1985

Grove City College v. Bell: Restricting the Remedial Reach of Title IX

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Notes

Grove City College v. Bell: Restricting The Remedial Reach Of Title IX

INTRODUCTION

Congress enacted Title IX of the Education Amendments of 1972 to address the pervasive problem of sex discrimination in the schools. Section 901 of Title IX broadly mandates that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to dis-


The fact sheet which accompanied the proposed legislation in the Senate contained data indicating that in 1970 women comprised only 29.3% of the entering freshmen in the 35 most selective schools in the country. Further, it reflected that men received higher financial awards on the average, that far more men were admitted to graduate schools and that female instructors were paid substantially less than their similarly qualified male counterparts. The fact sheet concluded that "[d]iscrimination against women, in contrast to that against minorities, is still overt and socially acceptable within the community." Comment, The Expansion of Constitutional and Statutory Remedies for Sex Segregation in Education: The Fourteenth Amendment and Title IX of the Education Amendments of 1972, 32 EMORY L.J. 1111, 1144 n. 119 (1983) (citing fact sheet accompanying summary of amendment No. 874 to the Higher Education Bill, S. 659, 92d Cong., 2d Sess., 118 CONG. REC. 5808-09 (1972)).

Sex discrimination surfaces in a wide range of activities within a school. For example, the majority of school principals are men. Todd, Title IX of the 1972 Education Amendments: Preventing Sex Discrimination in Public Schools, 53 TEX. L. REV. 103, 104 (1974). However, men tend to be underrepresented in supportive positions. Id. The structure of curricula, such as a required home economics course for girls and an industrial arts course for boys, evidences further sex bias. Id.

Perhaps the greatest amount of attention has been directed at the glaring discrimination occurring with a school's physical education and sports programs. For commentaries focusing solely upon sex discrimination in athletics, see generally, Cox, Intercollegiate Athletics and Title IX, 46 GEO. WASH. L. REV. 34 (1977) (noting the disparity in funding, equipment, facilities, coaching and publicity for men's and women's athletic programs). See also Note, Sex Discrimination and Intercollegiate Athletics, 61 IOWA L. REV. 420 (1975) [hereinafter cited as Note, Sex Discrimination] (although the struggle to eliminate sexism in collegiate athletics has gained momentum, equality may be achieved only when outdated societal attitudes toward women are discarded); Comment, Title IX's Promise of Equality of Opportunity in Athletics: Does it Cover the Bases?, 64 KY. L.J. 432 (1975) (Title IX's regulations for athletics can succeed only if women are afforded equal opportunity and the necessary funds); Note, Sex Discrimination and Intercollegiate Ath-
discrimination under any education program or activity receiving Federal financial assistance." Envisioning a comprehensive statute which would protect women from biased educational policies, Congress narrowly limited those schools or activities which would escape Title IX's reach. In 1975, the Department of Health, Education and Welfare issued regulations designed to implement Title IX's broad prohibition against sex discrimination and govern federally assisted educational programs or activities. Despite the ex-

letics: Putting Some Muscle on Title IX, 88 YALE L.J. 1254 (1979) (arguing that Title IX requires more stringent regulations to address sex discrimination in collegiate athletics).

This note will utilize the terms "school," "institution" and "college" interchangeably to refer to an educational entity which may or may not receive federal financial support.


5. Nine exceptions to Title IX's coverage are found in § 901(a)(1)-(a)(9):
   (1) With regard to admissions policies, restriction of Title IX's prohibitions to vocational, professional, graduate, and public undergraduate institutions;
   (2) Exemption for educational institutions commencing planned change in admissions;
   (3) Exemption for educational institutions of religious organizations;
   (4) Exemption for military institutions;
   (5) Exemption for institutions with traditionally single sex admissions policy;
   (6) Exemption for social fraternities or sororities;
   (7) Exemption for Boy or Girl Scout Conferences;
   (8) Exemption for father-son or mother-daughter activities at educational institutions;
   (9) Exemption for scholarship awards in beauty pageants.

6. Section 902, the enforcement provision of Title IX, authorizes the Department to regulate federally assisted education programs. § 902 states in relevant part:
   Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section [901] . . . with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law . . .

The Department of Health, Education and Welfare regulated federal education funding prior to 1980. The Department of Education has replaced HEW as the agency administering Title IX, pursuant to § 301(a)(3) of the Department of Education
pansive language and broad remedial purpose of the statute, divergent interpretations of its wording have generated tremendous controversy as to the statute's intended application.\footnote{For various judicial interpretations of Title IX, see infra notes 59-65 and accompanying text. For commentaries which address the scope of the statute, see, e.g., Note, \textit{Title IX and Intercollegiate Athletics: Adducing Congressional Intent}, 24 B.C.L. REV. 1243 (1983) [hereinafter cited as Note, \textit{Congressional Intent}] (advocating that Congress intended indirectly received funds, such as student grants, to fall within Title IX's prohibition); Note, \textit{The Program-Specific Reach of Title IX}, 83 COLUM. L. REV. 1210 (1983) [hereinafter cited as Note, \textit{Program-Specific Reach}] (suggesting that Title IX's prohibitions must cover the entire school where coverage is based on the school's receipt of non-earmarked aid or student-aid funds); Note, \textit{Discrimination: The Remedial Scope of Title IX of the Education Amendments of 1972, As Interpreted in Grove City College and Richmond University}, 36 OKLA. L. REV. 710 (1983) [hereinafter cited as Note, \textit{Remedial Scope}] (arguing that Title IX requires an expansive reading in order to eradicate sex discrimination in education).}

Courts attempting to determine the proper scope of Title IX have focused on two ambiguities in its text.\footnote{Both § 901, the regulatory portion of Title IX, and § 902, its enforcement provision, make reference to "recipients" of federal financial assistance in the context of a particular educational "program." \textit{Education Amendments of 1972} §§ 901, 902, 20 U.S.C. §§ 1681, 1682 (1976); see \textit{supra} notes 3, 6 and accompanying text.} First, the statute fails to define what constitutes "receipt" of federal assistance.\footnote{For differing judicial interpretations of the term "recipient," see infra notes 59-63 and accompanying text.} This raises the question of whether a school receives aid, for Title IX purposes, when federal funds are granted to its students who, in turn, use the money to pay their tuition. Second, although the statute indicates that both its prohibition of sex discrimination and its enforcement provision are program-specific,\footnote{See infra notes 3, 6 and accompanying text.} it offers no definition as to what an "education program or activity" may encompass. Interpretations of this apparent restriction on the statute's reach range from limiting the application of Title IX to only the specific programs which receive the aid,\footnote{See infra note 62 and accompanying text.} such as the student loan program, to applying the statute's prohibitions to the entire institution when the aid reaches numerous programs through the school's general budget.\footnote{Prior to its decision in \textit{Grove City}, the Supreme Court merely implied that a school's receipt of federal aid through its students triggered Title IX's coverage by noting that Title IX reaches a program or activity if it "receives or benefits from such assist-
school is a recipient of federal financial assistance for Title IX purposes even when it indirectly receives aid through its students.\textsuperscript{15} Focusing on the statute's applicability to a "program or activity," the Court further determined that receipt of the students’ federal aid does not subject a school to institution-wide coverage under Title IX.\textsuperscript{16} Under \textit{Grove City}, such aid merely constitutes assistance to a school's financial aid program, thereby limiting Title IX’s remedial reach to that program.\textsuperscript{17} This restrictive interpretation of Title IX’s program-specific language has been criticized as inconsistent with the Act’s remedial purpose.\textsuperscript{18} More importantly, by narrowing Title IX’s reach, the decision has engendered concern as to the viability of existing avenues of redress for sex discrimination.\textsuperscript{19}

This note examines the \textit{Grove City} decision and its impact on challenges of sex discrimination under Title IX. It will review the history of Title IX and the varied interpretations of its statutory language. The \textit{Grove City} decision will then be discussed and analyzed in light of both congressional intent and prior Supreme Court treatment of Title IX. An examination of the congressional reaction evoked by \textit{Grove City}, the decision’s impact on sex discrimination in the schools, and its effect on existing civil rights laws will follow. Finally, this note will propose recommendations.

\begin{footnotesize}
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  \item[14.] 104 S. Ct. 1211 (1984).
  \item[15.] See infra note 87 and accompanying text.
  \item[16.] 104 S. Ct. at 1222.
  \item[17.] Id. at 1220-22.
  \item[18.] \textit{A Return to Sex Bias}, 70 A.B.A. J. 26-27 (1984) [hereinafter cited as \textit{Sex Bias}]. The Leadership Conference on Civil Rights in Washington, D.C., has interpreted \textit{Grove City} to mean that there is no longer any federal law that comprehensively prohibits sex discrimination in education. Id.
  \item[19.] For a discussion of the possible impact of \textit{Grove City} on future claims of sex discrimination under Title IX, see infra notes 196-204 and accompanying text. Moreover, the civil rights laws passed since the early 1960’s, banning discrimination based on race, national origin, religion, age and handicaps, have the same structure as Title IX. Thus, civil rights advocates fear that if Title IX is rendered ineffective, the others will suffer the same fate. See infra notes 193-95 and accompanying text for a discussion of the potential effect of the \textit{Grove City} decision on existing anti-discrimination legislation. For an analysis of the text and legislative history of the Civil Rights Act of 1964 in the context of fair employment practices, public accomodations and federal assistance, see \textit{The Civil Rights Act of 1964, Operations Manual} (BNA 1964); \textit{Civil Rights Issues in 1983: A Symposium}, 14 COLUM. HUM. RTS. L. REV. 1-174 (1982); Greenberg, \textit{Reflections on Leading Issues in Civil Rights, Then and Now}, 57 NOTRE DAME LAW. 625-41 (1982).
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for better achieving the objectives of Title IX without expanding the statute beyond its intended scope.

BACKGROUND

Claims of Sex Discrimination Under the Equal Protection Clause

Prior to the enactment of Title IX, claims of sex discrimination within educational institutions were predicated on the fourteenth amendment.20 This constitutional guarantee provides that a state shall not deny any person "the equal protection of the laws."21 The equal protection clause provides only limited assistance to victims of sex discrimination, however, because it requires that a plaintiff prove the existence of state action or federal involvement.22 Moreover, despite the amendment's sweeping language, the history of its enactment reveals that it was not intended to achieve sexual equality.23

22. See Note, Sex Discrimination, supra note 2, at 433. The requisite state action may be established through one of four basic showings: (1) discrimination arising under state legislation, municipal ordinance or act of state officials under color of state law; (2) activities of a private party which are directly or indirectly controlled by the state; (3) private party carrying on a public function ordinarily conducted by the state; or (4) aggregation of all indicia of state involvement in actions of the private party. Because of the variety of ways state action may be established, it traditionally has not been difficult to invoke the application of the equal protection clause. See Evans v. Newton, 382 U.S. 296, 299 (1966) (noting that formally "private" activity may become so entwined with governmental policies or so "impregnated with a governmental character" as to be subject to the constitutional limitations placed upon state action); see also Martin, Title IX and Intercollegiate Athletics: Scoring Points for Women, 8 OHIO N.U.L. REV. 481 (1981) (concluding that the standard does not pose a problem in the sports area because interscholastic and intercollegiate associations provide the necessary state or federal involvement). See generally, Horowitz, The Misleading Search for "State Action" Under the Fourteenth Amendment, 30 S. CAL. L. REV. 208 (1957) (arguing that whenever, and however, a state gives legal consequences to transactions between private persons there is "state action" for purposes of the fourteenth amendment); O'Neil, Private Universities and Public Law, 19 BUFFALO L. REV. 155 (1970) (recognizing that the grounds for finding state action are many and varied); Schubert, State Action and the Private University, 24 RUTGERS L. REV. 323 (1970) (existing Supreme Court precedent affords a variety of legal theories on which courts could hold the private university subject to the fourteenth amendment); Van Alstyne and Karst, State Action, 14 STAN. L. REV. 3 (1961) (noting the efforts of the courts to give meaning to the fourteenth and fifteenth amendments have resulted in a variety of state action doctrines).
23. See Crozier, Constitutionality of Discrimination Based on Sex, 15 B.U.L. REV. 723, 725 (1935) (suggesting that public opinion between 1865 and 1873 reflected the greatest concern for race discrimination and the least for sex discrimination). The history
The fourteenth amendment mandates equal treatment among those similarly situated. Accordingly, statutes may contain valid classifications, intended to serve the public interest, where uniform treatment of all persons is not practical or desirable. Certain group classifications, such as race and national origin, are considered “suspect” and are subjected to the strictest scrutiny. The government must demonstrate that such classifications are necessary to promote a compelling state interest. Sex-based classifications are not considered “suspect,” however, and are sanctioned where they are substantially related to an important state interest. This less stringent standard of review has limited the success of sex discrimination claims under the fourteenth amendment.

of the fourteenth amendment reflects that government would be free to classify persons on the basis of age, economic or social condition and sex, and yet not violate the equal protection clause. See CONG. GLOBE, 39th Cong., 1st Sess. 1293 (1866) (statement of Rep. John A. Bingham). For a comparison of the treatment of gender-based classifications under the fourteenth amendment (the equal protection principle) and the proposed Equal Rights Amendment (the sexual equality principle), see Ginsburg, Sexual Equality Under the Fourteenth and Equal Rights Amendments, 1979 WASH. U.L.Q. 161. This commentator suggests that although the equal protection guarantee extends to any person, it was clear from the amendment's inception that the government had the power to classify “persons” on a number of bases, without affront to the equal protection clause. Id.

