Note

Exempt but Not Immune: Why the Section 501(c)(3) Tax Exemption Amounts to Federal Financial Assistance and Demands that Private Schools Comply with Title IX

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Title IX of the Education Amendments Act of 1972 (Title IX) prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance and ensures that federal funds are not used to support discriminatory practices. Independent, non-public, educational institutions try to escape compliance with Title IX, claiming they do not receive federal financial assistance and are not subject to Title IX. While they may not receive a direct federal grant or loan, many of these independent schools are organized as nonprofits and are exempt from federal income taxes pursuant to section 501(c)(3) of the Internal Revenue Code. As a result, these schools save significant amounts of money that they would otherwise have to spend on taxes, while diminishing the federal government's tax revenue. There is an open question as to whether an educational institution's 501(c)(3) tax-exempt status constitutes federal financial assistance and triggers Title IX liability. In July 2022, two federal district courts found that independent schools were subject to Title IX based on their 501(c)(3) status. However, in April 2024, the Fourth Circuit became the first federal appellate court to consider this question and found that a school's tax-

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exempt status does not constitute "Federal financial assistance" and thus does not make it subject to Title IX. This Note argues that educational institutions that maintain tax-exempt status do in fact receive federal financial assistance by virtue of the tax benefit they receive and must comply with Title IX. After presenting the split in opinion on whether tax-exempt status triggers liability under Title IX, this Note conducts a statutory analysis of "Federal financial assistance." This Note first considers the text of the statute, applying various tools of statutory analysis to conclude that the plain text of Title IX extends to tax-exempt organizations, including tax-exempt schools. This Note also uses legislative history to further discern congressional intent and demonstrate that Congress intended Title IX to be afforded a broad scope and should not be limited to exclude tax-exempt status.

INTRODUCTION

Five female students at Concordia Preparatory School in Towson, Maryland, were sexually assaulted and subject to verbal sexual harassment by male students while enrolled at the school.[1] One fourteen-year-old student was sexually assaulted by a group of male students in the locker room.[2] Students on the boys soccer team repeatedly harassed another student, making sexually explicit gestures towards her and expressing their desire to have sex with her.[3] A thirteen-year-old student was sexually assaulted by a male classmate and received numerous sexually suggestive text messages from older male students.[4]

Imagine reporting this behavior to trusted school administrators, only for the administration to dismiss your concerns and even reject a faculty-proposed policy to address the widespread harassment.[5] A school environment so dismissive that school employees feel compelled to quit their jobs in an act of defiance.[6] Surely, you think, the school administration can be held accountable for allowing a culture of sexual misconduct to endure by ignoring students' allegations and outcry from parents and teachers alike. You would be correct; Title IX of the Education Amendments Act of 1972 (Title IX) exists to do exactly that.[7]

Title IX prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance, and such sex-based discrimination encompasses sexual harassment and assault.[8] Accordingly, these former Concordia Preparatory School students each brought a case against the

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1. Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, No. RDB-20-3132, 2022 WL 2869041, at *1 (D. Md. July 21, 2022), *rev'd and remanded*, 96 F.4th 707 (4th Cir. 2024).

2. Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, No. RDB-20-3132, 2021 WL 2580385, at *4 (D. Md. June 23, 2021) (detailing the former students' factual allegations in a previous memorandum opinion).

3. *Id.*

4. *Id.* at *5.

5. *Id.* at *3.

6. *Id.*

7. *See* 20 U.S.C. § 1681(a).

