

BOB DOLE



(R - Kansas)

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FOR IMMEDIATE RELEASE:
THURSDAY, MAY 24, 1984

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STATEMENT OF SENATOR BOB DOLE

Senate Labor and Human Resources Committee
S.2568, The Civil Rights Act of 1984

MR. CHAIRMAN. I THANK YOU FOR THE OPPORTUNITY TO TESTIFY TODAY. I COMMEND YOU FOR HOLDING SUCH PROMPT HEARINGS ON THIS IMPORTANT LEGISLATION. YOU HAVE A NUMBER OF EXCELLENT WITNESSES HERE WHO WILL TESTIFY TO THE DRAMATIC GAINS WHICH HAVE BEEN MADE UNDER THE FOUR CIVIL RIGHTS LAWS IN QUESTION AND THE COMPELLING NEED FOR A SWIFT CONGRESSIONAL RESPONSE TO THE GROVE CITY DECISION TO ENSURE THAT THESE LAWS WILL HAVE THE BROAD COVERAGE ORIGINALLY INTENDED BY CONGRESS. I WILL NOT TRY TO REPEAT OR EXPAND UPON WHAT THEY WILL TELL YOU. THOSE WHO HAVE PERSONALLY BENEFITTED FROM THESE LAWS AND THOSE WHO HAVE BEEN IN THE FOREFRONT OF ENFORCEMENT EFFORTS ARE IN THE BEST POSITION TO TELL YOU WHY WE NEED FAVORABLE ACTION ON THIS BILL, THIS YEAR. RATHER, MY PRIMARY PURPOSE IN TESTIFYING TODAY IS TO DISCUSS SOME OF THE CONCERNS WHICH HAVE BEEN EXPRESSED ABOUT S.2568, INCLUDING THOSE RAISED BY ASSISTANT ATTORNEY GENERAL BRAD REYNOLDS IN TESTIMONY RECENTLY PRESENTED IN THE HOUSE. I BELIEVE MR. REYNOLDS' COMMENTS ARE HELPFUL AND DESERVE THOUGHTFUL CONSIDERATION BY THIS COMMITTEE SO THAT A CLEAR AND UNEQUIVOCAL

WILL RESULT FROM THE BILL'S ENACTMENT. TO THIS END, AS ONE WHO HAS
COSPONSORED AND ACTIVELY SUPPORTED THIS LEGISLATION, I WANTED TO
SHARE MY OWN THOUGHTS AND PERSPECTIVE ABOUT HOW THIS BILL IS INTENDED
TO OPERATE.

FIRST, THE GENERAL CONCERN HAS BEEN EXPRESSED THAT THE BILL
COULD RESULT IN A SIGNIFICANT AND UNPRECEDENTED EXPANSION IN COVERAGE
UNDER EACH OF THE FOUR CIVIL RIGHTS LAWS IN QUESTION. IN RESPONSE TO
THIS CONCERN, I WOULD REPEAT WHAT I SAID ON THE SENATE FLOOR WHEN
S. 2568 WAS INTRODUCED. SIMILAR STATEMENTS WERE MADE BY THE BILL'S
PRINCIPAL SPONSORS, SENATORS PACKWOOD AND KENNEDY. SPECIFICALLY, THE
PURPOSE OF THIS BILL IS TO RESTORE TITLE IX TO THE BROAD COVERAGE
THAT MARKED ITS ENFORCEMENT PRIOR TO GROVE CITY, AND TO ENSURE THAT
THE INTEGRITY OF PARALLEL FEDERAL STATUTES PROHIBITING RACE, HANDICAP,
AND AGE DISCRIMINATION IS PRESERVED. THAT IS, THE INTENT IS NOT TO
EXPAND COVERAGE, BUT RATHER TO MAINTAIN THE STATUS QUO ANTE GROVE
CITY.

