

July 24, 1998

MEMORANDUM FOR: CHARLES F.C. RUFF, ELENA KAGAN, JULIE FERNANDES
FROM: EDDIE CORREIA
SUBJECT: Title IX and Abortion

The Department of Justice will soon forward proposed new regulations regarding the application of Title IX. In general, Title IX bars gender discrimination by institutions that receive federal funds and provide educational programs. Many federal agencies do not now have such regulations even though they oversee covered programs. In addition to providing standards for agencies that do not have them, the regulations will address some statutory developments in the Title IX framework.

One issue that requires particular attention is the effect of Title IX on abortions and related services. The original Title IX regulations require that covered institutions treat pregnancy-related conditions, including abortions, in the same way as temporary disability. Thus, an institution cannot refuse to provide abortion services, or cover them under their health insurance plan, if they provide or cover other conditions stemming from temporary disabilities.

The Danforth Amendment

In 1988, when Congress was considering the "Grove City" legislation to clarify that the civil rights law apply to all activities of institutions receiving federal funds, the issue of Title IX's application to abortion became controversial. Congress adopted an amendment to the final Grove City bill, offered by Senator Danforth, which provides:

Nothing in [Title IX] shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to an abortion.

The question is how this amendment applies in the following cases: 1) medical services

are required because of complications arising from an abortion; 2) an abortion is necessary to save the life of a woman; and 3) an abortion is necessary because of rape or incest. The National Women's Law Center has urged that the amendment be interpreted to exclude all these cases. (See Attachment A) The Department of Justice concludes that the best reading of the amendment is to exclude the first category and that a permissible reading of the amendment would exclude the second category. It has taken no position on the third category and it has not made a recommendation as to any interpretation.

Complications Arising from an Abortion

DOJ believes that there is a strong case for concluding that the Danforth amendment does not apply in the case of health services needed to treat complications arising from an abortion. While the text arguably covers these cases since they are "related to an abortion," the purpose of the amendment was to avoid forcing institutions to provide abortion-related services when doing so conflicts with their philosophy or moral beliefs. That concern is mitigated or absent entirely when the service itself is not an abortion. Second, the "penalty" provision of the amendment means that a covered institution cannot take an adverse action against someone because they have had an abortion. There is a strong argument that a refusal to provide an otherwise available service, simply because it is the result of an abortion, would be a penalty. Third, two statements by Members in the House, including one by Congressman Edwards, the House sponsor of the Grove City bill, indicate their understanding that the amendment did not apply to services in that situation. (See Attachment B)

Abortions Necessary to Save the Life of a Woman

DOJ is much less certain regarding the applicability of the Danforth amendment to abortions necessary to save the life of a woman. Interpreting the amendment to exclude this situation would require inferring an exception that is inconsistent with the clear text. The argument for doing so is based on various floor statements by individual Members. The NWLC points to an exchange between Senator Metzenbaum and Danforth. Metzenbaum said: "There is not even a life of the mother exception in the Danforth amendment. And a woman could be bleeding to death from pregnancy complications and under the Danforth amendment she could be denied a lifesaving abortion." Danforth responded: "[T]he characterization of the bill by the Senator from Ohio is completely erroneous and totally without foundation at all. It is a fabrication." While Danforth's comment could be interpreted to mean that the amendment was not intended to apply to any of the situations described by Metzenbaum, it is also subject to other interpretations. The comment by Metzenbaum is interspersed with several other criticisms of the amendment. Consequently, Danforth could have been objecting to any one of them, or to Metzenbaum's overall characterization of the amendment.

The NWLC also has argued that failing to infer an exception for this situation would constitute a "penalty" within the meaning of the penalty provision of the amendment. This argument may prove too much, however, since any denial of an abortion could be viewed as a

penalty.

Finally, there is an argument that comments by several Senators supporting the amendment reflected their understanding that the amendment was consistent with the Hyde amendment. At that time, the Hyde amendment barred federal funds for abortions, except in cases where the life of the woman is threatened or in cases of rape and incest. Arguably, then, these Senators viewed the Danforth amendment as implicitly excepting the same abortions that are excluded from the Hyde amendment prohibition. However, the statements can also be interpreted to mean that the speakers believed that the general approach of the Danforth amendment is the same as the general approach of the Hyde amendment, i.e., a woman may have a constitutional right to an abortion, but educational institutions (and federal taxpayers) should not be required to provide them. These comments, as well as the Metzenbaum-Danforth interchange, are shown in Attachment C.

Rape and Incest

The NWLC also argues that the amendment does not apply in cases of rape and incest. That argument is probably weaker than the other two situations, since the only bases for the claim are the general statements about consistency with the Hyde amendment described above. There is no floor statement that refers expressly to abortions in the case of rape or incest. DOJ did not address this exception.

II. Policy Considerations

The most direct -- and inevitable -- effect of the Danforth amendment is to preclude a Title IX requirement that a covered institution must provide abortions in the vast majority of cases where women choose them. A Title IX requirement applicable to complications arising from an abortion, abortions necessary to save a woman's life, and abortions in cases of rape and incest will arise much less frequently. The Department of Education has never received a complaint about a refusal to provide an abortion in these cases, but the absence of a complaint does not mean that the case could not arise or has never arisen in the past. Nevertheless, it is important to recognize that the open issues regarding the Danforth amendment, however they are resolved, will probably have an effect only in a very small number of cases. If the "exception" to the Danforth amendment is limited to complications arising from an abortion, the practical effect would be to require a small number of women who require a life-saving abortion, or who need an abortion because of rape or incest, to obtain services from another facility and to find another source of payment.

Another important consideration is the breadth of Title IX. There are many types of institutions that fall within Title IX's coverage. Virtually all institutions of higher education are covered. In addition, many teaching hospitals and other hospitals with an educational program are covered. While there is a "religious tenet" exception, it applies only to institutions that are "controlled by" religious organizations. In practice, this means that a religious organization itself

is setting policy. Georgetown, Notre Dame, and other universities affiliated closely with the Catholic Church, and teaching hospitals with the same affiliation, apparently do not fall within the exemption. (ED and HHS are confirming this.) However, based on our current understanding, whatever interpretation of the Danforth amendment we adopt will apply to those religiously-affiliated institutions.

There is obviously an argument for such a federal requirement since covered institutions receive federal funds and they have the option to refuse them. Moreover, making distinctions about health services based on whether they terminate pregnancy is inconsistent with the basic policy against gender discrimination. On the other hand, many Members of Congress may believe that the 1988 amendment was intended to prevent the federal government from imposing on public and private educational institutions a requirement that they provide abortions under any circumstances. Imposing such a requirement now could provoke a demand for a "conscious clause." If such a clause were adopted, the practical effect would be to eliminate the requirement for religiously-affiliated institutions. These constitute many of the institutions that do not provide these services voluntarily now.

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FROM-NATIONAL WOMENS LAW CENTER

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ATTACHMENT A

Model Title IX Regulations for Federal Government Agencies and Departments

The National Women's Law Center supports the inclusion of language in the model Title IX regulations ("the model regulations") that provides: "Medical procedures, benefits, services, and the use of facilities if the life of the woman will be endangered if the pregnancy continued to term or to address complications related to an abortion are not subject to this section." This provision is consistent with the statute's language and legislative history and represents a reasonable interpretation by the agencies charged with enforcing Title IX.

First, Title IX's abortion neutrality provision -- the Danforth Amendment to the Civil Rights Restoration Act of 1987 -- reads:

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion.

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

20 U.S.C. § 1688. The clarification at issue is necessary to ensure that the model regulations are not misconstrued to deny women access to such medical care.

The language concerning the life of the woman and complications falls squarely within the confines of the statute. The statute states that no covered entity can discriminate against a woman who is seeking or has received any benefit or service related to a legal abortion. Denying a woman an abortion necessary to save her life or medical services to address complications would certainly be "a penalty . . . imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion." It would be a high penalty indeed. Moreover, life threatening conditions and complications are per se not abortions.

The legislative history also indicates that the provision at issue is consistent with congressional intent. Senator Danforth himself, as well as other sponsors, explicitly addressed this issue. In response to Senator Metzenbaum's concern that the amendment would result in discriminatory treatment and did not account for abortions needed to save the life of the mother, Senator Danforth responded that such characterizations were "completely erroneous and totally without foundation at all." 134 Cong. Rec. S227 (daily ed. Jan. 28, 1988). Representative Aucoin stated: "Equally important is the fact that the bill clearly prohibits denial of provision of services related to complications arising from abortion under the terms of Title IX. 134 Cong. Rec. H568 (daily ed. Mar. 2, 1988). Chief sponsor Representative Edwards added: "Under its provisions, a covered institution does not have to include the costs of an abortion procedure in insurance for its students or employees. But [it] does not mean that it can exclude, for example, medical complications related to an abortion. Under the Danforth Amendment, Title IX still requires those complications to be covered." *Id.* at H584. There is no legislative history we were able to find to the contrary.