28. E.g., Craig v. Boren, 429 U.S. 190 (1976). The Court determined that sex-based classifications warrant an intermediate level of scrutiny, requiring more than merely a rational basis for sex discrimination, but not subjecting such classifications to the strictest level of analysis. Id. at 199-201. Accordingly, the state must put forth evidence that a sex-based classification is substantially, as well as rationally, related to an important state interest. Id. Since Reed v. Reed, 404 U.S. 71 (1971), the Court has subjected sex-based classifications to a closer examination than traditionally extended to nonsuspect classifications, but has not yet applied a strict scrutiny approach. See Martin, supra note 22, at 484-85.
29. Between the ratification of the fourteenth amendment in 1868 and 1971, the Supreme Court did not find a single statute which discriminated on the basis of sex to violate the equal protection clause of the fourteenth amendment. Levin, Recent Developments in the Law of Equal Educational Opportunity, 4 J. L. & EDUC. 411, 421 (1975). In
Because the equal protection clause did not effectively combat sex-based discrimination, Congress enacted Title IX of its Education Amendments of 1972 to specifically address gender-based discrimination in education.

Congressional Action and the History of Title IX

The legislative history of Title IX suggests that Congress intended the statute to be expansively construed. In his statements preceding its passage, Senator Bayh, the legislation's primary sponsor, noted that the statute was a strong, comprehensive measure designed to eradicate sex-based discrimination in education as thoroughly as possible. He stated further that the statute's prohibitions would reach all federal funding channelled through the Department of Health, Education and Welfare (the "Department") and that all such aid would be subject to termination. Despite extensive discussion as to the remedial purposes underly-

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1971, the Supreme Court held that an Idaho statute violated the fourteenth amendment by giving men a preference in the designation of persons to serve as estate administrators. Reed v. Reed, 404 U.S. 71 (1971). The Court purported to apply a mere rationality standard and rejected the contention that sex was a suspect classification. However, the Court articulated the appropriate standard as one "rest[ing] upon some ground of difference having a fair and substantial relation to the object of the legislation," thus suggesting that sex-based discrimination warranted closer examination. Id. at 76. For a discussion of "suspect" classes see supra note 26. Traditionally, sex-based classifications have been permitted as a result of presumed differences in ability between the sexes or out of necessity for the protection of women. See, e.g., Comment, Half-Court Girls' Basketball Rules: An Application of the Equal Protection Clause and Title IX, 65 IOWA L. REV. 766 (1980) [hereinafter cited as Comment, Girls' Basketball]. This commentator argues that half-court basketball, a vestige of the days when females were considered physically incapable of strenuous activity, cannot be tolerated if sex discrimination is to be eliminated from all facets of educational institutions. Id. at 797.

30. See Hearings, Discrimination Against Women, supra note 2.
32. Note, Remedial Scope, supra note 7, at 714.
33. See, e.g., Note, Remedial Scope, supra note 7, at 716 (Congress's overriding objective in enacting Title IX was to deny an entire institution which engages in sex discrimination all financial support). See supra note 3 and accompanying text.
34. The Supreme Court has noted that because Senator Bayh was the statute's primary sponsor, his statements may be considered an authoritative guide to the construction of Title IX. North Haven Bd. of Educ. v. Bell, 456 U.S. 512, 526-27 (1982).
36. 117 CONG. REC. 30,408 (1971) (statement of Sen. Bayh); see supra note 3 and accompanying text. With regard to available services or studies within an institution, Senator Bayh indicated that "once a student is accepted within an institution, we permit no exceptions," implying that no part of the institution is exempt from Title IX. 118 CONG. REC. 5802-03 (1972). Senator McGovern stated that he urged the passage of Senator Bayh's amendment "to assure that no funds . . . be extended to any institution that practices biased admissions or educational policies." 117 CONG. REC. 30,158-59 (1971).
ing Title IX, however, the congressional debates are devoid of meaningful deliberation clarifying its language.\(^37\)

In their construction of Title IX, courts and commentators have relied upon interpretations of Title VI of the Civil Rights Act of 1964, which proscribes discrimination by race, color, religion, or national origin.\(^38\) Title IX was expressly modeled after Title VI, and the language of the two statutes is nearly identical.\(^39\) Both

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\(^{37}\) The legislative history with respect to the definition of Title IX's terminology is ambiguous at best. For example, during the congressional debates over the original version of Title IX, Senator Bayh was asked to explain what he meant by "any program or activity." He responded: "What we are trying to do is provide equal access for women and men students to the education process and extracurricular activities in a school where there is not a unique facet such as football involved. We are not requiring that intercollegiate football be desegregated, nor that the men's lockerroom be desegregated." 117 CONG. REC. 30,407 (1971). But see Note, The Application of Title IX to School Athletic Programs, 68 CORNELL L. REV. 222 (1983) (concluding that Senator Bayh's use of the word "program" appears to have no real significance). Commentators have attempted to clarify the intended meaning of Title IX by contrasting the language in Senator Bayh's first proposal with that contained in the statute as enacted. The original proposal for Title IX specifically applied to "any program or activity conducted by . . . [an] institution . . . which is a recipient of Federal financial assistance for any education program or activity." S. 659, 92d Cong., 2d Sess., 117 CONG. REC. 30,156 (1971). This proposal presumably mandated that all programs in a recipient institution comply with Title IX. See Note, supra, at 224. In contrast, the statute as ultimately enacted contains no references to the institution, but merely prohibits sex discrimination in "any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a) (1976). The omission of the reference to an institution contained in the first proposal has been interpreted to mean that Congress intended to limit Title IX to a program-by-program application. See Kuhn, Title IX: Employment and Athletics are Outside HEW's Jurisdiction, 65 GEO. L.J. 49, 64 (1976).

\(^{38}\) Title VI of the Civil Rights Act of 1964 provides: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. § 2000d (1976). The original committee proposal for the legislation contained in Title IX would have amended Title VI by simply adding the word "sex" to its list of classifications which are impermissible in any federal program or activity. H.R. 16098, 91st Cong., 2d Sess. § 805 (1970). Title IX was ultimately enacted as a separate statute because its sponsors feared opening Title VI to amendment, with possible attempts to restrict its coverage and enforcement. Sex Discrimination Regulations: Review of Regulations to Implement Title IX, Hearings Before the Subcomm. on Postsecondary Educ. and Labor of the House Comm. on Educ. and Labor, 94th Cong., 1st Sess. 409 (1975) [hereinafter cited as Hearings, Sex Discrimination].

\(^{39}\) Compare 20 U.S.C. § 1681(a) (1976) (Title IX) with 42 U.S.C. § 2000d (1976) (Title VI). Title IX mandates that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Title VI requires that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Further, the enforcement sections of the two statutes are identically worded. Both provide that compliance may be effected "(1) by the termination of or
statutes authorize administrative enforcement of their provisions through termination or refusal of federal aid to any "program or activity" receiving federal financial assistance. The two statutes also limit termination of aid to the particular program, or part thereof, in which noncompliance has been found.40

Accordingly, the history of Title VI is often examined in an attempt to ascertain the congressional intent behind the program-specific language of Title IX.41 While the record is ambiguous as to a precise definition of the statute's terminology42 the regulations issued in conjunction with Title VI expressly required compliance by the entire institution when such institution received any federal financial assistance.43 Moreover, judicial interpretations of Title VI either supported the expansive reach of the Department's regu-

40. Compare 20 U.S.C. § 1682 (1976) (Title IX) with 42 U.S.C. § 2000d-1 (1976) (Title VI). Unlike Title VI, however, the scope of Title IX is somewhat restricted by its express application to educational programs or activities and its exemptions. 20 U.S.C. § 1681(a)(1)-(a)(9); see supra note 5. The Supreme Court has recognized that Title IX, like Title VI, was broadly designed "to avoid the use of federal resources to support discriminatory practices." Cannon v. University of Chicago, 441 U.S. 677, 704 (1978). The Court also acknowledged that Title IX, like Title VI, sought to accomplish the objectives of avoiding the use of federal resources to support discriminatory practices and providing individual citizens effective protection against those practices. Id.

41. E.g., Grove City College v. Bell, 104 S. Ct. 1211, 1228 (1984) (Brennan, J., dissenting) (interpretation of similar language under Title VI crucial to an understanding of congressional intent of Title IX); North Haven Board of Educ. v. Bell, 456 U.S. 512, 529 (1982) (the meaning and applicability of Title VI are useful guidelines in construing Title IX).

42. Definitions of "program" include equating the word with a specific grant statute, to using the term to encompass a school district. Compare 110 CONG. REC. 7100-01 (1964) (remarks of Senator Javits that Title VI would preclude federal funds from being used for racially discriminatory federal-state programs) with 110 CONG. REC. 12714-15 (remarks of Senator Humphrey that termination of federal aid under Title VI would be restricted to the particular school district which violated its provisions).

43. See generally 45 C.F.R. §§ 80.1-80.4(d) (1984). For example, § 80.4(d) indicates that Assurances of Compliance with Title VI would be required from educational institutions receiving federal financial assistance. Such an assurance was "applicable to the entire institution unless the applicant establishes . . . that the institution's practices in designated parts or programs of the institution will in no way affect its practices [in the federally funded program], or the beneficiaries of or participants in such program." 45 C.F.R. § 80.4(d)(2) (1984). Between 1965 and 1971, the Department instituted approximately 600 administrative enforcement proceedings under Title VI against school districts and terminated all federal assistance to the district in 45 to 50 cases. See Affidavit
lations or sanctioned broad-based termination of federal aid when such funds directly or indirectly supported a program which was affected by discriminatory practices. Because of the administrative and judicial construction given to Title VI at the time Title IX was enacted, it is believed that Congress intended the language of Title IX to be given a similarly liberal construction.

Following the enactment of Title IX, the Department prepared the regulations by which the statute would be enforced. Relying upon Title IX’s broad remedial purpose, the Department adopted the position that “Federal financial assistance” included indirect assistance programs such as the Basic Education Opportunity Grant (“BEOG”) program. Further, the Department recognized that any program within an institution that benefits from federal financial assistance, regardless of whether it directly receives the assistance, is subject to Title IX regulation. Accordingly, when a school receives any amount of federal aid, directly or indirectly, the entire institution is precluded by the Department’s regulations from discriminating in any program on the basis of sex. The reg-

44. See, e.g., Board of Pub. Instruction v. Finch, 414 F.2d 1068 (5th Cir. 1969) (authorizing termination of federal funds distributed in a discriminatory manner); United States v. Jefferson County Bd. of Educ., 372 F.2d 836, 881-82 (5th Cir. 1966), adopted en banc, 380 F.2d 385 (5th Cir. 1967) (per curiam) (expressly approving the Department’s desegregation guidelines).

45. Grove City, 104 S. Ct. at 1230 (Brennan, J., dissenting). Additionally, subsequent attempts to modify Title IX by restricting the meaning of “program or activity” and “Federal financial assistance” were rejected in part because they would have made it impossible to reconcile the language of Title IX with precedent under Title IV. See, e.g., 122 CONG. REC. 28,145 (1976).

46. The Department’s regulations are codified at 34 C.F.R. § 106 (1984).

47. Addressing members of Congress, then HEW Secretary Weinberger stated the HEW position: “[S]tudent assistance, assistance that the Government furnishes, that goes directly or indirectly to an institution, is Government aid within the meaning of Title IX.” Hearings, Sex Discrimination, supra note 38, at 481-84. The Department’s regulations define “Federal financial assistance” to include scholarships, loans, grants, or funds extended to students for payment to an institution. 34 C.F.R. § 106.2(g) (1984). For a discussion of the BEOG program, see infra note 77 and accompanying text.

