

Fourth Circuit Rules Parochial School's 501(c)(3) Tax Exemption Does Not Trigger Title IX Obligations

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Title IX of the Education Amendments of 1972 (Title IX) [prohibits](#) entities “receiving federal financial assistance” from discriminating based on sex in education programs and activities. The statute and implementing regulations impose a range of obligations on schools that receive such assistance, including how they must [respond](#) to cases of sexual harassment and [administer](#) their athletics programs. Violations of Title IX can [subject](#) recipient schools to lawsuits in which plaintiffs can obtain injunctive relief and damages. One significant [question](#) courts have faced in Title IX cases pertains to the statute’s reach—exactly which entities count as recipients of federal financial assistance? The U.S. Court of Appeals for the Fourth Circuit recently [ruled](#)—in an opinion reversing a district court decision—that a parochial secondary school’s tax-exempt status under [26 U.S.C. § 501\(c\)\(3\)](#) did not qualify as federal financial assistance and thus did not trigger Title IX obligations.

At least within the Fourth Circuit’s jurisdiction, the appellate court’s decision provides clarity for the time being regarding the reach of Title IX for tax-exempt schools that do not accept federal funding. The decision likely does the same with respect to certain [other civil rights laws](#) that apply to recipients of federal financial assistance. More broadly, the decision aligns with how the Department of Justice, the agency [entrusted](#) with coordinating enforcement of Title IX and other civil rights statutes across federal agencies, [interprets](#) what counts as federal financial assistance. To place the issue in context, this Sidebar begins with a general background on the major civil rights laws that prohibit discrimination in federally funded programs, as well as the Supreme Court decisions upon which the recent Fourth Circuit opinion relied. The Sidebar then more closely examines the Fourth Circuit’s decision and concludes with some considerations for Congress.

Federal Financial Assistance and Civil Rights Requirements

Congress has imposed nondiscrimination requirements on recipients of federal financial assistance under Title IX and several other statutes. The Supreme Court has [generally treated](#) these laws as enacted pursuant to Congress’s power under the Spending Clause of the Constitution.

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Spending Clause

The [Spending Clause](#) grants Congress the power to spend money to provide for the general welfare. Congress can also set conditions under which federal funds will be disbursed. Exercising that power, Congress has enacted several laws, including Title IX, that prohibit recipients of “federal financial assistance” from discriminating on certain bases. For example, [Title VI](#) of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating based on race. Likewise, [Section 504](#) of the Rehabilitation Act forbids recipients from discriminating based on disability. Unlike Title IX, neither of these laws is limited to education programs; instead, they apply broadly to all of the programs and activities of recipients.

The Supreme Court has [characterized](#) legislation enacted under the Spending Clause as contractual—in [exchange](#) for funds, recipients agree to follow federal obligations. The Court has [explained](#) that the “‘legitimacy of Congress’ power’ to enact Spending Clause legislation rests” on whether recipients “voluntarily and knowingly” agree to the contract’s terms. For Congress to [impose](#) enforceable conditions on federal funding, requirements must be “clear” and “unambiguous[]” so that recipients [have](#) “notice” of their obligations. Congress also may not [impose](#) conditions on states that are unconstitutionally coercive.

Recipients and Beneficiaries of Federal Financial Assistance

A clear form of federal financial assistance is [funding](#) provided by an agency directly to an entity through a federal grant or loan. The text of Title IX [describes](#) federal financial [assistance](#) as grants, loans, or contracts. In the same way that Title VI and Section 504 operate, Title IX’s prohibition of sex discrimination in education programs [applies](#) only to [recipients](#) of such assistance. Which entities qualify as recipients of federal financial assistance for purposes of civil rights laws such as Title IX is not always self-evident. For example, when financial assistance is passed through multiple entities or [benefits](#) multiple groups, questions may arise as to which [entities](#) precisely are recipients of that assistance.

