

The Burger Court Opinion Writing Database

Grove City College v. Bell

465 U.S. 555 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 13, 1984

Personal

Re: 82-792 Grove City College v. Terrel H. Bell,
Secretary of Education

Dear Lewis:

Thank you for the preview of your concurring opinion in this case. I will only concur in the judgment. I agree fully. This is a case that merits a concurring opinion, and I'd like to join. See small suggestions on pages 2 and 3.

Regards,

WEB

Mr. Justice Powell

The CJ can't join my opinion
as I agree with the Court's
opinion.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 13, 1984

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SUPREME COURT U.S.
JUSTICE BUILDING

'84 JAN 16 AM 11:02

Re: 82-792 Grove City College v. Terrel Bell,
Secretary of Education

Dear John:

Please show me as joining only in the judgment.

Regards,



Mr. Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

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SUPREME COURT U.S.
JUSTICE MARSHALL

January 16, 1984 '84 JAN 16 A11:02

RE: 82-792 Grove City College v. Terrel Bell,
Secretary of Education

Dear Byron:

Please show me as joining only in the judgment.

Regards,



Mr. Justice White

Copies to the Conference

P.S. I may write a word or two

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 19, 1984

Re: 82-792 Grove City College v. Bell, Secretary Board
of Education, Et Al.

Dear Lewis:

Please join me in your concurring opinion.

Regards,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 13, 1983

No. 82-792

Grove City College v. Bell

Dear John,

You and I are in dissent in the
above. I'll be happy to try the
dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stevens".

Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 29, 1983

No. 82-792

Grove City College v. Bell

Dear Byron,

I agree with most of your opinion
in the above but not with Part III.
I'll be writing separately on that
question.

Sincerely,

Justice White

Copies to the Conference

To: The Chief Justice
Justice White
~~Justice Marshall~~
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-792

GROVE CITY COLLEGE, INDIVIDUALLY AND ON BEHALF
OF ITS STUDENTS, ET AL., PETITIONERS *v.* TERREL
H. BELL, SECRETARY OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February —, 1984]

JUSTICE BRENNAN, concurring in part and dissenting in
part.

The Court today concludes that Grove City College is "receiving Federal financial assistance" within the meaning of Title IX of the Education Amendments of 1972, 20 U. S. C. § 1681(a), because a number of its students receive federal education grants. As the Court persuasively demonstrates in Part II of its opinion, that conclusion is dictated by "the need to accord [Title IX] a sweep as broad as its language," *ante*, at 8; by reference to the analogous statutory language and legislative history of Title VI of the Civil Rights Act of 1964, *ante*, at 10; by reliance on the unique postenactment history of Title IX, *ante*, at 11-12; and by recognition of the strong congressional intent that there is no "substantive difference between direct institutional assistance and aid received by a school through its students," *ante*, at 7, 9, 13, and nn. 12-14, 19. For these same reasons, however, I cannot join Part III of the Court's opinion, in which the Court interprets the language in Title IX that limits application of the statute to "any education program or activity" receiving federal monies. By conveniently ignoring these controlling indicia of congressional intent, the Court also ignores the primary purposes for which Congress enacted Title IX. The result—allowing Title IX coverage for the College's financial

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 29, 1983

Memorandum to the Conference

Re: 82-792 - Grove City College v. Bell

This opinion follows the Conference view that the Court of Appeals was right in holding that Grove City was a recipient of Federal aid and that it must execute an Assurance of Compliance, but wrong in holding that the College as a whole was the educational program receiving the aid. The bottom line, however, is to affirm rather than to affirm in part and reverse in part, which was the suggestion in Conference. The District Court issued an injunction against terminating aid, the Court of Appeals reversed and remanded for further proceedings consistent with its opinion, which, I take it, would have required the College to execute a proper Assurance or face termination of funds. That is also the upshot of this draft; hence the suggestion to affirm even though along the way we differ with the Court of Appeals in important respects.

B.R.W.