48. The regulations define “recipient” as any entity (1) which receives federal financial aid directly from the government or through another recipient and (2) which “operates an education program or activity which receives or benefits from such assistance.” 34 C.F.R. § 106.2(h) (1984); see Note, Remedial Scope, supra note 7, at 719. This commentator notes that the word “benefit” is crucial because it demonstrates that the regulations have expanded the statutory language of Title IX, prohibiting sex discrimination in programs “receiving” federal funding, to encompass all programs which “benefit” from the receipt of such aid. Id.

49. As HEW Secretary Weinberger explained, HEW presumes that “if the Federal funds go to an institution which has educational programs, then the institution is covered throughout its activities.” Hearings, Sex Discrimination, supra note 38, at 485.
ulations provide that an institution receiving any form of federal aid must execute an Assurance of Compliance, by which the school agrees to uphold the provisions of Title IX in the recipient program or activity.\textsuperscript{50}

In response to the Department's expansive regulations,\textsuperscript{51} several resolutions of disapproval were introduced in both houses of Congress, including an attempt to limit Title IX to directly funded "programs or activities."\textsuperscript{52} Nevertheless, no resolution was passed, and the Title IX regulations, as originally conceived, took effect on

\textsuperscript{50}Under such an Assurance, the school agrees to:
- comply, to the extent applicable to it, with Title IX . . . and all applicable requirements imposed by or pursuant to the Department's regulation . . . to the end that . . . no person shall, on the basis of sex, be . . . subjected to discrimination under any education program or activity for which [it] receives or benefits from Federal financial assistance from the Department.

\textit{Grove City}, 104 S. Ct. at 1215 (citing 34 C.F.R. § 106.4(a) (1984)). Although the Assurance of Compliance form currently in use differs slightly from the version quoted above, it is substantially similar in that it refers to "education programs and activities receiving Federal financial assistance." \textit{Grove City}, 104 S. Ct. at 1215 n.7.

\textsuperscript{51}The Department's regulations were subjected to presidential and congressional scrutiny. Section 902 of the Education Amendments of 1972 mandates that "[n]o such rule, regulation, or order shall become effective unless and until approved by the President." 20 U.S.C. § 1682 (1976). Department regulations were given to Congress for a 45-day period, allowing Congress the opportunity to examine them prior to their becoming effective. 20 U.S.C. § 1232(d)(1) (Supp. V. 1982). If it was determined that the regulations were inconsistent with congressional intent, Congress could render them void by concurrent resolution. If no resolution was adopted, the regulations would automatically become effective after 45 days. See J.P. Harris, \textit{Congressional Control of Administration} 204-38 (1964); Cotter and Smith, \textit{Administrative Accountability to Congress: The Concurrent Resolution}, 9 W. Pol. Q. 955 (1956). The congressional veto power set forth in § 1232(d)(1) is probably unconstitutional. See I.N.S. v. Chadha, 103 S. Ct. 2764, 2792, 2814 (1983) (White, J., dissenting) (noting that the Court's invalidation of the congressional veto power at issue in that case "sounds the death knell" for nearly 200 similar statutory provisions, including § 1232(d)(1)).

\textsuperscript{52}See S. 2146, 94th Cong. 1st Sess. (1975), 121 CONG. REC. 23,845 (1975) (amendment by Senator Helms to limit coverage of Title IX to programs directly receiving federal aid; resolution was never reported out of committee); H.R. Con. Res. 310, 94th Cong., 1st Sess., 121 CONG. REC. 19,209 (1975) (resolution to disapprove of the regulations in their entirety; no action taken); see also S. Con. Res. 52, 94th Cong., 1st Sess., 121 CONG. REC. 22,940 (1975) (concurrent resolution disapproving of Title IX regulations as applied to athletic programs); H.R. Con. Res. 311, 94th Cong., 1st Sess., 121 CONG. REC. 19,209 (1975) (concurrent resolution to disapprove certain sections of Department regulations applicable to athletic programs and grants).

Congress could have adopted a resolution which disapproved only specific parts of the regulations, such as the overbroad sections, while allowing the remaining regulations to become effective. See \textit{Hearings on S. 2106 Before the Senate Comm. on Postsecondary Educ. of the Comm. on Educ. and Labor}, 94th Cong., 1st Sess. 95-96 (1975) (remarks of Sen. Buchanan), 122 (remarks of Sen. Brown); see also Brooks, \textit{Measuring the Reach of Title IX: Defining Program and Recipient in Higher Education}, 17 Akron L. Rev. 335 (1984) (noting that two amendments to Title IX were unsuccessfully raised in the Senate that would have defined "education program" narrowly).
As the Supreme Court and legal commentators have noted, Congress's failure to approve resolutions limiting Title IX's scope suggests that it considered the comprehensive regulations to be consistent with Title IX. Despite evidence in both the pre-enactment and post-enactment history that Congress intended Title IX to be interpreted expansively, both institutions and students facing termination of their federal aid because of alleged Title IX violations have attacked the validity of the Department's regulations. The controversy primarily concerns the proper scope of Title IX's reference to "any education program or activity receiving Federal financial assistance." According to the Department, aid to an entire institution may be terminated if discrimination occurs in any program.

53. Congressional approval of final HEW regulations, implementing Title IX, followed hearings conducted over a 60-day period which resulted in 600 pages of text and statements. See Hearings, Sex Discrimination, supra note 38, at 1.

54. See North Haven Bd. of Educ. v. Bell, 456 U.S. 512 (1982). The Court recognized the value of determining congressional intent through a statute's post-enactment history: "Although post-enactment developments cannot be accorded 'the weight of contemporaneous legislative history,' . . . [w]here 'an agency's statutory construction has been "fully brought to the attention of Congress," and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned.'" Id. at 535 (citations omitted). See generally Comment, Girls' Basketball, supra note 29, at 788 (arguing that Congress's failure to adopt any resolutions to condemn the regulations demonstrates Congress's ratification of the substantive content of the Department's interpretation of Title IX's scope); Note, Remedial Scope, supra note 7, at 716-17 (concluding that the failure of either house to pass a disapproval resolution implies that Congress considered the regulations to be within the scope of Title IX).

55. See, e.g., Grove City College v. Bell, 687 F.2d 684 (3d Cir. 1982), aff'd, 104 S. Ct. 1211 (1984) (school and students challenged Department's termination of students' BEOG's on basis of college's failure to execute Assurance of Compliance); Hillsdale College v. HEW, 696 F.2d 418 (6th Cir. 1982), vacated, 104 S. Ct. 1673 (1984) (college refused to furnish Assurance of Compliance with Title IX in all areas of school merely because its students received federal loans/grants); Haffer v. Temple University, 524 F. Supp. 531 (E.D. Pa. 1981), aff'd per curiam, 688 F.2d 14 (3d Cir. 1982) (university contended that receipt of federal aid earmarked for other parts of the university through its students did not trigger Title IX coverage of athletic program which itself received no funds); University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va. 1982) (school sought injunctive and declaratory relief to prevent Department from investigating its athletic program for Title IX noncompliance); Othen v. Ann Arbor School Bd., 507 F. Supp. 1376 (E.D. Mich. 1981), aff'd on other grounds, 699 F.2d 309 (6th Cir. 1983) (school claimed its sexually discriminatory athletic program received no direct federal financial assistance). Administrators of private colleges and universities argue strongly for institutional autonomy and freedom from federal government regulation. See Brooks, supra note 52, at 362. Brooks concludes that a narrow view of the applicability of Title IX to private colleges and universities would subvert congressional intent in providing federal aid to assist students in meeting their educational goals. Id.


57. See generally Note, Title VI, Title IX, and the Private University: Defining "Re-
students and institutions maintain, however, that such an approach penalizes non-discriminatory programs and innocent students in an effort to address sex discrimination occurring elsewhere in the institution. In resolving these issues, the courts have reached widely divergent results.

**Lower Court Interpretations of Title IX**

Courts adopting a narrow reading of Title IX have focused on the restrictive wording of the statute and have virtually excluded consideration of its broad purpose. These courts reject the argument that an entire institution may be encompassed by Title IX's reference to an education program or activity, holding that this approach circumvents the program-specific focus of the statute. Interpreting the statute's reference to a "recipient" of federal financial assistance and "program or activity" as words of limitation, such courts have held that the Department may terminate only specifically earmarked federal funding which is granted directly to a discriminatory program or activity. Other courts, hesitant to

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58. See supra note 55.

59. See Note, CIVIL RIGHTS — Title IX Applies to Non-earmarked, General-use Federal Financial Aid as Well As to Earmarked Aid, 56 TEMP. L.Q. 605, 627 (1983) [hereinafter cited as Note, CIVIL RIGHTS] (concluding that certain courts appear to view the purpose and wording of Title IX as mutually exclusive, resulting in the split among federal courts interpreting the scope of Title IX). For courts interpreting the language of Title IX narrowly, see, e.g., University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va. 1982) (termination provision of Title IX will not apply absent showing of earmarked assistance granted directly to violative program); Othen v. Ann Arbor School Board, 507 F. Supp. 1376 (E.D. Mich. 1981), aff'd on other grounds, 699 F.2d 309 (6th Cir. 1983) (Title IX authorizes termination of only specifically earmarked funds and only as to the program receiving the direct aid). See generally Brooks, supra note 52, at 344 (courts adopting a narrow reading of Title IX have not conducted a complete analysis of the statute's legislative history).

60. "Earmarked" federal aid refers to funding which is extended to a school or institution specifically for use in a particular educational program or activity. For example, The College Library Resources Program, 20 U.S.C. § 1029 (1980), earmarks funds for the purchase of library materials. An example of general, non-earmarked aid is the Basic Education for Adults Program, Adult Education Act of 1966, 20 U.S.C. §§ 1201-1213 (1976). Although allocated for a specific educational purpose, the funds are not earmarked for a particular institutional program.

61. Foreshadowing the holding in *Grove City*, a federal court recently determined that, while a college is a recipient of federal aid where funding is received through its students, Title IX's coverage is restricted to the college's grant and loan programs. Hillsdale College v. HEW, 696 F.2d 418, 430 (6th Cir. 1982), vacated, 104 S. Ct. 1673 (1984). The Sixth Circuit's position in *Hillsdale* resembles the interpretation of program-specificity currently advocated by the Reagan Administration. See Note, Program-Specific
impose judicially-construed limitations on the statute's scope, have adopted a broader reading of Title IX.

Courts which have interpreted Title IX more expansively agree that the Department may terminate federal aid to a school which directly or indirectly receives federal funding if the school practices sex discrimination in any program or activity. Courts following this view, however, present different approaches to defining a "program or activity" under Title IX. One court has focused on the form of aid, holding that when a school receives aid through a federal grant program, such as the one which administers BEOG's, the entire institution constitutes the "program or activity" subject to Title IX's regulations. Another court allowed Title IX a broad reach by applying a "benefit theory," whereby Title IX's restrictions apply to any program within the school which benefits from federal funds, notwithstanding the fact that the federal aid was directed to another program or activity. Under either approach, courts which expansively interpret the statute have attempted to give full scope to Title IX's comprehensive, nondiscriminatory pur-

Reach, supra note 7, at 1214 n.35 (citing United States Dep't of Justice, Civil Rights Division, Memorandum on Program-Specificity 2 (March 15, 1983)).

Commentators have noted that the requirement that the discriminatory program or activity be directly funded in order to fall within the ambit of Title IX results from equating the reach of Title IX's prohibition with the narrow scope of the Department's authority to terminate a school's federal aid. See infra notes 208-10 and accompanying text; Note, Program-Specific Reach, supra note 7, at 1214 (1983). § 902 of Title IX limits termination to "the particular program, or part thereof, in which such noncompliance has been so found." 20 U.S.C. § 1682(1) (1976). Referred to as the "pinpoint provision," the part of the statute authorizing the Department to terminate funds must be distinguished from the Department's authority to enforce compliance by "any other means authorized by law," which is not limited to a particular program. 20 U.S.C. § 1682(2) (1976); see infra notes 208-15 and accompanying text.

62. See, e.g., Iron Arrow Honor Society v. Heckler, 702 F.2d 549 (5th Cir. 1983), vacated, 702 F.2d 549 (1983) (program-specific prohibition applies when discriminatory program is "benefited" by federal assistance or when a federally assisted program is infected by a discriminatory environment); Grove City College v. Bell, 687 F.2d 684 (3d Cir. 1982), aff'd, 104 S. Ct. 1211 (1984) (nonearmarked student aid to an institution renders the entire institution a "program" for Title IX purposes); Haffer v. Temple, 524 F. Supp. 531 (E.D. Pa. 1981), aff'd per curiam, 688 F.2d 14 (3d Cir. 1982) (any program which receives or benefits from federal aid must comply with Title IX's prohibitions against discrimination).