In a series of cases, the Supreme Court has provided some clarification regarding when an entity counts as a recipient of federal financial assistance. The Court has generally [distinguished](#) between the actual, voluntary recipients of aid—who may receive federal aid directly or through an intermediary—and mere beneficiaries of federal aid extended to other entities. For example, in *Grove City College v. Bell*, the Supreme Court held that a college’s receipt of federal funding indirectly through a student aid program [constituted](#) receipt of federal financial assistance under Title IX. In that case, the college declined to [participate](#) in “direct institutional aid programs” and certain other federal student assistance programs in an attempt to avoid federal oversight. Even so, the college [enrolled](#) students who received federal grants earmarked for education expenses. The Department of Education [requested](#) that the college execute an “Assurance of Compliance” with Title IX. The college refused and, following administrative proceedings, the Department [terminated](#) assistance to the college through those student aid programs until the college came into compliance. The college and some of its students sued.

The Supreme Court ruled that the college’s indirect receipt of federal dollars through federal student aid constituted federal financial assistance. The Court observed, among other things, that Title IX [lacked](#) any “hint that Congress perceived a substantive difference between direct institutional assistance and aid received by a school through its students.” In addition, Congress intended to provide assistance to colleges through the program, and Title IX was drafted with essentially identical language to Title VI, which Congress intended to apply to colleges taking student aid. Further, the Court [observed](#) that the college was free to end its participation in the student aid program and avoid any Title IX obligations.

Grove City did not conclusively resolve the contours of “indirect” assistance that triggers civil rights obligations. The Court explored that question further in *Department of Transportation v. Paralyzed Veterans of America*. In that case, the Court [considered](#) whether Section 504 of the Rehabilitation Act applied to commercial airlines based on federal funds extended to airports. Under the program at issue,

airport operators [submitted](#) grant applications for airport development projects and received funds to support various construction projects. The Court [concluded](#) that the airport operators that actually received federal funding were the recipients of federal financial assistance, while airport users, such as airlines, did not receive any funds, directly or indirectly, and thus were not recipients. Under Section 504, as well as Title VI and Title IX, the Court [explained](#), “Congress enters into an arrangement in the nature of a contract with recipients of funds,” and accepting those funds “triggers coverage under the nondiscrimination provision.” This limitation of coverage to actual recipients [ensures](#) that statutory obligations apply only to those who can choose to accept or reject those requirements when deciding to receive federal funds. In the *Paralyzed Veterans* case, while the airport operators were in that position, the airlines were not. The Court also [rejected](#) the contention that the money given to airports constituted indirect assistance to airlines because the funds were spent in ways that benefited airlines. Distinguishing [between](#) “intended beneficiaries” and “intended recipients,” the Court held that the airlines were only beneficiaries of federal aid given to airport operators, not the intended recipients of that aid. The statute therefore, just [like](#) Title IX, “draws the line of federal regulatory coverage between the recipient and the beneficiary.”

The Supreme Court has also faced a related question—whether an organization that receives dues from other federally funded entities can be considered a recipient. In *National Collegiate Athletic Association v. Smith*, the Court examined whether the NCAA’s receipt of dues from federally funded colleges and universities rendered it a recipient under Title IX. The Court concluded it did not. An entity that [receives](#) federal assistance, “directly or through an intermediary,” is a recipient; but an entity that only benefits economically from that assistance is not, the Court held. The Court contrasted the situation in *Grove City College*, where the student aid was “[earmarked](#)” for education expenses, with the facts in *Smith*, where there was no indication “that NCAA members paid their dues with federal funds earmarked for that purpose.” The NCAA may have benefited economically from the dues it received from colleges accepting federal assistance, but that fact alone could not transform the NCAA itself into a recipient of federal assistance.

Recent Fourth Circuit Decision

In *Buettner-Hartsoe v. Baltimore Lutheran High School Association*, the Fourth Circuit—reversing a district court decision—[ruled](#) that a parochial school’s tax-exempt status under 26 U.S.C. § 501(c)(3) did not trigger Title IX obligations. The Fourth Circuit reasoned that an entity’s tax-exempt status did not constitute “receiving federal financial assistance” under Title IX. Looking first at the statutory text, the court concluded that “receiving federal financial assistance” means “taking or accepting federal financial aid, help, or support.” In the court’s view, this indicates a “transfer of funds from the federal government to the entity.” That interpretation, the court explained, accords with the description in the statute of assistance as grants, loans, or contracts. According to the court, federal financial assistance is thus limited to “affirmative” forms of assistance.

