Civil Rights Act of 1984

Counsel's Office has reviewed the above-referenced draft report, and finds no objection to it from a legal perspective.

FFF:JGR:aea 8/28/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

August 29, 1984

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
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WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Subject: Draft DOD Report on S.2568, the Civil Rights Act of 1984

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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	CUAT 18	D	84/08/24		S	84/08/28
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S - For Signature
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5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO				
	J. Svahn	B. White	Take necessary action	☐
	M. Horowitz	K. Wilson	Approval or signature	☐
	N. Risque		Comment	☐
	J. Cicconi		Prepare reply	☐
	F. Fielding		Discuss with me	☐
	K. Cribb		For your information	☐
	S. Galebach		See remarks below	☐
	L. Verstandig			
	N. Sweeney			
	R. Howard			

FROM Branden Blum **DATE** 8/24/84

REMARKS

Draft Department of Defense report on S. 2568, the Civil Rights Act of 1984

In the attached draft report, Defense indicates that ambiguous provisions contained in S. 2568 will likely cause significant administrative and enforcement problems. Please review the draft report and provide me with any changes by Wednesday, 8/29. (Copies have been forwarded to Justice and Education.) Markup by the Senate Labor and Human Resources Committee is scheduled for 9/12/84.

Attachment

SPLCM/L

OMB FORM 4
Rev Aug 70

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D.C. 20301

.onorable Orrin G. Hatch
Chairman, Committee on Labor and
Human Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Defense on S. 2568, 98th Congress, a bill, "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," also known as "The Civil Rights Act of 1984."

The Department of Defense has no express view as to the necessity of the proposed legislation. However, the Department of Defense does have concerns about the wording of the present proposal. Definitions of the terms "recipient" and "assistance which supports" are unnecessarily vague and ambiguous and if unmodified will likely result in significant administrative and enforcement problems for funding agencies.

The proposed legislation appears to impose the nondiscrimination requirements of the four statutes to be amended upon an entire state, county, or municipal government if only one program of one organizational subunit receives Federal funds. This would mean, in turn, that if discrimination were found in one program of one organizational subunit, all Federal funds to the entire state, county, or municipal government could be terminated.

The Department of Defense is concerned that its funding of research and development projects at colleges and universities, some of which are related to national security issues, or its funding of state military departments (e.g., the National Guard), units of which currently perform vital defense missions on an active duty basis, would be jeopardized by a finding of discrimination in a totally unrelated Federal assistance program of another agency. This would be particularly burdensome if the

Department of Defense funded programs were known to be in compliance with the nondiscrimination statutes. Even if the term "recipient" was limited to mean the specific institution recieving the assistance (i.e., college or university in lieu of the entire state or local government), the Department of Defense is concerned that its funding of research and development projects, perhaps even its funding of Reserve Officer Training Corps programs, could be adversely impacted by a discrimination finding in another program or subunit of the institution in question.

The four civil rights statutes to be amended by the proposed legislation currently require funding Federal agencies to determine the compliance status of their program recipients. If the term "recipient" is redefined to include the entire state, county, or municipal government, this will require funding agencies to assess compliance in areas in which they have no expertise. In addition, funding agencies would be required to increase significantly the size of their compliance staffs and their enforcement budgets in order to assess the compliance status of entire institutions or governmental bodies. Further, since recipients often receive funds from more than one Federal agency, overlapping, duplicative compliance reviews by agencies will result.

The Department of Defense, therefore, recommends that the proposed legislation be amended to accomplish the following:

Limit the definition of "recipient" to the program or activity actually receiving Federal funds, or, at most, to the specific institution receiving the funds.

Limit fund termination to the program or activity in which discrimination is identified. If this cannot be done, include a provision which permits funding agencies to exempt termination of some or all funding for reasons of national security.

Correct the overlapping of Federal agency jurisdictions for determining compliance by limiting agency responsibilities for compliance activities or be centralizing compliance and enforcement activities for all agencies into one.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

Chapman B. Cox

TO: Brandon Blum
395-3454

FROM: John Thomas
Attorney Advisor
Department of Justice
633-3916

THE WHITE HOUSE
WASHINGTON
March 6, 1985

TO: John

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

~~FOR YOUR INFORMATION~~:

Pls attach
to what I stapled
you yesterday

MB

DRAFT

TESTIMONY OF

WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE

BEFORE

COMMITTEE ON EDUCATION AND LABOR AND SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY
H.R. 700, THE "CIVIL RIGHTS RESTORATION ACT OF 1985"

MARCH 7, 1985

DRAFT

Mr. Chairman and Members of this Joint Committee, I appreciate the invitation to appear before you at these hearings and welcome this opportunity to present the views of the Department of Justice on the legislative proposal before you intended to address the Supreme Court's decision in the Grove City case.

It is, I think, a measure of our times, and a clear reflection of the progress made over the past twenty years, that we can come together today to discuss a new civil rights bill, voicing either support or opposition as the case may be, confident that we all share the same degree of revulsion for acts and practices of discrimination against any person on account of race, color, national origin, religion, sex, age, or handicap. The legislative framework that Congress has constructed over the past two decades has provided the Executive and Judicial branches with the essential tools they needed to wage a winning war against these most invidious forms of bias and prejudice. While that war is admittedly not yet won, civil rights enforcement activity has indeed brought us to the brink of victory -- with, I am proud to say, as impressive strides made in the past four years as in any other administration.

But I am not here this afternoon to detail the Justice Department's remarkable record since 1981 of civil rights' enforcement on behalf of all Americans victimized by discrim-

inatory conduct. That is for another day. Today I want to speak to H.R. 700, which carries the title "The Civil Rights Restoration Act of 1985." That bill revives a debate -- a much needed debate, I might add -- that was regrettably truncated last year in the House, and received only belated attention in the Senate before adjournment. The provocation for the legislation is the Supreme Court's Grove City decision of a little more than a year ago. 1/ As we all know, the Court was called upon in that case to interpret the reach of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits sex discrimination in any "education program or activity" that receives federal financial assistance.

It is enough for these purposes to focus on the Court's principal holdings in Grove City. First, the Court found that federal aid to students enrolled at Grove City College was sufficient to trigger Title IX coverage of the school, even though Grove City received no federal funds directly. That coverage, however, the Court held, pertained only to the education program or activity identified with the funding -- in that case, the student financial aid office.

The Grove City decision surprisingly touched off an avalanche of criticism. I say "surprisingly" because the programmatic interpretation announced by the Supreme Court

1/ Grove City College v. Bell, 104 S.Ct. 1211 (1984).

was precisely what Congress intended at the time of Title IX's enactment some 13 years ago, as the legislative debates at that time make clear -- and is wholly consistent with the manner in which the lower federal courts had been reading that and similar statutes for years. 2/ Nonetheless, many reached to overstate the Grove City decision, representing its program-specific holding to be a narrowing of Title IX coverage, and in turn the coverage under Title VI, Section 504 and the Age Discrimination Act. Accordingly, legislation was introduced ostensibly aimed only at overturning the program-specific holding of Grove City, but in reality setting forth a much more ambitious agenda. That effort having faltered in the 98th Congress, we are back today to examine the new proposal introduced at the beginning of this legislative session as H.R. 700 -- portrayed once again by many as a Grove City bill.

One thing that can, and should, be said at the very outset about H.R. 700 is that it is not a proper description of it to call the bill "Grove City legislation." If the Supreme

2/ E.g., Hillsdale College v. Department of Health, Education and Welfare, 696 F.2d 418 (6th Cir. 1982), vacated and remanded, 52 U.S.L.W. 3700 (U.S. March 26, 1984) in light of Grove City College v. Bell, 104 S. Ct. 1211 (1984); Rice v. President & Fellows of Harvard College, 663 F.2d 336 (1st Cir. 1981), cert. denied, 456 U.S. 928 (1982); University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va. 1982); Othen v. Ann Arbor School Board, 507 F. Supp. 1376 (E.D. Mich. 1982), aff'd 699 F.2d 309 (6th Cir. 1983).

Court's programmatic interpretation of Title IX is, indeed, a source of discomfort to the current Members of Congress, and a consensus exists in both Houses to overturn that feature of Grove City by providing through a statutory amendment institutionwide coverage of colleges and universities, the correct way to accomplish that is through a bill like S. 272, introduced by Senator Dole in the Senate and fully supported by the President.

S. 272 provides simply that, if federal aid is extended to any of a college's or university's educational programs or activities, then all of that college's or university's educational programs and activities will be subject to Title IX's prohibition against sex discrimination. Accordingly, women's college athletic programs -- which were portrayed in last year's hearings as the "big loser" as a result of Grove City -- would under this formulation receive the full benefit of Title IX's protections. The Dole bill goes even farther. In an effort to alleviate possible concern that our students could be deprived by other forms of discrimination from enjoying equal education opportunities, S. 272 amends the three similarly-worded, cross-cutting civil rights statutes -- Title VI of the Civil Rights Act of 1964 (race, color, and national origin), Section 504 of the Rehabilitation Act of 1973 (handicap) and The Age Discrimination Act of 1978 (age) -- to ensure that, as applied to education institutions, coverage upon receipt of any federal funds will be institutionwide, not program-specific.