63. In Grove City College v. Bell, 687 F.2d 684 (3d Cir. 1982), aff'd, 104 S. Ct. 1211 (1984), the appellate court stated that to require a demonstration that each individual component of an institution had in fact received federal money for a particular purpose would preclude the imposition of an effective termination sanction. Id. at 700.

64. Haffer v. Temple University, 524 F. Supp. 531 (E.D. Pa. 1981), aff'd per curiam, 688 F.2d 14 (3d Cir. 1982). The district court noted that the use of federal money to support nondiscriminatory programs allows a school to transfer money, which would have gone to that program, into other discriminatory programs. Id. at 17.
pose.\textsuperscript{65} Although the Supreme Court had never specifically defined the language of Title IX prior to Grove City, its interpretations consistently broadened the statute's reach.

\textit{The Supreme Court's Interpretation of Title IX}

Prior to its decision in Grove City, the Supreme Court expressly declined to define what constitutes a "program or activity" within the reach of Title IX.\textsuperscript{66} Previous decisions, however, reflect the Court's willingness to expand the scope of Title IX beyond the language of the statute.\textsuperscript{67} In Cannon \textit{v. University of Chicago},\textsuperscript{68} the Supreme Court recognized an implied private right of action under Title IX.\textsuperscript{69} The Court determined that a school's receipt of federal

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\item[\textsuperscript{65}](Grove City College v. Bell, 104 S. Ct. 1211 (1984)).
\item[\textsuperscript{66}](See infra note 74 and accompanying text.)
\item[\textsuperscript{67}](See, e.g., Comment, The Expansion of Constitutional and Statutory Remedies for Sex Segregation in Education: The Fourteenth Amendment and Title IX of the Education Amendments of 1972, 32 EMORY L.J. 1111, 1146 (1983) (Supreme Court review has resulted in a significant expansion of Title IX coverage).)
\item[\textsuperscript{68}](441 U.S. 677 (1979). In Cannon, an applicant was denied admission to the medical programs of several private universities. She filed suit in federal district court, alleging that she had been excluded on the basis of her sex and, further, that the programs were recipients of federal financial aid at the time her application was denied. The district court dismissed the complaint on the grounds that Title IX does not expressly authorize a private right of action for injury by violation of § 901. 406 F. Supp. 1257, 1259 (1976). The Court of Appeals agreed that the statute contained no implied private remedy. 559 F.2d 1063, 1071-75 (7th Cir. 1976). The Supreme Court reversed, however, finding that Title IX contained a private right of action, despite the absence of express authorization in Title IX. 441 U.S. 677, 717 (1979). The Court noted four factors in its analysis: (1) petitioner was a member of that class for whose benefit Title IX was enacted; (2) the legislative history of Title IX indicated that Congress intended to create a private cause of action; (3) a private remedy, rather than frustrating the underlying purposes of the legislative scheme, would assist in achieving its statutory purpose; and (4) a federal remedy was appropriate because protecting citizens against sex discrimination was an area of concern to the federal government as well as the states. Id. at 688-717. See generally, Note, An Overview of Implied Rights of Action: Cannon \textit{v. University of Chicago}, 40 LA. L. REV. 1011 (1980) (Cannon may be viewed as signaling a movement toward a loosening of the standards necessary to imply a private right of action); Note, Broadening Access to the Courts and Clarifying Judicial Standards: Sex Discrimination Cases in the 1978-1979 Supreme Court Term, 14 U. RICH. L. REV. 515-84 (1980) (Supreme Court cases during 1978-1979 suggest victims of alleged sex discrimination will be able to gain access to a federal court).
\item[\textsuperscript{69}](Cannon, 441 U.S. at 694-96. The Court noted that the relevant language of Title IX was identical to that of Title VI, except that the word "sex" in Title IX replaced the words "race, color or national origin" in Title VI. Because Title VI had been interpreted to contain an implied right of action before Title IX was even enacted, the Court in Cannon similarly construed Title IX to contain such a remedy. Id. Prior to Cannon, several courts had refused to recognize a private right of action or else required that an individual exhaust administrative remedies first. See Jones \textit{v. Oklahoma Secondary School Activities Ass'n}, 453 F. Supp. 150 (D. Okla. 1977); Cape \textit{v. Tennessee Secondary School Athletic Ass'n}, 424 F. Supp. 732 (E.D. Tenn. 1976), rev'd, 563 F.2d 793 (6th Cir.).)
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aid subjected admissions decisions to Title IX coverage.70 It did not require, however, that such aid be earmarked for the admissions program, thus suggesting that a school’s indirect receipt of aid through its students would bring the school under the reach of Title IX.71

The Supreme Court further extended the statute’s reach to encompass gender-based employment discrimination in federally funded education programs in North Haven Board of Education v. Bell.72 In North Haven, the Court established a three-step analysis for interpreting congressional intent in Title IX cases. The Court determined that analysis of any issue under Title IX required examination of the statutory language, legislative history, and post-enactment history of the statute.73 Using this analysis, the North Haven Court determined that the Department’s authority to issue regulations and terminate funds was subject to the program-specific limitations of Title IX, but declined to define the term “program” within the opinion.74 When the Supreme Court granted certiorari in Grove City, it was expected that the Court would finally clarify the ambiguous “program or activity” language of Title IX and thereby resolve the issue as to the statute’s intended

70. Cannon, 441 U.S. at 680. The medical schools were receiving federal financial assistance at the time of the petitioner’s exclusion. Id.

71. Id. at 680-81 n.2. Because only sex discrimination in the admissions program was at issue in Cannon, the decision neither supports nor refutes the position that other programs should similarly be covered by virtue of the school’s receipt of aid.

72. 456 U.S. 512 (1982). In North Haven, federally funded public school boards, threatened with enforcement proceedings for alleged violations of § 901(a) with respect to board employees, brought suits challenging HEW’s authority to regulate employment practices. The district court in each action granted the board’s motion for summary judgment. Id. at 518. On appeal, the court of appeals reversed, holding that § 902 permitted the department to issue regulations prohibiting gender-based employment discrimination. Id. at 519. The Supreme Court affirmed the decision of the appellate court, finding that sex discrimination in employment falls within Title IX’s prohibition, predating its finding on the text, legislative history and post-enactment history of Title IX. Id. at 520-35. See generally Note, Employment Discrimination — “Person” in Title IX of the 1972 Education Amendments Includes Employees of Federally Funded Programs — HEW Regulations to Enforce Title IX are Valid, 12 U. BALT. L. REV. 548 (1983) (statute includes employees despite the lack of any congressional plan establishing procedures for handling employee complaints).

73. North Haven, 456 U.S. at 520-35. The North Haven Court reaffirmed the importance of examining the meaning, history and application of Title VI when interpreting Title IX, as it had done in Cannon.

74. Id. at 538, 540. The Court noted that a determination of whether petitioners’ federal funds could be terminated under Title IX as well as a definition of “program,” were beyond the scope of its opinion. Id.
Grove City College is a private, coeducational liberal arts college with an enrollment of 2,200 students. Although the college accepts no federal funding, a number of its students receive federal tuition assistance in the form of BEOG's. Because the college itself received no federal aid directly, it refused to execute an Assurance of Compliance in accordance with the anti-discrimination regulations of Title IX. The Department, pursuant to an administrative order, terminated federal assistance to Grove City's students pending the college's execution of the Assurance of Compliance. The college and four of its students filed suit in federal district court, challenging the Department's authority to terminate the students' federal aid and seeking an order vacating the Department's termination of assistance to Grove City's students.

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75. See, e.g., Note, Program-Specific Reach, supra note 7, at 1211.
76. Grove City College v. Bell, 687 F.2d 684, 688 (3rd Cir. 1982).
77. One hundred forty of Grove City's 2200 students received BEOG's. Otherwise known as Pell Grants, BEOG's are appropriated by Congress and allocated by the Department of Education. 20 U.S.C. § 1070a (1984). There are two methods by which BEOG's are disbursed. Grove City's students received BEOG's under the Alternate Disbursement System, whereby the Secretary of Education calculates and pays the funding directly to the student after the institution verifies the student's eligibility. 34 C.F.R. §§ 690.92, 690.94 (1984). Alternatively, under the Regular Disbursement System, the Secretary of Education advances funds to the institution which thereby calculates and awards funds to its students. 34 C.F.R. §§ 690.72, 690.74 (1984). Both systems require students to sign the following statement:

Statement of Educational Purpose
I declare that I will use any funds I receive under the Pell Grant program solely for expenses connected with attendance at ______________________________
(Name of Institution) ______________________________
(Date) ______________________________
(Signature) ______________________________
34 C.F.R. § 690.79 (1984). In addition to Pell Grants, 342 of Grove City's students received Guaranteed Student Loans (GSL's). The district court held that GSL's were contracts of guarantee which were exempted from Title IX regulation by § 902(a). The Department did not contest this on appeal. 687 F.2d 684, 690 n.10.
78. 687 F.2d at 689.
79. Id. Following an administrative hearing, where it was determined that Grove City was a recipient of federal financial aid under Title IX, an administrative law judge entered an order terminating both BEOG and GSL aid. Id.
80. Id. Student plaintiffs represented in affidavits to the District Court for the Western District of Pennsylvania that without such funds, they would be unable to continue attending Grove City, the college of their choice. Id.
81. Id.
The Lower Court Decisions

The district court agreed with the Department that BEOG's received by the students constituted federal financial assistance to Grove City, but held that the Department could not terminate the aid by reason of the school's refusal to execute an Assurance of Compliance. On appeal, however, the United States Court of Appeals for the Third Circuit reversed and determined that the Department possessed the authority to terminate the students' BEOG's even when the college merely refused to execute an Assurance of Compliance. In so holding, the appellate court expansively interpreted the program-specific language to encompass the entire institution when such institution or its students received non-earmarked federal aid. Reasoning that the Title IX remedy was as extensive as the program which benefited from the funds involved, the court noted that Title IX's program-specific terms must be interpreted realistically and flexibly in light of the broad, nondiscriminatory purpose of the statute.

The Decision of the United States Supreme Court

The Supreme Court affirmed the Third Circuit's conclusion that the Department could terminate students' tuition grants which were not earmarked for one of Grove City's programs. Writing for the Court, Justice White rejected, however, the appellate court's view that these indirectly received grants constituted aid to

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82. Grove City College v. Harris, 500 F. Supp. 253 (W.D. Pa. 1980). The court ultimately concluded that no termination of federal financial assistance could occur absent an actual finding of sex discrimination. Id. at 273.

83. 687 F.2d 684, 703.

84. Id. at 700. Judge Garth, writing for a unanimous court, recognized that a "program" cannot be interpreted so narrowly as to render Title IX ineffective where the school received non-earmarked or indirect funding. It would be illogical, in the court's opinion, to conclude that the more general the funding, the more restrictive the coverage of Title IX. Id. at 698.

85. Id. at 700. Because federal grants to Grove City's students benefited the entire college, the entire institution constituted the "program" under Title IX's regulation. Id.

86. Id. at 697. This approach would thereby accommodate the conflicting concepts of "indirect federal financial assistance" and "program-specific" requirements. Id.; see infra note 106 and accompanying text.

87. Grove City College v. Bell, 104 S. Ct. 1211, 1220 (1984). The Court is in unanimous agreement on this point. See id. at 1223 (Powell, J., concurring); id. at 1225 (Stevens, J., concurring); id. at 1226 (Brennan, J., concurring).

Accordingly, the Supreme Court expressly refused to accept the appellate court's conclusion that under such circumstances, the institution itself constituted a Title IX "program."\(^{90}\)

In deciding whether Grove City received federal financial assistance under Title IX as a result of its students' receipt of BEOG's to finance their education, Justice White initially noted that the BEOG program was characterized by Congress as the focus of Title IX's regulatory mandate over federal funding.\(^{91}\) In light of Congress's express concern over sex discrimination in the administration of student financial aid programs, it would be anomalous to hold that BEOG's were not intended to trigger Title IX's coverage.\(^{92}\) The Court found further support for its conclusion that Title IX applied to aid received through a school's students by examining the statute's language and its pre- and post-enactment legislative history.

The Court was unable to find a distinction between direct and indirect institutional assistance in the text of Title IX; therefore, it agreed with the appellate court that the inclusive terminology of the statute appeared to reach all forms of federal educational assistance.\(^{93}\) It reiterated the Court's belief that Title IX should be accorded a sweep as broad as its language,\(^{94}\) and expressed reluctance to read into the statute a limitation which was not apparent on its face.\(^{95}\)

Reviewing pre-enactment legislative history of Title IX, Justice White found no indication that Title IX's liberal language differed from Congress's underlying intent.\(^{96}\) He recognized that Title IX was patterned after Title VI, which Congress envisioned would

\(^{89}\) Id. at 1220-21. Justice Powell concurred with Justice White on this point. Id. at 1223 (Powell, J., concurring). Justice Stevens, in his concurrence, refused to join with this part of the Court's opinion. Id. at 1225 (Stevens, J., concurring); see infra notes 115-21 and accompanying text.

