GROVE CITY/CIVIL RIGHTS Vol. F(6 of 6) OA 16789 ADDINGTON, DAVID S.: FILES

WITHDRAWAL SHEET
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
letter case (OA 16789)			C5
1. memo	Addington to Brandon Blum, re draft Justice letter on "Grove City" Bill	2/18/88	~~P-5~~ 10/4/00
2. draft letter	handwritten, re S. 557	n.d.	~~P-5~~

COLLECTION: DAVID ADDINGTON FILES, 1987-1988	ggc
FILE LOCATION: Grove City/Civil Rights Vol. I (6 of 6)	2/23/94

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]
- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA.
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

Freedom of Information Act - [5 U.S.C. 552(b)]
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

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File Grove City

National Association
of Manufacturers

JERRY J JASINOWSKI
Executive Vice President
& Chief Economist

February 18, 1988

Honorable
U.S. House of Representatives
Washington, DC 20515

Dear :

The National Association of Manufacturers urges that you oppose any effort to permit consideration of "The Civil Rights Restoration Act," so-called Grove City legislation, under suspension of the rules.

It is public knowledge that we support vigorous enforcement of anti-discrimination statutes as illustrated by our strenuous opposition to Administration efforts to dilute Executive Order 11246. NAM supports returning to the law as it was prior to the Supreme Court decision in Grove City College v Bell. However, we strongly oppose S. 557 and H.R. 1214 because they would vastly expand federal statutory coverage over business despite proponents' characterizations that they are simply "restorative."

The House and those that support and oppose H.R. 1214 have not had an opportunity to express their positions -- hearings have neither been scheduled nor held in the 100th Congress. If S. 557 is brought up under suspension, however, merit would not be an issue as no amendments would be in order. For example, Members would not have an opportunity to amend or strike abortion language contained in S. 557. The only issue would be the procedure.

We may differ on the merits of S. 557 and H.R. 1214. I hope there is agreement, however, that suspension of the rules is wholly inappropriate on a measure where positions on the legislation are so clearly polarized.

Accordingly, we urge that you oppose suspension as a vehicle by which to bring the Grove City legislation to the floor.

Sincerely,

1331 Pennsylvania Ave., NW
Suite 1500 - North Lobby
Washington DC 20004-1703
(202)637-3000

PRESS RELEASE

FOR: IMMEDIATE RELEASE

FEBRUARY 12, 1988

For more information, contact: Rev. Cleveland Sparrow, Chairman
5801 16th Street, N.W.
Washington, D.C.
(202) 723-8411

We the National Coalition for Black Traditional Values do hearby publically declare war against the following Congressional legislation and recent judicial rulings.

1) S. 557, paragraph 3b
2) The Edward Hawkins bill - HR 1214

We believe that these bills are a direct assault on black traditional values which we stand for. This legislation is a racist attempt by special interest groups to further erode and infringe upon the gains and accomplishments won during the Civil Rights movement.

We also believe that these actions are a direct infringement upon black traditional values for church and family.

We believe that the recent judicial ruling of the 9th U.S. Circuit Court of Appeals declaring homosexuals as a "suspect class" and entitled to the same special Constitutional protection as racial minorities is absurd.

We feel that the homosexual lifestyle is a matter of choice and therefore should not be subject to the same Constitutional protections as racial minorities.

We feel that this ruling is an infringement upon the Constitutional rights and privileges of all minority groups.

DRAFT

ALERT***ALERT***ALERT

"CIVIL RIGHTS" BILL MAY COME UP UNDER SUSPENSION

It now appears that the Democrats will try to bring up the Civil Rights Restoration Act, also known as the "Grove City" bill (S.557/ H.R. 1214) under suspension of the rules sometime in the next few weeks. The version they will try to bring to the floor is the recently-passed Senate version of the bill.

Conservatives should note that evevn though the bill includes some good modifying amendments (such as an abortion neutral amendment, freeing religious hospitals and others from being forced to perform abortions), the overall bill is still unnaceptable.

Conservatives oppose bringing the bill up under suspension for the following reasons:

1. The suspension calendar is for non-controversial bills only. The Grove City bill, on the other hand, is extremely controversial.

2. No hearings have been held in the House on the bill during this Congress.

3. The proper committee procedures for consideration of such a bill have not been followed.

4. A number of Members have prepared amendments they would like to offer to the bill. But under the suspension of the rules procedures they would not be allowed to offer them.

5. The Grove City bill as passed by the Senate is completely unnaceptable to conservatives unless it includes the following amendments:

   A. Religious Tenets Exception: This says the "Grove City" bill will not apply to educational institutions where the institution is controlled by, or closely identifies with, the tenets of the religious organization.

   B. Definition of handicapped: This would prevent persons with contagious diseases, drug addicts and alcoholics from being considered "handicapped". Without this clarification, employers would be forced to hire such persons, who would then get the same protections as the handicapped.

   C. Small Providers Exception: Without this amendment,

small business providers, such as the corner grocery store, are going to be required to make expensive structural alterations to their facilities to accomodate handicapped. These small businesses would be subject to numerous suits by anyone who complains about their access to the facilities.

D. State and Local Government Exemption: This would make "Grove City" apply only to the specifil program or activity of a state or local agency or other entity that actually receives the federal aid, not the entire state or local agency or entity. Without this amendment, they would be subjected to mountains of federal paperwork and open to the possibility of costly lawsuits.

CONSERVATIVE POSITION

Conservative Members should:

1. Vote "NO" on suspension of the rules with regard to the "Grove City" bill.

2. Insist the bill go through regular established procedures for consideration of controversial bills. A "NO" vote on suspension will still allow the bill to be considered later under regular procedures.