The legislation I have just described is fully responsive to the Grove City decision. It assigns to Title IX the broad coverage demanded by some immediately following the Supreme Court's ruling and certainly removes any spectre that women's athletics (or any other education program) will be unprotected against sex discrimination -- or, indeed, against other forms of unlawful discrimination. Moreover, the Dole bill states explicitly that, as to the application of all four cross-cutting civil rights statutes outside the educational environment of schools, colleges and universities, their coverage is to remain as broad as it always has been, uninfluenced one way or the other by the Supreme Court's interpretation of Title IX in Grove City. 3/

H.R. 700 goes beyond -- far beyond -- the Title IX concerns raised by Grove City and the comprehensive legislative answer to that decision provided in S. 272. As with its counterpart in the Senate (S. 431), H.R. 700 moves the debate to a much larger arena, one that is no longer seriously interested in Grove City or Title IX, but has as its wider focus civil rights enforcement generally and the proper role to be played by the Federal Government. Let there be no mistake about it, the so-called "Civil Rights Restoration Act of 1985"

3/ Reference is also made in S. 273 to North Haven Board of Education v. Bell, 456 U.S. 512 (1982), as another Supreme Court decision construing Title IX as programmatic in scope that should not influence future court interpretations of these laws.

adopts for the first time a uniquely expansive view of federal enforcement authority in the field of civil rights. Nothing about the bill even hints at a "restoration." Instead, H.R. 700 uses the extension of a federal dollar as the excuse for opening virtually every entity in this country -- public and private -- to federal supervision, regulation, intervention, intrusion and oversight. Massive bureaucratic paperwork, onerous administrative reporting requirements, disruptive agency compliance reviews, all will become a regular feature of a dollar's worth of federal assistance.

It is no small irony that, on the heels of two elections where the citizens of this Nation voted overwhelmingly to reduce federal intrusion and interference in our daily lives -- and to return to the states a substantial measure of authority that is constitutionally theirs but has been wrested away over the years by an overzealous federal bureaucracy -- this Joint Committee is now considering one of the most far-reaching legislative efforts in memory to stretch the tenacles of the Federal Government to every crevice of public and private sector activity.

Therein lies the real debate over H.R. 700. We are not with this remarkably expansive bill embroiled in a dispute with the Supreme Court over its interpretation of Title IX, but rather are confronted with the most fundamental of issues in our federalist system of government. The proposed legis-

lation is premised on the philosophy that it is the Federal Government alone that can and should be trusted with enforcement authority in civil rights matters and thus it seeks a transfer virtually all power in this area to the federal bureaucracy. Juxtaposed on the other side of the debate are those of us who continue to believe that the role of the Federal Government in this and other areas is, under our Constitution, a limited one that cannot properly preempt the role of state and local authorities without a strong showing of need. Here, the pretense for "need" is Grove City. Yet, H.R. 700's response to that "Title IX-only" ruling can properly be likened to the proverbial "killing of a gnat with an elephant gun." Some of the more obvious consequences are worth highlighting.

H.R. 700 starts with the bold statement of an intent "to restore the prior consistent and longstanding Executive branch interpretation and broad, institutionwide application of those laws [Title IX, Title VI, Section 504 and the Age Discrimination Act] as previously administered." I am supremely confident, Mr. Chairman, that no cohesive, coherent comprehensible explanation of the meaning of that sentence is available. The prior "executive branch interpretation" of the statutes in question is not found in a single agency, but in fact resides in those 28 executive agencies of the Federal Government extending federal financial assistance. Their respective interpretations of these statutes have not only

not been internally "consistent," they have not been "consistent" from one agency to another; moreover, few agency pronouncements can boast of being "longstanding." The same can be said for the various agency "applications" of the four civil rights laws: While the descriptive modifier "broad, institutionwide" probably fits some misguided administrative action in some agencies, those instances mark the exception rather than the rule. See, e.g., 34 C.F.R. § 100.4(d)(2); 45 C.F.R. § 80.4(d)(2).

The Committee can, I suppose, fill this record with different witnesses' conflicting understandings of the manner in which select agencies may or may not have "previously administered" these laws. It is, nonetheless, a most imperfect legislative technique for Congress to offer vague and ill-defined legislation that, by its terms, is intended to codify an amorphous body of prior regulatory and administrative activity -- whatever it may be and no matter how unfaithful it was to the legislation itself. Civil rights enforcement will be poorly served if that is what ultimately emerges as the law, embroiling courts and litigants alike in endless controversies over which agency practice, of the many divergent ones from which to choose, Congress really intended to codify -- a aimless exercise for the most part since H.R. 700 gives no clue of how to sort through the labyrinth of "executive branch interpretation and . . . application of . . . laws that H.R. 700 would codify by wholesale incorporation.

If, as some have suggested, the essential thrust of the proposed bill is simply to give expansive coverage to the cross-cutting statutes, so that all disputes are to be resolved in favor of enlarging (not contracting) the reach of Title IX, Title VI, Section 504 and the ADA, problems do not go away. H.R. 700 is being advertised in much narrower terms as a civil rights restoration measure; yet much of its language goes well beyond "restoring" coverage to pre-Grove City understandings of the laws. Take, for example, the new definition of the term "program or activity" to include "all the operations" of an entity "any part of which is extended Federal financial assistance." At its most expansive, Title IX in its current form pertains only to "education programs or activities." The proposed new language can nonetheless properly be read as adroitly avoiding the modifier "education," and thus raising for the first time the spectre of Title IX coverage of non-educational programs and activities. Whatever else might be said about this proposed amendment, it plainly is not in any sense "restorational."

Nor do the four subsections to the definition of "program or activity" -- that undertake to describe coverage in terms of types of "entitites" -- harken back to pre-Grove City law in any meaningful or consistent fashion. Rather, the language is, for the most part, imprecise and open-ended (perhaps intentionally so), leaving vulnerable to federal regulation and oversight a variety of institutions, programs, and probably even individuals which Congress had previously

chosen to leave free from the burden of federal regulatory control.

Thus, the reference in H.R. 700 to "a department or agency of a state or of a local government" -- all the operations of which are to be covered if any part receives federal funding -- opens the way for the first time for nonfunded activity of a state agency in northern California, for example, to be subject to federal compliance reviews because of some other, unknown and wholly unrelated, funded activity of that same state agency that is going on in southern California. In short, under the bill, receipt of funds by one program operated by a department of a state in one area of the state would bring the Federal Government's regulatory power to bear on completely unrelated, and nonfunded, operations in a distant part of the state or locality. As a consequence, those who operate their activities without federal funding would be subject to possibly unfamiliar or unknown regulations and regulators despite the fact that they have no knowledge, control, or influence over those other persons in the department who chose to receive federal funds. This, again, can hardly be called a "restoration" of pre-Grove City civil rights coverage.

The same can be said with respect to the portion of H.R. 700 aimed directly at educational institutions. The bill here defines a program or activity as "a university or system of higher education." This necessarily results in far broader coverage than anything contemplated under Title IX or the

other cross-cutting statutes prior to Grove City. Never has the Department of Education sought Title IX assurances of compliance from entire systems of higher education, such as the University of California system; rather, it has sought and obtained such documentation only from each unit within the system that receives funding, such as U.C.L.A. Moreover, within each university or campus, federal financial assistance to the law school, for example, has heretofore not been interpreted to trigger coverage of other administratively separate units, such as the medical school, or the school of undergraduage studies. 3/ H.R. 700 appears to change all that.

Also, from all appearances, H.R. 700 changes coverage of parochial schools, bringing them for the first time within reach of Title IX as a result of including "other school systems" within the multi-definitional description of program or activity. Since there are no qualifiers (such as exist under current statutes) the receipt of federal funds by a single Catholic school in Chicago would presumably bring all Catholic schools in the entire Archdiocese under the Federal Government's watchful eye.

3/ The current statutory definition of "educational institution" in Title uses was the phrase "administratively separate unit" as the institutional breakpoint. This phrase has been defined more precisely in agency regulations to depend on a school's admission's policy. Thus, each discrete and independent admissions program will generally identify the entity as an "administratively separate unit." See 34 C.F.R. 106.2(o).

No less ambitious is the bill's sweeping treatment of private organizations as fitting within the new definition of "program or activity." Under H.R. 700, all of the operations of a corporation, or partnership, or other private organizations are covered if any of their parts are extended federal aid. Thus, the bill would not just cover all the operations of a privately-owned hospital if one part of the hospital received funding -- a primary goal of the bill's Senate sponsors. See, e.g., 131 Cong. Rec. S-1312 (daily ed. Feb. 7, 1985) (remarks of Sen. Durenberger). It would cover all the operations of the corporation as well, whether or not related to the delivery of health services. This stands in stark contrast with pre-Grove City law, when private enterprise was free from federal intrusion or interference except to the extent of its funded programs and activities.