\(^{90}\) Id. at 1220. Justice White noted: "We cannot accept the Court of Appeals' conclusion that in the circumstances present here Grove City itself is a 'program or activity' that may be regulated in its entirety." Id. Justice White failed to indicate, however, exactly what circumstances would warrant institution-wide regulation.

\(^{91}\) Id. at 1216-17. The BEOG program and Title IX's nondiscrimination requirements were simultaneously created in the Education Amendments of 1972. Id. at 1216.

\(^{92}\) Id. at 1217. See Hearings, Discrimination Against Women, supra note 2, at 235 (1970).

\(^{93}\) 104 C. Ct. at 1217.

\(^{94}\) Id.; see North Haven Bd. of Educ. v. Bell, 456 U.S. 512, 521 (1982).

\(^{95}\) 104 S. Ct. at 1217.

\(^{96}\) Id. at 1219.
cover student aid funding. Accordingly, the drafters of Title IX must have intended the statute to possess a similarly expansive reach.

Examination of the statute's post-enactment history provided further evidence of Congress's intent to include indirect student aid under Title IX. The Department's regulations expressly included grants to students in the definition of federal financial assistance. Because Congress never formally disapproved of the regulations, the Court recognized a strong implication that the regulations accurately reflected congressional intent. The Court next addressed the breadth of Title IX's coverage within the institution.

In considering whether Title IX extended to all parts of Grove City College, the Court engaged in only a cursory analysis of the language and legislative history of the statute. Based on the Supreme Court's earlier analysis of Title IX's language and legislative history in North Haven, Justice White restated the Court's determination that Title IX's program-specific language limits the Department's authority to issue regulations and terminate funds. Although the legislative history contained suggestions that receipt of federal aid in any program results in institution-wide coverage under Title IX, he rejected this argument without explanation under the facts of Grove City.

Thus, while the entire Court found it appropriate to broaden Title IX's reach to encompass even aid received by an institution through its students, six members of the Court refused to expand the coverage to encompass the entire institution. However, they

97. 42 U.S.C. § 2000d (1976); see supra notes 38-44 and accompanying text.
98. 104 S. Ct. at 1218. See, e.g., Senator Bayh's declaration that Title IX authorizes termination of "all aid that comes through the Department of Health, Education and Welfare." 117 Cong. Rec. 30,408 (1971). Although the Court noted that such statements provided an authoritative guide to the statute's construction, it limited their controlling effect to instances in which the statements are consistent with the language of Title IX. 104 S. Ct. at 1219.
99. 104 S. Ct. at 1218.
100. Id. Under the Department's regulations prohibiting sex discrimination, "[s]cholarships, loans [and] grants . . . extended directly to . . . students for payments to an institution constitute federal financial assistance to that institution." 34 C.F.R. § 106.2(g) (1984); see supra note 47.
101. 104 S. Ct. at 1219; see supra notes 51-53 and accompanying text.
102. 456 U.S. 512 (1982); see supra note 72 and accompanying text.
103. 104 S. Ct. at 1220; see North Haven, 456 U.S. at 538.
104. 104 S. Ct. at 1220. Justice White noted that the Court could not accept the court of appeals' conclusion that "in the circumstances present here, Grove City itself is a 'program or activity' that may be regulated in its entirety," but failed to indicate which circumstances of the case precluded institution-wide coverage.
105. See supra notes 87-89 and accompanying text.
thought it necessary to tie even indirect funding to a particular program within the institution, in order that such program might fall within the ambit of Title IX's program-specific language. The Court determined that student-received BEOG's, like those granted directly to the institution, constitute aid only to the school's financial aid program. Justice White stated that the purpose of the BEOG program is to enable students to attend the institution, rather than merely to increase the resources available to the school. Grove City's choice of the administrative mechanism by which such aid is disbursed did not, therefore, expand Title IX's regulatory coverage to the entire institution.

The Court rejected the argument that receipt of federal funds in one program permits the college to use its resources in other sex-discriminatory programs, determining that this theory was inconsistent with congressional intent. It recognized that substantial portions of the students' BEOG money eventually reached the general budget, thereby providing a variety of services. Nevertheless, Justice White was not persuaded that Congress intended the Department's regulatory authority to "follow federally aided students from classroom to classroom."

Because Grove City College's financial assistance program constituted an educational program or activity receiving federal financial aid, the Court ruled that the Department could condition the school's BEOG's on Grove City's execution of an Assurance of Compliance with Title IX as to that program. It expressly rejected the institution's contention that termination of funds must

106. Because student-received BEOG's are not tied to a particular program or activity of the school, the Court's holding that they trigger Title IX coverage suggests that regulation is not limited to only those programs which receive earmarked federal funding. To prevent such an interpretation the Court was forced to construe BEOG's as intended for a particular program, and logically chose financial aid.

107. 104 S. Ct. at 1222. Justices Powell, Burger and O'Connor concur with this determination. Id. at 1223 (Powell, J., concurring).

108. Id. at 1221. But see infra notes 144-46 and accompanying text.

109. Id. at 1221.

110. Id. at 1221-22. Justice White noted that there was no evidence to support a claim that funds were being diverted from the financial aid program to other areas within the school. Id. at 1221. He further rejected the notion that a small student-received BEOG or grant earmarked for one department may subject the entire school to Title IX. Id.

111. Id. at 1222. Acknowledging that most federal educational aid has an economic ripple effect throughout the institution, Justice White reasoned that it would be difficult, if not impossible, to determine which programs or activities actually derive such indirect benefits. Id. at 1221.

112. Id. at 1222.

113. Id. at 1222-23. Justice White noted that § 902 plainly authorizes termination of
be predicated upon a finding of actual discrimination, noting that the Department was authorized to sanction noncompliance with any requirement under Section 902 of Title IX, including a school's refusal to execute an Assurance of Compliance with the statute.\textsuperscript{114}

\textbf{The Concurring and Dissenting Opinions}

Justice Powell, joined by Chief Justice Burger and Justice O'Connor, concurred with Justice White's opinion, agreeing that the decision was dictated by the language, legislative history and Department regulations for Title IX.\textsuperscript{115} Justice Powell cautioned that the federal government was being "overzealous" by litigating a case where no discrimination had actually occurred.\textsuperscript{116} The purpose of the statute was to make it unlawful for recipients of federal aid to engage in sex discrimination.\textsuperscript{117} He noted that Grove City College, which supported a strong nondiscriminatory policy, had not discriminated on any count, and therefore had complied to the letter with the sole purpose of Title IX.\textsuperscript{118}

In a separate opinion, Justice Stevens concurred with the decision, yet suggested that it had been improper to litigate the issue of program-specificity because the Department no longer contested, as it had in the lower courts, that Title IX only encompassed Grove City's financial aid program.\textsuperscript{119} Justice Stevens maintained

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\item federal funding to effect "[c]ompliance with any requirement adopted pursuant to this section." \textit{Id.} at 1222.
\item Justice White further dismissed Grove City's contention that requiring compliance with Title IX as a condition to eligibility in the BEOG program infringed upon the first amendment rights of the college and its students. \textit{Id.} This argument was without merit, he believed, because Congress is free to impose reasonable conditions to the financial aid it disburses and, additionally, no institution was obligated to accept such assistance. \textit{Id.; see, e.g., Pennhurst State School & Hosp. v. Halderman, 451 U.S. 1, 17 (1981).}
\item \textit{Id.} at 1223 (Powell, J., concurring).
\item \textit{Id.} at 1223 (Powell, J., concurring). Justice Powell chastised the Department for "having taken this small independent college, which it acknowledges has engaged in no discrimination whatever, through six years of litigation with the full weight of the federal government opposing it." \textit{Id.} at 1224. Further, Justice Powell expressed concern that the most direct effect of terminating the funding would fall upon the students, disadvantaging them rather than the school. \textit{Id.}
\item \textit{Id.} (Powell, J., concurring).
\item \textit{Id.} (Powell, J., concurring).
\item \textit{Id.} at 1225 (Stevens, J., concurring). Justice Stevens recognized that the Department was merely seeking a judgment that Grove City be required to execute an Assurance of Compliance with regard to its financial aid program. \textit{Id.} Similarly, in his dissent, Justice Brennan noted the curious fact that until the government had filed its briefs in \textit{Grove City}, it had consistently maintained that Title IX covered the entire undergraduate institution operated by Grove City College. Accordingly, Justice Brennan
\end{itemize}
that, in addition to being unnecessary, the Court’s holding was predicated on speculation rather than evidence.\textsuperscript{120} He advised that a factual inquiry was required as to which of Grove City’s programs received or benefited from federal financial assistance.\textsuperscript{121} 

Justice Brennan, joined by Justice Marshall, concurred with the Court’s opinion insofar as it stated that Grove City was a recipient of federal financial assistance because its students received federal education grants.\textsuperscript{122} He dissented, however, from the conclusion that Title IX’s prohibitions only affected Grove City’s financial aid program.\textsuperscript{123} Such a narrow definition of “program or activity” reflected an ignorance of clear indicia of congressional intent as well as the primary purpose for which the statute was enacted.\textsuperscript{124} Following a thorough examination of Title IX’s legislative history, judicial interpretation of similar statutory language in Title VI, and the post-enactment history of Title IX, Justice Brennan determined that a more liberal reading of the program-specific language was required.\textsuperscript{125} When federal money is received by or benefits the entire institution, Title IX coverage throughout the institution is appropriate.\textsuperscript{126}
ANALYSIS

Direct v. Indirect Aid

In finding that receipt of indirect aid, in the form of students' educational loans, qualifies a school as a recipient of federal aid and subjects it to Title IX's prohibitions, the Court articulated a well-reasoned decision based on the contemporaneous history of Title IX, its language and its post-enactment history. Although the legislative history provides no express indication that student aid was meant to trigger Title IX coverage, the statute's similarity to Title VI, together with statements by legislators, suggests that this result is consistent with the intent of Congress. In addition, the language of Title IX fails to distinguish between direct and indirect federal financial assistance, thus implying that both fall within the realm of Title IX. Further, the statute's post-enactment history contains evidence of defeated amendments which would have limited Title IX's application to direct aid. Thus, it appears that the drafters of Title IX did not differentiate between direct institutional assistance and aid received by a school through its students. Therefore, the Grove City Court properly concluded that Title IX reaches even those institutions which indirectly receive federal aid through their students' financial aid.

The Program-Specificity Limitation

Notwithstanding its proper determination that Title IX coverage was triggered by indirect federal funding, the Court erred in construing the school's financial aid department to be the only program receiving such aid. Such a restrictive application of the statute's program-specific language is inconsistent with congressional intent and represents a significant departure from the Court's consistently broad interpretations of Title IX's remedial reach.

_Grove City_’s narrow construction of the term “program” signifi-
Grove City College v. Bell

significantly restricts the statute's coverage and represents a marked retreat from the Court's liberal readings of Title IX in prior decisions. For example, in Cannon v. University of Chicago, the Supreme Court acknowledged that Title IX had been enacted to prevent the use of federal resources to support discriminatory practices and expanded the remedial scope of Title IX to include a private right of action. The Court further broadened the statute's reach in North Haven Board of Education v. Bell, by holding that Title IX applied to gender-based employment discrimination in federally funded education programs. In North Haven, the Court expressly recognized that "[t]o give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language."

In Grove City, the Court failed to undertake the thorough analysis of congressional intent with which it resolved previous Title IX issues. In North Haven, the Supreme Court expressly set forth a three-pronged analysis for determining the intended scope of Title IX, which required examination of the statute's pre-enactment history, its language and its post-enactment history. In interpreting the program-specific provision, Justice White paid these criteria only cursory attention. By rejecting evidence of legislative intent without further consideration, the Court reached a determination which contravenes Title IX's goal of eliminating sexual discrimination in federally funded institutions. Had the Court followed its three-pronged analysis for determining congressional intent, it would have found no support for its narrow conclusion that BEOG's constitute assistance only to the financial aid department of the school.