MODEL TITLE IX REGULATIONS FOR FEDERAL GOVERNMENT AGENCIES

References to the Hyde Amendment in the Danforth Amendment's Legislative History

The National Women's Law Center supports the inclusion of language in the model Title IX regulations, making clear that the Danforth amendment (codified at 20 U.S.C. § 1688) does not apply to abortions necessary for the life of the woman or resulting from rape or incest, or to complications related to abortion. From past discussions, we understand there is agreement that complications are not subject to the Danforth amendment, but that some issue has arisen concerning abortions necessary to save the life of the woman. In fact, we believe that the amendment should also not cover these abortions or abortions resulting from rape or incest. The numerous references to the Hyde amendment, Pub. L. No. 103-333, § 509, 108 Stat. 2539, 2573 (1994) (current version), in the legislative history of the Danforth amendment reveal Congress' intent to exclude from coverage of this amendment abortions necessary to save the life of the woman and those arising from rape or incest, as well as complications related to an abortion.

The Hyde amendment then prohibited federal funding of abortions under the Medicaid program except in certain circumstances — when necessary to save the life of the mother and when a woman suffered rape or incest, provided that she promptly reported the crime. 1981 Hyde Amendment, Pub. L. No. 96-536, § 109, 94 Stat. 3166, 3170 (1980). Senator Danforth himself explicitly stated that his amendment would not change the law, but would simply make Title IX consistent with congressional policy, as reflected in the Hyde amendment. 134 Cong. Rec. S 169 (daily ed. Jan. 27, 1988); see also 134 Cong. Rec. S 226 (daily ed. Jan. 28, 1988) (statement of Sen. Danforth); 134 Cong. Rec. S 164 (daily ed. Jan. 27, 1988) (same); id. at S 173 (same). In addition, Senators Metzenbaum and Danforth had a dialogue in which the former stated: "There is not even a life of the mother exception in the Danforth amendment. And a woman could be bleeding to death from pregnancy complications and under the Danforth amendment she could be denied a lifesaving abortion." Senator Danforth responded: "[T]he characterization of the bill by the Senator from Ohio is completely erroneous and totally without foundation at all. It is a fabrication." 134 Cong. Rec. at S 227 (daily ed. Jan. 28, 1988). Senator Danforth then continued by citing the antidiscrimination provision of his amendment to support his assertion.

Furthermore, the Senators who supported the Danforth amendment described its intent as to be consistent with the Hyde amendment. See 134 Cong. Rec. S 217 (daily ed. Jan. 28, 1988) (statement of Sen. Hatch); id. at S 220 (statement of Sen. Domenici); id. (statement of Sen. Gramm); id. at S 229 (analysis by Dept. of Educ.); 134 Cong. Rec. S 166 (daily ed. Jan. 27, 1988) (statement of Sen. Humphrey); id. at S 171 (statement of Sen. Nickles). Senator Humphrey argued that without the Danforth amendment, the bill would reach the "heights of hypocrisy" because the federal government had adopted a policy of refusing to pay for abortions except in the most narrow circumstances. 134 Cong. Rec. at S 166 (daily ed. Jan. 27, 1988) ("The Medicaid program has funded abortions only in the narrowest of instances . . .").

These statements indicate that Congress intended to exclude abortions that were covered by Medicaid at the time, as well as complications related to abortion.

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Second, the model regulations are a reasonable interpretation of the statute by the agencies charged with its enforcement. In Guardians Association v. Civil Service Commission of the City of New York, 463 U.S. 582 (1983), five Justices agreed that while the text of Title VI did not itself proscribe unintentional racial discrimination, federal agencies could enact valid regulations with such a proscription. See 463 U.S. at 591-92 (White, J.); *id.* at 617-24 (Marshall, J., dissenting); *id.* at 642-45 (Stevens, Brennan, and Blackmun, JJ., dissenting). Justice White in his opinion stated that the language of Title VI on its face is ambiguous and that the agencies' interpretations of the statute -- i.e., regulations -- should not be rejected "absent clear inconsistency with the face or structure of the statute, or with the unmistakable mandate of the legislative history." *Id.* at 592 (citing Zenith Radio Corp. v. United States, 437 U.S. 443, 450 (1978)). Justice Marshall in his dissent also articulated the longstanding principle that an agency's construction of a statute need not be the only reasonable one to warrant deference, as long as it is not unreasonable. *Id.* at 621 (citing Zenith, 437 U.S. at 451). Assuming, *arguendo*, that the text of Title IX is ambiguous with respect to whether covered entities may provide an abortion necessary to save the life of the woman or medical services to address complications, the statute and its legislative history support the clarifying regulation at issue.

The clarification will ensure that Title IX is not used to deny women access to important medical care, in furtherance of the objectives of the statute. Accordingly, inclusion of this provision represents a reasonable interpretation of the statute that is consistent with its language and legislative history.

I have heard the President wants to veto this bill. That, of course, is his right. But should he do so, we will override that decision. And that will be a good day, and a good outcome for so many of our people who depend on good government to open doors and promote individual opportunity.

But I cannot let this record stand without expressing my outrage, and my serious concern over the regrettable inclusion in this antidiscrimination bill, the discriminatory Danforth provision regarding reproductive rights for women in this country. Time and time again, the vagaries of the political process have presented a dilemma to supporters of civil rights who also are strong supporters of reproductive rights. We're forced to choose which of these principles is more important. In my mind they are the same. They are indivisible. Civil rights are very basic and very simple, and among them must be the right to reproductive freedom.

Instead of immediately rejecting the Grove City decision, the Congress has been tied up in knots, and civil rights have been held hostage, to the demands of some who would like to use the restoration legislation as an opportunity to further their goals of placing limits and restrictions on reproductive freedom.

We have watched a process for 4 years in which a powerful minority -- not one which represents the majority opinion of the people of this great Nation -- has stymied and hogtied the civil rights restoration legislation.

But today we have finally moved ahead, and because of the statements of authors of the Danforth amendment during consideration of S. 557, and only because of these statements and others which have been made by chief sponsors of the bill on the floor today, can I support this bill.

These statements have clarified what could have been a dangerous loophole in the Danforth provision. With regard to his amendment, the Senator from Missouri said, "The amendment says that *** a college *** is prohibited from discriminating against people who have had abortions or who are seeking abortions." And the Senator from California, a coauthor of the Danforth provision, also stated that the provision was drafted "to ensure that there could not be discrimination against women who either are seeking or have received abortion-related services."

These statements by the authors of the provision have precedence in setting the terms of legislative intent and history. And with their statements clarifying that this legislation before us today expressly prohibits, and does not in any way permit, discrimination against women who have had or are seeking abortions, I can support this bill. I regret, however, and do strongly oppose, the further diminishment in access to safe and legal abortion included in this bill.

With assurances from the authors of the Danforth amendment, and with the clarification provided by floor leaders today, it is now clear that this legislation prohibits discrimination based on a person's decision regarding abortion -- in scholarships, in housing, in extracurricular activities, in student or faculty hire and tenure, and in other benefits offered to students or employees under title IX. Equally important is the fact that the bill clearly prohibits denial of provision of services related to complications arising from abortion under the terms of title IX.

harm in order to prove that the plaintiffs were not otherwise qualified under section 504 for the job in question. These cases demonstrate that determining risk of harm in these situations is well within the capacity of the courts.

The amendment which we are enacting today concerning contagious diseases or infections thus logically and appropriately parallels current law governing the risk of harm from employing individuals with other kinds of handicaps. I am pleased that our desire to prohibit discriminatory employment policies which are medically unjustified is being preserve in such a way that the nature of the handicap does not lead to a greater leeway for discrimination. Although, as I have noted, this amendment is essentially unnecessary because it restates current law, I believe it can serve a useful clarifying function.

It is unfortunate in my view that the Senate failed to adopt an abortion-free bill. House sponsors of this legislation could have reported a bill with such an amendment in the 98th Congress. However, we knew that abortion was wrongly tied to this legislation, and therefore, we urged Senate sponsors to present us with a clean bill -- something they were unable to do.

I do not believe that the Danforth amendment belongs on this bill. But I will support the bill, including the amendment, because of the critically important statements made by Senator Danforth in describing its purpose and effect. He said, and I quote:

The amendment says that *** a college is prohibited from discriminating against people who have had abortions or who are seeking abortions. (135 Cong. Rec. S. 163, Jan. 27, 1988)

Senator Wilson, who had a role in drafting the amendment, said that it was drafted:

To ensure that there could not be discrimination against women who either are seeking or have received abortion-related services. (135 Cong. Rec. S. 227, Jan. 28, 1988)

Such assurance, that the Danforth amendment clearly prohibits any covered institution from discriminating against a woman who is seeking or has had an abortion, is critical to my support of this provision. Whether it be scholarships, promotions, extracurricular activities, student employment or any other benefits offered to students or employees, under title IX benefits cannot be withheld from a student or employee because she received or is seeking an abortion.

Finally, it is important to keep in mind not only what the Danforth amendment does, but what it does not do.

Under its provisions, a covered institution does not have to include the costs of an abortion procedure in insurance for its students or employees.

But does not mean that it can exclude, for example, medical complications related to an abortion. Under the Danforth Amendment, Title IX still requires those complications to be covered.

I do not take the loss of health insurance to cover the costs of an abortion procedure lightly. Nor do I approve of the Danforth amendment's exclusion of

whether they want an abortion or do not. And I would encourage them to vote against the Danforth amendment.

I thank the Chair and I thank the majority leader.

Mr. DANFORTH. What I would like to do is ask unanimous consent to add two cosponsors and then proceed for 5 minutes.

