

NCWGE NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

February 16, 2005

The Honorable Arlen Specter, Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy, Ranking Member
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Thomas Griffith's Renomination to the U.S. Court of Appeals for the D.C. Circuit

Dear Chairman Specter and Senator Leahy:

We are writing on behalf of the National Coalition for Women and Girls in Education (NCWGE), a nonprofit coalition of more than 50 organizations dedicated to improving educational opportunities for women and girls, concerning Thomas B. Griffith's renomination to the U.S. Court of Appeals for the District of Columbia Circuit. Based on his radical and deeply damaging views about Title IX of the Education Amendments of 1972, the NCWGE has serious concerns about Mr. Griffith's suitability for a lifetime seat on the federal bench.

The NCWGE first expressed these concerns in a letter to Committee members in the spring of 2004. We write now to explain why Mr. Griffith's attempts to explain his views on Title IX, in a letter to former Chairman Hatch of November 19, 2004, and in written responses to Committee questions on December 3, 2004, do not adequately address our concerns. In fact, Mr. Griffith's responses only underscore the serious problems in his record because they reveal that he continues to believe – contrary to the views of every court to consider the question and of every Administration for more than two decades -- that the Title IX regulatory athletics policies impose quotas and violate Title IX and the Constitution. It is this potential prejudgment of an important legal issue that is likely to come before the D.C. Circuit Court of Appeals, and its implications for Mr. Griffith's positions on other civil rights issues, that lead the NCWGE to express its concerns about his nomination anew. We ask that you carefully evaluate Mr. Griffith's record in its entirety before voting on this nomination.

As you know, as a member of the Secretary of Education's Title IX Athletics Commission, Mr. Griffith joined in supporting numerous recommendations – ultimately rejected by then-Education Secretary Roderick Paige – that would have undermined fundamental principles of equal opportunity. Mr. Griffith also offered a radical proposal of his own: to eliminate the proportionality

prong of the three-part test, a test that has been used for 25 years to evaluate schools' compliance with Title IX's mandate that women and men be provided equal opportunities to participate in sports and that has been upheld against legal challenge by every federal appellate court to have considered it. Despite the unanimity of judicial decisions upholding the test, Mr. Griffith argued strenuously to the Commission that the test imposes quotas, is inconsistent with the language of Title IX, and violates the Equal Protection Clause of the Constitution – asserting that courts that disagreed with him got it “wrong.” (Transcript of Commission hearing, January 30, 2003, at 28.) Recognizing the extreme and dangerous nature of Mr. Griffith's proposal, the Commission – which itself was stacked with members opposed to Title IX athletics policies -- rejected Mr. Griffith's proposal by a lopsided margin of 11 to 4.

Neither Mr. Griffith's November 19, 2004 letter to Chairman Hatch nor his responses to questions posed to him by the Committee alleviate the serious concerns raised by his service on the Commission. While Mr. Griffith attempts to explain his opposition to the proportionality test, he continues to describe the test as resulting in quotas -- despite, among other things, the Department of Education's explicit affirmation in July 2003 that the Title IX athletics policies do no such thing. Mr. Griffith's suggestion that some have simply “misused” or “misinterpreted” the test in this way (Response of Thomas B. Griffith to the Written Questions of Senator Edward M. Kennedy, Dec. 3, 2004, at 1, 3) rings hollow in light of his categorical proposal to eliminate the proportionality test in its entirety. And Mr. Griffith's continued statements that the proportionality test does not “accurately capture the imperatives of Title IX” (Letter from Thomas B. Griffith to Chairman Orrin G. Hatch, November 19, 2004, at 2) belie his suggestion that he views the test as permissible but not required (Response of Thomas B. Griffith to the Written Questions of Senator Joseph R. Biden, Jr., Dec. 3, 2004, at 3), and suggest anew that he has prejudged this important legal issue.

Many NCWGE members therefore believe it is imperative that you carefully consider Mr. Griffith's strongly held views on Title IX as you evaluate his record and his suitability for a lifetime seat on this important court. We encourage you to look beyond the lip service of Mr. Griffith's November 19, 2004 letter and his responses to the Committee's questions to the true substance of views revealed by his record.

Thank you for your consideration. If you have any questions, please contact either of us.

Sincerely,



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American Association of University Women
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Vice-Chair, NCWGE
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Cc: Members of the Judiciary Committee

NCWGE NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

Member Organizations*

Academy for Educational Development
American Association for the Advancement of Science
American Association of School Administrators
American Association of University Women
American Council on Education
American Educational Research Association
American Federation of Teachers
American Psychological Association
Association for Gender Equity Leadership in Education
Association for Women in Science
Association of American Colleges and Universities
Association of Junior Leagues International, Inc.
Association of Teacher Educators
Business & Professional Women USA
Center for Advancement of Public Policy
Center for Women's Policy Studies
Council of Chief State School Officers
Resource Center on Educational Equity
Dads and Daughters
Equal Rights Advocates
Federation of Organizations for Professional Women
Feminist Majority Foundation
Gallaudet University,
Women's Basketball Coach
Girl Scouts of the USA
Girls Count
Girls Incorporated
Girlstart
Leadership Conference on Civil Rights
Ms. Foundation for Women
Myra Sadker Advocates for Gender Equity
Legal Momentum, formerly NOW Legal Defense and Education Fund
National Alliance for Partnerships in Equity

National Association for Girls & Women in Sport
National Association of Collegiate Women Athletic Administrators
National Center for Lesbian Rights
National Council of Administrative Women in Education
National Council of Negro Women
National Education Association
National Organization for Women
National PTA
National Partnership for Women & Families
National Women's History Project
National Women's Law Center
National Women's Political Caucus
Partners of the Americas
U. S. Student Association
Wider Opportunities for Women
Women Work!
Women's Edge
Women's Research and Education Institute
Women's Sports Foundation
Young Women's Christian Association

**(Attached for informational purposes only. Some member organizations do not take positions on judicial nominations.)*