Even so, I have yet to reach the outer limits of the regulatory net cast by H.R. 700. For, in the final subsection defining programs or activities, the bill utilizes the vaguest of catchall language to sweep within its coverage "any other entity determined [to be covered] in a manner consistent with coverage provided with respect to entities described in [the preceding three] paragraphs." I will readily admit to confusion as to the intended meaning of the phrase "in a manner consistent with." Is the Mom-and-Pop grocery store that receives food stamps from customers in payment for produce to be regarded as covered "in a manner consistent with"

the coverage of a Grove City College that receives student tuition payments that are comprised, at least in part, of federal loans? Are farmers and ranchers who receive federal price supports or crop insurance subsidies or disaster loans to be regarded as covered "in a manner consistent with" the coverage of a private corporation that receives a dollar of federal financial assistance? Is a transferee of federal funds from the initial recipient to be covered "in a manner consistent with" the coverage of a state agency that receives a transfer of federal funds from another department or office of the state? No exemptions are written into the proposed legislation for ultimate beneficiaries.

In each of the above examples, monies disbursed by the Federal Government ultimately find their way into the coffers of the "other entity," either directly or indirectly, and H.R. 700 indicates that no matter how large or small the federal assistance, how long or fleetingly it remains with the entity, or how far removed in the chain of distribution, coverage attaches. Indeed, on the understanding of H.R. 700 as providing for systemwide coverage of higher education "systems" once a federal dollar is received by any component of that system, there is reason for concern by members of trade associations, for example, that aid to the association or one of its members could lead to coverage of all other members "in a manner consistent with" systemwide coverage of higher edu-

cation systems. Similarly vulnerable, it seems, are subsidiaries within a "corporate family," bank affiliates, and even independent contractors -- all of which by analogy can (without ever actually receiving federal funds or knowing others with whom they are doing business are federally funded to some extent) come under the coverage of H.R. 700, as part of a "system" (i.e., another entity covered "in a manner consistent with" coverage of a nonfunded component of a higher education system).

One other bit of confusion is introduced by the catchall reference to "any other entity." Presumably, once the entity is targeted as a recipient, it is subject to the same federal oversight of "all operations" of its business and other activities, no matter how widely divergent or broadly dispersed they may be. That is, at least, one likely way to read "in a manner consistent with" other coverage determinations under H.R. 700.

A final provision of the bill deserving comment is the fund termination provision. H.R. 700 would leave fund termination intact as a remedy but would make it applicable "to the particular assistance which supports such noncompliance" (emphasis added). This is yet another expansive change (in the name of "restoration") the current law, which limits fund termination "to the particular program, or part thereof, in which such noncompliance has been so found." See, e.g, 20 U.S.C. § 1682 (Title IX) (emphasis added). The effect of this amendment -- and intentionally so as I understand it -- would be to overturn

that portion of North Haven Board of Education v. Bell, 456 U.S. 512 (1982), holding that the coverage and fund termination provisions of Title IX are coterminous.

There is a curious anomaly created by such an approach. The more expansive H.R. 700 is with respect to its coverage formula -- reaching as it does all programs, activities and operations of a college or university, state or local department or agency, private corporation, or any other entity -- the less meaningful the fund termination clause becomes, even as expanded to permit the cutoff of funds that "support" noncompliance. To put it another way, as federal enforcement authority is stretched farther and farther beyond the actual funded activity, to unrelated, remote activities of distant affiliates, fund cutoff is simply not an available remedy. Legislation crafted so that its most meaningful remedial provision is all but read out of the statute because of an overambitious and loosely defined coverage formula is, it would seem, in need of much more than a little bit of fine tuning. And that observation, of course, goes beyond the more obvious point that some more understandable definition of the phrase "supports such noncompliance" is needed than a statement that there must be a "specific nexus" between the funding and the discrimination in order to justify fund termination. 131 Cong. Rec. S1307 (daily ed. Feb. 7, 1985) (remarks of Sen. Cranston).

The net effect of H.R. 700 is to expand dramatically the reach of the four cross-cutting antidiscrimination statutes

that are the focus of the proposed legislation. Coverage is no longer to be tied to funded programs, or even necessarily to entities with funded programs, but in addition is to be expanded in elastic fashion to any and all components of a higher education system once one such component receives federal funds, to any and all activities and functions of a state or local department or agency, wherever located, once a federal dollar reaches that department or agency, to all plants, divisions and sales outlets of a private corporation if any aspect of the corporation receives federal aid, and to any other entity in its entirety (including all its parts and subparts) if it or any of its affiliates are extended federal financial assistance -- directly or indirectly, by transfer or otherwise.

Before Congress undertakes to make so massive a change in existing federal civil rights enforcement under Title IX, Title VI, Section 504 and the ADA, one would hope that it would first compile a record of a demonstrated need to superimpose a concomitantly expanding federal bureaucracy over state and local enforcement officials in the newly covered areas contemplated by H.R. 700. Thus far, we have heard no articulated reason for taking such drastic action other than the Grove City decision and its supposed adverse impact on women's college athletic programs. That problem, however, is more than answered by the Dole bill in the Senate, and does not require the wholly gratuitous revamping of federal enforcement authority that is called for in the Civil Rights Restoration Act of 1985.

forcement authority that is called for in the Civil Rights Restoration Act of 1985.

Congress has indeed passed broad civil rights legislation in the past to redress a demonstrated failure on the part of states and localities vigorously to prosecute discrimination on account of race, sex, religion, national origin or handicap. But in those cases, and they are familiar to us all -- the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, the Rehabilitation Act of 1973 -- the record was made that required protections were being denied or simply left unattended at the state and local levels. By contrast, we have nothing suggested in the debates underlying legislation similar to H.R. 700 in the last session of Congress, in the lengthy Presidential campaign of 1984, or in more recent utterances promoting the present bill, that even hints at like problems in the civil rights area today.

Rather, the impetus of H.R. 700 seems to be a purely ideological one -- i.e., to use the excuse of overturning Grove City as the vehicle for expanding to the fullest extent possible the reach and role of the federal bureaucracy into every facet of the public and private affairs of all our citizens. Nor has any care been given to defining meaningful parameters for such legislation. Instead, Congress is being asked in H.R. 700 to codify, sight unseen, the staggering body of administrative and regulatory practices and interpretations that has evolved throughout the Government agencies over the

life of the four cross-cutting statutes. Even if the need could be shown for so massive a federal takeover of civil rights enforcement activity, there certainly must be a more thoughtful and effective way to accomplish that result than the blanket codification of these statutes' "prior administration."

This seems particularly so in current times when exceedingly large deficits understandably raise concerns over increased federal expenditures. No estimate has been offered by the proponents of H.R. 700 of the costs involved in responsibly implementing and administering legislation of this sort. The limited federal resources available now for civil rights enforcement are patently inadequate to perform even the most minimal requirements of such legislation. Just to carry out the increased paperwork and oversight responsibilities under H.R. 700 would likely require a doubling of OCR (Office of Civil Rights) staffs in the various executive agencies. When increased compliance reviews and the inevitable deluge of litigation is also factored in, it is difficult to estimate the full dimension of the staggering additional costs that would inevitably be involved.

If H.R. 700 comes with an expensive price tag, Congress should focus on the costs every bit as much as the substance of the bill. It is a cruel hoax indeed to erect legislation filled with the promise of greatly expanded Federal civil rights enforcement and then provide no additional resources to perform the enlarged task. No interests are served by such

an approach and many hopes will ultimately be dashed. Of course, as S. 272 reflects, the stated need to overturn Grove City in order to protect against discrimination in educational institutions can be effectively handled through meaningful legislation that requires nowhere near the expenditure of funds and enhancement of resources as will be demanded by H.R. 700. That course addresses the concerns raised by the Supreme Court decision and insures that, within our federalist system, there will be no compromise of civil rights protections or of the enforcement activity necessary to guarantee those protections.

Thank you, Mr. Chairman. That concludes my prepared remarks and I would be happy to answer any questions.

THE WHITE HOUSE

WASHINGTON

March 6, 1985

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS JGR
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: William Bradford Reynolds Draft Testimony on H.R. 700, the "Civil Rights Restoration Act of 1985"

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

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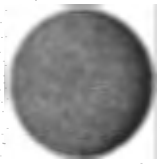

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

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TO	F. Fielding ✓	Take necessary action ☐
	M. Horowitz	Approval or signature ☐
	R. Landis	Comment ☐
	K. Wilson	Prepare reply ☐
	N. Sweeney	Discuss with me ☐
		For your information ☐
		See remarks below ☐
FROM	Branden Blum	DATE 3/5/85

REMARKS

Draft Justice testimony on H.R. 700, the "Civil Rights Restoration Act of 1985"

Attached is Justice's draft testimony for a joint hearing (scheduled for Thursday 3/7) before the House Education and Labor Committee and a sub-cmte. of the House Judiciary Committee. Copies have been forwarded to Agriculture, Education and HHS, which have also been invited to testify.