Title IX's pre-enactment history indicates that the legislation, as originally proposed, was intended to cover an entire institution when any institutional program or activity received federal

133. Id. at 680; see supra note 68.
135. Id. at 535; see supra note 72.
137. 456 U.S. at 521.
138. Grove City College v. Bell, 104 S. Ct. 1211, 1220 (1984). Justice White summarily reviewed the Court's previous findings: "An analysis of Title IX's language and legislative history led us to conclude in North Haven . . . that 'an agency's authority under Title IX both to promulgate regulations and to terminate funds is subject to the program-specific limitations of §§ 901 and 902.'" Id. (quoting North Haven Bd. of Educ. v. Bell, 456 U.S. 512, 538 (1982)).
money. The original version of the act was subsequently modified to conform to the version of Title IX which had already passed in the House to help ensure adoption of the legislation in the Senate. Nevertheless, the record contains no suggestion that the Senate had altered the broad underlying premise of the original proposal. On the day of Title IX’s enactment, Senator Bayh termed the statute “a strong and comprehensive measure,” designed “to root out [sex discrimination] as thoroughly as possible.” It is difficult to reconcile such a comprehensive objective with the Court’s restrictive interpretation of Title IX’s program-specific language in Grove City.

Title IX was enacted as part of the Education Amendments of 1972 which also established the BEOG program. Congress intended this program to provide funds which would benefit colleges and universities as a whole, rather than merely enable the school to operate a student aid program, as suggested in Grove City. The pre-enactment debates for the amendments demonstrate congressional understanding that the passage of Title IX would subject the institution whose students received BEOG’s to pervasive federal regulation under the statute. Given the nature of the federal funding at issue, it is therefore unlikely that Congress would have

139. See supra notes 33-36 and accompanying text.
140. See 118 CONG. REC. 5803 (1972).
141. See generally Brooks, supra note 52, at 341 (noting that the amendment ultimately adopted as Title IX was only slightly modified from the original version).
143. Id. at 5804.
145. Other grant-in-aid programs, apart from the BEOG program, expressly provided assistance to an institution for its student aid program. For example, under 20 U.S.C. § 427 (1970 & Supp. 1985), the federal government will loan money directly to an institution to enable it to meet its required 10% matching contribution and to establish a student loan fund eligible for capital contributions. Although this program has not been funded since 1975, it was in effect at the time the BEOG program originated, suggesting that BEOG’s were not intended to merely provide assistance to an institution’s aid program.
146. Debates on the bills demonstrate congressional awareness of the connection between the BEOG program and Title IX. See, e.g., 117 CONG. REC. 30,412 (1971). Senator Bayh remarked that the passage of Title IX would ensure that the “hundreds of millions of dollars” of education expenditures authorized by the remainder of the bill would be applied equitably to all citizens, regardless of sex. Id.

The regulatory effect of Title IX on the BEOG program was heralded by the history of Title VI, which prohibited discrimination institution-wide by colleges and universities which enroll students who receive student loans. 45 C.F.R. § 80.4(d)(2) (1984). See generally Czapanskiy, Grove City College v. Bell: Touchdown or Touchback?, 43 Md. L. REV. 379, 409 (1984) (Congress had no reason to expect a different regulatory approach to BEOG’s under Title IX unless it required one).
exempted all areas of the institution, except the financial aid program, from Title IX’s strictures.

Although the statutory language of Title IX appears to limit the statute's reach through its focus on a specific “program or activity,” examination of similarly worded legislation, as well as the purpose behind the adoption of such language, fails to support a restrictive application of Title IX within an institution. Because Title IX’s reference to “programs or activities” is identical to that contained in Title VI, the legislative history and judicial interpretation of Title VI are integral to understanding Title IX. In adopting the language in Title VI, its drafters feared that an unrestricted enforcement sanction might lead to the arbitrary termination of federal aid throughout entire-school systems as a result of discriminatory practices in a particular program. Attempting to circumvent such overbroad funding terminations, Congress enacted Title VI with program-specific language. Nonetheless, the administrative regulations to implement Title VI clearly applied the statute’s provisions to entire institutions. Because these regulations were effective in 1972 when Congress enacted Title IX, it must have been clear that the regulations to implement Title IX would reflect a similarly expansive reading of the program-specific language. Moreover, judicial interpretations of Title VI which existed in 1972 supported a broad reading of Title VI and its regulations. Having had the opportunity to review both the regula-

147. See supra note 39 and accompanying text.
148. See Note, Board of Public Instruction v. Finch: Unwarranted Compromise of Title VI’s Termination Sanction, 118 U. PA. L. REV. 1113 (1970). This commentator suggests that the inclusion of the program-specific language in Title IX arose from two concerns of Congress: the possibility that noncompliance in a single school district might lead to termination of funds to the entire state and the possibility that discrimination in an education program might result in the termination of federal assistance to unrelated federally financed programs, such as highways. Id. at 1116-24.
149. Id. (analyzing the purpose of the program-specific language of Title VI).
150. Id. at 1120-21. See also Board of Pub. Instruction v. Finch, 414 F.2d 1068 (5th Cir. 1969), which noted it was the purpose of the language not to protect the “political entity whose funds might be cut off, but for the protection of the innocent beneficiaries of programs not tainted by discriminatory practices.” Id. at 1075 (emphasis in original).
151. See 45 C.F.R. § 80.4(d)(2) (1984). This section provides that Assurances of Compliance required from institutions receiving federal financial assistance (1) would extend “to all . . . practices relating to the treatment of students,” and (2) “shall be applicable to the entire institution.”
152. 104 S. Ct. at 1230 (Brennan, J., dissenting).
153. See, e.g., Board of Pub. Instruction v. Finch, 414 F.2d 1068 (5th Cir. 1969) (termination of federal funds is proper if they support a program which is infected by a discriminatory environment); Bossier Parish School Bd. v. Lemon, 370 F.2d 847, 852 (5th Cir. 1967), cert. denied, 388 U.S. 911 (1967) (equating a local school system with a “program or activity”).
tions implementing Title VI and judicial interpretations thereof, Congress must have intended an equally liberal reading of the program-specific language of Title IX.\textsuperscript{154}

Further analysis of the language in Title IX demonstrates Congress's intent that the program-specific language not be construed narrowly. Title IX prohibits sex discrimination in federally funded "programs or activities," and, furthermore, contains exceptions directed specifically at certain types of programs and activities.\textsuperscript{155} Many of these programs are unlikely to receive earmarked support and thus would not be subject to Title IX except as encompassed by institution-wide coverage.\textsuperscript{156} The fact that Congress made exceptions for certain programs implies that, without such exceptions, the programs would be covered Title IX even though they may not actually receive federal funding. Thus, by carving out exceptions to the statute at the time it was enacted and by way of subsequent amendment, Congress indicated that when it intended to exclude particular programs and activities from institution-wide coverage, it would do so expressly.\textsuperscript{157}

Had the Grove City Court more closely examined the post-enactment history of Title IX, it would have found further indication that Title IX was intended to be broadly construed. The Department, consistent with its interpretation of similar language in Title VI, implemented regulations for Title IX which allowed for institution-wide coverage.\textsuperscript{158} Worded in the disjunctive, the regulations prohibit sex discrimination in any program or activity which "receives or benefits" from federal financial assistance.\textsuperscript{159} Given the opportunity, Congress elected not to amend the Department's regulations, impliedly approving their broad reach.\textsuperscript{160}

The Court's interpretation of program-specificity, however, focuses solely upon programs receiving specific federal funding.\textsuperscript{161} By failing to acknowledge Title IX's applicability to all the pro-

\textsuperscript{154} 104 S. Ct. at 1230 (Brennan, J., dissenting).
\textsuperscript{155} See supra note 5 and accompanying text.
\textsuperscript{156} One example is athletic programs. See infra notes 202-03 and accompanying text.
\textsuperscript{158} See supra notes 48-49 and accompanying text.
\textsuperscript{159} See 34 C.F.R. § 106.31 (1984).
\textsuperscript{160} See supra notes 51-54 and accompanying text.
\textsuperscript{161} As noted by Justice Stevens in his concurrence, the Court overlooks the fact that the applicable regulation is worded in the disjunctive and applies "to every recipient and to each education program or activity . . . which receives or benefits from Federal financial assistance." 104 S. Ct. at 1225 (Stevens, J., concurring) (citing 34 C.F.R. § 106.11 (1984)) (emphasis added).
grams which benefit from receipt of federal aid anywhere within the school, the Court permits schools to effectively insulate discriminatory programs from the statute's reach merely by channeling federal money elsewhere in the school.\footnote{162}

Moreover, the arbitrary determination that receipt of students' BEOG's only triggers Title IX coverage of the financial aid program creates an implied presumption that this money is not being used elsewhere. Instead of requiring a factual inquiry as to those programs or activities challenged as discriminatory, the Court artificially restricts the statute's coverage of BEOG funding to a single program.\footnote{163} This result frustrates the remedial purpose for which Title IX was enacted and finds no support, express or implied, in the pre-enactment legislative history, statutory language, or post-enactment history of the statute.

In addition to its inconsistency with congressional intent, the Supreme Court's restrictive application of Title IX's anti-discriminatory provisions reflects an inconsistency with the Court's own findings in the \textit{Grove City} decision. In resolving the issue of whether aid indirectly received by a school amounts to federal aid to the institution, the Court determined that BEOG's are identical to general aid to the school and expressed a reluctance to "read into section 901(a) a limitation not apparent on its face."\footnote{164} Nevertheless, the Court artificially restricted Title IX's reach by determining that BEOG funds, utilized throughout the institution, constitute aid solely to the school's financial aid department.\footnote{165} This apparent contradiction as to Title IX's applicability throughout an institution is inexplicable in light of Congress's intent that receipt of such aid should trigger the statute's regulatory protection.

Further inconsistency within the decision stems from Justice

\footnote{162}{In effect, schools may avoid the application of Title IX by building legitimate "Chinese walls" around federal aid and fund discriminatory programs from non-federal sources. Grove City College v. Bell, 687 F.2d 684, 707 (1982) (Becker, J., concurring). \textit{See generally} Note, \textit{CIVIL RIGHTS}, supra note 59, at 617 (advancing the adoption of a use-oriented analysis).}

\footnote{163}{104 S. Ct. at 1225-26 (Stevens, J., concurring).}

\footnote{164}{\textit{Id.} at 1217.}

\footnote{165}{\textit{Id.} at 1221. Indicating that student financial aid programs are "sui generis," the Court concluded that "in purpose and effect" BEOG's represent aid to the financial aid program and, therefore, only that program may be regulated under Title IX. \textit{Id.} at 1221-22. For an analysis of the implementation of a "purpose and effect" test for Title IX coverage, see Czapinskiy, \textit{supra} note 146, at 399-408. This commentator suggests that a proper application of a purpose and effect test in \textit{Grove City} would have recognized Congress's purposes in enacting BEOG's and would have sought accurate evidence of the funding program's impact on the institution. \textit{Id.} at 406.}
White's limited comparison of Title IX with Title VI. He analogized the two statutes in concluding that the school's receipt of aid from its students triggered Title IX's coverage. In determining that non-earmarked student funds could be terminated only as a result of sex discrimination in the financial aid program, however, the Court disregarded judicial interpretations of Title VI which sanctioned broad-based termination of funding, regardless of the program for which they were specified. Such selective comparison to Title VI precludes a consistent, predictable interpretation of Title IX and promotes a result which is inconsistent with congressional intent.

**Grove City's Impact**

**The Congressional Response**

The immediate reaction evoked within Congress by the Grove City decision suggests its inconsistency with the legislative intent underlying the statute. Shortly after the Supreme Court's ruling in Grove City, identical bills were introduced in both houses of Congress which would have overturned the decision. The legislation, entitled the Civil Rights Act of 1984, would have implemented three basic changes in Title IX as well as in three other civil rights enactments passed since the early 1960's. First, the legislation would have replaced the reference to "program or activity" with the term "recipient." Second, the Act would have defined a "recipient" to include any entity receiving federal finan-

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166. 104 S. Ct. at 1218; see supra notes 41-45, 97-98, and accompanying text.
167. 104 S. Ct. at 1222; see supra note 44 and accompanying text.
168. As the Supreme Court stated in Cannon v. University of Chicago, 441 U.S. 677 (1979), because members of Congress made repeated reference to Title VI and its modes of enforcement, it can be presumed that the representatives were aware of the prior interpretation of Title VI and that this interpretation reflected their intent with respect to Title IX. Id. at 697-98.
171. Instead of prohibiting sex discrimination "under any education program or activity receiving federal financial assistance," § 901(a) as amended would proscribe discrimination "by any education [sic] recipient of [federal aid]." H.R. 5490, 98th Cong., 2d Sess. § 2(a)(3) (1984); S. 2568, 98th Cong., 2d Sess. § 2(a)(3) (1984). Further, the Department's termination authority would encompass federal "assistance which supports
cial assistance "directly or through another."\textsuperscript{172} Third, the Act would have clarified the enforcement provision of each statute to provide for termination of federal aid to an entire institution when any of its programs or activities violated the precepts of Title IX.\textsuperscript{173}

Following joint hearings of the House Education and Labor and Judiciary Committees, the House overwhelmingly approved its bill in June, 1984.\textsuperscript{174} Senate consideration resulted in disagreement over the bill's proper scope, however, which prevented the bill from being reported out of committee.\textsuperscript{175} Notwithstanding the bill's sixty-three bipartisan co-sponsors in the Senate and accelerated lobbying efforts by a coalition of labor unions, women's rights and civil rights organizations, the legislation faced strong opposition from conservative Senate Republicans and the Reagan Administration.\textsuperscript{176} Opponents of the bill contend that it would go beyond reversing the \textit{Grove City} decision and unjustifiably expand federal authority to enforce anti-discrimination laws.\textsuperscript{177} Despite

\textsuperscript{172} The bills would incorporate a supplemental paragraph defining the term "recipient" to expressly include indirect aid. H.R. 5490, 98th Cong., 2d Sess. § 2(b)(2) (1984); S. 2568, 98th Cong., 2d Sess. § 2(b)(2) (1984).