8. *See Title IX and Sex Discrimination*, U.S. DEP'T OF EDUC. (last updated Apr. 11, 2025), https://www.ed.gov/laws-and-policy/civil-rights-laws/title-ix-and-sex-discrimination [perma.cc/4MH7-7ANE] (explaining that sexual harassment and assault constitute sex-based discrimination); Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 64 (1986) (stating that sexual harassment is sex-based discrimination).

school in 2020,[9] alleging that they reported the behavior to school officials who failed to investigate, report, or take meaningful action to address such assault and harassment, resulting in a hyper-sexualized school culture in violation of Title IX.[10] The Fourth Circuit, however, recently reversed the district court's denial of the school's motion to dismiss.[11] In its opinion, the Fourth Circuit held that tax-exempt status does not constitute federal financial assistance for purposes of Title IX, and that since the school did not receive any other form of federal financial assistance, it did not have to comply with Title IX's nondiscrimination requirements.[12] As a result, the school was able to evade liability for its failure to provide a school environment free from discrimination on the basis of sex.[13]

Congress enacted Title IX to combat discrimination on the basis of sex in education programs and activities and to ensure federal funds are not used to support discriminatory practices.[14] Title IX provides that "[n]o 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."[15] Since the statute's passage, courts have repeatedly affirmed the far-reaching remedial purposes of Title IX, stating that the statute should be construed broadly and making clear

9. Because these students filed suit against the school after they had graduated, they are referred to as "former" students in this Note.

10. Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, No. RDB-20-3132, 2022 WL 2869041, at *1 (D. Md. July 21, 2022), *rev'd and remanded*, 96 F.4th 707 (4th Cir. 2024).

11. *Buettner-Hartsoe*, 96 F.4th at 715.

12. *Id.*

13. *Id.*; *see* Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, No. RDB-20-3132, 2024 WL 1908532, at *1 (D. Md. May 1, 2024) (dismissing the remaining plaintiffs' claims for lack of subject matter jurisdiction following the Fourth Circuit's holding).

14. *See* Cannon v. Univ. of Chi., 441 U.S. 677, 704 (1979) (explaining that the underlying purpose of Title IX was to prohibit the use of federal resources to support discriminatory programs); 117 CONG. REC. 39256 (1971) (statement of Rep. Edith Green) (stating that the purpose of the legislation that would become Title IX "is to end discrimination in all institutions of higher education . . . across the board").

15. 20 U.S.C. § 1681(a).

that it protects against all forms of discrimination based on sex, including sexual harassment.[16]

Today, sexual harassment and other forms of sex-based discrimination are rampant in schools.[17] The reprehensible conduct that certain students at Concordia Preparatory School endured, and that other students perpetrated, is not a rarity among students in the United States. In the 2020–2021 school year alone, public schools and school districts across the United States reported over 3,000 incidents of sexual violence and over 25,000 allegations of harassment on the basis of sex or sexual orientation.[18] As of January 14, 2025, the Department of Education is currently investigating 1,123 complaints against elementary-secondary and post-secondary institutions for failure to

16. *See* N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 521 (1982) ("There is no doubt that 'if we are to give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language.'" (alteration in original) (quoting United States v. Price, 383 U.S. 787, 801 (1966))); *see also* Franklin v. Gwinnett Cnty. Pub. Schs., 503 U.S. 60, 75 (1992) (finding that a school district can be held liable under Title IX for a teacher's sexual harassment of a student (citing Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 64 (1986))); Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 281 (1998) (finding a remedy under Title IX for sexual harassment from a teacher towards a student (citing *Franklin*, 503 U.S. at 74–75)); Davis *ex rel.* LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 649–50 (1999) (establishing Title IX liability for schools that fail to address peer sexual harassment).

17. *See Sexual Violence in Schools*, NAT'L EDUC. ASS'N TODAY (2021), https://www.nea.org/nea-today/all-news-articles/sexual-violence-schools [perma.cc/B3RT-2VGV] (highlighting the rise of sexual harassment and violence in schools); *Quick Facts: Sexual Harassment and Violence in School*, AM. ASS'N OF UNIV. WOMEN (Jan. 2022), https://www.aauw.org/app/uploads/2022/08/Sexual-Harassment-and-Violence-in-School-Quick-Facts-Jan-2022.pdf [perma.cc/CF9C-H7S4] (discussing the prevalence of sexual harassment and violence in schools and reporting that nearly half of middle and high schoolers experience sexual harassment).