TO THIS END, THE LAWS WOULD BE AMENDED SO THAT THE ANTI-
DISCRIMINATION MANDATE IN EACH APPLIES TO A "RECIPIENT" OF FEDERAL

FUNDS, IN LIEU OF THE CURRENT "PROGRAM OR ACTIVITY" LANGUAGE SO
NARROWLY CONSTRUED IN GROVE CITY. THE WORD "RECIPIENT" IS A TERM
WHICH HAS BEEN USED AND APPLIED FOR MANY YEARS PURSUANT TO AGENCY
REGULATIONS IMPLEMENTING THESE FOUR LAWS. MOREOVER, THE DEFINITION
OF RECIPIENT CONTAINED IN THE BILL IS PATTERNED AFTER THAT CONTAINED
IN THOSE REGULATIONS. THUS, CONGRESS HAS A LONG
ENFORCEMENT HISTORY TO LOOK TO IN DETERMINING HOW THE WORD "RECIPIENT,"
AS DEFINED, WILL BE INTERPRETED. IN ADDITION, THE FACT THAT THE
STATUTORY LANGUAGE IS DRAWN FROM EXISTING REGULATIONS SHOULD SEND A
STRONG AND CLEAR SIGNAL TO THE COURTS AND FEDERAL AGENCIES THAT NO
EXPANSION IN COVERAGE IS INTENDED.

SECOND, THE CONCERN HAS BEEN EXPRESSED THAT THE DEFINITION
OF THE WORD "RECIPIENT" CONTAINED IN THE BILL INCORPORATES A SO-CALLED
"TRICKLE UP" THEORY SO THAT, FOR INSTANCE, IF A STATE UNIVERSITY
RECEIVES FEDERAL FUNDS, ALL OTHER STATE DEPARTMENTS, INSTITUTIONS, AND
AGENCIES WOULD BE COVERED. IT IS MY BELIEF THAT SUCH A CONSTRUCTION
WOULD BE INCOMPATIBLE WITH BOTH CONGRESSIONAL INTENT AND THE LANGUAGE
OF THE PROPOSED LEGISLATION. IF THE UNIVERSITY RECEIVES THE FEDERAL

FUNDS, THE UNIVERSITY IS THE "RECIPIENT." IT'S THAT SIMPLE. THERE IS AN EXCEPTION IN WHICH THE RECEIPT OF FEDERAL FUNDS BY A SUBUNIT COULD RESULT IN COVERAGE OF THE LARGER ENTITY. THIS IS WHERE THE ASSISTANCE TO THE SUBUNIT IN FACT "SUPPORTS" THE LARGER ENTITY. BUT THIS LIMITED EXCEPTION IS NECESSARY TO PRECLUDE THE POSSIBILITY THAT A GOVERNMENTAL UNIT, OR OTHER ENTITY, COULD AVOID THE BROAD COVERAGE INTENDED BY THE BILL THROUGH CHANNELING FEDERAL FUNDS THROUGH ONE OF ITS SUBUNITS.

A THIRD CONCERN IS THAT THE BILL COULD EXPAND AGENCIES' AUTHORITY TO TERMINATE FEDERAL FUNDS WHERE VOLUNTARY COMPLIANCE WITH THE LAW CANNOT BE OBTAINED. AGAIN, MY UNDERSTANDING OF THE AMENDMENTS MADE TO THOSE SECTIONS DEALING WITH FUND TERMINATION IS THAT THEY WOULD NOT EXPAND THE AVAILABILITY OF THIS SELDOM USED ENFORCEMENT TOOL, BUT SIMPLY ENSURE THAT THE TERMINATION AUTHORITY IS NOT NARROWED AS A RESULT OF GROVE CITY.

THE LANGUAGE OF THE AMENDMENT IS DRAWN FROM THE SEMINAL TITLE VI CASE OF TAYLOR COUNTY BOARD OF POLICE INSTRUCTION VS. FINCH DECIDED BY THE 5TH CIRCUIT IN 1969. THE TAYLOR COUNTY CASE HAS BEEN

FOLLOWED, REPEATEDLY, BY BOTH AGENCIES AND THE COURTS IN CONSTRUING THE SCOPE OF THE TERMINATION AUTHORITY. SO THAT, HERE TOO, CONGRESS HAS A LONG HISTORY TO LOOK TO IN DETERMINING HOW THE LANGUAGE OF THE AMENDMENT WILL OPERATE.

A FOURTH CONCERN IS THAT THE DEFINITION OF "RECIPIENT" CONTAINED IN THE BILL COULD RESULT IN COVERAGE OF "ULTIMATE BENEFICIARIES" SUCH AS STUDENTS RECEIVING FEDERAL LOANS OR OLDER AMERICANS RECEIVING SOCIAL SECURITY BENEFITS. SUCH A CONSTRUCTION WOULD SURELY BE IMPLAUSIBLE. THE LEGISLATION IS DESIGNED TO MAKE EXPLICIT THAT EXEMPTION FOR ULTIMATE BENEFICIARIES, HERETOFORE MERELY IMPLICIT IN EACH OF THESE FOUR LAWS, BY EXCLUDING FROM THE DEFINITION OF "RECIPIENT," "INDIVIDUALS OR PERSONS" RECEIVING FEDERAL AID.