\textsuperscript{173} DAILY LAB. REP. (BNA) No. 155, at A-3 (Aug. 10, 1984). Opponents of the bill argued that it was too broad and that it would subject previously uncovered institutions to burdensome federal regulation. It is contended that such legislation would obliterate lines of distinction between federal and state and local government functions and cause unnecessary federal interference with the private sector. Statement of Chairman Hatch of the Senate Labor and Hum. Resources Comm. on Bill to Reverse Grove City Decision, in DAILY LAB. REP. (BNA) No. 154, at D-1 (Aug. 9, 1984). Speaking as a Senate witness, Charles MacKenzie, president of Grove City College, maintained that the bill would result in overwhelming federal interference. He feared that the college might never be able to disengage itself from the federal government: "(W)hatever step we take to refuse federal funds or to deny admission to students receiving federal monies, someone, somewhere will attempt to trace a federal dollar to Grove City's treasury." DAILY LAB. REP. (BNA) No. 105, at A-2 (May 31, 1984).

\textsuperscript{174} House Bill 5490 was passed on June 26, 1984 by a vote of 375 to 32. DAILY LAB. REP. (BNA) No. 184, at A-7 (Sept. 21, 1984).

\textsuperscript{175} Supporters in the Senate urged that the bill was necessary in order to reestablish the civil rights protections which have existed for the past 20 years. DAILY LAB. REP. (BNA) No. 155, at A-3 (Aug. 10, 1984). Opponents of the bill argued that it was too broad and that it would subject previously uncovered institutions to burdensome federal regulation. It is contended that such legislation would obliterate lines of distinction between federal and state and local government functions and cause unnecessary federal interference with the private sector. Statement of Chairman Hatch of the Senate Labor and Hum. Resources Comm. on Bill to Reverse Grove City Decision, in DAILY LAB. REP. (BNA) No. 154, at D-1 (Aug. 9, 1984). Speaking as a Senate witness, Charles MacKenzie, president of Grove City College, maintained that the bill would result in overwhelming federal interference. He feared that the college might never be able to disengage itself from the federal government: "(W)hatever step we take to refuse federal funds or to deny admission to students receiving federal monies, someone, somewhere will attempt to trace a federal dollar to Grove City's treasury." DAILY LAB. REP. (BNA) No. 105, at A-2 (May 31, 1984).

\textsuperscript{176} The greatest opposition came from Senator Orrin Hatch, whose Labor and Human Resources Committee had jurisdiction over the bill. Supporters of the legislation have charged that the Administration, by its silence, in effect opposed the bill. Senator Robert Packwood and Senator Edward Kennedy, sponsors of S. 2568, expressly called on President Reagan to let the Senate know that he supported the measure. DAILY LAB. REP. (BNA) No. 184, at A-7 (Sept. 21, 1984).

\textsuperscript{177} Senator Hatch, fearing the potential overbreadth of S. 2568, introduced a separate bill to reverse the \textit{Grove City} ruling. S. 2910 would have covered only Title IX and would have replaced "program or activity" with "institution," thereby removing the program-specific limitations of the statute and implementing Title IX on an institution-wide
negotiations, the parties were unable to reconcile their differences into a mutually acceptable version of the bill.\footnote{\textsuperscript{178}}

Upon reconvening in February, 1985, civil rights supporters in the House introduced similar legislation, entitled The Civil Rights Restoration Act of 1985.\footnote{\textsuperscript{179}} As enunciated in the bill, the legislation is intended to restore the prior interpretation and broad institution-wide application of the civil rights laws as previously administered.\footnote{\textsuperscript{180}} The 1985 legislation expands the term "program or activity" to include "all of the operations" of a recipient of federal funding, "any part of which is extended federal financial assistance."\footnote{\textsuperscript{181}} It specifically extends such coverage to state and local governments, local educational agencies,\footnote{\textsuperscript{182}} universities or systems of higher education, corporations, partnerships and other private organizations. Further, the legislation permits coverage of "any other entity . . . in a manner consistent with the coverage provided with respect to the those entities described."\footnote{\textsuperscript{183}}

Opponents contend that the bill's indefinite parameters provide little guidance for the courts, bureaucrats, attorneys and businessmen attempting to determine its scope.\footnote{\textsuperscript{184}} They argue that the leg-

\footnote{\textsuperscript{178}} With time running out in the session, the bill's sponsors tried unsuccessfully to get the bill to the Senate floor for a vote. \textit{Rights Bill}, supra note 177, at 2430. The bill was subsequently offered as an amendment to a continuing House appropriations resolution. H.J. Res. 648, 98th Cong., 2d Sess. (1984). Their efforts proved futile on October 2, 1984 when the Senate elected to table the legislation by a vote of 53 to 45. \textit{Rights Bill}, supra note 177, at 2430.


\footnote{\textsuperscript{180}} \textit{Id}.

\footnote{\textsuperscript{181}} \textit{Id}.

\footnote{\textsuperscript{182}} The bill offers a less expansive intrusion into the affairs of state and local governments by allowing the statutes to encompass only the agency or department actually receiving the federal aid, rather than all of its operations. \textit{Id}.

\footnote{\textsuperscript{183}} \textit{Id}.

\footnote{\textsuperscript{184}} See, e.g., \textit{Hearings Before the House Comm. on Educ. and Labor and the Judiciary Subcomm. on Civil and Constitutional Rights}, H.R. 700, 99th Cong., 1st Sess. (1985) [hereinafter cited as \textit{Hearings, Constitutional Rights}] (statement of Eric I. Miller, executive director of Citizens Concerned for the Constitution) (on file at Loyola University of Chicago Law Library). Mr. Miller asserts that "the potential scope of H.R. 700 is limited only by the ingenuity and innovativeness of an enterprising attorney working hand-in-hand with a bureaucrat who wants to socialize the private sector in America, all in the
islation protects some civil rights, such as freedom from discrimination, at the expense of other rights, namely academic freedom and independence from federal regulation in the private sector. Proponents of the 1985 legislation, a growing coalition of groups with diverse interests, maintain that the Act is vital to prevent the erosion of progress in civil rights.

**Grove City’s Broad Implications**

The Supreme Court’s decision in *Grove City* undercuts the single federal law which comprehensively prohibited sex discrimination in education. Individuals whose claims do not fall within the scope of Title IX must assert them under the equal protection clause, a comparatively ineffective method of reaching sex discrimination. Recent Supreme Court decisions involving equal protection challenges reflect the Court’s hesitancy to recognize complete sexual equality under the equal protection clause. Without the confines of an activist federal judiciary.” *Id.* Accordingly, he proposes that legislation confined to educational entities would circumvent the need for discussion of such business concerns.

185. *Hearings, Constitutional Rights, supra* note 184 (statement of J. Richard Chase, President, Wheaton College and First Vice President, American Association of Presidents of Independent Colleges and Universities). Mr. Chase expresses concern that H.R. 700 will allow federal agencies to regulate the academic programs of institutions which benefit only indirectly from federal assistance and permit such agencies to evaluate the legitimacy of a college’s deeply held religious convictions resulting in an unwarranted entanglement of church and state.

186. These groups include: Chicago Lawyers’ Committee for Civil Rights Under Law, Inc.; Paralyzed Veterans of America; American Federation of State, County, and Municipal Employees; American Association of University Women; NAACP; The National Women's Law Center; Project on the Status and Education of Women, Association of American Colleges. *Hearings, Constitutional Rights, supra* note 184 (testimony on behalf of these groups).


188. See *Sex Bias, supra* note 18, at 26 (quoting the Leadership Conference on Civil Rights in Washington, D.C.).

189. See *supra* notes 20-30 and accompanying text. The remedy provided under an equal protection claim may not provide the optimum solution in certain cases of sex discrimination. For example, a female athlete who is not given the opportunity to play on a women's team would find a cause of action under Title IX more beneficial than one under the equal protection clause. While a Title IX remedy might amount to an affirmative order to create equal opportunity through separate teams, the remedy under an equal protection claim would only permit the complaining party to participate or try out for an all-male team. See *J. Weisstart & C. Lowell, The Law of Sports* 84 (1979); Martin, *supra* note 22, at 485.

190. See, e.g., Michael M. v. Superior Court of Sonoma County, 450 U.S. 464 (1981). In *Michael M.*, the Court upheld California’s statutory rape law which held males criminally responsible for an act of sexual intercourse with underage females. Females, however, were not liable under the same circumstances for engaging in intercourse with
Equal Rights Amendment,\textsuperscript{191} or similar legislation mandating equality between the sexes, the future of constitutional protection against sex discrimination is uncertain.\textsuperscript{192}

The Grove City Court’s conservative ruling on Title IX’s scope, moreover, threatens to have serious repercussions beyond the context of sex discrimination in educational institutions. The decision potentially undermines similarly structured civil rights laws addressing discrimination based on race, age and handicaps.\textsuperscript{193} These enactments, like Title IX, restrict their applicability to a “program or activity” that is “receiving” federal funding. In contrast to the interpretation of Title IX in Grove City, courts reviewing these earlier Acts have consistently viewed this same language less restrictively in order to more effectively redress various types of discrimination.\textsuperscript{194} Because Grove City has effectively narrowed the scope of Title IX, the decision may signal more restricted applications of other civil rights legislation as well.\textsuperscript{195}

\textsuperscript{191}See infra notes 219-21 and accompanying text.

\textsuperscript{192}See Dow, supra note 190, at 71.


\textsuperscript{195}In Consolidated Rail Corp. v. Darrone, 104 S. Ct. 1248 (1984), decided the same day as Grove City, the Supreme Court remanded a handicap employment case, arising under § 504 of the Rehabilitation Act, for findings as to the relevant program to which Title IX would apply in light of the restrictive interpretation of the term in Grove City. The Office for Civil Rights of the Department of Education has announced its intention to apply the interpretation of Title IX in Grove City in its enforcement proceedings brought under Title IX, Title VI and section 504. See Czapanskiy, supra note 146, at 379 n.1. Resistance to complaints of race discrimination is increasing because of the widely held belief that the present administration will not enforce civil rights laws. Hearings, Constitutional Rights, supra note 184 (statement of Raymond A. Bolden, President, Joliet Branch, NAACP).
The Practical Implications

The error in the Court's interpretation and application of Title IX's program specific language in Grove City is further evidenced by the statute's inability to effectively redress sex discrimination in the institution. Although Grove City involved the Department's authority to compel an institution to execute an Assurance of Compliance with Title IX, rather than alleged discrimination under the statute, the decision could render the Department powerless to reach actual sex discrimination in some areas of the school which are supported by federal funding.

Under Grove City, it is unclear how sex discrimination may be challenged when the violative program or activity does not itself receive federal aid earmarked for that program. Determining that indirect funding is received only by the school's financial aid program, the Court indicated that Title IX regulation must be restricted to programs which receive federal funding designated for that program. The application of such a narrow construction of the statute demonstrates its injustice. For example, the Office of Civil Rights ("OCR") decided not to investigate one sexual harassment claim arising under Title IX because the alleged discrimination occurred in a particular building not constructed or renovated with federal money, notwithstanding the fact that the university had received $2,216,000 under the College Housing Loan Program and $9,900,000 in student aid.