18. *Sexual Violence and Sex-Based Harassment or Bullying in U.S. Public Schools During the 2020-21 School Year*, U.S. DEP'T OF EDUC. OFF. FOR C.R. (2023), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/crdc-sexual-violence-snapshot.pdf [perma.cc/2WA4-36H5]. Although the Supreme Court has never directly addressed whether discrimination on the basis of sex includes harassment based on sexual orientation in the context of Title IX, guidance from the Department of Education has indicated such conduct is covered by Title IX. *See, e.g.*, *Sex Discrimination FAQs*, U.S. DEP'T OF EDUC., https://web.archive.org/web/20240927223116/https://www.ed.gov/laws-and-policy/civil-rights-laws/civil-rights-faqs/sex-discrimination [perma.cc/8V9J-DGH8]. Further, the recent Supreme Court decision in *Bostock v. Clayton County*, which found that discrimination on the basis of sex includes discrimination based on sexual orientation in the context of Title VII, supports a similar interpretation of sex-based discrimination under Title IX. *See* 140 S. Ct. 1731, 1754 (2020).

adequately respond to reported sexual harassment or sexual violence, in violation of Title IX.[19]

As the country grapples with widespread sexual harassment in schools, leaving children to fear for their safety and the inevitable day that sexual violence or harassment impacts them or someone they know, it is imperative that students are guaranteed protection and have adequate remedial measures to report and address such conduct. The protections afforded to students by Title IX are critical to ensuring a safe learning environment free from sexual violence and harassment. Title IX requires schools to provide an educational environment free from sexual harassment, and to respond quickly and effectively when someone engages in such conduct to ensure victims are not deprived of educational opportunities.[20] Title IX is essential to protect students from discrimination based on sex, yet its protections are not limitless.

Congress promulgated Title IX under its Spending Clause power,[21] and as such the constitutional hook in the text of Title IX is "receiving Federal financial assistance."[22] Courts have since struggled to determine the scope of "Federal financial assistance," which remains undefined in the statute. A recent Fourth Circuit decision limited the statute's scope to the detriment of students, finding that tax-exempt status does not trigger Title IX compliance.[23]

Independent, non-public educational institutions try to escape compliance with Title IX, claiming they do not receive federal financial assistance and thus are not subject to Title IX.[24]

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19. *Pending Cases Currently Under Investigation at Elementary-Secondary and Post-Secondary Schools*, U.S. DEP'T OF EDUC., OFF. FOR C.R. (last updated Jan. 14, 2025), https://ocrcas.ed.gov/open-investigations [perma.cc/4APA 57YK] (choose "Sex Discrimination" from the Basis of Discrimination dropdown; then choose "Title IX – Sexual Harassment" from the Sex Discrimination dropdown; then click submit) (reporting current investigation of 338 complaints of sexual violence and 785 complaints of sexual harassment).

20. *See* Davis *ex rel.* LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 646–47 (1999) (holding that a school's failure to effectively address student-on-student sexual harassment can trigger liability for the school).

21. *See* U.S. CONST. art. I, § 8, cl. 1.

22. 20 U.S.C. § 1681(a).

23. *See* Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, 96 F.4th 707, 715 (4th Cir. 2024).

24. *See, e.g.*, *id.* (addressing a private school's claim that its status as a 501(c)(3) tax-exempt organization does not trigger liability under Title IX); E.H.