Mr. BYRD. I have no problem with that, Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Missouri for not to exceed 5 minutes for the purpose of making a statement only and for the purpose of asking that additional cosponsors to the amendment be added.

The PRESIDING OFFICER. Is there objection? The Senator from Missouri.

Mr. DANFORTH. Mr. President, I ask unanimous consent that Senator WARNER, Senator PRESSLER—Senator THURMOND already is a cosponsor—Senator WARNER and Senator PRESSLER be added as cosponsors to the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, just responding to Senator Packwood on the question: Do we want to change the law? Do I want to change the law? The answer to that question is, of course, no, I do not. The law has not yet been interpreted to require hospitals to perform abortions. The law has not yet been interpreted to provide that, for example, Georgetown University funds abortions, to my knowledge.

My position is that we do not want the law to be so construed in the future and the Dewey, Ballantine law firm has written a legal opinion that the law might be construed by a court or by an administrative agency to require a Georgetown University to perform abortions or to fund abortions.

That is the issue: prospectively, in the future, do we want to preclude a court from making such a decision or do we not? My view is that the Congress has never taken a position in the past that it is the position of the Government of the United States to use the power of the purse to coerce educational institutions or hospitals into either funding or performing abortions. Congress has never done that. To my knowledge, courts have not done that. The law now is not that hospitals must perform abortions. The law today is not that Georgetown University Hospital has to perform abortions. The law is not now, today, that Georgetown University has to pay for people's abortions.

My position is that we should make it clear in this bill that a Federal judge in the future or administrative agency in the future is not going to do that. We do not believe, as a matter of policy, that should happen.

Senator Packwood cited a letter from the Justice Department on the effect on hospitals. He said it was outrageous. But the firm of Dewey, Ballantine reached precisely the same conclusion. And I quote again from the Dewey, Ballantine memorandum of law:

The protections of title IX could be extended to a hospital's patients as well as to its students and staff. In that case the refusal to perform abortion services for the general public could also be considered sex discrimination in violation of title IX.

This is not just the Justice Department. This is the Dewey, Ballantine law firm that has given me the same legal opinion as to what a court can do if it pushes this legislation to its farthest extreme. I want to preclude that.

That is why I have offered the amendment. It will not change the law, but, instead, it is taking a very clear position that the Congress of the United States is not going to force hospitals and universities and colleges into doing something which, under the Hyde amendment, we do not do.

Under the Hyde amendment we have decided we are not going to fund abortions with the taxpayers' dollars. How can we be in a position in the Congress of the United States of deciding that a court is going to have a free run at compelling hospitals and universities and colleges in their health plans and in their medical services to do what we in Congress will not do?

What kind of quirky position would that be? This really would be the law. The bill in its present form, without the amendment, would open the door to wild changes in the status quo, in the opinion of this Senator.

The PRESIDING OFFICER (Mr. Dixon). The majority leader.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I understand the distinguished Senator from South Carolina wishes to speak. It is not my desire to hold the floor long. I merely am trying to protect Senators for the moment who have amendments they are preparing.

Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from South Carolina for not to exceed 10 minutes for the

purpose of making a statement only, and that I be protected in my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Carolina is recognized for not to exceed 10 minutes, while the right of the majority leader to the floor is protected.

Mr. THURMOND. Mr. President, I rise in support of this amendment.

The amendment that has been offered by the distinguished Senator from Missouri would merely establish that title IX of the Education Amendments of 1972 is to be neutral with respect to abortion.

Mr. President, each year Congress enacts provisions of law that prohibit the use of Federal dollars to perform abortions. This is our consistent policy and one which has been ruled constitutional by the Supreme Court. In light of this fact, it is ludicrous that there is a Federal regulation on the books that requires those who receive Federal financial assistance to make abortion services available.

One can hardly imagine anything more hypocritical than the Federal Government making an activity off limits for its own money at the same time it requires others to use their money for the same activity. Such hypocrisy should be erased from the regulations and any legislation that addresses title IX is an appropriate place to do so.

Clearly, the title IX regulations of the Department of Education on abortion do not reflect the intent of the Congress which approved that law, nor do they reflect the policy of the Congress today. It is simply ridiculous to describe, as these regulations do, the failure to provide abortion services as discrimination on the basis of sex.

Quite frankly, Mr. President, I am having a bit of a hard time understanding why it is so objectionable to remove this regulatory blunder from the books. I am not aware of anyone who has endorsed the policy that failure to provide abortion services is a form of sex discrimination. In fact, in a response to a written question submitted by Senator HATCH, Eleanor Smeal, president of the National Organization for Women, Inc., stated:

To the best of my knowledge, NOW has not to date taken a policy position that the failure to provide abortion services is a form of sex discrimination.

In responding to the same question, Marcia D. Greenberger, managing attorney of the National Women's Law Center, stated:

To the best of my knowledge and belief, the National Women's Law Center has never taken the position, as a matter of policy, not the law, that failure to provide abortion services is a form of sex discrimination.

ever the administration is, whether or not to grant the religious exemption. It is perfectly possible to construe it very narrowly and simply not act on it or not grant the exemptions.

Mr. NICKLES. I do not know how many exemptions the Carter administration did or did not grant.

Mr. DANFORTH. I think it is zero or very close to zero.

Mr. NICKLES. I would not be surprised.

I think the Senator is making an outstanding comment. It is certainly not a policy that should change on administration philosophy.

Mr. DANFORTH. The Senator mentioned St. Anthony Hospital. Maybe it has a nursing program which would bring it within reach of this bill, conceivably. Does the Senator believe that the administrators of St. Anthony Hospital in Oklahoma should be in a position of going through an administrative officer of the Federal Government and begging for an exemption so that the hospital would not have to perform abortions? Is that the position we should put them in?

Mr. NICKLES. I think the Senator is making an excellent point. Administrators of hospitals have a lot of important work to do, and this should not be added, not to mention the fact of the litigation that this would expose them to. That is dollars and services and time that could be better used in servicing their patients, instead of fighting legal battles and class-action suits.

Mr. DANFORTH. Let us say that Georgetown Hospital would have to go to the Department of Education. It is demeaning and it is a tenuous position to be put into, if Georgetown University or St. Anthony Hospital, or St. Mary's Hospital in St. Louis, or whatever, has to go to a Federal bureaucrat and say: "Please, Mr. Bureaucrat, out of the kindness of your heart construe the religious exemption in a way that is beneficial to me."

The Dewey, Ballantine opinion pointed out very clearly that the religious exemption can be very tightly construed and it is not right—I think the Senator will agree—it is just not right to put religious hospitals or hospitals that are affiliated with universities in the position of pleading for an exemption which can be granted or denied at the discretion of the administrative officer.

Mr. NICKLES. I think the Senator is exactly correct.

Again when you think of the issue and how important it is to various institutions to take the issue of abortion in Georgetown or I mentioned St. Anthony's, and I am sure again all Senators have other similar type institutions, the issue is so important to a lot of their strong beliefs, that we are not talking about a minor issue of whether or not something is approved, an in-

surance claim or something. We are talking about very significant changes in policy that should not really be at the whim of any particular administration as it changes from time to time.

Why in the world would we in Congress mandate the hospitals that they have to provide services and fund services, whether it be insurance or provide those services, when we in Congress through the Hyde amendment say we are not going to fund them, we did not fund abortions with Federal taxpayers' dollars, but yet we would be requiring those institutions to provide that service?

Mr. President, the final point I want to make—and we have a lot of people, probably a strong majority in this body who would like to see this piece of legislation pass—I am confident that if the Danforth amendment does not pass, that the Civil Rights Restoration Act of 1987 will not become law.

I do not know if it has been read or not, but I will read to you comments that the President has stated, which gives me a great deal of confidence that the President will veto the bill if the Danforth amendment is not passed.

On July 30, 1987, he addressed persons active concerning the Grove City issue and I will read what the President had to say. This is President Reagan on July 30, 1987. He said:

I want, third, to restate our firm opposition to the so-called "Grove City" legislation sponsored by Senator Kennedy. This bill—S. 557—would mean that hospitals and colleges receiving federal funds, even those with religious affiliations, would be open to lawsuits if they failed to provide abortions. In other words, the legislation would virtually force these institutions to provide abortion on demand.

The President goes on:

I don't mind telling you, this one really touches my temperature control. I don't want to get started, but let me just say this. As far as I'm concerned, every member of Congress should oppose this pro-abortion federal intrusion. . . .

He goes on to say:

We support an amendment offered by Senator Danforth—an amendment that would eliminate the pro-abortion aspects of that legislation. As I said before, this Administration will oppose any legislation that would require individuals or institutions—public or private—to finance or perform abortions.

Mr. President, I am confident that if the Danforth amendment is not agreed to, the President will veto this entire bill.

So for the proponents of this legislation, I would think that they would like to see the Danforth amendment, which would just guarantee those institutions the right to perform abortions or the right not to perform abortions, agreed to.

Mr. President, I conclude my statement. Again, I would urge the adoption of the Danforth amendment.

I think if we fail to adopt the Danforth amendment, it would be a very serious mistake.

Mr. President, I yield the floor and suggest the absence of a quorum.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. Would the Senator from Oklahoma withhold that last motion?

The clerk will call the roll.

Mr. PACKWOOD. I asked for recognition, Mr. President.

He yielded the floor.

Mr. NICKLES. No. I suggested the absence of a quorum.