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: DEC 29 1983

Recirculated: _____

BRW
Conrad
Justice White
WR

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-792

GROVE CITY COLLEGE, INDIVIDUALLY AND ON BEHALF
OF ITS STUDENTS, ET AL., PETITIONERS *v.* TERREL
H. BELL, SECRETARY OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

Section 901(a) of Title IX of the Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 373, 20 U. S. C. § 1681(a), prohibits sex discrimination in "any education program or activity receiving Federal financial assistance,"¹ and § 902 directs agencies awarding most types of assistance to promulgate regulations to ensure that recipients adhere to that prohibition. Compliance with departmental regulations may be secured by termination of assistance "to the particular program, or part thereof, in which . . . noncompliance has been . . . found" or by "any other means authorized by law." § 902, 20 U. S. C. § 1682.²

¹Section 901(a), 20 U. S. C. § 1681(a), provides, in pertinent part:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance"

Nine statutory exemptions, none of which is relevant to the disposition of this case, follow. See §§ 901(a)(1)-(9), 20 U. S. C. §§ 1681(a)(1)-(9).

²Section 902, 20 U. S. C. § 1682, provides:

"Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section [901] with respect to such program or activity by issuing rules, regulations, or orders of

To: The Chief Justice
Justice Brennan ✓
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

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SEE PAGES: 14
REFERENCES THROUGHOUT.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-792

GROVE CITY COLLEGE, INDIVIDUALLY AND ON BEHALF
OF ITS STUDENTS, ET AL., PETITIONERS *v.* TERREL
H. BELL, SECRETARY OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

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To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

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JUSTICE

Stylistic changes
and pp. 13-14
34 JAN 16 AM '84

JAN 13 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-792

GROVE CITY COLLEGE, INDIVIDUALLY AND ON BEHALF
OF ITS STUDENTS, ET AL., PETITIONERS *v.* TERREL
H. BELL, SECRETARY OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

Section 901(a) of Title IX of the Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 373, 20 U. S. C. § 1681(a), prohibits sex discrimination in “any education program or activity receiving Federal financial assistance,”¹ and § 902 directs agencies awarding most types of assistance to promulgate regulations to ensure that recipients adhere to that prohibition. Compliance with departmental regulations may be secured by termination of assistance “to the particular program, or part thereof, in which . . . noncompliance has been . . . found” or by “any other means authorized by law.” § 902, 20 U. S. C. § 1682.²

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 6, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Grove City College v. Bell, No. 82-792

Two cases were being held for Grove City:

(1) Hillsdale College v. Dept. of Education, No. 82-1538:

Petitioner is a private coeducational college that accepts no direct federal or state assistance. Approximately 1/4 of its students receive federal aid under various loan or grant programs. Petitioner refused to execute an Assurance of Compliance, and respondent instituted administrative enforcement proceedings. Respondent's Reviewing authority agreed with respondent that petitioner was required to execute an assurance, but CA6 reversed. It agreed with respondent that petitioner was a recipient of federal financial assistance within the meaning of §901 of Title IX because its students received federal loans and grants, but concluded that the relevant "program or activity" is the federal loan and grant program for students. CA6 further held that the Assurance of Compliance regulation was invalid as applied since it has been interpreted to cover the entire College and is not limited to the student loan and grant program.

The Court's decision in Grove City disposes of the contention that no program or activity operated by petitioner receives federal financial assistance for purposes of Title IX. Grove City also rejected the conclusion reached by CA6 regarding the validity of the Assurance of Compliance regulation. In determining which of petitioner's programs are covered by Title IX, it is possible to point to two differences between this case and Grove City. First, petitioner's students receive federal assistance under several programs not involved in Grove City. Second, petitioner participates in the BEOG program through the Regular Disbursement System and participates in other programs that require it to determine students' eligibility for assistance. Neither of these differences should affect the outcome. One other point is worth mentioning: To the extent that CA6 held that the relevant program was limited to the federal student-aid programs, its decision is inconsistent with n.21 of the Court's opinion in Grove City. It is not clear that CA6 intended this result, but its opinion is ambiguous.

I recommend GVR. ✓

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 3, 1984

Re: No. 82-792-Grove City College v. Bell

Dear Byron:

I await further writing.

Sincerely,

T.M.

T.M.