However, while they may not receive a federal grant or loan, many of these independent schools are organized as nonprofits and are thus exempt from federal income taxes pursuant to section 501(c)(3) of the Internal Revenue Code.[25] Section 501(c)(3) status provides that these educational institutions do not have to pay income taxes, meaning any endowments, tuition payments, and other fees they receive for their services are received tax-free.[26] As a result, these schools save significant amounts of money that they would otherwise have to spend on taxes, while diminishing the federal government's tax revenue.[27]

The question remains whether an educational institution's 501(c)(3) tax-exempt status constitutes "Federal financial assistance" under Title IX. In July 2022, two federal district courts—one in Maryland and one in California—found that independent schools were subject to Title IX based on their 501(c)(3) status.[28] Then, in March 2024, the Fourth Circuit became the first federal appellate court to consider whether Title IX applies to independent schools that maintain tax-exempt status under section 501(c)(3). In *Buettner-Hartsoe v. Baltimore Lutheran High School Association*, the Fourth Circuit reversed the Maryland district court decision and found that a school's tax-exempt status does not constitute "Federal financial assistance" and thus does not subject the school to Title IX.[29]

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ex rel. Herrera v. Valley Christian Acad., 616 F. Supp. 3d 1040, 1050 (C.D. Cal. 2022) (rejecting a private school's attempt to evade Title IX compliance under the notion that a tax exemption is not a form of federal financial assistance).

25. *See* 26 U.S.C. § 501(c)(3).

26. *Id.*

27. *See, e.g.*, Nathan Born & Adam Looney, *How Much Do Tax-Exempt Organizations Benefit from Tax Exemption?*, URBAN-BROOKINGS TAX POL'Y CTR. 3 (2022), https://www.taxpolicycenter.org/sites/default/files/publication/164057/how_much_do_tax-exempt_organizations_benefit_from_tax_exemption.pdf [perma.cc/WRY6-ZZTR] (estimating that in 2018, the tax savings associated with private schools and universities was $1.7 billion); Scott Hodge, *Reining in America's $3.3 Trillion Tax-Exempt Economy*, TAX FOUND. 2 (2024), https://taxfoundation.org/wp-content/uploads/2024/06/FF839v2.pdf [https://perma.cc/L94Y-Z3NB] (explaining that many 501(c)(3) nonprofits are business-like and generate large amounts of income which are exempted from income taxation).

28. *See* E.H. *ex rel.* Herrera v. Valley Christian Acad., 616 F. Supp. 3d 1040 (C.D. Cal. 2022); Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, No. RDB-20-3132, 2022 WL 2869041 (D. Md. July 21, 2022), *rev'd and remanded*, 96 F.4th 707 (4th Cir. 2024).

29. *Buettner-Hartsoe*, 96 F.4th at 710.

This Note argues that educational institutions that maintain tax-exempt status do in fact "receive Federal financial assistance" by virtue of the tax benefit they receive and therefore must comply with Title IX. Part I of this Note details the historical background of Title IX, outlining its purpose and general framework. This Part provides an overview of Title IX and how sex discrimination in private schools is currently regulated under federal law, discussing the statute's purpose, text, and scope. Next, this Part describes the 501(c)(3) tax exemption and its purpose. Part I ends with an explanation of the relationship between tax-exempt status and discrimination in private schools, describing the current statutory landscape and illuminating the persistent escape route that private schools seek.

Part II presents the split in opinions on whether a tax exemption constitutes federal financial assistance. This Part provides an overview of the Fourth Circuit's reason for narrowing the scope of Title IX and finding that tax-exempt status does not constitute "Federal financial assistance" for purposes of Title IX. This Part also summarizes the two recent district court decisions that held that a 501(c)(3) tax exemption is a form of federal financial assistance and thus triggers compliance with Title IX.

Part III of this Note conducts a statutory analysis of Title IX, arguing that tax-exempt status constitutes federal financial assistance, and that as a result, Title IX compliance extends to private schools organized as 501(c)(3) nonprofits. This Part first considers the text of the statute, applying various tools of statutory analysis to conclude that Title IX clearly requires nonprofit private schools that maintain tax-exempt status to comply with Title IX.[30] Next, this Part uses methods of statutory interpretation that go beyond the statute's text to discern congressional intent, arguing that Title IX must be afforded a broad scope and should not be limited to exclude tax-exempt status.[31] This Note concludes with an argument that interpreting federal financial assistance to include tax-exempt status best comports with the purpose behind Title IX.