3. Be sure to be in town to participate in floor debate on the suspension issue (on a Monday) and the actual vote on suspension (on a Tuesday). This procedure requires a favorable vote by two-thirds of those present. This means, of course, that we will need only one-third of all Members plus one to defeat this attempt.

SENATE-PASSED VERSION OF S 557

The Senate passed the Grove City bill (S 557) on January 28, 1988 with several amendments attached to it. These amendments included:

1. An abortion neutral amendment: (Sen. Danforth), this would ensure that the bill does not require that persons or public or private entities receiving federal funds perform abortions.
2. A modified Arline amendment: (Sen. Humphrey), this said that the protections for handicapped persons did not apply to persons who currently have a contagious disease or infection, and who, because of the disease, would be a direct threat to the health or safety of other individuals or who, because of the disease, are unable to do the job.
3. Weicker amendment regarding abortion: Anti-abortion supporters rejected this amendment, which said that the bill would not force or require any individual or hospital or any other institution receiving federal funds to perform or pay for an abortion. Those anti-abortion forces favored the Danforth amendment above.

The Senate version does not include the following amendments, which the liberal-dominated Senate rejected:

1. Religious Tenets amendment: (Sen. Hatch) this clarified that the exemption to Section 901 of the Education Amendments of 1972 shall also apply to entities closely identified with the tenets of a religious organization.
2. Grove City substitute bill amendment: (Sen. Hatch) this was a substitute Grove City bill, which limited the reach the federal government would have under S.557.
3. Small Providers exception: (Sen. Humphrey) provided for the treatment of small providers under the Rehabilitation Act of 1973.

GRASS ROOTS SUPPORT

Members should be aware that numerous conservative grass roots groups are reportedly in strong opposition to bringing the "Grove City" bill up via suspension of the rules, without any opportunities to be able to include certain vital amendments.

****

Karen A. Burke

File Grove City
2-3

February 18, 1988

MEMORANDUM FOR BRANDON BLUM
OFFICE OF LEGISLATIVE REFERENCE
OFFICE OF MANAGEMENT AND BUDGET

FROM: DAVID S. ADDINGTON
SPECIAL ASSISTANT TO THE PRESIDENT
FOR LEGISLATIVE AFFAIRS

SUBJECT: Draft Justice Letter on "Grove City" Bill

I have reviewed the draft Justice Department letter on S. 557, the Grove City civil rights bill.

I understand that John Bolton, the proposed signer of the letter, is out of town. For this letter to have its intended effect, it must be signed by a senior Departmental official whose name the Members will recognize (if not John Bolton, then Brad Reynolds).

Also, for the letter to be read by Members, as opposed to simply being shunted off for staff to read, the letter should be short (preferably one page), and should not have the voluminous DOJ attachments.

It would be better to hit the Members with this initial DOJ letter and then to have DOJ follow up with its packages of information on the issues.

Attached is a redrafted version of the letter which DOJ should review and consider.

If DOJ determines that it is important to include in the letter the reference to religious tenets and Title IX, then it needs to spell out the issue more clearly. The phrase in the DOJ draft letter "inadequately protects religious tenets under Title IX" will be meaningless to most of the Members who read the letter.

WH/LA 1-18

[Draft DOJ Letter on Grove City Bill to 300 House Members]

Dear _____:

We understand that the House leadership is considering whether to place on the suspension calendar the Senate-passed "Civil Rights Restoration Act" (S. 557), also called the "Grove City" bill. The Administration strongly opposes S. 557 and its House counterpart, H.R. 1214, and supports as an appropriate alternative H.R. 1881.

Consideration of S. 557 under suspension of the rules would cut off the opportunity for Members of the House to consider amendments to correct serious deficiencies in the legislation.

The legislation inflicts a variety of Federal compliance burdens for the first time on State and local governments and on many private institutions, such as farms and small businesses, and exposes them to costly lawsuits. The manner in which the legislation treats churches, synagogues, and religious elementary and secondary school systems threatens religious liberty. These are just two of the critical defects which remain in S. 557 even with the preservation of the important abortion neutrality provision adopted by the Senate.

The legislation would be the most radical revision of civil rights legislation in two decades, yet no committee hearings have been held on it in this Congress. Such a fundamental revision of Federal civil rights laws should not occur without the careful consideration which is part of the normal legislative process.

We urge you to oppose placement of S. 557 on the suspension calandar and, if it is placed on that calendar, to vote against its passage when it is considered under suspension of the rules. Only keeping it off the suspension calendar, or defeating the motion to pass it under suspension of the rules, will provide an opportunity for those affected by the bill to be heard, and an opportunity for the House to work its will through the normal amendment process.

I have asked Michael Wermuth, the Legislative Counsel of the Civil Rights Division (633-1703) and Mark R. Disler, Deputy Assistant Attorney General for Civil Rights, to provide information and to answer any questions you or your staff may have.

Sincerely,
[Assistant Attorney General]

File: Grove City

Al — Could we get Jim Sensenbrenner to do a letter along these lines?

David

Dear Mr. Speaker:

We understand that you are considering a proposal to place S. 557 or H.R. 1214, the "Grove City" civil rights bill, on the suspension calendar.

Such a procedure cuts off the opportunity for Members of the House to consider amendments to correct deficiencies in the legislation.

Legislation that imposes new burdens on vast segments of our society deserves careful consideration in the normal legislative process.

We urge you not to short-circuit the legislative process by placing the Grove City bill on the suspension calendar.

Sincerely,

[Many Members]

7

File Grove City

FOR A
PRO-LIFE
SOLUTION TO THE
ABORTION PROBLEM

Christian Action Council

GREATER WASHINGTON, D.C.

