# The 14th Amendment and the Evolution of Title IX

# *Grove City College v. Bell*

*The 14th Amendment provides, in part, that no state can "deny to any person within its jurisdiction the equal protection of the laws." Title IX specifically prohibits sex discrimination.*

Ratified in 1868, Congress and the courts have applied the 14th Amendment’s Equal Protection Clause to many aspects of public life over the past 150 years. Title IX is an example of how the 14th Amendment has been interpreted over time. [Title IX,](https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq) which is of particular interest to young people, prohibits institutions that receive federal funding from excluding students from participating in educational and athletic programs on the basis of sex.

Specifically, [Title IX](http://cdn.ca9.uscourts.gov/datastore/general/2017/11/21/Title%20IX%20Civil%20Rights%20Act%201972.pdf) states that “No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX of the Civil Rights Act was signed into law on June 23, 1972 by President Richard M. Nixon. However, Title IX began its journey through all three branches of government when Representative Patsy T. Mink, of Hawaii, who is recognized as the major author and sponsor of the legislation, introduced it in Congress. When she died in 2002, Title IX was renamed the Patsy Mink Equal Opportunity in Education Act. She was given the [Medal of Freedom](https://www.youtube.com/watch?v=TQRoRAFnTJs) after her death.

**One way to track the evolution of Title IX is to examine the Supreme Court’s 1984 decision in *Grove City College v. Bell*. As the high court’s first Title IX case, the issues that arose from the Act,** demonstrate how each of the three branches exercises its authority. The casemakes Title IX a study not only of the 14th Amendment but also of the impact of the push and pull of the separation of powers on law-abiding citizens.

## **In a Nutshell**

**The Legislative Branch. C**ongress enacted [Title IX of the Education Amendments of 1972](https://www.justice.gov/crt/title-ix-education-amendments-1972#T), which requires that no person be excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of sex under “any education program or activity receiving Federal financial assistance.” It authorizes any federal agency that provides such assistance to issue regulations to enforce the prohibition of sex discrimination. It also allows termination of financial assistance when an institution does not voluntarily comply.

**The Executive Branch. In 1975, the United States Department of Health, Education and Welfare (which became the Department of Education and is referred to here as the Department) issued implementing regulations requiring every educational institution that receives federal financial assistance to file a document assuring its compliance with Title IX.**

**The Judicial Branch. T**he Supreme Court of the United States [ruled](https://www.oyez.org/cases/1983/82-792) in 1984 that Title IX’s non-discrimination and compliance requirements apply to any educational institution that receives federal financial assistance through grants provided directly to its students. At that time, the requirement applied only to the specific program or activity receiving federal assistance. In this instance the program was student **financial aid.**

**The Legislative Branch. I**n early 1988, the Senate and House of Representatives each responded to the Supreme Court decision by passing legislation (Civil Rights Restoration Act of 1987) which clarifies that a “program or activity,” for purposes of Title IX and other civil rights laws, refers to “all operations” of an institution whenever federal financial assistance is extended to “any part” of the institution.

**The Executive Branch.** On March 16, 1988, President Reagan [vetoed](http://www.presidency.ucsb.edu/ws/index.php?pid=35559&st=&st1=) the legislation on grounds that it “vastly and unjustifiably expand[s] the power of the [f]ederal government over the decisions and affairs of private organizations.”

**The Legislative Branch. On** March 22, 1988, Congress overrode the President’s veto by passing again the legislation with the support of a two-thirds majority in the House and Senate. As a result, the Civil Rights Restoration Act became [law](https://www.gpo.gov/fdsys/pkg/STATUTE-102/pdf/STATUTE-102-Pg28.pdf).

**How to Use These Resources**

1. To get started, review the glossary and prepare students to use it with the case materials to underline terms and concept they find in the readings.
2. Have students read the Grove City College v. Bell facts and case summary and make a list of their questions and arguments, 8.
3. Use the Title IX discussion questions to dive more deeply into the issues raised in Grove City College v. Bell.
4. Have students use the Title IX time line as a reference for drawing a [Venn Diagram](https://www.lucidchart.com/pages/venn-diagram) or [double bubble map](https://www.dvusd.org/cms/lib/AZ01901092/Centricity/Domain/1535/map-double-bubble.pdf) to list the impacts of each branch of government on the evolution of Title IX.
5. Use the separation of powers discussion questions to illuminate how the push and pull of the three branches of government shaped Title IX. Guide students’ understanding of how the separation of powers has an impact on their daily life and the issues that matter to them.
6. Have students view the [Ahead of the Majority](https://www.youtube.com/watch?v=QsHncYl7Xcg) video on Representative Patsy Mink, often called the Mother of Title IX. Next, have students select a [Pathways to the Bench](http://www.uscourts.gov/judges-judgeships/pathways-bench-video-series) video profile of a federal judge whose story also deals with personal adversities that motivated them to be of service.