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30. Unless another Title IX exemption is applicable.

31. *See, e.g.*, N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 521 (1982) ("There is no doubt that 'if we are to give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language.'" (alteration in original) (quoting United States v. Price, 383 U.S. 787, 801 (1966))).

I. THE EVOLUTION OF TITLE IX AND PRIVATE SCHOOLS' NOTABLE OPPORTUNITY TO BYPASS COMPLIANCE

In the 1970s, after the passage of the landmark Civil Rights Act of 1964, Congress sought to establish further protections, this time on the basis of sex.[32] Title IX of the Education Amendments Act of 1972 was the culmination of these efforts.[33] Section A recounts the historical background of Title IX of the Education Amendments Act of 1972, which itself requires a brief introduction to the legislation it was based on: Title VI of the Civil Rights Act of 1964 (Title VI).[34] This Section reviews the text of the statute as well as Supreme Court jurisprudence and legislative history that provide valuable insight into the statute's scope and purpose. Section B discusses how federal law currently regulates sex discrimination in private schools, detailing how the Supreme Court currently interprets "Federal financial assistance" and the scope of Title IX. Section C begins with an introduction to the 501(c)(3) tax exemption, outlining its purpose, before transitioning to an explanation of the relationship between tax-exempt status and discrimination in private schools, as well as the current statutory landscape. Finally, this Part explains how private schools interpret Title IX in a way that distorts the ability of victims of sex-based discrimination to recover for their harm, to the benefit of these schools.

A. HISTORICAL BACKGROUND AND EVOLUTION OF TITLE IX

Title IX of the Education Amendments Act of 1972 is widely hailed as a transformative piece of civil rights legislation, applauded for its sweeping protections and frequently cited for its positive impact on gender equality.[35] In 1972, President Richard

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32. The Civil Rights Act of 1964 did not initially include discrimination on the basis of sex, which was only later added as an amendment in Title VII. *See Women's Rights and the Civil Rights Act of 1964*, NAT'L ARCHIVES (last updated June 17, 2022), https://www.archives.gov/women/1964-civil-rights-act [perma.cc/W6FC-XP8G].

33. *See* Remy Tumin, *Fifty Years on, Title IX's Legacy Includes Its Durability*, N.Y. TIMES (June 23, 2022), https://www.nytimes.com/2022/06/23/sports/title-ix-anniversary.html [perma.cc/647K-8U8P].

34. 42 U.S.C. § 2000d.

35. *See, e.g.*, Tumin, *supra* note 33 (discussing the lasting effects of Title IX); Ruth Igielnik, *Most Americans Who Are Familiar with Title IX Say It's Had a Positive Impact on Gender Equality*, PEW RSCH. CTR. (Apr. 21, 2022),

Nixon signed Title IX into law in response to the Women's Rights Movement of the late 1960s and early 1970s and the growing concern regarding discrimination against women in education.[36] As more women joined the workforce, the earnings gap between women and their male counterparts became more apparent;[37] advocacy groups attributed much of this inequality to inequities in education.[38] As a result, Congress held hearings regarding discrimination against women in education.[39] Ultimately, in 1972, Senator Birch Bayh of Indiana introduced what would become Title IX, designed to combat "the continuation of corrosive and unjustified discrimination against women" in the American educational system and "root out, as thoroughly as possible . . . the social evil of sex discrimination in education."[40]

Title IX was modeled after Title VI of the 1964 Civil Rights Act, which prohibited federally assisted programs from discriminating on the basis of race, color, or national origin.[41] Title IX

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https://www.pewresearch.org/short-reads/2022/04/21/most-americans-who-are-familiar-with-title-ix-say-its-had-a-positive-impact-on-gender-equality [perma.cc/Z2HW-JF4V] (finding that over sixty percent of people who have heard about Title IX believe it has "had a positive impact on gender equality").