February 18, 1988

Dear Representative:

The Christian Action Council opposes the suspension of House rules for a vote on the Civil Rights Restoration Act. A suspension of the rules is a procedure used for non-controversial items which have a general concensus of agreement from the members of Congress.

The Civil Rights Restoration Act is controversial in many areas and deserves a full committee hearing and full-floor debate on its merits.

We urge you to vote against any suspension of the House rules to insure adequate debate on this piece of legislation.

Sincerely,

Thomas A. Glessner

Thomas A. Glessner
Executive Director

TAG/jss

701 W. Broad St., Suite 405 • Falls Church, VA 22046 • (703) 237-2100

Fri 2: Grove City

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

February 18, 1988

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Department of Agriculture - Sid Clemans - 382-1516
Department of Education - Jack Kristy - 732-2670

SUBJECT: Department of Justice draft report for House Members concerning S. 557, the Civil Rights Restoration Act.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than 5:00 p.m. today 2/18/88.

NOTE: Justice advises that S. 557 may be brought to the House floor on the "suspension calendar" very shortly.

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.

James C. Murr for
Assistant Director for Legislative Reference

Enclosure

cc: A. B. Culvahouse, Jr.
Bob Damus
Karen Wilson
Barry White

(DOJ Draft)

To 300 Members of House

Dear

We understand that there is a serious chance that the Senate-passed version of the "Civil Rights Restoration Act of 1987" (S. 557) will be brought to the Floor on the suspension calendar in the near future. There have been no hearings or Committee consideration of this major civil rights bill in the House in the 100th Congress. It is one of the most significant civil rights bills the Congress has ever considered. The Administration opposes this bill and supports H.R. 1881 as an appropriate alternative.

It is important to stress that the abortion issue is just one of many legitimate concerns that have been raised about this bill. Curing the abortion issue will not address these many other concerns. The bill will vastly expand the scope of jurisdiction under four civil rights statutes without a showing of need, and will impose a variety of federal compliance burdens for the first time on numerous elements of the private sector and state and local governments, and expose them to costly private litigation. In particular, this bill represents a threat to religious liberty by the manner in which it treats churches, synagogues, religious elementary and secondary school systems, and inadequately protects religious tenets under Title IX. Even these issues are only part of the problems remaining in this bill even if the abortion issue is addressed.

We are attaching just some of our brief summaries that give a flavor of our concern. We would like an opportunity to explain the bases of these concerns and the merits of our analyses in a manner that allows you to weigh our concerns carefully. We also would like to explain why the Administration-supported bill, H.R. 1881, is a more appropriate measure.

We urge you to vote "no" on the motion to suspend the rules to expedite consideration of the Civil Rights Restoration Act, and to permit the regular parliamentary procedure, including hearings and Committee consideration, to take its course. We have no desire to delay such a regular course of consideration, but we do believe our concerns merit appropriate hearing.

Even if you do not ultimately agree with all -- or any -- of the concerns raised by the Administration, isn't it only fair that they be heard and debated?

If you have questions, please call or have your staff call Michael Wermuth, Legislative Counsel, Civil Rights Division (633-1703) or Mark R. Disler, Deputy Assistant Attorney General for Civil Rights (633-3845).

Sincerely,

John R. Bolton
Assistant Attorney General

FLAWS IN S. 557/H.R. 1214 ("CIVIL RIGHTS RESTORATION ACT")

- This bill addresses the scope of federal jurisdiction under four civil rights statutes as well as certain substantive aspects of these laws.

- The Civil Rights Restoration Act (CRRA) represents a vast expansion of federal power over State and local governments and the private sector, including churches and synagogues, farmers, businesses, voluntary associations, and private and religious schools. This expansion goes well beyond the scope of power exercised by the federal government before Grove City. Without being exhaustive, some examples are:

  - An entire church or synagogue, including its prayer rooms and religious classes, will be covered under at least three of these statutes if it operates one federally-assisted program or activity.

  - Every school in a religious school system will be covered in its entirety if one school within the school system receives even one dollar of federal financial assistance even if the others receive no assistance.

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

  - Farmers receiving crop subsidies, price supports, or similar federal support will be subject to coverage.

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

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

  - Further, if the tenant of one unit in one apartment building owned by an entity principally engaged in providing housing receives federal housing aid, not only is the entire apartment building covered, but all other apartment buildings, all other housing operations, and all other non-housing businesses of the owner are covered even though they receive no direct or even indirect federal aid.

  - If a housing developer receives federal aid for one housing project, all of the developer's housing projects everywhere in the country will be covered, together with all non-housing

activities of the developer, even if the other projects or activities receive no direct or indirect federal aid.

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

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

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

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

- A vague, catch-all provision creates additional coverage.

- As a consequence, more sectors of American society will be subject to: increased federal paperwork requirements; random on-site compliance reviews by federal agencies even in the absence of an allegation of discrimination; thousands of words of federal regulations; costly Section 504 accessibility regulations that can require structural and equipment modifications, job restructuring, modifications of work schedules, and provision of auxiliary aids; equality-of-result rather than equality-of-opportunity standards that can lead to quotas and proportionality requirements; the need to attempt to accommodate contagious persons; increased exposure to costly private lawsuits that will inevitably seek the most expansive interpretation of the already overbroad language of the bill; and increased exposure to the judgments of federal courts.

- Moreover, the bill inadequately protects the religious tenets of entities covered under title IX, by refusing to strengthen a current exemption to allow institutions, not only controlled by, but also those closely identified with the tenets of, a religious organization, to seek an exemption from title IX coverage where title IX conflicts with those tenets.