Please review and provide me with any comments by COB TODAY, March 5.

Attachment

OMB FORM 4
Rev Aug 70

DRAFT

TESTIMONY OF

WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE

BEFORE

COMMITTEE ON EDUCATION AND LABOR AND SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY
H.R. 700, THE "CIVIL RIGHTS RESTORATION ACT OF 1985"

MARCH 7, 1985

DRAFT

Mr. Chairman and Members of this Joint Committee, I appreciate the invitation to appear before you at these hearings and welcome this opportunity to present the views of the Department of Justice on the legislative proposal before you intended to address the Supreme Court's decision in the Grove City case.

It is, I think, a measure of our times, and a clear reflection of the progress made over the past twenty years, that we can come together today to discuss a new civil rights bill, voicing either support or opposition as the case may be, confident that we all share the same degree of revulsion for acts and practices of discrimination against any person on account of race, color, national origin, religion, sex, age, or handicap. The legislative framework that Congress has constructed over the past two decades has provided the Executive and Judicial branches with the essential tools they needed to wage a winning war against these most invidious forms of bias and prejudice. While that war is admittedly not yet won, civil rights enforcement activity has indeed brought us to the brink of victory -- with, I am proud to say, as impressive strides made in the past four years as in any other administration.

But I am not here this afternoon to detail the Justice Department's remarkable record since 1981 of civil rights' enforcement on behalf of all Americans victimized by discrim-

inatory conduct. That is for another day. Today I want to speak to H.R. 700, which carries the title "The Civil Rights Restoration Act of 1985." That bill revives a debate -- a much needed debate, I might add -- that was regrettably truncated last year in the House, and received only belated attention in the Senate before adjournment. The provocation for the legislation is the Supreme Court's Grove City decision of a little more than a year ago. 1/ As we all know, the Court was called upon in that case to interpret the reach of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits sex discrimination in any "education program or activity" that receives federal financial assistance.

It is enough for these purposes to focus on the Court's principal holdings in Grove City. First, the Court found that federal aid to students enrolled at Grove City College was sufficient to trigger Title IX coverage of the school, even though Grove City received no federal funds directly. That coverage, however, the Court held, pertained only to the education program or activity identified with the funding -- in that case, the student financial aid office.

The Grove City decision surprisingly touched off an avalanche of criticism. I say "surprisingly" because the programmatic interpretation announced by the Supreme Court

1/ Grove City College v. Bell, 104 S.Ct. 1211 (1984).

was precisely what Congress intended at the time of Title IX's enactment some 13 years ago, as the legislative debates at that time make clear -- and is wholly consistent with the manner in which the lower federal courts had been reading that and similar statutes for years. 2/ Nonetheless, many reached to overstate the Grove City decision, representing its program-specific holding to be a narrowing of Title IX coverage, and in turn the coverage under Title VI, Section 504 and the Age Discrimination Act. Accordingly, legislation was introduced ostensibly aimed only at overturning the program-specific holding of Grove City, but in reality setting forth a much more ambitious agenda. That effort having faltered in the 98th Congress, we are back today to examine the new proposal introduced at the beginning of this legislative session as H.R. 700 -- portrayed once again by many as a Grove City bill.

One thing that can, and should, be said at the very outset about H.R. 700 is that it is not a proper description of it to call the bill "Grove City legislation." If the Supreme

2/ E.g., Hillsdale College v. Department of Health, Education and Welfare, 696 F.2d 418 (6th Cir. 1982), vacated and remanded, 52 U.S.L.W. 3700 (U.S. March 26, 1984) in light of Grove City College v. Bell, 104 S. Ct. 1211 (1984); Rice v. President & Fellows of Harvard College, 663 F.2d 336 (1st Cir. 1981), cert. denied, 456 U.S. 928 (1982); University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va. 1982); Othen v. Ann Arbor School Board, 507 F. Supp. 1376 (E.D. Mich. 1982), aff'd 699 F.2d 309 (6th Cir. 1983).

Court's programmatic interpretation of Title IX is, indeed, a source of discomfort to the current Members of Congress, and a consensus exists in both Houses to overturn that feature of Grove City by providing through a statutory amendment institutionwide coverage of colleges and universities, the correct way to accomplish that is through a bill like S. 272, introduced by Senator Dole in the Senate and fully supported by the President.

S. 272 provides simply that, if federal aid is extended to any of a college's or university's educational programs or activities, then all of that college's or university's educational programs and activities will be subject to Title IX's prohibition against sex discrimination. Accordingly, women's college athletic programs -- which were portrayed in last year's hearings as the "big loser" as a result of Grove City -- would under this formulation receive the full benefit of Title IX's protections. The Dole bill goes even farther. In an effort to alleviate possible concern that our students could be deprived by other forms of discrimination from enjoying equal education opportunities, S. 272 amends the three similarly-worded, cross-cutting civil rights statutes -- Title VI of the Civil Rights Act of 1964 (race, color, and national origin), Section 504 of the Rehabilitation Act of 1973 (handicap) and The Age Discrimination Act of 1978 (age) -- to ensure that, as applied to education institutions, coverage upon receipt of any federal funds will be institutionwide, not program-specific.

The legislation I have just described is fully responsive to the Grove City decision. It assigns to Title IX the broad coverage demanded by some immediately following the Supreme Court's ruling and certainly removes any spectre that women's athletics (or any other education program) will be unprotected against sex discrimination -- or, indeed, against other forms of unlawful discrimination. Moreover, the Dole bill states explicitly that, as to the application of all four cross-cutting civil rights statutes outside the educational environment of schools, colleges and universities, their coverage is to remain as broad as it always has been, uninfluenced one way or the other by the Supreme Court's interpretation of Title IX in Grove City. 3/

H.R. 700 goes beyond -- far beyond -- the Title IX concerns raised by Grove City and the comprehensive legislative answer to that decision provided in S. 272. As with its counterpart in the Senate (S. 431), H.R. 700 moves the debate to a much larger arena, one that is no longer seriously interested in Grove City or Title IX, but has as its wider focus civil rights enforcement generally and the proper role to be played by the Federal Government. Let there be no mistake about it, the so-called "Civil Rights Restoration Act of 1985"

3/ Reference is also made in S. 273 to North Haven Board of Education v. Bell, 456 U.S. 512 (1982), as another Supreme Court decision construing Title IX as programmatic in scope that should not influence future court interpretations of these laws.

adopts for the first time a uniquely expansive view of federal enforcement authority in the field of civil rights. Nothing about the bill even hints at a "restoration." Instead, H.R. 700 uses the extension of a federal dollar as the excuse for opening virtually every entity in this country -- public and private -- to federal supervision, regulation, intervention, intrusion and oversight. Massive bureaucratic paperwork, onerous administrative reporting requirements, disruptive agency compliance reviews, all will become a regular feature of a dollar's worth of federal assistance.

It is no small irony that, on the heels of two elections where the citizens of this Nation voted overwhelmingly to reduce federal intrusion and interference in our daily lives -- and to return to the states a substantial measure of authority that is constitutionally theirs but has been wrested away over the years by an overzealous federal bureaucracy -- this Joint Committee is now considering one of the most far-reaching legislative efforts in memory to stretch the tenacles of the Federal Government to every crevice of public and private sector activity.

Therein lies the real debate over H.R. 700. We are not with this remarkably expansive bill embroiled in a dispute with the Supreme Court over its interpretation of Title IX, but rather are confronted with the most fundamental of issues in our federalist system of government. The proposed legis-

lation is premised on the philosophy that it is the Federal Government alone that can and should be trusted with enforcement authority in civil rights matters and thus it seeks a transfer virtually all power in this area to the federal bureaucracy. Juxtaposed on the other side of the debate are those of us who continue to believe that the role of the Federal Government in this and other areas is, under our Constitution, a limited one that cannot properly preempt the role of state and local authorities without a strong showing of need. Here, the pretense for "need" is Grove City. Yet, H.R. 700's response to that "Title IX-only" ruling can properly be likened to the proverbial "killing of a gnat with an elephant gun." Some of the more obvious consequences are worth highlighting.