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# Facts and Case Summary - *Grove City College v. Bell*

**Facts**

Grove City College is a private, church-affiliated, co-educational institution of higher education in Grove City, a small town in northwestern Pennsylvania. Since its founding in the 19th Century, the college had refused to accept directly any forms of government assistance on grounds that compliance with the rules that accompany such assistance would compromise its independence and ability to deliver high-quality education at low cost.

In July 1976, the Executive Branch department, now known as the Department of Education, required the college to file an assurance of compliance stating that it was following the Title IX regulations prohibiting discriminating on the basis of gender. The directive was based, in part, on the fact that 140 of the college’s approximately 2,200 students received direct grants through the federal government’s Basic Educational Opportunity Grant (BEOG) program.

The college refused to comply with this request on grounds that it did not receive federal financial assistance. As a result, the department initiated formal proceedings to terminate the students’ BEOGs. After a hearing, an administrative law judge decided that because the college received federal assistance, it was required under Title IX to file an assurance of compliance report. The college’s refusal was sufficient grounds for the department to prohibit its grants to the students.

**Procedural History**

In November 1978, the college and a few student grant recipients, brought a lawsuit in the United States District Court for the Western District of Pennsylvania. The suit asked the court to do two things: 1) overturn the Department’s termination of the student grants; and 2) order the department not to require an assurance of compliance.

In June 1980, the district court ruled in favor of the college. It said that the department could not terminate the students’ BEOGs, even though the grants constituted Title IX “federal financial assistance.” The court gave the following reasons: (a) the regulations requiring the college to file an assurance of compliance were invalid; (b) there was no finding that the college discriminated on the basis of gender; and (c) the students who received the grants did not have the opportunity to participate in an administrative hearing on the matter.

Both the department and the college appealed to the United States Court of Appeals for the Third Circuit, which partially reversed the district court’s decision. The appellate court agreed with the district court that the college was a beneficiary of the federal grants received by its students. In light of that, it was covered by Title IX.

Unlike the district court, it said the department did have the authority to enforce the Title IX requirements in this case. The appellate court upheld the Department’s regulations requiring an assurance of compliance. It said the students’ federal financial assistance could be terminated based on the college’s failure to file, even if there was no finding of actual discrimination.

The appellate court also decided that the students were not entitled to a hearing on the termination of their grants because the funds could be used at other educational institutions. The college petitioned the Supreme Court of the United States to hear the case, the Court agreed, and oral arguments were heard on November 29, 1983.

**Issues**

* Was Grove City College subject to the requirements of Title IX because its students received federal grants for educational purposes?
* If Grove City was required to follow the Title IX requirements, could the students be prohibited from using their federal grants because the college refused to comply with the Department of Education’s regulations?
* Would applying the requirements of Title IX violate the rights of the college and/or its students to free association under the First Amendment?

**Holding**

On February 28, 1984, the Supreme Court issued its decision in Grove City College v. Bell.

A 6-3 majority of the Court held that when students receive federally funded grants, Title IX requirements only apply to the specific program or activity that was benefitted by the grants. In such instances, Title IX requirements do not apply across the entire institution.

**The Majority Opinion**

Justice White wrote the majority opinion affirming the decision of the Third Circuit Court of Appeals. He was joined by Chief Justice Burger and Justices Blackmun, O’Connor, Powell, and Rehnquist. The majority held that Title IX applied in this case because students used BEOGs to pay for their education at the college. However, the Court decided that an assurance of compliance could only be required of the student financial aid program because the grants benefitted only that program.

**The majority made the following key points:**

* The majority had “little trouble” deciding that Title IX compliance is required across the institution even though “federal funds are granted to Grove City’s students rather than directly to one of the college’s educational programs.” The Court based its decision on “clear statutory language,” “powerful evidence” of Congressional intent, and a “longstanding and coherent” agency interpretation of the statute.
* The Court found that there was “no evidence” that the students’ financial assistance was diverted to other areas of the institution. At the same time, it also acknowledged that, since most financial assistance has “economic ripple effects” throughout an institution, it would be “difficult, if not impossible” to determine which other programs or activities benefit directly from the federal aid.
* The department has the authority to demand an assurance of compliance regarding the program receiving federal financial assistance, i.e., the financial aid program. The college’s failure to do so warrants termination of the BEOGs that would be used at the college. Students receiving grants may either take them elsewhere or attend the college without using them there.

**The Concurring and Dissenting Opinions**

Justice Powell, joined by Chief Justice Burger and Justice O’Connor, concurred in the majority opinion. They wrote separately to express their view that this case was an “example of overzealousness on the part of the Federal Government.” The college did not, in fact, discriminate against anyone, and the department eventually conceded that Title IX applied only to the college’s financial aid office.

Justice Stevens partly concurred in the majority opinion and concurred in the result that Title IX requirements applied to the college. Justices Brennan, joined by Justice Marshall. He concurred in part and dissented in part from the majority opinion. They also agreed with the majority and the concurring justices that Title IX applied to the college.