Religious Institutions and Grove City Legislation

1. Q: Are entire churches, synagogues, and other religious institutions covered by S.557/H.R. 1214, if just one program at such an entity receives Federal aid?

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

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

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

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

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

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

Examples:

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

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

3. Q: Have sponsors of S.557/H.R. 1214 provided evidence that such coverage existed prior to the Grove City decision?

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

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

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

- Increased federal paperwork;

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

Such coverage represents a fundamental mistrust of religious institutions and expresses a desire to extend federal control over all of the operations of every aspect of the private sector that touches federal dollars. When a particular program at a church or synagogue receives federal aid, that program itself should be covered, but the rest of the church or synagogue should not be covered by all of these federal regulations. Many churches or synagogues heretofore willing to take federal social welfare aid may stop providing these important social services, or may reduce their efforts by the amount of the federal aid, rather than subject themselves to coverage of their entire institutions. In light of the value of pluralism and diversity in our society, the value of independent religious institutions, and in view of the complete absence of any case for the expansion of coverage over religious institutions, S.557/H.R. 1214 is seriously flawed.

Religious Tenets and Grove City Legislation

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

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

   In 1972, when Congress enacted Title IX, Congress included several exceptions to its coverage, including: "This section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization. . . ." 20 U.S.C. § 1681(a)(3).

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

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

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

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

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

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

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

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

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

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

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

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

THIS LANGUAGE HAS BROAD SUPPORT

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

The Private Sector and Grove City Legislation

1. Q: Does S.557/H.R. 1214 significantly expand the pre-Grove City private sector coverage under the civil rights statutes that it amends?

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

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

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

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

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

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

A: For certain private sector entities, coverage will extend to "all of the operations of" every division, plant, store, subsidiary, and facility of any "corporation, partnership, or other

private organization, or an entire sole proprietorship" if such entity is "principally engaged in the business of providing education, health care, housing, social services, or parks and recreation", whenever just one portion of one division, plant, store, subsidiary, or facility receives any Federal financial assistance. Subparagraph (3)(A)(ii) of the operative sections of the bill.

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

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

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

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

A: Examples:

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

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

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

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

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

A: The amazing reply is indicative of the "big government" vision of S.557/H.R. 1214. These private entities are treated so harshly, according to the Senate Committee Report at page 4, because they "provide a public service. . . ." (Emphasis supplied.) Indeed, the activities listed in 3(A)(ii) "are traditionally regarded as within the public sector. . . ." Senate Committee Report at 18 (emphasis supplied). In short, in the words of the Senate Committee Report, "Even private corporations are covered in their entirety under [subparagraph] (3) if they perform governmental functions, i.e., are 'principally engaged in the business of providing education, health care, housing, social services, or parks and recreation.'" Senate Committee Report at 20 (emphasis supplied).

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

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

A: The entire plant or geographically separate facility of corporations or other private entities not principally engaged in these five activities -- education, health care, housing, social services, or parks and recreation -- will be covered if one portion of, or one program at, the plant or facility receives any Federal financial assistance. Even this coverage will be very broad. For example, if a business falling outside the five categories has several plants in the same city or region, and one job training program at one plant receives federal job training assistance, all of the plants will be covered in their entirety; the Senate Committee Report at page 18 says that the term "geographically separate facility" is only intended to mean "facilities located in different regions or localities. Two facilities that are part of a complex or that are proximate to each other in the same city would not be considered geographically separate." Even coverage of the entire plant, where only one program at the plant receives assistance, is clearly much more expansive than the court holdings of "program-specificity." Simpson, supra; Bachman, supra; see also Brown, supra. And, of course, for those private businesses and private organizations consisting of only one "facility" -- as defined by the Senate Committee Report -- coverage of the entire facility will constitute coverage of the entire business or organization.

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

A: Coverage under these federal statutes brings with it:

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

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

LA

JUN 13 1987

Honorable Robert J. Dole
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Mr. Leader:

This is to provide you with the Administration's views on S. 557, a bill "To restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964." We oppose S. 557 and, instead, urge the passage of the Administration's proposal to address the Supreme Court's Grove City College v. Bell decision.

The Administration's bill was provided to you informally, and has been introduced in the House as H.R. 1881. Our bill, which is similar to the bill you introduced in the 99th Congress (S. 272), would amend Title IX and the three other civil rights laws noted above, in order to clarify that for educational institutions, the antidiscrimination provisions of these laws apply to the entire institution when any "program or activity" receives Federal financial assistance. Consistant with the Administration's stated position of supporting legislation addressing the Grove City decision, which concerned educational institutions, the Administration's bill, unlike S. 557, provides that for all other entities (e.g., State agencies and the private sector entities receiving Federal funding), the four civil rights laws would be construed as they were prior to the Supreme Court's ruling.

In addition, the Administration's proposal includes language that strengthens Title IX's exemption for certain religiously-based practices of educational institutions to include (in addition to institutions "controlled by" a religious organization) those that are "closely identified with the tenets of a particular religious organization." We have included this language to address concerns that institutions that have retained their religious mission and affiliation with religious entities nevertheless fall outside the scope of the exemption because technically they are controlled by lay boards, instead of by religious bodies.

The Administration's proposal also includes a provision stating that Title IX would neither grant, deny, nor secure any right concerning abortion or abortion-related services. This language is intended to prevent educational institutions and others subject to Title IX from being required to perform or pay for abortions or abortion-related services as a consequence of receipt of Federal funds.