36. *See Discrimination Against Women: Hearings on Section 805 of H.R. 16098 Before the Spec. Subcomm. on Educ. of the H. Comm. on Educ. & Lab.*, 91st Cong. 1 (1970) (statement of Rep. Edith Green, Chairman, Spec. Subcomm. on Educ. of the H. Comm. on Educ. & Lab.) (introducing testimony on a proposal to extend the protections of Title VI of the Civil Rights Act of 1964 to encompass discrimination on the basis of sex); 118 CONG. REC. 5803–06 (1972) (statement of Sen. Birch Bayh) (citing evidence of pervasive discrimination against women with respect to educational opportunities). *See generally* LESLIE GLADSTONE & GARY GALEMORE, CONG. RSCH. SERV., 97-954 GOV, SEX DISCRIMINATION IN EDUCATION: OVERVIEW OF TITLE IX (1998) (providing background on Title IX).

37. *See, e.g.*, *Title IX Legal Manual*, U.S. DEP'T OF JUST. C.R. DIV. ch. II.2, https://web.archive.org/web/20250131115806/https://www.justice.gov/crt/title-ix [perma.cc/WM55-SMJH] ("As a consequence of the equality in the workforce debate, Americans also began to focus attention generally on inequities that inhibited the progress of women and girls in education.").

38. *See id.* (recognizing the link between discrimination in education and subsequent employment opportunities).

39. *See, e.g.*, *supra* note 36 and accompanying text (providing examples of such congressional hearings); *see generally* Charles James, The Evolution of Title IX (Sex Discrimination) and Its Impact upon Colleges and Graduate Schools 15–17 (Aug. 4, 1987) (Ed.D. dissertation, Pepperdine University) (ProQuest) (providing background on the congressional hearings that led to Title IX).

40. 118 CONG. REC. 5803–04 (1972) (statement of Sen. Birch Bayh).

41. 42 U.S.C. § 2000d. *See* Grove City Coll. v. Bell, 465 U.S. 555, 566 (1984) ("'Title IX was patterned after Title VI of the Civil Rights Act of 1964 . . . .'" (first

filled a gap in existing civil rights statutes, which largely did not prohibit discrimination based on sex, by adding sex as a protected characteristic in the context of education.[42] Broad in its scope, Title IX provides that "[n]o 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 . . . ."[43] It invokes Congress's Spending Clause powers[44] to combat sex discrimination in public and private schools by preventing federal resources from supporting discriminatory practices.[45]

Often thought of as similar to a contract, Spending Clause legislation imposes conditions on states in return for federal assistance.[46] The operating rationale in the Title IX context is that in exchange for providing educational institutions with economic benefits, the government can require that such institutions not discriminate on the basis of sex, in violation of people's fundamental civil rights. Title IX, a long-overdue civil rights protection, served as a marked achievement for those who fiercely championed the legislation and, more importantly, armed Americans to fight persistent discrimination on the basis of sex.[47]

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citing 42 U.S.C. § 2000d; then citing Connon v. Univ. of. Chi., 441 U.S. 677, 684–85 (1979); and then citing 118 CONG. REC. 5807 (1972) (statement of Sen. Birch Bayh)).

42. *See* 117 CONG. REC. 30403 (1971) (statement of Sen. Birch Bayh) (discussing the gap left in civil rights laws by omitting sex as a protected characteristic from other provisions of the Civil Rights Act of 1964).

43. 20 U.S.C. § 1681(a). Note Title IX does provide limited exemptions for religious schools, military schools, schools that traditionally admit students of one sex, and social fraternities and sororities. *Id.* § 1681(a)(3)–(6).

44. U.S. CONST. art. I, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States . . . .").

45. *See* 20 U.S.C. § 1681(c) (defining "educational institution" broadly for purposes of Title IX).