The PRESIDING OFFICER. The Senator from Oklahoma has suggested the absence of a quorum.

The clerk will call the roll.

Mr. WEICKER. Mr. President, will the Senator yield for a parliamentary inquiry?

I would like to have the record read back.

Mr. DANFORTH. Regular order is correct.

Mr. WEICKER. The Senator yielded the floor and then said he suggested the absence of a quorum.

I would like the record read back.

Mr. PACKWOOD. I believe the Senator from Connecticut is right. The Senator from Oklahoma had yielded the floor.

Mr. NICKLES. No. I suggested the absence of a quorum.

Mr. PACKWOOD. Could we have the RECORD read?

The PRESIDING OFFICER. I understand that. The quorum call is in progress. The Senator from Oregon is recognized.

Mr. DANFORTH. I object.

The PRESIDING OFFICER. Objection has been heard.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask to dispense with the further proceedings under the call of the quorum.

Mr. DANFORTH. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk resumed the call of the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the quorum call be suspended.

Mr. DANFORTH. I object.

The PRESIDING OFFICER. There is objection heard. The clerk will continue to call the roll.

The legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 3]

Adams	Inouye	Reid
Byrd	Kennedy	Stennis
Danforth	Metzenbaum	Weicker
Dixon	Nickles	Wirth
Hatch	Packwood	

It is not just a substitute or different words for the same thing. It undoes what my amendment tries to do.

Now, Mr. President, I would be absolutely delighted to work with the majority leader and with people on the other side, and just get a vote at some time certain on my proposition. I really think I am entitled to that, to the basic proposition of whether we want to compel organizations, institutions, to either fund or provide abortions that they do not want to do. I am willing to do it. I would suggest some Senators are missing tonight. We can do it, say, at noontime, 1 o'clock, 2 o'clock tomorrow, have a time certain, not get bogged down in a lot of amendments, a lot of procedural rigmarole, and that would be my suggestion to the majority leader.

Mr. BREAUX. Mr. President, will the Senator yield for a question?

Mr. DANFORTH. Of course.

Mr. BREAUX. I would like to ask a question because I am really not certain of the answer, in the sense that I have heard there are some areas that would be affected by the Senator's amendment that are outside of the confines of the existing bill that the Senate is now considering, that there would be existing regulations in fact that are in place, that the bill does not address in any way.

If the amendment of the Senator from Missouri were in effect adopted then changes would be made in those existing regulations that the bill does not address. Can the Senator comment on that?

Mr. DANFORTH. Yes; I would be happy to comment on it. There was no law until 1972. In 1972 Congress passed the title IX of the Education Act. Title IX was passed a year before *Roe versus Wade* was decided. Clearly there was no intention at the time for Congress to mandate abortions or insurance coverage of abortion.

In 1975, the Department of Health, Education, and Welfare promulgated a regulation and that regulation equated the unwillingness to perform abortions with sex discrimination. That issue, to my knowledge, was never litigated. The law was really unformed. Then came the *Grove City* case and the effect of the *Grove City* case was to moot out those regulations because it so narrowly interpreted title IX that it really had no effect that is pertinent to the situation we are in now.

The position that is taken by Dewey, Ballantine—and I recommend the memorandum and the opinion to any Senator who is interested—the position that is taken by Dewey, Ballantine is that the combination of enacting a law which would tend to put our stamp of approval on title IX and ratify the regulations promulgated by HEW and apply title IX institution-wide and in fact even to hospitals that are not in themselves affiliated with

colleges and universities which have some sort of teaching program, such as a nursing program, that that combination of events, that cluster of events, would open the door for a court to create an interpretation which is not now the law and which has not been the law.

It has never been the case before that it could be argued that Georgetown University Hospital could be forced to perform abortions. According to the Dewey, Ballantine law firm, that could be argued, and there is a reasonable possibility that a court would so hold. So that really is the issue.

The issue is not changing some prior law. The issue is acting now to prevent a bizarre result, which the Dewey, Ballantine law firm and the Department of Justice have both said and the American Hospital Association have all said, as a matter of fact, is a reasonable likelihood to occur.

Mr. BREAUX. If the Senator will yield for a following question, I do not want to delay the Senate on this matter, but my agreement with the Senator from Missouri is that this bill should be abortion neutral in the sense we do not make any declaratory judgments one way or the other on the abortion issue. But I think what I am getting from the author of the amendment is that by adopting his amendment, he is in fact recommending and perhaps mandating some changes in how abortion is treated in some of these institutions. So, to me it seems that he is taking it out of the area of neutral and abortion neutral because he is in fact making some changes in some other areas of how abortion is handled.

It seems to me it is hard to argue that it is abortion neutral if in fact changes are required by the Senator's amendment.

Mr. DANFORTH. But I believe it is abortion neutral because it really is not now the law that says a church-related hospital can be compelled to perform abortions. After the HEW decision regulation in 1975 which equated sex discrimination with the refusal to fund abortions in health plans, it is true that some colleges and universities changed their health plans and some terminated their health plans. The matter was never litigated; at least I think that that is correct, that the matter was never litigated. But it really seems to me that as far as the law is concerned Congress has never acted to state that the refusal of a private party to fund abortion is sex discrimination. Congress has never done that.

To the contrary, Congress has said with respect to Federal funds in the Hyde amendment, that we are not going to be in the business of funding abortion. So I really do not believe that it is fair to say that the present

state of the law or that the state of the law before the Supreme Court decided the *Grove City* case was one that compelled unwilling institutions to either perform abortions or to finance abortions.

Mr. BREAUX. I thank the Senator.

Mr. LUGAR. Mr. President, I rise to speak on behalf of the amendment offered by the senior Senator from Missouri. I am pleased to be a cosponsor of this important amendment which has been carefully written to ensure that the bill before us, if enacted into law, will not be construed in a manner adverse to human life.

Mr. President, some may argue that this amendment is not needed. For this reason, it is suggested that current policy on the termination of pregnancies will not change. I wish this were true. Sadly—it is not.

Under the current regulatory policy governing Federal assistance for education, schools receiving Federal assistance have been required to make abortion services available to students and to employees. No exemption is allowed—unless a school can prove that they are controlled by a religious body. As a result, the regulations have been used to force institutions to provide abortions against clear moral conscience, and in violation of the historical convictions of many independent institutions which have been established on religious principles.

Whatever a Senator may feel about the merits of this particular regulatory policy, all must agree that it is controversial and divisive. Until now, that controversy has at least been limited to educational institutions. If the current legislation does not assure abortion neutrality, the controversy which now attends Federal policy in the area of education will be spread to every other area of public policy endeavor. Therefore, I ask my colleagues, and I ask the American people:

Is that what we intend to do with enactment of this bill?

Is that what we should do?

For me it is clear that we should not.

This body is deeply divided on the issue of abortion. This body is divided, and the American people are divided. The debate has gone on for a long time. But as long as the American people are so obviously divided, we as representatives of the people must not coerce private individuals or private institutions into providing abortions.

Those who wish to provide abortion services, are currently free to do so. I do not agree with those who do. I think they are wrong. But they are permitted by law to do as they choose. The bill before us, unless it is amended to ensure abortion neutrality, will deny the influence of conscience on the abortion issue—to institutions worthy of our most profound respect.

used as a way to force institutions to either fund or to provide them.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, it is critical that my colleagues recognize that the Weicker-Kennedy-Metzenbaum-Packwood amendment is nothing but an empty shell. This particular amendment states only that the act, S. 557, shall not be interpreted to require individuals or institutions to perform or pay for abortions. But, as the distinguished Senator from Missouri has so cogently stated, it is the existing regulations under title IX that must be addressed. S. 557 does, in fact, broaden the coverage of title IX and, consequently, S. 557 expands the coverage of the abortion regulations.

You cannot read the bill without recognizing it expands the law as it existed 1 day before Grove City. But it is the application of the regulations under title IX that must be changed and only the Danforth amendment brings about that change. That is a fact.

Mr. WEICKER. Would the distinguished Senator yield for just one question?

Mr. HATCH. I would be delighted.

Mr. WEICKER. The distinguished Senator from Utah—I thank him for yielding for a question—sees only the Danforth amendment.

Mr. HATCH. That is right.

Mr. WEICKER. Does the distinguished Senator from Utah agree that the regulations could be changed by the executive agency itself?

Mr. HATCH. The answer to that is the agency might change them, but there will be instant litigation to reinforce them, and we do not know what would happen.

But also, the second answer to that is, not only may the agency change them, but a subsequent administration may harden them or make them more difficult.

So the fact that we have regulations in existence does not necessarily stop them from being changed one way or the other, and it does not change the litigation that would ensure that would reinforce them.

I call to the attention of the distinguished Senator from Connecticut, my friend, his comments made before the committee, which I thought were unique.

Let me do that in just a second, but let me just say this: Danforth solves this problem. It is an abortion-neutral amendment. It seems to me that it is a fair amendment. It does not impose Roe versus Wade on anybody nor does it stop Roe versus Wade from having its full force and effect. In short, the Weicker-Kennedy-Packwood-Metzenbaum amendment passes, then colleges, hospitals, State government agencies and others would be forced to pay for or perform abortions. Only the

Danforth amendment corrects this gross inconsistency under Federal law, whereby the Federal Government refuses to fund abortions.