H.R. 700 starts with the bold statement of an intent "to restore the prior consistent and longstanding Executive branch interpretation and broad, institutionwide application of those laws [Title IX, Title VI, Section 504 and the Age Discrimination Act] as previously administered." I am supremely confident, Mr. Chairman, that no cohesive, coherent comprehensible explanation of the meaning of that sentence is available. The prior "executive branch interpretation" of the statutes in question is not found in a single agency, but in fact resides in those 28 executive agencies of the Federal Government extending federal financial assistance. Their respective interpretations of these statutes have not only

not been internally "consistent," they have not been "consistent" from one agency to another; moreover, few agency pronouncements can boast of being "longstanding." The same can be said for the various agency "applications" of the four civil rights laws: While the descriptive modifier "broad, institutionwide" probably fits some misguided administrative action in some agencies, those instances mark the exception rather than the rule. See, e.g., 34 C.F.R. § 100.4(d)(2); 45 C.F.R. § 80.4(d)(2).

The Committee can, I suppose, fill this record with different witnesses' conflicting understandings of the manner in which select agencies may or may not have "previously administered" those laws. It is, nonetheless, a most imperfect legislative technique for Congress to offer vague and ill-defined legislation that, by its terms, is intended to codify an amorphous body of prior regulatory and administrative activity -- whatever it may be and no matter how unfaithful it was to the legislation itself. Civil rights enforcement will be poorly served if that is what ultimately emerges as the law, embroiling courts and litigants alike in endless controversies over which agency practice, of the many divergent ones from which to choose, Congress really intended to codify -- a aimless exercise for the most part since H.R. 700 gives no clue of how to sort through the labyrinth of "executive branch interpretation and . . . application of . . . laws that H.R. 700 would codify by wholesale incorporation.

If, as some have suggested, the essential thrust of the proposed bill is simply to give expansive coverage to the cross-cutting statutes, so that all disputes are to be resolved in favor of enlarging (not contracting) the reach of Title IX, Title VI, Section 504 and the ADA, problems do not go away. H.R. 700 is being advertised in much narrower terms as a civil rights restoration measure; yet much of its language goes well beyond "restoring" coverage to pre-Grove City understandings of the laws. Take, for example, the new definition of the term "program or activity" to include "all the operations" of an entity "any part of which is extended Federal financial assistance." At its most expansive, Title IX in its current form pertains only to "education programs or activities." The proposed new language can nonetheless properly be read as adroitly avoiding the modifier "education," and thus raising for the first time the spectre of Title IX coverage of non-educational programs and activities. Whatever else might be said about this proposed amendment, it plainly is not in any sense "restorational."

Nor do the four subsections to the definition of "program or activity" -- that undertake to describe coverage in terms of types of "entitites" -- harken back to pre-Grove City law in any meaningful or consistent fashion. Rather, the language is, for the most part, imprecise and open-ended (perhaps intentionally so), leaving vulnerable to federal regulation and oversight a variety of institutions, programs, and probably even individuals which Congress had previously

chosen to leave free from the burden of federal regulatory control.

Thus, the reference in H.R. 700 to "a department or agency of a state or of a local government" -- all the operations of which are to be covered if any part receives federal funding -- opens the way for the first time for nonfunded activity of a state agency in northern California, for example, to be subject to federal compliance reviews because of some other, unknown and wholly unrelated, funded activity of that same state agency that is going on in southern California. In short, under the bill, receipt of funds by one program operated by a department of a state in one area of the state would bring the Federal Government's regulatory power to bear on completely unrelated, and nonfunded, operations in a distant part of the state or locality. As a consequence, those who operate their activities without federal funding would be subject to possibly unfamiliar or unknown regulations and regulators despite the fact that they have no knowledge, control, or influence over those other persons in the department who chose to receive federal funds. This, again, can hardly be called a "restoration" of pre-Grove City civil rights coverage.

The same can be said with respect to the portion of H.R. 700 aimed directly at educational institutions. The bill here defines a program or activity as "a university or system of higher education." This necessarily results in far broader coverage than anything contemplated under Title IX or the

other cross-cutting statutes prior to Grove City. Never has the Department of Education sought Title IX assurances of compliance from entire systems of higher education, such as the University of California system; rather, it has sought and obtained such documentation only from each unit within the system that receives funding, such as U.C.L.A. Moreover, within each university or campus, federal financial assistance to the law school, for example, has heretofore not been interpreted to trigger coverage of other administratively separate units, such as the medical school, or the school of undergraduage studies. 3/ H.R. 700 appears to change all that.

Also, from all appearances, H.R. 700 changes coverage of parochial schools, bringing them for the first time within reach of Title IX as a result of including "other school systems" within the multi-definitional description of program or activity. Since there are no qualifiers (such as exist under current statutes) the receipt of federal funds by a single Catholic school in Chicago would presumably bring all Catholic schools in the entire Archdiocese under the Federal Government's watchful eye.

3/ The current statutory definition of "educational institution" in Title uses was the phrase "administratively separate unit" as the institutional breakpoint. This phrase has been defined more precisely in agency regulations to depend on a school's admission's policy. Thus, each discrete and independent admissions program will generally identify the entity as an "administratively separate unit." See 34 C.F.R. 106.2(o).

No less ambitious is the bill's sweeping treatment of private organizations as fitting within the new definition of "program or activity." Under H.R. 700, all of the operations of a corporation, or partnership, or other private organizations are covered if any of their parts are extended federal aid. Thus, the bill would not just cover all the operations of a privately-owned hospital if one part of the hospital received funding -- a primary goal of the bill's Senate sponsors. See, e.g., 131 Cong. Rec. S-1312 (daily ed. Feb. 7, 1985) (remarks of Sen. Durenberger). It would cover all the operations of the corporation as well, whether or not related to the delivery of health services. This stands in stark contrast with pre-Grove City law, when private enterprise was free from federal intrusion or interference except to the extent of its funded programs and activities.

Even so, I have yet to reach the outer limits of the regulatory net cast by H.R. 700. For, in the final subsection defining programs or activities, the bill utilizes the vaguest of catchall language to sweep within its coverage "any other entity determined [to be covered] in a manner consistent with coverage provided with respect to entities described in [the preceding three] paragraphs." I will readily admit to confusion as to the intended meaning of the phrase "in a manner consistent with." Is the Mom-and-Pop grocery store that receives food stamps from customers in payment for produce to be regarded as covered "in a manner consistent with"

the coverage of a Grove City College that receives student tuition payments that are comprised, at least in part, of federal loans? Are farmers and ranchers who receive federal price supports or crop insurance subsidies or disaster loans to be regarded as covered "in a manner consistent with" the coverage of a private corporation that receives a dollar of federal financial assistance? Is a transferee of federal funds from the initial recipient to be covered "in a manner consistent with" the coverage of a state agency that receives a transfer of federal funds from another department or office of the state? No exemptions are written into the proposed legislation for ultimate beneficiaries.

In each of the above examples, monies disbursed by the Federal Government ultimately find their way into the coffers of the "other entity," either directly or indirectly, and H.R. 700 indicates that no matter how large or small the federal assistance, how long or fleetingly it remains with the entity, or how far removed in the chain of distribution, coverage attaches. Indeed, on the understanding of H.R. 700 as providing for systemwide coverage of higher education "systems" once a federal dollar is received by any component of that system, there is reason for concern by members of trade associations, for example, that aid to the association or one of its members could lead to coverage of all other members "in a manner consistent with" systemwide coverage of higher edu-

cation systems. Similarly vulnerable, it seems, are subsidiaries within a "corporate family," bank affiliates, and even independent contractors -- all of which by analogy can (without ever actually receiving federal funds or knowing others with whom they are doing business are federally funded to some extent) come under the coverage of H.R. 700, as part of a "system" (i.e., another entity covered "in a manner consistent with" coverage of a nonfunded component of a higher education system).

One other bit of confusion is introduced by the catchall reference to "any other entity." Presumably, once the entity is targeted as a recipient, it is subject to the same federal oversight of "all operations" of its business and other activities, no matter how widely divergent or broadly dispersed they may be. That is, at least, one likely way to read "in a manner consistent with" other coverage determinations under H.R. 700.

A final provision of the bill deserving comment is the fund termination provision. H.R. 700 would leave fund termination intact as a remedy but would make it applicable "to the particular assistance which supports such noncompliance" (emphasis added). This is yet another expansive change (in the name of "restoration") the current law, which limits fund termination "to the particular program, or part thereof, in which such noncompliance has been so found." See, e.g, 20 U.S.C. § 1682 (Title IX) (emphasis added). The effect of this amendment -- and intentionally so as I understand it -- would be to overturn

that portion of North Haven Board of Education v. Bell, 456 U.S. 512 (1982), holding that the coverage and fund termination provisions of Title IX are coterminous.

There is a curious anomaly created by such an approach. The more expansive H.R. 700 is with respect to its coverage formula -- reaching as it does all programs, activities and operations of a college or university, state or local department or agency, private corporation, or any other entity -- the less meaningful the fund termination clause becomes, even as expanded to permit the cutoff of funds that "support" noncompliance. To put it another way, as federal enforcement authority is stretched farther and farther beyond the actual funded activity, to unrelated, remote activities of distant affiliates, fund cutoff is simply not an available remedy. Legislation crafted so that its most meaningful remedial provision is all but read out of the statute because of an overambitious and loosely defined coverage formula is, it would seem, in need of much more than a little bit of fine tuning. And that observation, of course, goes beyond the more obvious point that some more understandable definition of the phrase "supports such noncompliance" is needed than a statement that there must be a "specific nexus" between the funding and the discrimination in order to justify fund termination. 131 Cong. Rec. S1307 (daily ed. Feb. 7, 1985) (remarks of Sen. Cranston).