The Court's restrictive interpretation of programs covered by Title IX exempts from coverage those areas of the school which re-

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196. See supra notes 80-81 and accompanying text.
197. By construing the financial aid program to be the only recipient of BEOG funding, the decision permits the remainder of the school to receive support from the general budget, including BEOG money, yet operate unhindered by Title IX's regulatory prohibition. But see infra notes 208-15 and accompanying text.
198. As Justice Stevens suggested in his concurring opinion, Grove City raises doubt as to whether another discriminatory program or activity, which is wholly supported by BEOG funding, may nevertheless be challenged under Title IX. Grove City College v. Bell, 104 S. Ct. 1225-26 (1984) (Stevens, J., concurring).
199. Id. at 1222 (Stevens, J., concurring).
200. See Project on Equal Education Rights of the NOW Legal Defense and Education Fund, Injustice Under the Law: The Impact of the Grove City College Decision on Civil Rights in America (1985) [hereinafter cited as Injustice Under the Law]. Implementation of the Grove City restriction has exempted from coverage other forms of discrimination within the institution as well. For example, the Office for Civil Rights ("OCR") refused to investigate a disabled maintenance worker's claim of employment discrimination at a university on the grounds that the school received no federal funds for maintenance, despite receiving approximately $3,376,182 in federal aid from the Department of Education over the past 5 years. Id. (OCR Docket Number 03-84-2040).
ceive or benefit from federal aid not specifically targeted for that area. For example, sex discrimination in an athletic program may no longer fall within Title IX's reach because few athletic programs are funded by federal grants or funds specifically earmarked for their use. Because such a program receives federal funding from a variety of sources, including student aid, discrimination may be attacked only when the school's receipt of federal aid precludes discrimination throughout the institution. Under the Court's program-specific interpretation of Title IX, however, the potential for institution-wide enforcement is reduced to a minimum.

The impropriety of the Grove City decision is further reflected in its adverse impact on students. By permitting the termination of BEOG's to rectify sex discrimination in the financial aid program, Grove City allows termination of student-received federal aid which

201. Only 4% of $13 billion in federal aid received by college and universities is earmarked for specific programs. Under Grove City, the remaining 96% may, in effect, subsidize discriminatory programs and activities. Injustice Under the Law, supra note 200, at 2.

202. See Czapanskiy, supra note 146, at 382. This commentator notes that an athletic program is a subordinate unit within an institution which receives federal aid from a variety of sources, including student aid, construction funds for athletic facilities and research grants. Id.

203. See Brief for the Honorable Claudine C. Schneider, Gary Ackerman et al., Grove City College v. Bell, 104 S. Ct. 1211 (1984), at 32-33, which acknowledges that the Department's original Title IX regulations covered athletic programs and notes that since athletic programs typically receive no earmarked federal funding, authority for the Department's regulation must derive from the role of athletics as a part of the total educational programs of institutions receiving federal funding.

204. See Czapanskiy, supra note 146, at 381. In its Amicus Brief, the Council of Collegiate Women Athletic Administrators notes the significant progress in the area of women's athletics between 1972-1982 as a result of the enactment of Title IX. Brief for the Council of Collegiate Women Athletic Administrators as Amicus Curiae in Support of Respondent at 11, Grove City College v. Bell, 104 S. Ct. 1211 (1984). Citing unpublished estimates prepared by the National Collegiate Athletic Association ("NCAA") and distributed to its members, the Council notes that the average expenditure for women's athletic programs rose from $27,000 in 1973-1974 to $400,000 in 1981-1982. Id. at 11-12. Further, while fewer than 32,000 female student athletes participated in NCAA schools in 1971-1972, this number had risen to 72,000 by 1981-1982. Id. at 12. In addition to the dramatic increase in female participation in athletics, there has been a significant expansion in the number of coaching positions for women's teams as well as growth in career-oriented athletic administration programs. Id. The Council concludes that past progress and future growth is dependent upon effective enforcement of Title IX to assure full equality to women. See also Hearings, Constitutional Rights, supra note 184, at 3 (statement of Rosetta Daylie, President of AFSCME Council 31) (on file at Loyola University of Chicago Law Library) (noting that, before Title IX, no colleges or universities offered athletic scholarships to women; by 1982, 15,000 women were offered scholarships); Comment, The Evolution of Title IX Prospects for Equality in Intercollegiate Athletics, 11 GOLDEN GATE 759, 761-62 (1981) (noting the advanced opportunities for women to participate in collegiate athletics as a result of Title IX).
does not support the department in which discrimination is practiced.\textsuperscript{205} Students who receive funding directly from the federal government lose their aid in the government’s attempt to address sex discrimination which only affected students who receive federal aid through the school.\textsuperscript{206} While being, in effect, penalized for the institution’s discriminatory policies, these students do not ultimately benefit from the statute’s remedial sanction beyond the possible resumption of their own aid upon the institution’s eventual compliance with the statute’s regulations.\textsuperscript{207} At the same time, however, they may be subjected to sex discrimination in other areas of the school which are not covered by Title IX’s prohibitions. In light of Congress’s express intent to prevent the use of federal money to support discriminatory programs, it is difficult to reconcile this ineffective application of the statute with Title IX’s remedial purpose.

RECOMMENDATIONS

\textit{A Practical Application of Title IX}

The Court’s determination that receipt of BEOG’s does not trigger institution-wide coverage was undoubtedly premised upon the Court’s narrow scope of the Department’s termination authority. However, the \textit{Grove City} decision should not be read as implying that areas of the institution, other than the financial aid department, can never be subject to Title IX’s regulations when the school receives BEOG’s.\textsuperscript{208} Courts should be cognizant of the dif-

\textsuperscript{205} Grove City’s students receive BEOG’s under the Alternative Disbursement System, whereby determination of eligibility and disbursement of funding is performed directly by the federal government. The school’s financial aid program merely verifies the eligibility of recipients of the federal aid. Accordingly, Grove City’s financial aid department does not make decisions as to who will receive federal aid or how much aid will be extended. Any sex discrimination among students participating in the school’s financial aid program, therefore, does not affect Grove City’s BEOG recipients who receive their funding directly from the federal government. \textit{See supra} note 77 and accompanying text.

\textsuperscript{206} \textit{See supra} note 77 and accompanying text.

\textsuperscript{207} A recipient institution or student-applicant shall be restored to full eligibility to receive further federal financial assistance if the institution satisfies the terms and conditions of the termination or suspension order, issued under § 100.10(f), or if it brings itself into compliance and provides assurance that it will fully comply in the future. 34 C.F.R. § 100.10(a), (f) (1984).

\textsuperscript{208} The \textit{Grove City} Court determined that the Department did not have the authority to terminate funding to an entire institution if only one program in an institution failed to satisfy Title IX’s requirements. Arguably, however, the Department may still use “other means” to effect the goals of Title IX. \textit{See infra} note 210; \textit{supra} note 103 and accompanying text; Note, \textit{Program-Specific Reach}, \textit{supra} note 7, at 1221 (although the reach of Title IX’s prohibition is coterminous with the Department’s enforcement author-
ference between the Department’s authority to terminate federal aid and its authority to enforce its regulations by “other means authorized by law.” Accordingly, although the Department may not automatically terminate aid in every program or activity in the school, it is empowered to use its “other means” authority to reach discrimination throughout an institution receiving general support from non-earmarked funds or student aid.

Under Title IX’s enforcement provision, the Department’s termination authority is limited to the particular “program or part thereof” in which noncompliance has been found. Where termination is impossible or impractical, the Department may obtain an injunction to enforce an Assurance of Compliance or file suit under other state and local laws as a means of furthering Title IX’s objectives. Such alternate avenues of enforcement are preferable to the complete termination of federal funding because they can be focused to address the source of the Title IX violation. For example, a court may tailor an injunctive order to encompass only those who have the ability to correct the Title IX violation. Additionally, alternate methods of enforcement do not adversely affect the students by depriving them of aid to which they may otherwise be entitled. Moreover, while the termination of funding signals termination of Title IX coverage, enforcement through other means permits Title IX’s protections to continue to reach the school in an effort to redress sex discrimination.

209. 34 C.F.R. §§ 100.8, 106.71 (1984); see Note, Congressional Intent, supra note 7, at 1281 (1983) (Department should refuse to allow prospective students to qualify for aid and terminate existing funding only as a last resort); Note, Program-Specific Reach, supra note 7, at 1217-27, 1244 (the narrow scope of the Department’s termination authority must be distinguished from the scope of Title IX’s prohibition as enforced by “other means authorized by law”).

210. Section 902 authorizes the Department to effect compliance with Title IX by two means: “(1) by the termination of or refusal to grant or to continue assistance under such program or activity . . . limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law.” 20 U.S.C. § 1682 (1976) (emphasis added); see supra note 6.


212. These examples are illustrative of “other-means” of enforcement. The Department’s regulations include state and local law remedies and voluntary compliance as “other means authorized by law.” 34 C.F.R. §§ 100.8, 106.71 (1984).

213. See Note, Program-Specific Reach, supra note 7, at 1226.


215. Termination merely reduces the resources with which a school may continue its discriminatory policies. Additionally, it provides no remedy for those who subsequently experience discrimination. See Note, Program-Specific Reach, supra note 7, at 1226 n.108.
Congressional Action

To circumvent the need for judicial construction of Title IX's ambiguous provisions, Congress should elucidate its intent by enacting legislation which clarifies the statute's application. Prompted by the Grove City decision, congressional civil rights supporters have already attempted to extensively amend Title IX and three other civil rights laws.216 Such broad, sweeping attempts to overturn the Grove City interpretation of the program-specific language of these statutes is likely to be met with resistance.217 Legislation directed solely toward clarifying the language of Title IX, however, would effectuate congressional intent with respect to that statute without altering the established interpretation and construction of similar civil rights laws.218

Alternatively, Congress may effectively redress sex discrimination in the schools by enacting new legislation which would augment the provisions of Title IX. For example, the Equal Rights Amendment to the Constitution ("ERA"), as proposed, had the capacity to address widespread discrimination by its mandate that the government not use gender as a factor in official classification.219 Commentators note that the ERA's broad language would have been subject to judicial interpretation, much like Title IX.220 Presumably, however, the adoption of the ERA would elevate sex-based classifications from the intermediate level of review to the Court's strictest scrutiny.221 Regardless of its form, it is apparent

216. See supra notes 169-78 and accompanying text.
217. For example, Senator Hatch, who led the opposition against the Civil Rights Act of 1984, proposed alternative legislation which would have amended only Title IX. See supra note 177.
218. See, e.g., notes 38-44 and accompanying text (interpretation and construction of Title VI of the Civil Rights Act of 1964).
219. See S. Res. No. 689, 92d Cong., 2d Sess. 2 (1972). See generally Ginsburg, supra note 23, at 175 (ERA did not require similarity in result, parity, or proportional representation). Although the ERA would impose a state action requirement, much like the equal protection clause of the fourteenth amendment, the variety of ways by which state involvement may be shown simplifies plaintiff's burden in alleging this necessary element. See supra note 22 and accompanying text.
220. Ginsburg, supra note 23, at 176. ("No one can predict with complete assurance how the Amendment will be interpreted and applied in every instance.").
221. See supra notes 26-29 and accompanying text. The Supreme Court's express reluctance to heighten the level of scrutiny for sex-based classifications in the face of the enactment of the ERA suggests it believed the amendment, if enacted, would effectuate such a change. Frontiero v. Richardson, 411 U.S. 677, 692 (1973) (Powell, J., concurring); see Comment, Girls' Basketball, supra note 29, at 797 (ERA may have an impact on the analysis used in sex discrimination cases, but no change will occur unless the
that future legislation must be unambiguously worded and provide sufficient indicia of congressional intent if it is to successfully attack sex discrimination in any context.

**CONCLUSION**

Congress intended Title IX to combat sex discrimination in educational institutions. In *Grove City*, the Court determined that a college's indirect receipt of student aid funds cannot trigger institution-wide coverage notwithstanding the fact that these funds may be used to support the entire institution. Instead, the Court restricted the application of Title IX to only those programs for which funding is intended. The decision is contrary to Congress's intent that Title IX be given a comprehensive interpretation in order to achieve its remedial objectives. Further, *Grove City* represents a significant retrenchment from the Court's previously liberal interpretations of the scope of Title IX. While depriving plaintiffs of a potentially powerful means of redressing sex discrimination, the decision threatens the continued viability of similarly structured civil rights legislation.

The *Grove City* decision has provided the impetus for corrective legislation in both houses of Congress. Such legislation, proposing sweeping changes in several civil rights laws, has been met with vigorous resistance. At a minimum, Congress must elucidate the intended meaning of the program-specific language of these statutes. The Court's construction of program-specificity in *Grove City* renders the law incapable of adequately redressing various forms of discrimination and threatens to reverse two decades of progress toward the achievement of Congress's remedial goals.

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Court views the amendment as a mandate that sex be considered a suspect classification). *See generally* Cox, *supra* note 2, at 61 (ERA may be interpreted as establishing sex as a suspect classification or as creating an absolute prohibition against sex classifications).