Under the Hyde amendment, the Federal Government refuses to fund abortions, but under this bill as it is written now, colleges, hospitals, and others will be forced to fund or perform abortions. This is an important thing.

Let me just say in that regard, when we debated this matter before the committee, the distinguished Senator from Connecticut, my friend and a person for whom I have a great deal of respect, he said this. Just for the RECORD I will state:

If you take Federal funds, you cannot deny a person an abortion. The reason why you cannot deny a person an abortion is it is legal in the United States of America. The reason why it is legal is we do not run the Nation by virtue of our individual consciences. We run by virtue of the constitutional system. That is the answer, pure and simple. And it is not going to change.

The fact is—

This is the distinguished Senator from Connecticut—

The fact is that the law of the United States of America says that abortion in certain circumstances is legal. Period. That is it . . . that is exactly what the law states . . . I just repeat, so that it is relatively simple, that if someone wants to take Federal funds that you cannot deny the rights of a person under the law. That is it. This in no way impinges upon your individual conscience . . . as I said before . . .

Senator HUMPHREY then said: "Will the Senator yield for a question?" Does the Senator wish to require Catholic University to perform abortions?"

It probably would have been better for him to have used Notre Dame University, so let us substitute Notre Dame.

Senator WEICKER said: "No, I certainly do not want Catholic University"—or in this case Notre Dame University—"to be required to perform them. The fact is that if Catholic University wants to take Federal funds, they cannot deny—they are not forced to perform them, but they cannot deny an abortion if it is requested."

Once my amendment went down, the preceding amendment went down to defeat—we only had 39 votes, although that is a significant vote—

Mr. WEICKER. Would the Senator yield? Catholic University has an exemption.

Mr. HATCH. That is the point I was going to make personally. Let me just make that point. The reason my amendment was so important before is because under the law as written in this Grove City bill that may pass the floor today, I do not know—under that law, any institution controlled by a religious organization is exempt if its tenets conflict with title IX.

There are only two who make that a requisite in the whole country today out of thousands of schools and hundreds of religious schools. They are Brigham Young University and Catholic University, because they are the only ones completely controlled by religious institutions. All the others are now going to be subject to title IX regulations superseding their own religious tenets—it is just that simple—with the defeat of the Hatch amendment the last time.

I do not think people realize that. This bill is so broadly drafted that, frankly, bureaucrats, with their hostility to religious beliefs, will be trampling all over religious beliefs in these schools.

I think the distinguished Senator from Connecticut would have answered the same way had it been Notre Dame.

Is that correct?

Mr. WEICKER. To respond to the distinguished Senator from Utah, and, again, I can only respond as I did before, exemptions can be granted and they are granted.

Mr. HATCH. Not pursuant to this bill without my amendment.

Mr. WEICKER. And they are granted. And they have been granted to all religiously controlled institutions as far as the public is concerned. So, again, I think you have stated your point articulately and I hope I have mine. But I again have to repeat underlying all of this, yes, to say that Roe versus Wade is not involved is to say that a portion of the law of the land does not have any bearing on what happened after title IX was enacted. I think it certainly does. And that is the law of the land, regardless of how some would like to have it changed.

In terms of, No. 1, the application of title IX is specific to students and employees, and not the public. What those nonreligiously controlled institutions are trying to do is get around this business by having a lay board of trustees and they do not come under the law. These are matters which, quite frankly, really we are not getting into insofar as trying to reestablish what the law was.

I appreciate the speculations of the distinguished Senator from Utah. All I am trying to do is to make sure that what the law was prior to the Grove City case will be the law again with that one point on the definition of program activity being cleared up.

Mr. HATCH. Frankly, that cannot be the case the way this bill is written.

Let me say this, and I will substitute Notre Dame University for Catholic University because Catholic University would be exempt. They do have an exemption, as does Brigham Young University, the only two schools in the country that will have the exemption

if this bill passes both Houses of Congress and is signed into law, which I doubt will happen. So we are going through an exercise here.

Mr. HUMPHREY stated, "Will the Senator yield for a question? Is the Senator willing to substitute Notre Dame to perform the abortion? They will be subject to this law when it passes."

Mr. WEICKER said, "No, I certainly do not want Notre Dame University required to perform them. The fact is that if Notre Dame wants to take Federal funds they cannot deny." He goes on to say, "They cannot be forced to perform them. They cannot deny the abortion if it is requested."

I said, "It is a lot more than that. Under those title IX abortion regulations they have to provide it regardless of their religious beliefs. If those regulations stay in force and effect, and there is no way it seems to me they do not, and this bill passes in its present form, then Catholic institutions that are not owned and controlled by that church but nevertheless affiliated with the church are going to have to provide abortions as a matter of fact to their students. That is, I think, an abomination and I think it flies in the face of religious freedom."

Mr. HARKIN said, "Will the Senator yield? I take it if they don't take Federal money then they don't have to."

I said, "Senator, there is hardly any entity of any size in this world today that does not take Federal money either directly or indirectly. There is hardly a school in this country today that does not indirectly or directly take Federal funds."

Mr. WEICKER said, "That comment, of course, is the essence of the entire argument of this legislation. If you are going to discriminate, you do so with your own money and on your own hook. You do not do so with Federal funds. That underlies everything we are doing here today."

I take it that Roe versus Wade is the law of the land, a constitutional law of the land, and, therefore, it has to be imposed on these schools whether they like it or not, and, frankly, will be imposed whether they have any regulation or not.

Mr. WEICKER. Will the Senator yield?

Mr. HATCH. Let me finish my statement. I would like not to be interrupted and I would like to be able—if you will do it on your own time, I will be happy to yield.

Mr. WEICKER. Sure. I would just comment to assuage the very misgivings the distinguished Senator from Utah has, and they are obviously based on fact, from my own lips, to assuage those doubts being exactly the purpose of this amendment that is before us now.

Now, granted, other misgivings that he has relative to the regulatory agency are addressed by the distin-

guished Senator from Missouri in his amendment. But what I am saying, and the Senator will certainly agree, is that this amendment is very clear. The very point raised in committee cannot happen, cannot happen, by virtue of this amendment, at least as far as the law is concerned.

It can still happen under regulations, which is the reason why the Senator from Missouri has his amendment.

Mr. HATCH. Your point is Roe versus Wade is the constitutional law of the land and supersedes regulations. Is that your position?

Mr. WEICKER. It certainly is. Roe versus Wade is the law of the land.

Mr. HATCH. Then even this law, which is a statutory law, even your amendment, that does away with your amendment because the precedent that Roe versus Wade would take being the constitutional law of the land would overrule your own amendment.

Mr. WEICKER. Is the Senator amending Roe versus Wade?

Mr. HATCH. This amendment is abortion neutral and ends the issue, if the Senator is wrong that Roe versus Wade would take precedence. If Roe versus Wade does, then both of these amendments would be unconstitutional.

I do not agree with that.

Be that as it may, the Senator may be right.

S. 557 raises serious questions as to the requirements of public and private institutions with regard to the provisions of abortion services. Let me say at the outset that there has been a great deal of confusion regarding the relevance and importance of an abortion neutral amendment to S. 557 which Senator DANFORTH has brought to the floor.

To begin, it is appropriate to discuss the abortion neutral amendment that has been offered by Senator DANFORTH. The amendment reads as follows:

Nothing in this Title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person because such person has received any benefit or service related to a legal abortion.

It is hard to believe anybody would vote against that amendment if, in fact, we are trying to go back to pre-Grove City.

The language of the amendment is clear. It would not prohibit any public or private institution from providing abortion services; such institutions would have the option to provide abortion services if they deem such services appropriate and desirable. However, these institutions would not be required to provide abortion services when the provision is against the con-

science of the institution. I think that is a fair position.

What we must recognize is that this is not a question of whether one should be able to have an abortion—the Danforth amendment in no way prohibits institutions from providing abortions if they so choose. Rather, the question is whether the Federal Government has the right to force these institutions to pay for or perform abortion services even if to do so is against religious belief or conscience. That is the issue here.

Frankly, there is a glaring irony in the effect of this bill. On the one hand Congress has consistently prohibited the use of Federal funds for the performance of abortions under the Hyde amendment and yet under this bill, institutions that receive Federal assistance would be required to pay for or provide abortions.

Specifically, the regulations at issue, 34 CFR 106.41 and 106.57 require that:

A recipient shall treat . . . termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational programs or activity.

That is pretty stark stuff.

It is important to note the S. 557 and its accompanying legislative history render these regulations even more egregious than they were before the bill was proposed. First, the proponents have interpreted these regulations as meaning that failure to perform or provide for abortion services is a form of sex discrimination. While this assumption has been argued on the State level in connection with litigation involving State equal rights amendments, this is the first time that abortion has been linked to sex discrimination with regard to these regulations or in connection with Federal legislation, generally.

Second, S. 557 expands the scope of title IX and thereby expands the scope of the existing regulations and the opportunity for future action consistent with the misinterpretation that failure to perform or provide abortion services is a form of sex discrimination. For example, the proponents of the bill have acknowledged that the bill would extend title IX coverage to any off-campus hospital which has any teaching program, such as medical students, nursing students or residents.