The net effect of H.R. 700 is to expand dramatically the reach of the four cross-cutting antidiscrimination statutes

that are the focus of the proposed legislation. Coverage is no longer to be tied to funded programs, or even necessarily to entities with funded programs, but in addition is to be expanded in elastic fashion to any and all components of a higher education system once one such component receives federal funds, to any and all activities and functions of a state or local department or agency, wherever located, once a federal dollar reaches that department or agency, to all plants, divisions and sales outlets of a private corporation if any aspect of the corporation receives federal aid, and to any other entity in its entirety (including all its parts and subparts) if it or any of its affiliates are extended federal financial assistance -- directly or indirectly, by transfer or otherwise.

Before Congress undertakes to make so massive a change in existing federal civil rights enforcement under Title IX, Title VI, Section 504 and the ADA, one would hope that it would first compile a record of a demonstrated need to superimpose a concomitantly expanding federal bureaucracy over state and local enforcement officials in the newly covered areas contemplated by H.R. 700. Thus far, we have heard no articulated reason for taking such drastic action other than the Grove City decision and its supposed adverse impact on women's college athletic programs. That problem, however, is more than answered by the Dole bill in the Senate, and does not require the wholly gratuitous revamping of federal enforcement authority that is called for in the Civil Rights Restoration Act of 1985.

forcement authority that is called for in the Civil Rights Restoration Act of 1985.

Congress has indeed passed broad civil rights legislation in the past to redress a demonstrated failure on the part of states and localities vigorously to prosecute discrimination on account of race, sex, religion, national origin or handicap. But in those cases, and they are familiar to us all -- the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, the Rehabilitation Act of 1973 -- the record was made that required protections were being denied or simply left unattended at the state and local levels. By contrast, we have nothing suggested in the debates underlying legislation similar to H.R. 700 in the last session of Congress, in the lengthy Presidential campaign of 1984, or in more recent utterances promoting the present bill, that even hints at like problems in the civil rights area today.

Rather, the impetus of H.R. 700 seems to be a purely ideological one -- i.e., to use the excuse of overturning Grove City as the vehicle for expanding to the fullest extent possible the reach and role of the federal bureaucracy into every facet of the public and private affairs of all our citizens. Nor has any care been given to defining meaningful parameters for such legislation. Instead, Congress is being asked in H.R. 700 to codify, sight unseen, the staggering body of administrative and regulatory practices and interpretations that has evolved throughout the Government agencies over the

life of the four cross-cutting statutes. Even if the need could be shown for so massive a federal takeover of civil rights enforcement activity, there certainly must be a more thoughtful and effective way to accomplish that result than the blanket codification of these statutes' "prior administration."

This seems particularly so in current times when exceedingly large deficits understandably raise concerns over increased federal expenditures. No estimate has been offered by the proponents of H.R. 700 of the costs involved in responsibly implementing and administering legislation of this sort. The limited federal resources available now for civil rights enforcement are patently inadequate to perform even the most minimal requirements of such legislation. Just to carry out the increased paperwork and oversight responsibilities under H.R. 700 would likely require a doubling of OCR (Office of Civil Rights) staffs in the various executive agencies. When increased compliance reviews and the inevitable deluge of litigation is also factored in, it is difficult to estimate the full dimension of the staggering additional costs that would inevitably be involved.

If H.R. 700 comes with an expensive price tag, Congress should focus on the costs every bit as much as the substance of the bill. It is a cruel hoax indeed to erect legislation filled with the promise of greatly expanded Federal civil rights enforcement and then provide no additional resources to perform the enlarged task. No interests are served by such

an approach and many hopes will ultimately be dashed. Of course, as S. 272 reflects, the stated need to overturn Grove City in order to protect against discrimination in educational institutions can be effectively handled through meaningful legislation that requires nowhere near the expenditure of funds and enhancement of resources as will be demanded by H.R. 700. That course addresses the concerns raised by the Supreme Court decision and insures that, within our federalist system, there will be no compromise of civil rights protections or of the enforcement activity necessary to guarantee those protections.

Thank you, Mr. Chairman. That concludes my prepared remarks and I would be happy to answer any questions.

THE WHITE HOUSE

WASHINGTON

March 6, 1985

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft Education Testimony on H.R. 700, the Civil Rights Restoration Act of 1985

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO	✓ Fred Fielding Jack Svahn	Take necessary action ☐ Approval or signature ☐
	Mike Horowitz	Comment ☐
	Barry White	Prepare reply ☐
	Karen Wilson	Discuss with me ☐
	Naomi Sweeney	For your information ☐ See remarks below ☐
FROM	Branden Blum	DATE 3/6/85

REMARKS

Subject: Draft Education Testimony on H.R. 700, the "Civil Rights Restoration Act of 1985"

Attached is Department of Education draft testimony for the joint hearing (scheduled for tomorrow) before the House Education and Labor Committee and the House Judiciary Committee.

Copies have been forwarded to Agriculture, HHS and Justice.

Please review and provide me with any comments by 2:30 p.m. today, 3/6.

OMB FORM 4
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Education

DRAFT

Mr. Chairman, I welcome this opportunity to appear before you and the members of the Committees on Education and Labor and Judiciary convened here for the purpose of considering legislation intended to overcome the effects of the Supreme Court's decision in Grove City v. Bell.

Within the Department of Education, the Office for Civil Rights (OCR) is responsible for the administration and enforcement of those statutory provisions which have been affected by the Grove City decision; Title VI of the Civil Rights Act of 1964 which prohibits discrimination on account of race, color or national origin; Title IX of the Education Amendments of 1972 which prohibits discrimination on account of sex; Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on account of handicap and the Age Discrimination Act of 1975. OCR must ensure that civil rights responsibilities embodied in those statutes are carried out by over 16,000 elementary and secondary education agencies and 3,200 colleges and universities, thereby assuring that 58 million students in this country are afforded equal access to programs and activities receiving Federal financial assistance.

In the Grove City case, the Supreme Court unanimously held that Grove City College, by virtue of its participation in the Basic Educational Opportunity Grant (BEOG) program, is a recipient of Federal financial assistance, and is therefore subject to Title IX of the Education Amendments of 1972. However, relying on the "program or activity" language in the statute, the Court held that Title IX coverage triggered by such Federal financial assistance extends only to the College's financial aid office, and does not trigger broader coverage.

DRAFT

Because this interpretation contrasted with the broader interpretation applied by the Department of Education and its predecessor, the Department of Health Education and Welfare, the direct result of this aspect of the decision was to narrow OCR's jurisdiction. We would welcome and support legislation which addresses that most disturbing feature of the Grove City decision. However, it is important that the approach adopted to achieve this result does not, at the same time, create other unintended results and unnecessary confusion. Unfortunately, several provisions of H.R. 700, as they would apply to educational institutions, create the possibility for a Federal jurisdiction which would be broader than that exercised pre-Grove City. A few examples would illustrate my point.

H.R. 700 would provide that the term "'program or activity' means all the operations of--" the educational entities specified in the proposal, so long as "any part" of those entities received Federal financial assistance (Emphasis added). With reference to educational entities -- universities and school districts -- such a definition of "program or activity" would certainly create jurisdiction in portions of "operations" in which OCR would not have exercised jurisdiction based on interpretations of the term "program or activity" in use pre-Grove City. For example, under H.R. 700, financial assistance flowing to only one "part" of a 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

DRAFT

of its endowment fund. In declaring that all such operations of a college or university, even those absolutely unrelated to educational programming, are to be within the jurisdiction of the Federal government under such circumstances, H.R. 700 goes well beyond its announced purpose of merely restoring that jurisdiction previously exercised. Similarly, H.R. 700 creates the opportunity for an expanded jurisdiction with reference to "all the operations" of other entities to which the Department provides financial assistance -- State education agencies (SEAs), local education agencies as well as other recipients of financial assistance from this Department where only one part of the entity actually received the assistance.

The approach of H.R. 700 contrasts with that offered by S. 272 which, as introduced by Senator Dole, offers the best possibility for ameliorating the effects of the Grove City decision without expanding Federal jurisdiction beyond that existing prior to the Court's action. S. 272 provides that if Federal aid is extended to a educational program or activity at an institution, then all the institution's educational programs or activities will be subject to the civil rights laws. This simple approach would respond to the Grove City decision by permitting OCR to exercise jurisdiction in all educational programs at a recipient institution and would not, at the same time, require that jurisdiction also be asserted over certain noneducational "operations" in which the Department has not traditionally interfered.