A FIFTH CONCERN IS THAT THE BILL COULD RESULT IN COVERAGE OF MA & PA GROCERS WHO TAKE FEDERAL FOOD STAMPS OR LANDLORDS WHOSE TENANTS PAY THE RENT WITH THE SOCIAL SECURITY CHECKS. THIS CONCERN ASSUMES THAT FUNDS PROVIDED TO INDIVIDUALS UNDER SUCH GENERAL ASSISTANCE PROGRAMS ARE "FEDERAL FINANCIAL ASSISTANCE" FOR PURPOSES OF TRIGGERING COVERAGE UNDER THESE ANTIDISCRIMINATION LAWS. BUT, AS I

STATED ON THE FLOOR WHEN S. 2568 WAS INTRODUCED, THE BILL IS NOT INTENDED TO ALTER THE DEFINITION OF FEDERAL FINANCIAL ASSISTANCE. MOREOVER, THE SUPREME COURT, IN THE GROVE CITY OPINION, EXPLAINED THE DIFFERENCE BETWEEN THIS TYPE OF SUPPORT, AND STUDENT FINANCIAL ASSISTANCE, WHICH THE COURT HELD DID TRIGGER COVERAGE. SPECIFICALLY, THE COURT STATED:

"GROVE CITY'S ATTEMPT TO ANALOGIZE BEOGs TO FOOD STAMPS, SOCIAL SECURITY BENEFITS, WELFARE PAYMENTS, AND OTHER FORMS OF GENERAL-PURPOSE GOVERNMENTAL ASSISTANCE TO LOW-INCOME FAMILIES IS UNAVAILING. FIRST, THERE IS NO EVIDENCE THAT CONGRESS INTENDED THE RECEIPT OF FEDERAL MONEY IN THIS MANNER TO TRIGGER COVERAGE UNDER TITLE IX. SECOND, THESE GENERAL ASSISTANCE PROGRAMS, UNLIKE STUDENT AID PROGRAMS, WERE NOT DESIGNED TO ASSIST COLLEGES AND UNIVERSITIES. THIRD, EDUCATIONAL INSTITUTIONS HAVE NO CONTROL OVER, AND INDEED PERHAPS NO KNOWLEDGE OF, WHETHER THEY ULTIMATELY RECEIVE FEDERAL FUNDS MADE AVAILABLE TO INDIVIDUALS UNDER GENERAL ASSISTANCE PROGRAMS, BUT THEY REMAIN FREE TO OPT OUT OF FEDERAL STUDENT ASSISTANCE PROGRAMS. FOURTH, THE INDIVIDUALS' ELIGIBILITY FOR GENERAL ASSISTANCE IS NOT TIED TO ATTENDANCE AT AN EDUCATIONAL INSTITUTION."

THIS SECTION OF THE GROVE CITY OPINION IS NOT AFFECTED BY THE PROPOSED LEGISLATION. AS WAS MADE CLEAR WHEN THIS BILL WAS INTRODUCED, THE LEGISLATION IS DESIGNED TO OVERTURN ONLY THAT PORTION OF THE GROVE

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CITY OPINION WHICH CONSTRUED THE "PROGRAM OR ACTIVITY" LANGUAGE
CONTAINED IN TITLE IX SO NARROWLY.

FINALLY, CONCERNS HAVE BEEN EXPRESSED THAT THIS LEGISLATION
WOULD INCREASE FEDERAL REGULATORY PAPERWORK REQUIREMENTS, RESULT
IN GREATER AGENCY JURISDICTIONAL OVERLAP, AND GENERATE A SIGNIFICANT
AMOUNT OF LITIGATION. BUT ALL THESE CONCERNS STEM FROM THE ASSUMPTION
THAT THE BILL WOULD RESULT IN AN UNPRECEDENTED EXPANSION OF COVERAGE
UNDER THESE CIVIL RIGHTS LAWS. AND AS I HAVE ATTEMPTED TO EXPLAIN
IN THE FOREGOING, IT IS MY INTENTION AND UNDERSTANDING THAT THIS
IS NOT THE CASE.

THAT CONCLUDES MY TESTIMONY. THANK YOU MR. CHAIRMAN.