Looking to the Supreme Court’s decisions in *Grove City College*, *Paralyzed Veterans*, and *Smith*, the Fourth Circuit determined that recipients of federal financial assistance are limited to entities that take or accept federal financial aid, including through an intermediary, but recipients do not include “mere beneficiaries” of such aid. Turning to the nature of tax exemptions, the court explained that while tax exemptions allow entities to keep money they otherwise would have to pay, they do not involve transfers of funds.

Applying these principles to the case before it, the court concluded that tax exemptions are not federal financial assistance. The Fourth Circuit observed that, in the more than 50 years since Title IX’s passage, “it has never been applied to organizations based solely on their tax exempt status.” Assistance indicates a financial grant; exemptions, by contrast, are a withholding of a tax burden, “rather than the affirmative grant of funds.” The court distinguished the situation in *Grove City College*—while the college in that

case accepted funding indirectly through students, the school still actually received federal money. With tax exemptions, no money changes hands.

The parties seeking to hold the school liable under Title IX nevertheless argued that the charitable contribution deduction available for tax-exempt entities operated like the indirect grants in *Grove City College*. According to this theory, because donors can receive a tax deduction when they donate to tax-exempt entities like the school in this case, such entities potentially receive more donations than they otherwise would if donors did not receive a deduction. The higher donations, under this theory, are essentially the same as *Grove City College*'s indirect grants. The court rejected this argument as well. As the Fourth Circuit saw it, in *Grove City College* federal funds were disbursed through students to the school. By contrast, no donors to the school actually received federal funds when they claimed a charitable deduction; they simply paid less in taxes. The charitable contribution deduction is thus not federal financial assistance under Title IX, the court reasoned, and “even if it were,” any benefit to the school “is far too attenuated to constitute ‘receiving’ federal financial assistance.”

Considerations for Congress

Congress has broad authority to set civil rights conditions on the receipt of federal funding. As reflected in the discussion above, however, courts in a variety of contexts continue to face disputes about what it means for entities to “receiv[e] federal financial assistance” for purposes of Title IX and other civil rights statutes. If Congress wishes to weigh in on the matter through legislation, it has a number of options available to it. One initial consideration in doing so concerns the authority generally regarded as underlying these laws—the Spending Clause. As mentioned above, unlike legislation enacted on other constitutional bases, the Supreme Court has characterized Spending Clause legislation as akin to a contract. Because a recipient must voluntarily and knowingly accept the terms of this “contract,” the Court requires that such legislation be “clear” and “unambiguous[]” in stating the terms that recipients agree to as conditions for receiving federal financial assistance.

In potentially addressing the reach of Title IX or other civil rights laws predicated on federal funding, one option might be to enact an explicit definition provision laying out precisely who qualifies as a “recipient” for purposes of these civil rights laws. Likewise, another option could be to expressly include—or exempt—tax benefits as “federal financial assistance.” Alternatively, Congress could amend the Internal Revenue Code to make compliance with certain nondiscrimination laws a condition of receiving a tax exemption. Were Congress to alter the reach of nondiscrimination laws predicated on federal funding, a relevant example it might draw from could be the [Civil Rights Restoration Act of 1987](#) (enacted in 1988), in which Congress amended [Title IX](#), [Title VI](#), and [Section 504](#) of the Rehabilitation Act (as well as the [Age Discrimination Act](#) of 1975). The legislation superseded portions of a Supreme Court decision that concluded Title IX applied only to the specific program that receives federal funds, rather than to an entire institution that receives funds. For all four statutes, Congress provided a new, expansive statutory definition of “program or activity.”

Congress could also enact legislation directing federal agencies to promulgate regulations on the matter consistent with standards Congress adopts. Were Congress to disagree with agency rules, pursuant to the [Congressional Review Act](#), it could pass a joint resolution of disapproval within the time limits established by that statute.

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