The Administration's proposal has been carefully crafted to meet the identified concerns arising under these civil rights laws. We oppose enactment of S. 557 for the reasons noted in the Department of Justice's testimony before the Senate Labor and Human Resources Committee on April 1, 1987, as well as the Department of Education's letter of March 31, 1987, to Senator Kennedy. The language of S. 557 goes far beyond the law prior to Grove City. I believe that the vague language of S. 557 would significantly and unnecessarily extend the reach of the Federal Government under these four civil rights statutes over the private sector and State and local governments. The Departments of Justice and Education have cited numerous examples of the far-reaching effects of S. 557. Clearly, S. 557 would almost certainly result in increased litigation and uncertainty for large parts of the public and private sectors.

As a result of these concerns, and because the Administration has proposed legislation to address the Grove City decision, I would join other Presidential senior advisers in recommending that the President veto S. 557 if it should be presented to him in its current form. I hope that Congress and the Administration will be able to work together so that the President will be presented with legislation consistent with the Administration's proposal representing an acceptable response to the Grove City decision.

Sincerely yours,

JAMES C. MILLER III
James C. Miller III
Director

cc: Honorable Orrin G. Hatch
Honorable Strom Thurmond

THE WHITE HOUSE

WASHINGTON

January 28, 1988

Dear Orrin:

I greatly appreciate your efforts on behalf of the Administration's legislation to overturn the Grove City College decision. This legislation that you are offering as an alternative to S. 557, the so-called "Civil Rights Restoration Act of 1987," accomplishes the stated intention of proponents of S. 557. At the same time, it avoids the vastly overreaching scope of S. 557.

As you know, our proposal would provide institution-wide coverage for educational institutions receiving Federal aid, under all four cross-cutting civil rights statutes at issue as a result of the Grove City College decision. In all other areas this measure retains the scope of coverage as it existed without regard to the Supreme Court's decisions in the Grove City College and North Haven Board of Education v. Bell cases. Moreover, our proposal assures that Title IX is abortion-neutral and adequately protects the religious tenets of institutions under Title IX.

A measure such as S. 557 is unacceptable to me. It dramatically expands the scope of Federal jurisdiction over state and local governments and the private sector, from churches and synagogues to farmers, grocery stores, and businesses of all sizes. Additionally, S. 557 inadequately protects religious tenets under Title IX and, even as amended by the Weicker Amendment, compels covered institutions, such as hospitals, to pay for or perform abortions as a condition of the receipt of Federal aid.

We can address legitimate concerns about the Grove City College decision with the simple override of that decision as reflected in the measure you have introduced in the Senate.

Sincerely,

Ronald Reagan

The Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

File DSA Grove City

February 17, 1988

NOTE FOR WILLIAM L. BALL, III

THROUGH: ALAN M. KRANOWITZ

FROM: DAVID S. ADDINGTON

SUBJECT: Meeting on Civil Rights Restoration Act/"Grove City" Bill (S. 557/H.R. 1214)

Deputy Assistant Attorneys General Tom Boyd (Legislative Affairs) and Mark Disler (Civil Rights Division) and I met with Congressman Jim Sensenbrenner (R-WI) yesterday on the Grove City bill. Sensenbrenner is the Ranking Republican on the House Judiciary Subcommittee on Civil and Constitutional Rights and has led the House fight against the Grove City bill for three years.

Sensenbrenner made the following comments rather insistently:

-- the Grove City bill will pass in the House by more than a two-thirds vote as it did in the Senate, assuming that the civil rights groups decide to live with (or are beaten in the House on) the Senate-passed Danforth pro-life abortion neutrality language;

-- the Administration should concentrate on securing adoption of amendments to correct the worst features of the bill, such as coverage of parent corporations based on actions of a single subsidiary and coverage of churches, rather than engaging in a futile frontal assault;

-- pursuing the Administration-supported alternative bill (H.R. 1881, which applies only to educational institutions) as a Republican substitute to H.R. 1214 would be a futile frontal assault; and

-- a number of Republicans who would vote "no" on this politically difficult issue if they could count on a guaranteed Presidential veto for political cover will vote "yes" because they do not believe that the Administration's veto threat/promise is real, especially in this election year.

[Note: The civil rights lobbies' coordinating group reportedly has decided that the "gain" of swift and timely enactment of the Grove City bill outweighs the "loss" of the Danforth abortion neutrality amendment and has asked the House Democratic Leadership to schedule the Senate-passed bill (S. 557) for floor consideration under suspension of the rules soon. Consideration under suspension would not permit floor amendments but would require a two-thirds affirmative vote for passage.]

File: Gravelly

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MORAL MAJORITY
INCORPORATED

Conversation of November 4,1987 with Mr. Martin Schneiderman, partner in the firm of Steptoe and Johnson, Washington, DC and a consultant who specializes in advising employers on personnel related matters as well as government contracts.

"The Arline decision (Arline v. Nassau County 107 S. Ct. 1123 (1987)) has put the contagious disease question in the employment setting into a new context.

The main clarification of Arline was that a contagious disease is a covered handicap which must be analyzed on a case by case basis. The burden of proof is upon the employer to prove risk rather than upon the employee to prove himself not dangerous. I don't disagree that the burden should be placed upon the employer provided he is able to monitor the situation through medical records.

The problem here is not with diseases with known modes of transmission but with diseases upon which the medical community is split with regard to vectors of transmission, probabilities of infection or extent of potential damage. There is general consensus in the medical community about the limited modes of contagion of AIDS - modes that do not occasion issues about workplace exposure. However, this should not end the analysis suggested by Arline.

People with AIDS, like those with compromised immune systems for other causes, are particular at risk for secondary infections which may or may not endanger others. For example, 85% of people with AIDS shed Cytomeglavirus (CMV). CMV infection of the fetus is the largest known cause of mental retardation in children.