In short, under S. 557, any university with students receiving federally subsidized grants or loans will be required to apply the abortion regulations in all of its operations. If a university has a teaching hospital and its students or employees receive medical care at the hospital, it would be required to provide abortion services on

the same basis as any other medical service. Even a nonuniversity hospital receiving Federal assistance could be required to provide for abortions if it conducts any education programs. Under this bill, that is how far it has been expanded. It is not taking us back simply to pre-Grove City.

In fact, in hearings before the Senate Labor and Human Resources Committee, James J. Wilson, city counselor of the city of St. Louis, MO, testified that S. 557 would not only overturn a Missouri State law that treats abortions differently from other medical procedures but also would invalidate the contractual relationship between the city of St. Louis and Regional Hospital which specifically prohibits abortions being performed by Regional with respect to any patients of the city.

The Missouri State Statute, 376.805 R.S.Mo. 1986, provides in pertinent part, "No health insurance contracts, plans or policies . . . shall provide coverage for elective abortions except by an optional rider for which there must be paid an additional premium." The proponents of S. 557 such as the American Civil Liberties Union (ACLU) and Planned Parenthood have publicly conceded that under the bill, the mandatory abortion regulations would cover all educational activities of any teaching hospital. In other words, they concede that hospitals would be required to provide coverage of abortions in the health benefit plans which they offer to the teaching staff and others connected with the teaching program.

Thus, the bill conflicts with Missouri State law prohibiting coverage for elective abortions in group health plans. Moreover, hospitals, such as Regional that have a staffing or teaching relationship with a nearby medical school, would be required to provide abortion services, thereby invalidating contractual arrangements such as that between St. Louis and Regional Hospital. There is tremendous controversy in this country surrounding the issue of abortion and those who oppose abortion hold a sincere respect for the right of life of unborn children. To call a failure to perform or provide abortion services sex discrimination is outrageous.

Students in colleges covered by title IX have already been compelled to support abortions for other students through mandatory student fees. In the case of *Erzinger v. Regents of the University of California*, the Superior Court for San Diego County relied on title IX for its decision rejecting the student's claim that the university could not compel them to support the abortions of other students through mandatory student fees. As the court stated:

Exclusion of medical care in connection with termination of pregnancies might

very well and probably would violate Federal law, Title IX of the 1972 Higher Education Amendments . . . (*Erzinger v. Regents of the University of California*, No. 458599, Superior Court San Diego, Franklin B. Orfield, J., presiding, at pp. 63-64.)

Moreover, there is strong reason to believe that the mandatory abortion coverage resulting from enactment of S. 557 will go beyond coverage of students and employees. As drafted, S. 557 decimates a significant existing limitation on the scope of the title IX abortion regulations—that is, section 901 which provides that the statute applies only to "educational" activities is altered by S. 577, section 901 would exclude noneducational operations of otherwise covered hospitals from regulation. S. 557, effectively abolishes that limitation by providing that "all of the operations" of an entity engaged in the health care business will be covered in their entirety. This indicates that if a hospital is covered at all under title IX, S. 557 will assure that even its treatment of patients from the general public will be subject to the abortion regulations. As drafted, "all of the operations of" listed entities, would include health care institutions whenever a health care institution receives any Federal aid. Certainly, it would run counter to the entire thrust of the bill to limit the application of title IX, and the abortion regulations, to only a hospital's "educational activities." No one contends that the act's other requirements will be limited to students or employees.

In fact, the coverage of this issue has still further ramifications. If a health care institution receiving Federal financial assistance is part of a larger chain, all other institutions in that chain are covered even if none of the other institutions receive Federal assistance. Clearly, S. 557 expands abortion requirements dramatically.

The proponents have suggested that Congress or the administration need merely rescind the regulations in order to correct the concerns raised by this issue. Mr. President, that is an insufficient solution to a serious problem. These regulations were promulgated in 1974 and therefore, have been on the books for the last 14 years. Any rescission would be met immediately with litigation in an attempt to reinstate the regulations. The abortion regulations represent one agency's view of what is required by title IX.

Administrative revocation of those regulations would not bar a court from deciding that the interpretation of the law reflected in the regulations was valid nonetheless and required by the statute. Absent congressional amendment in the form of the Danforth abortion neutral amendment, future administrations could easily reinstate the egregious regulations. Departmental regulations do not provide binding interpretations of Federal law. Judi-

cial interpretations of Federal statutes do. In any event, S. 557 effectively codifies the title IX abortion regulations, which would place them beyond mere administrative revocation. In short, congressional action is required at this time to correct the proabortion effects of S. 557.

It may be useful to point out the views of the proponents of S. 557 on this issue. During the Senate Labor and Human Resources Committee markup of S. 557, on May 20, 1987, Senator WEICKER stated:

Just for the record, I'll state, if you take Federal funds, you can't deny a person an abortion. The reason why you can't deny a person an abortion is, it's legal in the United States of America. The reason why it's legal is we don't run the nation by virtue of our individual consciences, we run by virtue of a constitutional system. That's the answer pure and simple, and it isn't going to change . . . It's relatively simple. If someone wants to take Federal funds, then they can't deny the rights of an American under the law. That's it. This in no way impinges on your individual conscience, as I said before . . . No, I certainly do not want Catholic University required to perform them. The fact is, if Catholic University wants to take Federal funds . . . they can't deny—they're not forced to perform them—they can't deny an abortion if its requested.

Mr. President it is outrageous and inconsistent to disallow the use of Federal funds for abortions on the one hand and to require those receiving Federal funds to pay for or provide abortions on the other hand. It is essential that we accept the Danforth abortion-neutral amendment and correct this glaring problem posed by S. 557.

Let me just add one other sentence. There are those who think that they will be supporting a prolife position by supporting the Weicker-Kennedy-Metzenbaum-Packwood amendment. That is not so. The only position on the floor this day that can solve this problem is going to be the Danforth amendment. So we are asking all Senators who have concerns in this area to vote against the Weicker-Kennedy-Packwood-Metzenbaum amendment. We think that it does more harm to the debate and problem than it does any good, and certainly it seems to me does not solve the problems that we are trying to address here today. It certainly does not solve the expansive nature of this bill, that expands the law way beyond what anybody thought it was back in 1984, before the Grove City decision occurred.

Let me just give 5 minutes to the distinguished Senator from New Mexico, and then turn the balance of my time over to the distinguished Senator from Missouri.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, I am not a Senator who believes that we ought to leave the Grove City decision alone. I

have cosponsored legislation to overrule the narrow interpretation of the Supreme Court with reference to institutions. I was an original cosponsor of BOB DOLE's bill of the 98th Congress, and the Senator from Oregon quite properly noted that I was nodding on that part—and that part only—of his discussion about institutionwide coverage versus a narrow interpretation.

Second, I am fully aware that this is not and should not be a discussion of whether or not we agree with Roe versus Wade. I think my record is pretty clear; I do not like the decision, but I am not the Supreme Court. I am a member of the legislative branch.

Third, it should be eminently clear that the law of the land is that the U.S. Government will not pay for abortions. That is the Hyde amendment. We have had that before us enough times where, regardless of how close the vote, it is pretty clear that the Congress of the United States—and I hope and assume constitutionally; nobody has taken that issue to the Supreme Court—has said "You will not spend taxpayers' money for abortion." I assume that is an appropriate exercise of our legislative authority. That is point three. We will not pay for abortion as a matter of decision of the Federal Government.

We had a choice, to borrow the jargon of the day, and Congress elected and exercised its right to choose, and we said we do not pay for them. That is No. 3.

Fourth, if you believe that the Grove City decision is too narrow, you ought to be down here on the floor trying to enact a bill with legislative language that will be passed, be signed by the President, and that will substantially ameliorate the narrow interpretations of the Supreme Court regarding civil rights. Those are my four positions.

Let me take the last one first. I want the last one to happen. In my humble opinion, there is no chance that it is going to happen unless the issue of abortion and civil rights is resolved. I just do not see how, since it has held the House up for 3 years. Can you imagine the President of the United States signing a bill with the Weicker-Kennedy-Metzenbaum language in it and the rest of this bill as it is, with the very first legal opinion out of the box saying you have, by this legislation, substantially expanded the coverage, and thus the scope for litigation, under civil rights of title IX of the Education Act as interpreted by departmental regulations. Can you imagine the President signing that? Can you imagine a veto being sustained by the U.S. Senate and the U.S. House? I just do not believe there is a chance of that.

Now, Mr. President, it seems to me to be—I was going to say the height of hypocrisy, but let me make it a little

bit more mellow—it seems to me to be extremely ironic that we will not pay for abortions, exercising our free choice and voting, and we are about to say here today that institutions out there in the United States, principally medical schools doing a fantastic job for American health, doing research, that we are sitting up here saying that an awful lot of them, if they get a little tiny bit of Federal money, there is a real chance, says this legal opinion, that in spite of the Metzenbaum-Weicker-Kennedy language, there is going to be a coercive effect of this new bill. We are drawing on their decisions regarding their choice to say, "We do not choose to perform abortions. There is somebody up the street that might. There is some hospital down the road that might. But we do not."

As a matter of fact, it is a civil rights issue, a pro-choice issue, in my opinion. In this case, it happens to be the same decision that those who are pro-life or right-to-life have come to with reference to their position on this bill.

Mr. President, it is very easy for me—and I have the greatest respect for the Senator from Oregon, who sits here, and the Senator from Ohio, who is over there.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. DOMENICI. Will the Senator yield me 5 additional minutes?