46. *See, e.g.*, Davis *ex rel.* LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 640 (1999) (describing the reciprocal nature of Congress's spending power); Shariful Khan, *An Expansive View of "Federal Financial Assistance,"* 133 YALE L.J.F. 691, 692 (2024), https://www.yalelawjournal.org/pdf/KhanYLJForumEssay_wzsxhhyw.pdf [https://perma.cc/U75M-KNSZ] (providing background on the use of the spending power in civil rights statutes).

47. *See Legislative Path to Title IX*, LIBR. OF CONG., https://guides.loc.gov/title-IX-law-library-resources/legislative-path [perma.cc/7NDZ-GXU4] (charting the legislative history of Title IX).

The immediate effect of Title IX was to open the doors of educational institutions to women who had previously been effectively shut out from such opportunities.[48] Two years before the passage of Title IX, women earned 43.1% of bachelor's degrees, 38.8% of master's degrees, and 9.6% of doctorate degrees; as of 2022, over fifty years since Title IX took effect, these percentages had grown to 58.5%, 62.6%, and 57%, respectively.[49] Title IX is credited for expanding professional opportunities for women,[50] improving safety on college campuses,[51] and recognizing the importance of learning environments free from sexual harassment.[52] Title IX's lasting impact on educational opportunities cannot be overstated, and throughout the decades since its passage, it has evolved to meet the country's ever-changing demands.

B. CURRENT FEDERAL REGULATION OF SEX DISCRIMINATION IN PUBLIC AND PRIVATE SCHOOLS

Recognizing the statute's broad directive, the Supreme Court has repeatedly afforded Title IX an expansive scope to effectuate the statute's purpose: to eliminate discrimination on the basis of sex in educational institutions.[53] While the text of the statute does not define discrimination on the basis of sex, in the

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48. *See, e.g.*, R. SHEP MELNICK, THE TRANSFORMATION OF TITLE IX 3 (2018) (examining the impact of Title IX on educational opportunities and enrollment).

49. *Digest of Education Statistics: Summary of Degrees Conferred Table 318.10*, NAT'L CTR. FOR EDUC. STAT. (Oct. 2023), https://nces.ed.gov/programs/digest/d23/tables/dt23_318.10.asp [perma.cc/JW3Z-ZZEE] (providing data on the number of post-secondary degrees conferred, by level of degree and sex of student, in 1969–1970 and 2021–2022); *see also* Neil Paine, *What 50 Years of Title IX Has—And Hasn't—Accomplished*, FIVETHIRTYEIGHT (June 1, 2022), https://fivethirtyeight.com/features/paine-title-ix [perma.cc/Z9S3-C4SK] (presenting data on the impacts of Title IX and noting that its enactment "coincided with enormous growth in educational attainment for American women").

50. *See supra* note 49 and accompanying text.

51. *See* Zara Abrams, *Title IX: 50 Years Later*, AM. PSYCH. ASS'N (June 28, 2022), https://www.apa.org/news/apa/2022/title-ix-landmark [perma.cc/4WFV MAXJ] (highlighting Title IX's role in improving safety on college campuses).

52. *See Title IX at 50*, NAT'L COAL. FOR WOMEN & GIRLS IN EDUC. 10 (June 2022), https://www.ncwge.org/TitleIX50/NCWGE%20Title%20IX%20At%2050%20-%206.2.22%20vF.pdf [perma.cc/BER9-M8CQ] (describing the positive impact on students when schools care to address sexual harassment).

53. *See, e.g.*, N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 521, 538 (1982) (emphasizing Title IX's broad scope and noting Title IX "is designed to eliminate . . . discrimination on the basis of sex in any education *program or activity*" (quoting 34 C.F.R. § 106.1 (1980))).

years since its passage, the Supreme Court and Department of Education have reckoned with ongoing and pervasive sexual harassment and assault in schools, ultimately broadening the scope of Title IX and affirming that it prohibits such conduct.[54] This Section reviews the current scope of Title IX; first describing the type of activity prohibited under Title IX, and then examining the Supreme Court's present understanding of the phrase "Federal financial assistance."

