

# NCWGE NATIONAL COALITION FOR WOMEN AND GIRLS IN EDUCATION

December 3, 2004

The Honorable Orrin Hatch, 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 Title IX Letter to the Chairman Hatch***

Dear Chairman Hatch 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 the nomination of Thomas B. Griffith to the U.S. Court of Appeals for the District of Columbia Circuit. NCWGE members wish to bring to your attention Mr. Griffith's record with respect to Title IX of the Education Amendments of 1972, and ask that you evaluate it carefully as you consider this nomination. It is important to note that while NCWGE and its members typically have not been involved in the judicial nominations process, NCWGE is quite concerned about this nomination and some of our member organizations have taken the serious step of opposing Mr. Griffith's nomination.

On November 19, 2004, Mr. Griffith sent a letter to Judiciary Committee Chairman Orrin Hatch regarding Title IX and his work on the Commission on Opportunity in Athletics. In this letter, Mr. Griffith discussed the recommendations that he made as a member of the Commission and addressed his concerns that institutions may use Title IX to promote quotas in athletics. The very fact that Mr. Griffith is still using erroneous words like "quota" in regards to Title IX—despite the Department of Education's Office of Civil Rights' direct assertion that Title IX is no such thing—is quite telling about his true position. Secretary Paige ultimately rejected the Commission's recommendations. Mr. Griffith, however, not only joined in making these recommendations, he offered a radical proposal of his own that even the stacked rejected by a lopsided vote of 11-4.

Mr. Griffith's proposal involved the elimination of the three-part test that has long been part of the regulatory policies governing how educational institutions may comply with Title IX. Under that prong, a school is in compliance with Title IX participation requirements if it offers athletics opportunities that are in substantial proportion to each gender's representation in the student body at


that school. This component – which is one of three wholly independent ways that schools can satisfy Title IX’s requirements – in no way mandates that schools set aside certain numbers of athletics slots for either men *or* women. Despite evidence to the contrary, Mr. Griffith continues to associate prong one with a quota system. NCWGE is concerned that Mr. Griffith has clearly made up his mind on the issue—and so does not demonstrate the impartiality that should be exhibited by successful nominees.

In support of his proposal, Mr. Griffith argued that the proportionality test is unreasonable, inconsistent with the language of Title IX, and a violation of the Equal Protection Clause of the Constitution. In so doing, as documented in the transcripts of the Commission’s proceedings, Mr. Griffith dismissed the decisions of *eight Circuit Courts* (every one to consider the issue) upholding the proportionality test and rejecting the very arguments he was making. In his letter to Chairman Hatch, Mr. Griffith also addresses this disagreement with settled law. He writes that although the courts found the use of the proportionality tests as permissible, he “argued that they should be abandoned.” This consistent disregard for settled law—especially a critical civil rights law like Title IX—is troubling.

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 his November 19, 2004 letter 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,



Lisa M. Maatz  
Chair, NCWGE  
American Association of University Women  
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Jocelyn Samuels  
Vice-Chair, NCWGE  
National Women’s Law Center  
202-588-5180

Cc: Members of the Judiciary Committee

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## **Member Organizations\***

*Academy for Educational Development*  
*American Association for the Advancement of Science*  
*American Association of School Administrators*  
*American Association of University Women*  
*American Civil Liberties Union*  
*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.)