The PRESIDING OFFICER. The Senator from New Mexico is recognized for an additional 5 minutes.

Mr. DOMENICI. It is very simple for me to see what is occurring. Let me couch it this way: Those who say vote for Metzenbaum are asking us to dodge the issue instead of deciding the issue. That is a very, very simple point—dodge the issue and be able to say that, as to the four corners of this new legislation we have addressed the issue. But as a matter of fact you cannot separate title IX of the Education Act from this. So we are not deciding the issue. We have grown notorious as a Congress for not deciding issues. We have grown to the point where our people expect litigation from our legislation because we do not want to decide in clear, plain English language.

I hope those in this body who think they are going to dodge instead of deciding this issue will at least listen to part of this morning's debate because it is unequivocal to this Senator that this legislation before us has in mind affecting title IX of the Education Act in some way or another.

Now, we would be told to not worry about it, it is something else, just worry about the four corners of this bill—dodging the issue instead of deciding it so those who think we are saying to our institutions, our medical schools and derivatives of those medical schools, "We are protecting you be-

cause we adopted this language and if you do not want to perform abortions, you are not harming anyone, you are not violating Roe versus Wade, they can go somewhere else and have them." If they think they are going to tell people that is what we decided, they dodged it. And they will have people litigating from now until it finally gets to the Supreme Court—on average 5 years—while people out there are saying what does it mean with reference to title IX, which now has a broadened institutional effect according to the very first legal opinion out of the box.

And I do not think anybody asked them how to decide. Let us send it to five more lawyers, even if we got a three-to-two decision—three lawyers, good ones saying we agree with this one and two do not—it is precisely the point the Senator from New Mexico is making. Let us make it clear. I guarantee my fellow Senators, if you are going to vote for the Metzenbaum-Weicker-Kennedy amendment, and say we made it clear, we protected the choice of institutions to deny abortions because nobody is hurt, you really have not, you have dodged it.

I thank the Senator for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, how much time is left?

The PRESIDING OFFICER. The proponents have 20 minutes; the opponents have 14 minutes and 51 seconds.

Mr. PACKWOOD. I yield 10 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, let us not confuse the issue. Let us not say that which is not so is so, and let us not say that that which is so is not so.

The manager of the bill, Senator HATCH, in opposition, talks about the expansion of the rights and the obligations of medical schools. The committee report addresses itself to that issue. It says "title IX covers only students and employees and does not reach the public at large." How the Senator from Utah can come to the conclusion that it reaches the public at large in spite of that interpretation by the committee report is difficult for me to understand. The language goes on to state that, "therefore, claims that the bill would require hospitals to provide abortion services to the general public are false."

Yet in spite of that, a member of the committee comes on the floor and says it just is not so. Then we hear the very strong argument made by our friend from New Mexico, who says we want

have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE], is necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

I also announce that the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Wyoming [Mr. WALLOP] are absent on official business.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "nay."

The PRESIDING OFFICER (Mr. WIRTH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 40, as follows:

[Rollcall Vote No. 8 Leg.]

YEAS—55

Adams	Glenn	Packwood
Baucus	Graham	Pell
Bentsen	Harkin	Pryor
Bingaman	Heflin	Riegle
Bradley	Heinz	Rockefeller
Breaux	Hollings	Rudman
Bumpers	Inouye	Sanford
Burdick	Kassebaum	Sarbanes
Byrd	Kennedy	Sasser
Chafee	Kerry	Simon
Chiles	Lautenberg	Simpson
Cohen	Leahy	Specter
Cranston	Levin	Stafford
D'Amato	Matsunaga	Stevens
Daschle	Metzenbaum	Weicker
Dixon	Mikulski	Wilson
Dodd	Mitchell	Wirth
Evans	Moynihan	
Fowler	Nunn	

NAYS—40

Armstrong	Grassley	Nickles
Bond	Hatch	Pressler
Boren	Hatfield	Proxmire
Bochowitz	Hecht	Quayle
Cochran	Helms	Reid
Conrad	Humphrey	Roth
Danforth	Johnston	Shelby
DeConcini	Karnes	Stennis
Domenici	Kasten	Symms
Durenberger	Lugar	Thurmond
Exon	McCain	Trible
Ford	McClure	Warner
Garn	McConnell	
Gramm	Melcher	

NOT VOTING—5

Biden	Gore	Wallop
Dole	Murkowski	

So the amendment (No. 1393) was agreed to.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. METZENBAUM. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1392

(Purpose: To ensure that the bill does not require that persons, or public or private entities receiving Federal funds perform abortions)

The PRESIDING OFFICER. Under the previous order, the Senator from Missouri is recognized for the purpose of offering an amendment pursuant to the unanimous-consent agreement of last night. The time will be evenly divided between now and 2 o'clock.

Mr. DANFORTH. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH) proposes an amendment numbered 1392.

At the appropriate place add the following: Notwithstanding any provision of this act or any amendment adopted thereto.

NEUTRALITY WITH RESPECT TO ABORTION

SEC. 909. Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

The PRESIDING OFFICER. Recognizing the Senator from Missouri, the Chair will once again ask that Senators who wish to converse please retire to the Cloakrooms. The Senate will be in order.

The Senator from Missouri.

Mr. DANFORTH. Mr. President, I ask unanimous consent that Senator NICKLES be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, during the last vote, a number of Senators came up to me and asked my thoughts on how that vote should go, and my response was it did not make any difference. So I know that some Senators who intend to vote for my amendment voted for the Metzenbaum amendment, some Senators who intended to vote for my amendment voted against the Metzenbaum amendment. My own view, as I stated on the floor during the debate on the Metzenbaum amendment, was that it was very much like a motion to instruct the Sergeant at Arms. It was a rollcall vote, but it had no content at all. It was a rollcall vote that purported to touch on the question of whether or not the Government is going to mandate abortions, but in point of fact it did not in any sense prevent the Government or some court from mandating abortions or abortion coverage. It did not provide any cover whatever for Senators who voted on it. Some people might say, "Well, is it some sort of compromise? Was the Metzenbaum-Weicker amendment some kind of

compromise on the issue before us?" The answer is no, it was not any compromise. It was not half a loaf. It was not a slice. It was not a crumb. It was an absolute zero. It did not matter whether it was cast or not, because it had absolutely no legal effect on the issue that has been raised by my amendment.

That is not simply my conclusion. When the language of the Metzenbaum amendment was available, I asked for two opinions, one from the Justice Department and one from the Dewey, Ballantine law firm. I received both of those legal opinions today. Both of them stated that from the standpoint of the basic question of whether or not abortions or abortion coverage is going to be mandated, the Metzenbaum amendment had no legal effect.

The Dewey, Ballantine opinion, which is dated January 27, after setting forth the Metzenbaum amendment, states, "Based on our review of this proposed amendment, we conclude that it would not solve the problem identified in our earlier memorandum. The proposed amendment declares the Civil Rights Restoration Act itself does not require the funding or performance of abortions. It is silent, however, on the possibility, which was the subject of our earlier letter and memorandum, that title IX and regulations promulgated under its authority could require the funding or performance of abortions. Moreover, since the Civil Rights Restoration Act would overturn the Supreme Court's decision in the Grove City case and thus extend the reach of title IX, the danger would remain, despite the proposed amendment, that institutions duly brought under the authority of title IX would also be required to fund or perform abortions for students, employees, and even the general public as described in our earlier letter."

Mr. President, the State of the bill as it now exists before the Senate, with the Metzenbaum-Weicker amendment which was just added, is that it remains a very live possibility that an administration or a court could require hospitals to perform abortions and could require health plans of colleges or universities to fund abortions.

Now, if that is the result that we want, if we want that possibility to stay alive, then the thing to do is to vote against the Danforth amendment. If it is the decision of the Senate of the United States to leave it up to a Federal judge, to enter an order requiring abortions performed at Georgetown University Hospital, to require abortion coverage under the health plan at Notre Dame University, and so on, if that is the intention of the Senate, let us leave it open. Let us reaffirm the regulations under title IX and kick the buck to the courts.

If, on the other hand, it is the position of the Senate that we should preclude that possibility in a court decision or in a future regulation, then we should adopt the Danforth amendment. That is the very simple issue before us. Regulations under title IX of the education amendments identified sex discrimination with the refusal to perform or to provide abortions. The bill in its present form expressly ratifies those regulations. No language in a committee report to the contrary undoes the expressed language in the bill itself. So if we in the Senate want to ratify a regulation that identifies refusal to perform abortions with sex discrimination, and if we want to extend that interpretation throughout universities, to university hospitals, to hospitals that have internship programs flowing out of those universities, and to other hospitals which have any teaching program at all, if we want that kind of expanded interpretation, then vote against the Danforth amendment.

I think it would be an absolute outrage for the Senate, the Congress to force on Georgetown or Notre Dame or the city of St. Louis or wherever a policy that under the Hyde amendment we do not support ourselves.

We do not fund abortions. We have made that decision. I do not understand why the Senate at this point should force even church-related colleges and hospitals to do what we will not do ourselves.

Mr. President, I yield 2 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 2 minutes.

Mr. GRAMM. Mr. President, I will be brief. What we have seen here is exactly the same kind of sham that has outraged the American people for years about this greatest of deliberative bodies. We have a clear-cut issue before us. The issue is as simple as any issue can be: Do we want to make it clear that under title IX, with the expansion that is being contemplated, Baylor University and Notre Dame do not have to fund abortions or to perform abortions in their medical facilities?