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# Glossary - *Grove City College v. Bell*

**Majority Opinion**

The majority opinion is an appellate opinion supporting the court’s judgment (the result reached in the case) which receives a majority vote of the justices or judges hearing the case.

**Concurring Opinion**

A concurring opinion is an appellate opinion of one or more justices or judges which supports the result reached in a case for reasons not stated in the majority opinion. A justice or judge can file an opinion that partially concurs with and partially dissents from the majority’s views, or that concurs only in the result based on alternative reasons.

**Dissenting Opinion**

A dissenting opinion is an appellate opinion of one or more judges which disagrees with the reasoning stated in the majority or plurality opinion and, consequently, with the result reached in a case.

**About Appeals**

An appeal is available if a party is dissatisfied with the outcome at the trial level. Common reasons for an appeal include claims that the trial proceedings were unfair or that the trial judge incorrectly applied the law.

**The Purpose of Appellate Courts**

The appellate courts do not retry cases or hear new evidence. They review the trial court record to make sure that the proper law was applied and that the proceedings were fair.

**Petitioner/Appellant v. Respondent/Appellee**

A party seeking review by an appellate court (in this case, Grove City College) is called a petitioner or an appellant. The opposing party (in this case, United States Secretary of Education Terrel Bell) is known as a respondent or an appellee. Each side presents written arguments, called briefs, to the appellate court. Others interested in the case may seek permission to file amicus curiae (friend of the court) briefs.

**Getting to the Supreme Court**

The parties who are not satisfied with the decision of a lower court must petition the Supreme Court of the United States to hear their case.

These parties are called petitioners. They ask the Court to grant a writ of certiorari, which means that the Supreme Court orders a lower court to send the record of the case for its review. The Supreme Court is not obligated to hear these cases.

It usually hears cases that could have national significance, might harmonize conflicting decisions among the federal circuit courts of appeals, and/or might set a precedent for other courts to follow.

According to the Supreme Court's rules, four of the nine justices must vote to accept a case. The Court accepts 100-150 of the more than 7,000 cases that it is asked to review each year. If the justices decide to accept a case (grant certiorari or cert), the case is scheduled on the docket.

According to the Supreme Court’s rules, a petitioner has a certain amount of time to write a brief, putting forth arguments on the issue(s) before the Court. After the petitioner's brief has been filed, the respondent is given a certain amount of time to file its brief. Briefs may not exceed 50 pages.

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**Discussion Questions - *Grove City College v. Bell***

Based on the Title IX issues in *Grove City v. Bell*, these questions explore the use of federal funding to enforce anti-discrimination laws.

1. Make a case for using federal funding as a carrot or a stick to incentivize schools to comply with Title IX and it regulations. Make a case against such incentives.
2. When the federal government is authorized to enforce Title IX laws by withholding federal funds from grantees that do not comply with the law and related policies, should it treat all funding recipients alike?  For example:   
   * Should private and public entities be treated the same when it comes to the enforcement of Title IX? Why? Why not?
   * Should non-profit entities, e.g., a school, and for-profit entities, e.g. a private business, be mandated to meet the same Title IX requirements?
   * What circumstances justify a government agency withholding Title IX federal funds?
3. Should the level of compliance and the related reporting and other policies depend on the entity’s ability to pay for Title IX requirements of reporting on and enforcing the policies?

* Should an entity have to prove or document its compliance with Title IX to avoid a cutoff of federal funding?  Make a case for why a private entity should − or should not − be required to prove or document its compliance with Title IX requirements that:
* Are inconsistent with an institution’s mission or values.
* The entity believes don’t apply to it.
* The entity is complying with, but can’t afford to prove its compliance.

1. Is cutting off financial aid to students an effective way to use the power of the purse to pressure schools to comply with Title IX? Why or why not?

* Is it a fair way? Why or why not?

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**Separation of Powers in Action - *Grove City College v. Bell***

**Government Structure and the Separation of Powers**

1. In general, what is the job description of each branch of government?
2. Specifically, describe the role of each branch in this case.
3. There are natural tensions among the three branches. How did those tensions surface in this case?

**Checks and Balances in the Separation of Powers**

1. Among the three branches there is a system of checks and balances. What does that mean?
2. In this case, give examples of how the branches checked each other. What impact did that have on Title IX?
3. In this case, give examples of how the branches balanced each other. What impact did that have on Title IX?
4. In this case, were the branches also interdependent? If so, how?

**Critical Thinking About the Separation of Powers**

1. “The government” is usually thought of as a monolithic institution. How does the structure of three branches and the separation of their powers challenge that concept?
2. How does the concept of separation of powers help us understand the genius of our system of government?
3. Using this case as an example, consider the job description of each branch and discuss why you think the Framers of the Constitution made the Legislative and Executive branches elected, but not the Judicial Branch?
4. How does the separation of powers give the ultimate power to “we the people?”