Justice White

cc: The Conference

WJW

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 23, 1984

Re: No. 82-792-Grove City College v. Bell

Dear Bill:

Please join me in your opinion.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 30, 1983

Re: No. 82-792 - Grove City College v. Bell

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 30, 1983

82-792 GROVE CITY COLLEGE v. BELL

Dear Byron:

I join your opinion with reluctance because, given the language and legislative history of the statute, I think your opinion decides the case correctly.

Unless I can suppress my strong inclination to write separately and express my disapproval of this type of federal intrusion, I may add a few words in concurrence.

Sincerely,



Justice White

lfp/ss

cc: The Conference

January 13, 1984

PERSONAL

82-792 Grove City v. Bell

Dear Chief:

I have joined the opinion for the Court in this case, but did so reluctantly.

It seems to me that the Department of Education displayed uncommonly poor judgment in seeking to compel - by what turned out to be protracted litigation - this college to sign an assurance that it would comply with the anti-discrimination provisions of Title IX. It is conceded that the college had a uniquely exemplary record of nondiscrimination.

I also would have thought that the Solicitor General, or perhaps the Attorney General, would have decided not to continue pressing this matter.

But the case is here, and we must decide it according to the law. I am considering a brief concurring opinion, and enclose a copy that I have not circulated. I would like to have the benefit of your judgment as to whether any purpose is served by expressing views along the lines of my draft.

Although I think you have the best record with respect to unnecessary concurring opinions, I also try to exercise a good deal of restraint. Entirely too many of them are circulated.

I will await your views with interest.

Sincerely,

The Chief Justice

lfp/ss

01/14

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

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JUSTICE

From: Justice Powell

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'84 JAN 16 A11:02

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-792

GROVE CITY COLLEGE, INDIVIDUALLY AND ON BEHALF
OF ITS STUDENTS, ET AL., PETITIONERS *v.* TERREL
H. BELL, SECRETARY OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

JUSTICE POWELL, concurring.

As I agree that the holding in this case is dictated by the language and legislative history of Title IX, and the Regulations of the Department of Education, I join the Court's decision. I do so reluctantly and write briefly to record my view that the case is an unedifying example of overzealousness on the part of the Federal Government.

Grove City College (Grove City) may be unique among colleges in our country; certainly there are few others like it. Founded more than a century ago in 1876, Grove City is an independent, coeducational liberal arts college. It describes itself as having "both a Christian world view and a freedom philosophy," perceiving these as "interrelated." Joint Appendix, at A-22. At the time of this suit, it had about 2,200 students and tuition was surprisingly low for a private college.¹ Some 140 of the College's students were receiving Basic Educational Opportunity Grants (BEOGs),² and 342 had obtained Guaranteed Student Loans (GSLs).³ The grants were made directly to the students through the De-

¹ Yearly tuition for 1983 for fees, room, and board was \$4270. Petitioner's Brief at 3, n. 2.

² *Grove City College v. Bell*, 500 F. Supp. 253, 259 (WD Pa. 1980).

³ *Grove City College, supra*, 500 F. Supp., at 259.

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pg 1

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

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JUSTICE POWELL

From: Justice Powell

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-792

GROVE CITY COLLEGE, INDIVIDUALLY AND ON BEHALF
OF ITS STUDENTS, ET AL., PETITIONERS *v.* TERREL
H. BELL, SECRETARY OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

JUSTICE POWELL, with whom CHIEF JUSTICE BURGER and
JUSTICE O'CONNOR join, concurring.

As I agree that the holding in this case is dictated by the language and legislative history of Title IX, and the Regulations of the Department of Education, I join the Court's decision. I do so reluctantly and write briefly to record my view that the case is an unedifying example of overzealousness on the part of the Federal Government.

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² *Grove City College v. Bell*, 500 F. Supp. 253, 259 (WD Pa. 1980).

³ *Grove City College*, *supra*, 500 F. Supp., at 259.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 30, 1983

Re: No. 82-792 Grove City College v. Bell

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 5, 1984

Re: 82-792 - Grove City College v. Bell

Dear Bill:

This is a copy of what I have just sent to the printer.