DRAFT

Since the Grove City decision over a year ago, OCR has maintained a fine record of achievement in enforcing the law and accommodating the Supreme Court's interpretation of the term "program or activity" which appears in all four of the statutes OCR enforces. OCR has continued to investigate cases, issue findings, conduct negotiations, reach settlements when possible, and, when necessary, proceed to initiate enforcement proceedings in order to bring about compliance with the civil rights laws for which it is responsible. At the same time, in order to implement the Supreme Court's decision in Grove City, the Department is analyzing its programs which disburse funds to determine whether or not a particular type of assistance would be regarded as providing broad or more limited jurisdiction. While that process is continuing, it has already resulted in written policy which addresses the scope of jurisdiction provided by many of the grant programs administered by the Department of Education, such as Chapters I and II of the Education Consolidation and Improvement Act.

As of February 11, 1985 OCR had identified approximately 63 cases in which its jurisdiction had been curtailed by the Grove City decision. Following the issuance of written policy, OCR confirmed the lack of jurisdiction in five of those cases, while in six others OCR was able to reestablish jurisdiction. In 52 cases, mostly arising in postsecondary contexts, OCR staff is gathering more data to apply the existing policy or is awaiting further written policy guidance.

Mr. Chairman, I would be happy, at this time, to respond to questions from you or members of the committees.

Thank you.

THE WHITE HOUSE

WASHINGTON

March 6, 1985

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ANALYST
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft Agriculture Testimony on H.R. 700
The Civil Rights Restoration Act of 1985

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

ID # _____ CU

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CORRESPONDENCE TRACKING WORKSHEET

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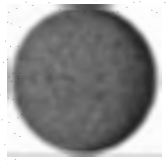

Name of Correspondent: Branden Blum

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Draft agriculture testimony on H.R. 700 the Civil Rights Restoration Act of 1985

ROUTE TO: | **ACTION** | **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO	F. Fielding J. Svahn	Take necessary action	☐
	M. Horowitz	Approval or signature	☐
	R. Landis	Comment	☐
	K. Wilson	Prepare reply	☐
		Discuss with me	☐
	N. Sweeney	For your information	☐
		See remarks below	☐
FROM	Branden Blum	DATE	3/5/85

REMARKS

Draft Agriculture testimony on H.R. 700, the "Civil Rights Restoration Act of 1985"

Attached is Agriculture's draft testimony for a joint hearing on H.R. 700 before the House Education and Labor Cmte. and the House Judiciary Committee scheduled for Thursday, March 7. Copies have been forwarded to Justice, HHS and Education.

Please review and provide me with any comments by 10:00 A.M. Wednesday, March 6.

SPECIAL

OMB FORM 4
Rev Aug 70

OFFICE OF THE GENERAL COUNSEL (Revised)

U. S. DEPARTMENT OF AGRICULTURE

Statement of Daniel Oliver, General Counsel
before the
House Committee on Education and Labor
and Judiciary

Mr. Chairman, it is a pleasure to present to this Committee the Department of Agriculture's views on H.R. 700 entitled the "Civil Rights Restoration Act of 1985."

The President and this Administration, as you know, and everyone should know, is committed to the principles of non-discrimination and equal opportunity. I will say no more about it, except that I concur heartily with the President's position on this matter.

H.R. 700 was introduced in reaction to the Supreme Court's decision in the Grove City case (Grove City College v. Bell, 104 S. Ct. 1211 (1984)). The stated purpose of the bill is, as I understand it, to reverse only a single holding of that decision. The holding in question is that the law prohibiting discrimination on the basis of gender (Title IX of the Education Amendments of 1972) prohibits such discrimination only in programs or activities receiving Federal financial assistance.

Some have said that that reading of the law (which I will call the "program-specific reading") represents a "new interpretation" of the anti-discrimination laws. I should add that the laws prohibiting

discrimination on the grounds of race, handicap, and age have the same provision.

I believe that the "program-specific reading" of the law is not a new interpretation. Every United States court of appeals that has considered the issue has adopted the program-specific reading -- every court, that is, except the Third Circuit, in the Grove City case. And, of course, the Third Circuit was overruled by the Supreme Court.

But more important for our purposes, Mr. Chairman, is the statutes' focus on activities receiving Federal financial assistance rather than on recipients of that assistance. This focus makes clear that these anti-discrimination laws are not concerned with the activities of the ultimate beneficiaries of Federal financial assistance, but with the activities of the groups and individuals through which the government works to provide assistance to those ultimate beneficiaries.

By broadly covering recipients of Federal assistance in their entirety H.R. 700 seems to change that focus. H.R. 700, in amending 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, would provide that the term "program or activity" means all the operations of, among other things, "a corporation, a partnership, or other private organization" -- a definition that would seem, by its terms, to cover such entities regardless of whether they are engaged in providing assistance to ultimate beneficiaries, or are themselves the ultimate beneficiaries of the Federal assistance.

A substantial proportion of the approximately 2.2 million American farmers conduct their farming business as corporations, partnerships, or other private organizations. If only one-half of them do so, over one million of them would become subject to the anti-discrimination laws if H.R. 700 were enacted -- with whatever paper work burdens that might be required.

How broad the term "other private organizations" is meant to be can only be guessed at. Does it include a farmer farming with his spouse and children?

At any rate, the provision including a corporation or a partnership within the terms "program or activity" would seem to cover all the ways of farming that come quickly to mind except farming as an unincorporated individual. H.R. 700 would therefore work a very considerable change in the anti-discrimination laws.

H.R. 700 also provides that the term "program or activity" means all the operations of "any other entity determined in a manner consistent with the coverage provided with respect to entities described in [the preceding paragraphs]." The scope of that definition is not clear. Would a farmer who operates not as a corporation but as an individual be considered an "entity"? If he is an "entity" within the meaning of the term in H.R. 700, could he be an "entity" "determined" under H.R. 700 to be included within the terms "program or activity"? (It is not easy to determine the meaning of that sentence in H.R. 700.)

In addition, H.R. 700 would cover a corporation, partnership or other private organization "any part of which is extended Federal financial

assistance." I assume that the term "extended" as used in H.R. 700 is meant to imply not just that assistance is offered, but also that it is accepted. This matter ought to be clarified. If a farmer who is a member of a partnership also farms in his individual capacity, and in that individual capacity is extended Federal financial assistance, is the partnership to which he belongs a partnership or other entity "any part of which is extended Federal financial assistance?" Does a farmer who is a member of a cooperative and who is extended Federal financial assistance bring the other members of the cooperative under the coverage of these statutes?

In sum, it seems clear that H.R. 700 would make great changes in the coverage of the farming community by these statutes. Corporations and partnerships are explicitly covered by H.R. 700. Individual farmers might be covered. That was certainly not the situation prior to the Supreme Court's decision in the Grove City case. Therefore, to the extent that this bill is meant only to return the law to some people's understanding of the status quo ante, it must be more carefully crafted in regard to America's farmers.

THE WHITE HOUSE
WASHINGTON

TO: JGR

FROM: ***Richard A. Hauser*** RAH
Deputy Counsel to the President

FYI: ✓ _____

COMMENT: _____

ACTION: _____

THE WHITE HOUSE

WASHINGTON

April 29, 1985

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Department of Agriculture Report on H.R. 700 the "Civil Rights Restoration Act of 1985"

Counsel's Office has reviewed the above-referenced report, and finds no objection to it from a legal perspective.

ID # _____ CU

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CORRESPONDENCE TRACKING WORKSHEET

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Name of Correspondent: James C. Munn

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Dept of Agriculture report on H.R. 700, the Civil Rights Restoration act of 1985

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U.S. Department of Justice civil rights

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

May 20, 1985

MEMORANDUM FOR: Honorable Richard A. Hauser
Deputy Counsel to the President
The White House

FROM: Michael A. Carvin MC
Special Assistant
to the Assistant Attorney General
Civil Rights Division

Here are some background matters on our Stotts Motion in Chicago. Brad Reynolds has talked with John Roberts about this.

Attachment

cc: John Roberts

May 20, 1985

Background on Filing of Stotts Motions in Chicago

Events: In cases to which we are a party involving the Chicago Police Department and the Chicago Fire Department we filed 1) memoranda in opposition to the continued use of eligibility lists for police officer and firefighter compiled from old examinations on the grounds that those examinations discriminated unlawfully against blacks and were otherwise tainted and 2) motions to modify decrees and orders in light of Firefighters Local Union 1784 v. Stotts, 104 S.Ct. 2576 (1984) by eliminating numerical ratios and other provisions which grant preferences based on race, sex or national origin in hiring and promotion. Our papers seek development of nondiscriminatory valid and racially neutral selection procedures for hiring and promotion.