There is no consensus in the medical community about the inherent risk of CMV infection by AIDS victims. As a precaution, many hospitals advise pregnant nurses and doctors not to be involved in the daily care of AIDS patients Medical literature remains divided as do doctors as to whether such precautions are necessary.

Other secondary infections (e.g. tuberculosis) and other symptomatic problems of AIDS could present workplace issues (dementia).

The entire question of secondary infections in the immuno-compromised requires more thorough investigation both from a medical standpoint and a legal one."

--James J. Boulet, Jr. Issued 1/27/88

NEW YORK FAULTED ON TUBERCULOSIS

U.S. Report Criticizes Efforts to Stem Growth of Disease

By BRUCE LAMBERT

Amid a disturbing resurgence of tuberculosis in New York City, a Federal review has found major failings in local prevention efforts, and city health officials have vowed to revamp the entire program.

The disease, once the nation's leading killer but now classified as curable, began making a comeback here in 1979 after decades of steady decline. Its spread has accelerated to the point that the city's tuberculosis rate is now three and a half times the national average.

Tuberculosis, which is spread by airborne bacteria when infected people cough, has hit hardest at the homeless and the world of the drug-addicted, where poverty is rampant and people often live in crowded, unsanitary conditions.

What particularly troubles public health experts is that to cure tuberculosis, a patient must take medication regularly for at least six to nine months, something many of those most susceptible to the disease are unable or unwilling to do.

Indeed, the focus of the Federal study by the Centers for Disease Control was the city's failure to monitor

Continued on Page 33, Column 1

Continued From Page 1

such patients adequately and insure that they stay on their medication.

"There is no comprehensive plan for dealing with the city's tuberculosis problem," the study said. "There is a lack of accountablity for achieving the bottom line — completion of treatment."

Tuberculosis, which attacks the lungs and sometimes other body parts, can be fatal if untreated. Officials blame its rise on the proliferation of AIDS, which lowers the body's defense to various diseases, and also on the increase in homeless people.

National figures have have started to reflect the New York trend. The Centers for Disease Control reported earlier this month that in 1986, tuberculosis cases showed their first nationwide rise since Federal recording began in 1953.

Tuberculosis cases in the city, which used to total in the thousands every year, declined to a low of 1,307 in 1978, a rate of 17.2 cases for each 100,000 residents.

The 'White Plague'

But since then, the caseload has risen to 2,223 in 1986, a rate of 31.4 in 100,000. That represented an 83 percent increase in the rate, with the biggest jump in the last two years — up 35 percent. The totals for 1987 are not yet available, but city officials expect the numbers to be at least as high as in the prior year. City health officials believe their records reflect nearly all the actual cases.

Formerly incurable, tuberculosis was once so widespread it was called the "white plague." In 1918, according to the National Center for Health Statistics, 118,000 people died of tuberculosis in the United States. And as late as the 1950's, 100,000 new cases and 40,000 deaths were still being attributed to the disease each year in the United States.

But medical advances in the late 1940's and early 1950's led to three effective drugs — isoniazid, streptomycin and paraminosalicylic acid — which, used alone or in combination, often effected a complete cure. Isoniazid, a synthetic chemical compound that inhibited the growth of tubercle bacilli, proved particularly effective.

New York's sharp caseload rise prompted a Federal review of the City Health Department's Tuberculosis Control Bureau. The study found systemic deficiencies and recommended a complete overhaul.

Report Faults New York's Efforts to Stem Tuberculosis Rise

Opening Residential Centers

Among the proposals is that the city open one or more residential centers to treat contagious patients who fail to take medication on their own, with special units to lock up those who require court-ordered quarantine until they are no longer a danger to others. City officials said that proposal is under consideration.

"The city's tuberculosis problem is well documented," the report said. "We do believe that the implementation of these recommendations can reestablish tuberculosis control and restore the downward trend of tuberculosis cases."

The city's Health Commissioner, Dr. Stephen C. Joseph, had requested the review, and the report was discussed by the city Board of Health on Thursday. He called the findings "terrific" and vowed to overhaul the agency.

Conducting the review was a five-member team headed by Dr. Dixie E. Snider Jr., director of tuberculosis control for the Centers for Disease Control.

Lack of Management Skills

The team found "confusion regarding who is responsible for reporting cases," high staff turnover, "a lack of broad management experience" and a lack of budgeting skills. Mistrust and poor communication characterized relations between the city and other health care institutions, the report said.

"Outreach workers lack important skills and information needed to motivate and educate patients," the report said. "There is no standard tuberculosis treatment and follow-up protocol in use by hospitals and clinics throughout the city."

Among the recommendations were to reorganize the tuberculosis bureau, set up a panel of experts to oversee its operation, "substantially increase" the number of patients under observation to verify that they are taking their medication and provide automobiles so field workers can see more patients.

On a positive note, the team said it "was consistently impressed with the dedication of bureau workers both in the central office and in the field." It said "a number of outreach workers were paying for patient incentives out of their own pockets," getting patients to take their pills for rewards like pizza, orange juice and small amounts of cash. Expanded efforts to reach the homeless were also praised.

Nationally, the number of tuberculosis cases for 1986 was 22,768. New York City accounted for about a tenth of that, even though the city has only about 3 percent of the nation's population. The national increase over the prior year was 567 cases, of which 380 were in New York City.

A breakdown of city statistics shows dramatic contrasts, with tuberculosis especially prevalent among middle-aged minority men.