Respectfully,



Justice Brennan

Attachment

January 5, 1984

[2\$0792i;2\$0792if]

82-792 - Grove City College v. Bell

JUSTICE STEVENS, concurring in part and concurring in the result.

For two reasons, I am unable to joint part III of the Court's opinion. First, it is advisory opinion unnecessary to today's decision, and second, the advice is predicated on speculation rather than evidence.

The controverted issue in this litigation is whether Grove City College may be required to execute the "Assurance of Compliance with Title IX" tendered to it by the Secretary in order to continue receiving the benefits of the federal financial assistance provided by the BEOG program. The Court of Appeals affirmed the District Court's decision that Grove City is a "recipient" of federal financial assistance, and reversed its decision that the Secretary could not terminate federal financial assistance unless Grove City executed the Assurance. The Court today holds (in part II of its opinion) that Grove City is a recipient of federal financial assistance within the meaning of Title IX, and (in part IV) that Grove City must execute the Assurance of Compliance in order to continue receiving that assistance. These holdings are fully sufficient to sustain the judgment the Court reviews, as the Court acknowledges by

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-792

GROVE CITY COLLEGE, INDIVIDUALLY AND ON BEHALF
OF ITS STUDENTS, ET AL., PETITIONERS *v.* TERREL
H. BELL, SECRETARY OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

JUSTICE STEVENS, concurring in part and concurring in
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federal financial assistance unless Grove City executed the
Assurance. The Court today holds (in part II of its opinion)
that Grove City is a recipient of federal financial assistance
within the meaning of Title IX, and (in part IV) that Grove
City must execute the Assurance of Compliance in order to
continue receiving that assistance. These holdings are fully
sufficient to sustain the judgment the Court reviews, as the
Court acknowledges by affirming that judgment.

In part III of its opinion, the Court holds that Grove City is
not required to refrain from discrimination on the basis of sex

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

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JUSTICE STEVENS
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From: **Justice Stevens**

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'84 JAN 16 A11 :02

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-792

GROVE CITY COLLEGE, INDIVIDUALLY AND ON BEHALF
OF ITS STUDENTS, ET AL., PETITIONERS *v.* TERREL
H. BELL, SECRETARY OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1984]

JUSTICE STEVENS, concurring in part and concurring in
the result.

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federal financial assistance because Grove City refused to ex-
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Grove City must execute the Assurance of Compliance in
order to continue receiving that assistance. These holdings
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ment.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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7.2

SUPREME COURT OF THE UNITED STATES

No. 82-792

GROVE CITY COLLEGE, INDIVIDUALLY AND ON BEHALF
OF ITS STUDENTS, ET AL., PETITIONERS *v.* TERREL
H. BELL, SECRETARY OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February 28, 1984]

JUSTICE STEVENS, concurring in part and concurring in
the result.

For two reasons, I am unable to joint part III of the
Court's opinion. First, it is an advisory opinion unnecessary
to today's decision, and second, the advice is predicated on
speculation rather than evidence.

The controverted issue in this litigation is whether Grove
City College may be required to execute the "Assurance of
Compliance with Title IX" tendered to it by the Secretary in
order to continue receiving the benefits of the federal finan-
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federal financial assistance because Grove City refused to ex-
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Grove City must execute the Assurance of Compliance in
order to continue receiving that assistance. These holdings
are fully sufficient to sustain the judgment the Court re-
views, as the Court acknowledges by affirming that judg-
ment.

3

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 3, 1984

No. 82-792 Grove City College v. Bell

Dear Byron,

Please join me in your opinion.

Sincerely,



Justice White

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

RECORDED
SUPREME COURT, U.S.
JUSTICE HAYNSTALL

January 16, 1984

'84 JAN 17 A10:01

Re: No. 82-792 Grove City College v. Bell

Dear Lewis,

Please join me in your concurring opinion.

Sincerely,

Sandra

Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 16, 1984

Re: No. 82-792 Grove City College v. Bell

Dear Lewis,

Please join me in your concurring opinion.

Sincerely,

Sandra

Justice Powell

Copies to the Conference

P.S. Your opinion is superb
and will help alleviate
the inevitable reaction
to the majority's holding.
S.