Now, you can beat all around the bush. You can try to confuse the issue all you want. You can say, well, let us leave it undetermined as it is in the current law. But when you get down to the bottom line, when you vote on the Danforth amendment, there is only one issue: Do we want to leave it open to some Federal judge to come along and say to Baylor University or Notre Dame or St. Mary's or any other private, church-related college in America that although the fundamental teachings of your church are totally opposed to abortion, we are going to force you to fund abortion and we are

going to force you to conduct abortions?

Now, the great paradox is that the Congress will not even fund abortion under Medicaid unless the life of the mother is in danger, and yet here we have a clear-cut attempt to force church-related institutions to do what we have prohibited under Medicaid. So you can try to make this a technical question. You can cloud it and go back home and say we were neutral on this subject; it was unclear before. We left it unclear.

The point of this amendment is that it ought not be unclear. There ought to be no doubt in anyone's mind that Baylor University should not be forced to fund something they fundamentally oppose. If you vote against this amendment, you are voting against that basic guarantee.

I yield the floor.

Mr. METZENBAUM. Does the Senator from Texas understand that—

The PRESIDING OFFICER. The time of the Senator from Texas has expired. Who yields time?

Mr. HATCH. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 9 minutes 44 seconds.

Mr. HATCH. Let me yield 2 minutes.

The PRESIDING OFFICER. The time is under the control of the Senator from Missouri, Senator DANFORTH.

Mr. DANFORTH. Mr. President, I yield—how long would the Senator like?—2 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 2 minutes.

Mr. EXON. I thank my friend from Missouri. I thank the Chair.

Mr. President, this is one of those votes in the U.S. Senate for which it is extremely easy for this Senator to cast and support the Danforth amendment. The case has been adequately made in previous arguments before this body. And I will not attempt to rehash those statements. Suffice it to say unless the Danforth amendment becomes law we are leaving an unanswered question that should not be left unanswered in this very, very important civil rights legislation.

I hope that all of the Members of this body will recognize and realize that the Danforth amendment is very simple, it is very straightforward. It simply says that we should not be in a position of forcing any institution regardless of its association to do something for which the fundamental tenets of that institution—and fundamental beliefs that many of us share—should not be put in jeopardy on a whim of one Federal judge at some time in the future.

It is a clarifying amendment. It states clearly what we should do. I appeal to all of my colleagues to support the Danforth amendment. It will

do nothing in the opinion of this Senator, and legal scholars that I have talked with, to harm or weaken the amendment that we are going to vote on, the bill itself, which has to do with civil rights. I hope we will pass the Danforth amendment.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. DANFORTH. Mr. President, I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, first I would like to point out to my friend from Texas that Baylor University is specifically exempted under the religious tenet exemption. So his argument in connection with that university is not applicable.

Second, I want to point out that if you vote for our amendment, the Packwood - Kennedy - Weicker - Metz-enbaum amendment, you will be undoing that amendment 100 percent because that amendment provides that "Notwithstanding any other provision of the law or any other provision in this bill." So if you voted with us and now you vote for the Danforth amendment, you've totally turned around. It would be a 100-percent change in vote. I hope those who have seen fit to stand with us by 55 votes will see fit to reject the Danforth amendment.

The big question is whether we are going to have a civil rights bill or an abortion bill. We have made it clear in our previously offered amendment now in the bill that this is a civil rights bill and we do not want it to be encumbered with abortion issues.

If you vote for the Danforth amendment, you will have voted for language that totally negates the impact of our amendment, or at least language which would appear to do so on its face. That is the intent of the Danforth amendment. I hope it does not. But I am afraid that it will.

The amendment offered by the Senator from Missouri is also problematic because it does not preclude the imposition of a penalty on a woman if she has a legal abortion. The amendment says nothing in the preceding sentence " * * * shall be construed to permit a penalty to be imposed on any person * * * because such person * * * has received any benefit or service related to a legal abortion."

That language is extremely unclear. It says nothing in the amendment that permits a penalty but the language does not prohibit a penalty of discrimination against a woman who has had an abortion. For example, a woman who has had an abortion or who has been counseled for abortion

can be excluded from scholarship programs, student employment, or even enrollment in classes. The Danforth amendment not only permits this discrimination but it also may encourage institutions to treat women differently because they exercise their constitutional right.

If we pass this amendment, we sanction discrimination against women who exercise their constitutional right. So this civil rights bill which we have introduced to expand the civil rights of all people would sanction discrimination against women. So I think it is fair to say that a vote for the Danforth amendment is a vote for discrimination against women. We say that is inappropriate.

Another problem with the Danforth amendment is that it changes title IX to permit discrimination against women as the medical services provided to them. The Danforth amendment says that "Nothing in this title shall be construed to require or prohibit any person or public or private entity to provide or pay for any benefit or service including the use of facilities related to an abortion."

This language means that if a university provides a medical service and that service has doctors who are ethically required to counsel patients on medical options, it would not be discrimination to fail to counsel pregnant women on all options. What we say when we pass the Danforth amendment is that women are not victims of discrimination when they are denied all information about their options including the option of abortion.

The discrimination that the Danforth amendment sanctions is the kind of discrimination that reduces women to less than full human beings because it denies women the information they need to make an important medical decision.

There is not even a life of the mother exception in the Danforth amendment. And a woman could be bleeding to death from pregnancy complications and under the Danforth amendment she could be denied a life-saving abortion. A man who is bleeding to death can be saved. That, to me, is discrimination against women.

We have already said we do not want to do anything about abortion. We have indicated we want to move forward with the Grove City legislation. I would hope that my colleagues would not undo the impact of the amendment which we just passed. That is what this amendment would do. But much more important than that, this amendment would permit discrimination against women in this country.

How inappropriate, how wrong it would be to include in a civil rights bill language which would authorize the discrimination against all women. We must defeat the Danforth amendment.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Chair would remind the gallery that they are here as guests of the Senate.

The Senator from Missouri.

Mr. DANFORTH. Mr. President, the characterization of the bill by the Senator from Ohio is completely erroneous and totally without foundation at all. It is a fabrication. My amendment expressly says, "Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion."

I yield 2 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 2 minutes.

Mr. WILSON. Mr. President, at the risk of being rude, the Senator from Ohio has flatly misstated the contents of the Danforth provision. The language just read by the Senator from Missouri was language which I and others insisted be in there, precisely to ensure that there could not be discrimination against women who either are seeking or have received abortion-related services.

You could have voted for or against the Metzenbaum amendment. You could have voted for it as simply being a truism, as Mr. DANFORTH said, without content, or voted against it as being a sham aimed at trying to persuade people that it would suffice and that there was no need for the Danforth amendment. There is need for the Danforth amendment.

To focus momentarily on the strict legal question, the amendment by Senator METZENBAUM stated that the bill does not require abortion, but it does not reach the offending regulation which gives rise to the need for the Danforth amendment. That need continues to exist, even with the Metzenbaum amendment in it. The Metzenbaum amendment is without content. The Danforth amendment is required to prevent a travesty.

I am prochoice, but I will be hanged if I can see my way or want the Congress of the United States to be on record as imposing upon someone who conscientiously objects to providing or funding abortion, as something morally repugnant to him or to her or to their institution, to be compelled by a Federal bribe to do so. That is wrong. We should not leave the law unclear.

The argument has been made that we should go back to what it was before Grove City. It is not what the law was. The question is what the law should be. It should be clear.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

The Senator from Missouri has remaining 4 minutes and 37 seconds. The Senator from Ohio has remaining 12 seconds.

If neither side yields time, the time available will be counted equally against both sides.

Mr. DANFORTH. Mr. President, I yield 1 minute to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 1 minute.

Mr. GRAMM. Mr. President, I want to respond to the Senator from Ohio.

First, is he aware that Baylor University waited 9 years to get an exemption? They currently have an exemption. But, as we are all aware, under the law, a new Secretary could come into office, do an investigation, and deny them that exemption.

Let me give the names of some Texas colleges that are religion affiliated that have asked for exemptions, and that for one reason or another did not get them: The Dallas Theological Seminar, Lubbock Christian College, University of Dallas, Southwestern Assemblies of God College, Concordia Lutheran College.

I ask my colleagues: Do we really want to leave any doubt as to whether Lubbock Christian College should have to conduct and/or pay for abortions if that is against the tenets of their religious beliefs? That is the issue here, and I urge my colleagues to focus on that.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. DANFORTH. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator reserves the remainder of his time. If neither side yields, the time will be counted equally against both sides.

Mr. DANFORTH. Mr. President, I yield 1 minute to the Senator from Utah.

Mr. HATCH. Mr. President, purely and simply, this is a question of funding for abortion. Access to abortion is not affected by the Danforth amendment.

The fact is, Mr. President, that the Weicker-Metzenbaum amendment does not solve the problem which is raised here today by Senator DANFORTH. Are we going to force all colleges and many other institutions to pay for or perform abortions despite any decision of conscience or religious belief to the contrary? That is what the Danforth amendment addresses, pure and simple.

Again, the Danforth amendment merely eliminates the coercion factor. Colleges and hospitals and other institutions will be free to provide for abortions if they want to, if they choose to, even under this amendment. But the