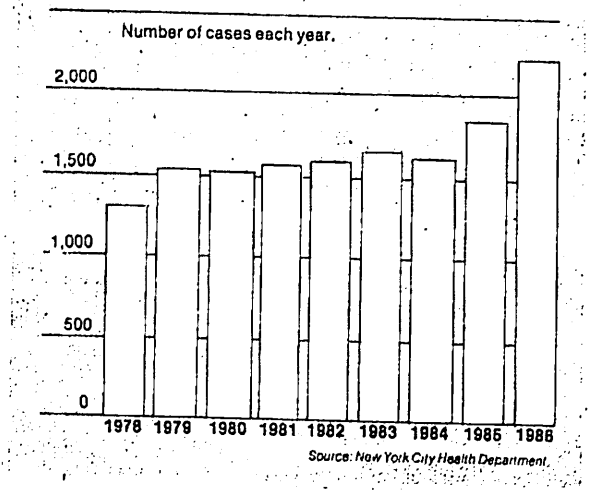
The highest illness rate was among black males 35 to 44 years old, who had 276.8 cases for each 100,000 of population — nine times the citywide average. The rate for white men in that age group was only 29.7 cases, while for Hispanic men it was 123.8. Among 32 cases in children under 5, only one was white.

Foreign-born people, who may have been infected abroad, are also a major factor. Of the city's 1986 cases, there were 1,616 born in this country and 607 born abroad, 315 of those from the Caribbean. The deputy Health Commissioner, Stephen Schultz, attributed much of that group to Haitians with AIDS.

Neighborhood variations also were extreme. The highest rate was 130.4 cases per 100,000 of population in central Harlem, followed by 83.5 on the Lower East Side and 71.4 in Fort Greene. The city's lowest rates were 7.1 in Maspeth-Forest Hills, 7.4 on Staten Island and 7.5 in Bay Ridge.

Historically, tuberculosis has been a disease of the impoverished, flourishing among those suffering from malnutrition, stress, alcoholism, drug addiction, overcrowding and poor hygiene and health care.

Tuberculosis in New York City



File: Judiciary
General
EOB

STATEMENT OF ADMINISTRATION POLICY

January 25, 1988
(Senate)

S. 557 - Civil Rights Restoration Act of 1987
(Kennedy (D) Massachusetts and 57 others)
(H.R. 1214)

The administration opposes S. 557, and the President's senior advisers will recommend that the President veto the bill if it is presented to him in its current form. S. 557 is particularly objectionable because of its vague language that vastly expands the jurisdiction under various Federal statutes of Federal agencies and courts over State and local governments, churches and synagogues, religious school systems, businesses of all sizes, and other elements of the private sector.

In response to the Supreme Court's decision in Grove City College v. Bell, the administration, however, does support legislation that would:

-- amend Title IX of the Education Amendments of 1972 and three other civil rights laws (Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title III of the Age Discrimination Act of 1975) to provide that for educational institutions, the antidiscrimination provisions of these laws apply to the entire institution when any "program or activity" receives Federal financial assistance;

-- include language that strengthens Title IX's exemption for certain religiously-based practices of educational institutions to include (in addition to institutions "controlled by" a religious organization) those which are "closely identified with the tenets of a religious organization"; and

-- state that the legislation would neither grant, secure nor deny any right concerning abortion, abortion-related services or funding thereof.

* * * * *

(Not to be Distributed Outside Executive Office of the President)

This position was drafted by the Legislative Reference Division in consultation with the Departments of Justice (Bolton/Disler/Apperson), Education (Hansen/Riddle), Health and Human Services (Burnett), Agriculture (Stangeland), Labor (Morin), Transportation (Herlihy), and TCJ (Wilson), GC (Cooney), HIMD (Clendenin), OIRA (Eisinger) and LVE (Arthur/Ricciuti).

This position is similar to the one taken in the House on H.R. 5490 (98th Congress) and the position taken by Justice and Education in testimony presented to the Senate Labor and Human Resources Committee on April 1, 1987. On June 19th OMB sent a letter to Senator Dole stating that the President's senior advisers would recommend a veto of S. 557 if enrolled in its current form. However, neither the earlier position nor testimony contained a veto threat. Justice, which requested that the veto language be included in the position statement, advises that it believes that such language is necessary if the position is to have any impact in the Senate. White House staff sign-off on the abortion language (Sweet) and veto threat (Culvahouse) should be obtained before forwarding the position to the Hill. Justice (Assistant Attorney General (Legislative Affairs Division) Bolton) requests that he be advised of any changes to the position.

Background

In 1984, the Supreme Court, in Grove City College v. Bell, ruled that Title IX of the Education Act Amendments of 1972 prohibited sex discrimination only in a specific "program or activity" receiving Federal financial assistance, and not throughout the entire school. The Supreme Court's decision also affected other Federal statutes containing such language which prohibit discrimination on the basis of race, color, national origin, age or handicap. The intended purpose of S. 557 is to reverse the Grove City decision and broaden the coverage of existing civil rights statutes so that the prohibitions against discrimination apply to the recipients of Federal financial assistance on an institution-wide (as opposed to only a specific program) basis.

Provisions of S. 557

According to the Senate Education and Labor Committee report, S. 557 expands coverage of Title IX of the Education Amendments of 1972 (prohibiting discrimination on the basis of sex in any education "program or activity" receiving Federal financial assistance) and three other civil rights statutes prohibiting discrimination in federally-funded programs: Title VI of the Civil Rights Act of 1964 (race discrimination); Section 504 of the Rehabilitation Act of 1973 (handicap discrimination); and Title III of the Age Discrimination Act of 1975 (age discrimination).