I. Facts: There are three suits brought by the United States against Chicago concerning discriminatory employment practices. One suit involves hiring and promotion in the Police Department and was consolidated with a suit by private plaintiffs. There are numerous parties and intervenors in the Police Department case, which was hotly contested in the district court and court of appeals and resulted in a decree entered in 1976 which was modified on several occasions thereafter. The present orders call for ratios based upon race, sex and national origin both for entry level hiring and promotion. There are two Fire Department cases brought by the United States, both of which were settled by consent decrees. The memoranda and the motion in the Police Department cases were filed pursuant to a court imposed scheduled as was the memorandum in the Fire Department case.

II. Position of the United States: In each of the cases the United States objects to the continued use of the present eligibility lists for hiring because the lists were based upon unlawful examinations, the discriminatory impact of which was only partially offset by the hiring ratios; because the lists are more than a year old and therefore within the authority of the City to take down under state law; because in the fire department the list was further compromised by bribery favoring white candidates; and because given the discriminatory nature of the examinations, federal law precludes their use in rank order, and the decision of the Supreme Court in Stotts precludes the use of race, sex and national origin as a basis for selection. It is the position of the United States that ordering hiring or promotion on the basis of race, sex or

national origin is beyond the authority of the district court, and that the Supreme Court so ruled in the Stotts case.

III. Relationship To Administration Philosophy. The Administration position is that persons should not be hired or promoted because of their race, color, sex or national origin or on the basis of discriminatory tests, but should be hired on the basis of their abilities. The development and use of neutral nondiscriminatory selection procedures is necessary to effectuate that position.

IV. Anticipated Criticism and Planned Department of Justice Response

Criticism: The Department should not go around country stirring up new racial disputes in cases that are already settled.

Response: These cases are far from settled. The memoranda were filed in response to contested motions by other parties or intervenors, seeking to require that old eligibility lists be retained and used in the future; and the Stotts motion in the police case was filed pursuant to the specific schedule fixed by the judge in that case. Moreover, the Stotts motions were closely connected with the issue raised in the contested motions.

Criticism: The Stotts program favors whites at the expense of minorities.

Response: Our position in these cases refutes that contention. We are opposing continued use of the tests which unlawfully discriminate against minorities; but we also seek to stop ratios in hiring and promotion based upon race, sex and national origin, so that persons can be hired and promoted on the grounds of their ability to perform the job as measured by neutral, valid tests.

Criticism: The courts have rejected our interpretations of Stotts.

Response: While some courts have ruled against our interpretation of Stotts, the issue remains in litigation and has not yet come before the Supreme Court. We are confident that our position will be vindicated when the Supreme Court reaches the issue.

V. Talking Points

° We are obliged to advise the courts of our interpretation of binding Supreme Court precedent in disputed cases to which we are a party.

° The Justice Department will continue to strive to enforce the rights of all Americans, regardless of race, sex, or national origin.

° We continue to bring many suits on behalf of blacks, hispanics and women to end discrimination against them. For example, on March 25, 1985 we filed a suit against the Department of Corrections of Massachusetts to end discrimination in hiring and promotion, and assignment against women by that State Agency.

for civil rights

THE FUTURE, OF GOALS - TIMETABLES AND QUOTAS

Three celebrated authors who tried their hand at predicting the shape of future societies obtained very mixed results. The novels of two, George Orwell's 1984 and Aldous Huxley's Brave New World are well known. A short story by the third, Kurt Vonnegut's "Harrison Bergeron" has yet to receive the attention it deserves. Perhaps this lack of attention is due to its title, which gives potential readers no clue as to its subject. More likely, however, it is due to the treatment of its subject, civil rights, and for this reason it is instructive.

1984 has come and gone. And, although most of the technology Orwell envisioned now exists, in spite of the Politburo's best efforts, his stark vision of the future in Soviet Russia has yet to be fully realized.

Meanwhile in the West, widespread acceptance of such practices as in-vitro fertilization, the production of test tube babies; substance abuse by all segments of society; and the breakdown of the traditional family structure, caused in large measure by the liberal policies of welfare-state governments, unfortunately, have combined to make Brave New World less a prediction of the future than a description of the present.

In the seven short pages of "Harrison Bergeron", Vonnegut paints a grim picture of life in 21st century America -- a country apparently gone mad in its quest for equality. The effect of this portrait is intensified by the realization that like Huxley's vision of the future, Vonnegut's future could soon become our present. To prevent this from occurring, we must act quickly and decisively to return to the historical puposes of the civil rights laws and amendments to the constitution: To end discrimination and to provide equal opportunity for all Americans. If we do not, what might we expect:

> The year was 2081, and everybody was finally equal. They weren't only equal before God and the law. They were equal every which way. Nobody was smarter than anybody else. Nobody was stronger or quicker than anybody else. All this equality was due to the 211th, 212th, and 213th Amendments to the Constitution, and to the unceasing vigilence of agents of the United States Handicapper General.

This passage, written a year before the passage of the Civil Rights Acts of 1964 and long before their widespread abuse, earns Vonnegut high marks for prescience and cynicism.

For almost a decade, federal regulators and their allies in the civil rights industry, like agents of the imaginary "Handicapper General", have pushed many affirmative action concepts beyond their logical, legal, and moral limits. Some of these actions undoubtedly were the result of inadvertance or inattention on the part of those taking them. Other actions, like the recent statement of two holdover Commissioners of the U.S. Commission on Civil Rights, are the product of a type of thinking most Americans consider antithetical to our values. Their statement that the "Civil Rights laws were not passed to give civil rights protection to all Americans, as the majority of this Commission seems to believe." is not merely incorrect, but also serves to confuse and inflame.

Inattention and inadvertance are far easier to accept. Believe me, I know. In 1982 I felt that quotas were an extraordinary remedy which should not be routinely sought. At that time, I had little formal background in civil rights law and had not often thought about, much less questioned, the prevailing popular notions about remedies. After two and one half years on the Equal Employment Opportunity Commission, some background, and much thought, I know that quotas are an extra-legal remedy which never should be sought. Other remedies merit similar scrutiny.

What often surprises and saddens me is the amount of time and energy people put into trying to understand the nuances of some of the arguments in favor of formula-type remedies. Arguments that in contexts other than civil rights would be rejected out of hand as specious. Arguments that we now find out were often disingenuously made. The arguments supporting goals and timetables are a case in point.

Goals and timetables people are told, and many uncritically repeat, "Are like managing by objectives" or are simply "The way that business does business". For reasons like these, it is argued that goals and timetables are innocuous and benign. Nonsense! They are nothing of the kind. A quota by any other name is just as wrong; not to mention discriminatory.

If you question equating goals and timetables with quotas, just ask any proponent of formula-type relief. That's how I was first apprised that such distinctions simply do not exist. Better still, just think about it. The arguments distinguishing goals from quotas fail to withstand even minimal scrutiny.

I am not sure that it is fair to suggest that it is but a stone's throw from formula-type relief to the America of "Harrison Bergeron". Goals and timetables as well as quotas may not inexorably lead to the type of body restraints and mind control devices that Vonnegut envisioned to make all Americans equal in the year 2081. It is undeniable, however, that to achieve his vision, the concept that some people must be placed at a disadvantage in order to make everybody equal is a necessary predicate. That is the danger which must be avoided.

What is important, is that we continue to make progress in the area of civil rights. This can and must be done fairly, without according special preferences to some or resorting to other extra-legal means. To do so, we first must be mindful of the primacy of individual rights in our constitutional and statutory schemes. We also must accept the fact that as we are endowed with dissimilar abilities and talents, so too will we achieve different results. This has been the guiding principle behind the Reagan Administration's battle against discrimination.

There is perhaps no better summary of the Reagan Administration position on civil rights than can be found in an unfamiliar, and often unfriendly, soure: the editorial pages of the Washington Post. Its February 27th editorial,"Civil Rights for Some Only?", is a vindication of the position espoused by Administration spokesmen, most notable among them Chairmen Clarence Thomas of the U.S. Equal Employment Opportunity Commission, Clarence Pendleton of the U.S. Commission on Civil Rights, and Assistant Attorney General William Bradford Reynolds. It bears repetition here because it provides the satisfaction one can only derive from watching a heretic recant or a heathen convert.

> Civil rights leaders for 120 years have sought to guarantee equal treatment for all citizens, not special rights for some only. For a time, public attention has properly been given to the needs of some groups because they have suffered discrimination for so long. But this does not diminish, and should not infringe upon, the rights guaranteed to others. It demeans the statutes at issue to regard them as mere compensatory laws or programs for preferential treatment. They are the affirmation of fundemental rights and values shared by all Americans and belonging to each.

Views like the foregoing, which have shaped the civil rights policies of the Reagan Administration, guarantee that Vonnegut's America will never come to pass. We will permit no person or group to be denied their rights or hindered in the attainment of their potential, while others are favored in the guise of protection. The days when discrimination as a conscious and explicit component of government policy, fortunately, are over. The country will certainly be better off for this.