S. 557 would redefine the term "program or activity" in each of the four statutes. The new definitions state that colleges, universities and public systems of higher education are covered by the civil rights statutes, as well as public, vocational and private school systems if they receive any Federal aid. In addition, corporations, private organizations to which Federal financial assistance is extended, and departments, agencies or other instrumentalities of State or local governments are also

included in the new definitions. These changes are intended to ensure that the antidiscrimination statutes are applied to the institution as a whole and not just to the specific Federally funded program within the institution. By its terms, however, S. 557 would extend this coverage beyond educational institutions, which was the context of the Grove City decision. In addition, S. 557 would exempt from Title IX "any operation of an entity which is controlled by a religious organization."

Administration Objections

At a hearing before the Senate Labor and Human Resources Committee on April 1, Justice and Education testified that the legislation is sweeping in scope and goes much further than simply reversing the Grove City decision. Both agencies provided various examples where the statutes' scope would be expanded by S. 557 (e.g., a State, county or local government department or agency will be covered in its entirety, whenever one of its programs receives Federal aid). Justice also noted that there would be increased costs associated with the paperwork requirements and enforcement efforts necessitated by the broadened coverage of S. 557. The Justice and Education concerns were also referenced in the OMB letter of June 19th.

Administration Bill

In January 1987, OMB cleared a Justice draft bill which would reverse the Supreme Court's Grove City decision along the lines of the above position. Copies were provided informally to Senator Dole, but according to Justice, the bill has not been introduced in the Senate because of a lack of support for the proposal. However, the bill has been introduced in the House as H.R. 1881.

U.S. Department of Justice

Office of Legislative Affairs

DA
File Tchaing

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 10 1988

William L. Ball, III
Assistant to the President
White House
1600 Pennsylvania Avenue, NW
2nd Floor West Wing
Washington, DC

Dear Will:

Attached you will find the two page "Grove City" summary with talking points you requested. While this analysis is quite comprehensive, a measure of this complexity forces the analysis to make hard choices between detail and brevity. If we can be of further help, please call immediately.

Sincerely,

John R. Bolton
Assistant Attorney General

FLAWS IN H.R. 1214 ("CIVIL RIGHTS RESTORATION ACT")

- This bill addresses the scope of federal jurisdiction under four civil rights statutes as well as certain substantive aspects of these laws.

- The Civil Rights Restoration Act (CRRA) represents a vast expansion of federal power over State and local governments and the private sector, including churches and synagogues, farmers, businesses, voluntary associations, and private and religious schools. This expansion goes well beyond the scope of power exercised by the federal government before Grove City. Without being exhaustive, some examples are:

  - An entire church or synagogue will be covered under at least three of these statutes if it operates one federally-assisted program or activity.

  - Every school in a religious school system will be covered in its entirety if one school within the school system receives even one dollar of federal financial assistance even if the others receive no assistance.

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

  - Farmers receiving crop subsidies, price supports, or similar federal support will be subject to coverage.

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

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

  - Further, if the tenant of one unit in one apartment building owned by an entity principally engaged in providing housing receives federal housing aid, not only is the entire apartment building covered, but all other apartment buildings, all other housing operations, and all other non-housing businesses of the owner are covered even though they receive no direct or even indirect federal aid.

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

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

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

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

- A vague, catch-all provision creates additional coverage.

- As a consequence, more sectors of American society will be subject to: increased federal paperwork requirements; random on-site compliance reviews by federal agencies even in the absence of an allegation of discrimination; thousands of words of federal regulations; costly Section 504 accessibility regulations that can require structural and equipment modifications, job restructuring, modifications of work schedules, and provision of auxiliary aids; equality-of-result rather than equality-of-opportunity standards that can lead to quotas and proportionality requirements; the need to attempt to accommodate contagious persons; increased exposure to costly private lawsuits that will inevitably seek the most expansive interpretation of the already overbroad language of the bill; and increased exposure to the judgments of federal courts.

- Moreover, the bill leaves in place current title IX regulations requiring covered programs to provide abortion and abortion-related services in student health insurance and employee benefits. Because the bill dramatically widens the scope of coverage of title IX, covered hospitals with any teaching program must, at a minimum, perform abortions on demand for the general public.

- The bill inadequately protects the religious tenets of entities covered under title IX, by refusing to strengthen a current exemption to allow institutions, not only controlled by, but also those closely identified with the tenets of, a religious organization, to seek an exemption from title IX coverage where title IX conflicts with those tenets.

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Vital Repair for Civil Rights Law

When Federal money flows to one department of a school or hospital, Federal law should prohibit discrimination in all parts of the institution. For years that was accepted as the clear intent of several Federal civil rights laws. Then in 1984, the Supreme Court narrowed their scope. The Senate now has restored the laws' broader reach and the House is about to follow. Sadly and ill-advisedly, Reagan Administration officials are signaling a veto.

Mr. Reagan's Justice Department never liked the broad sweep of the laws. When the case of Grove City College in Pennsylvania came along, it grabbed the opportunity to challenge them. The Supreme Court responded by limiting the application of the 1972 law against sex discrimination in higher education.

A 6-to-3 majority said that in the case of a college receiving Federal funds for student aid, the anti-discrimination law applied only to the financial aid office, not to other departments like sports. The Administration then applied the Court's reasoning to limit similar laws protecting racial minorities, the disabled and the aged.

Civil rights proponents countered with the legislation now before Congress. The bill would bring the meaning of the law back to where it was before the Grove City decision. Federal anti-discrimination laws would apply to an entire institution.

Administration officials and their Congressional allies argue that the new bill would intolerably expand governmental powers through civil rights guarantees. Some opponents have been appeased by an anti-abortion amendment sponsored by Senator John Danforth of Missouri that could allow discrimination against females who've had abortions. The amendment should be defeated in the House.

The lopsided Senate vote is expected to be matched in the House, suggesting sufficient votes to override a veto. The Administration would do well to heed this vast majority.

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