1. Prohibited Activity Under Title IX

Twice within the span of one year, the Supreme Court confronted the scope of behavior that Title IX prohibits. Both times the Court read Title IX broadly, making clear that Title IX violations include employee-on-student sexual harassment[55] and student-on-student sexual harassment.[56] These rulings reinforced schools' legal obligations to ensure a safe learning environment, recognizing that failure to address allegations of sexual harassment has real, detrimental effects on students and their educational opportunities.[57]

While the Supreme Court in *Gebser v. Lago Vista Independent School District* determined that employee-on-student sexual harassment may give rise to the discriminatory conduct envisioned by the statute, the Court imposed relatively stringent

54. *See* Franklin v. Gwinnett Cnty. Pub. Schs., 503 U.S. 60, 75 (1992) (finding that a school district can be held liable under Title IX for a teacher's sexual harassment of a student (citing Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 64 (1986))); Davis *ex rel.* LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 649–50 (1999) (broadening Title IX to encompass sexual harassment between students); 34 C.F.R. § 106.2 (2024) (including sex-based harassment as a form of discrimination on the basis of sex); *Title IX and Sex Discrimination*, *supra* note 8 (providing examples of the types of discrimination covered under Title IX).

55. Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 281 (1998) (finding that Title IX obligations apply when a teacher sexually harasses and abuses a student (citing *Franklin*, 503 U.S. at 74–75)).

56. *Davis ex rel. LaShonda D.*, 526 U.S. at 649–50 ("[S]tudent-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under [Title IX].").

57. A persistent sexually hostile environment reduces a student's sense of safety at school, which corresponds with declining academic performance and higher drop-out rates. Am. Acad. of Pediatrics, *Anti-Bullying, Sexual Harassment Resources Increase in US Schools but Gaps Remain*, PHYS.ORG (Sept. 27, 2024), https://phys.org/news/2024-09-anti-bullying-sexual-resources-schools.html [perma.cc/SE8V-BUXV].

standards of proof on plaintiffs.[58] If a school employee sexually harasses a student, the school district will be held liable under Title IX only where "an official of the school district who at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the [employee's] conduct."[59]

Shortly after this decision, the Supreme Court decided *Davis ex rel. LaShonda D. v. Monroe County Board of Education*, another seminal Title IX case.[60] Here, the Court held that the statute also imposes liability on covered educational institutions that fail to effectively respond to student-on-student harassment.[61] A school district may be liable for known acts of student-on-student sexual harassment, so long as the harassment is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit" and the school district acted with "deliberate indifference" to the harassment.[62]

2. The "Federal Financial Assistance" Hurdle

The above holdings reflect the broad objectives of Title IX and provide meaningful remedies for those subjected to discrimination and harassment in schools. But for a plaintiff to have available Title IX remedies, they must first address a threshold requirement and show that the school is a recipient of federal financial assistance.[63] Recipients of federal financial assistance include all public K–12 schools, colleges, and universities, since these institutions receive direct funds from the federal government.[64] Many private schools cannot bypass Title IX and freely

58. 524 U.S. at 290–91.

59. *Id.* at 277.

60. 526 U.S. 629.

61. *Id.* at 649–50.

62. *Id.* at 633.

63. *See* 20 U.S.C. § 1681(a) (prohibiting sex discrimination within "any education program or activity receiving Federal financial assistance" only).

64. *See generally School Funding: Do Poor Kids Get Their Fair Share?*, URBAN INST. (May 2017), https://apps.urban.org/features/school-funding-do-poor-kids-get-fair-share [perma.cc/2R4S-5CJH] (providing data on federal funding of public schools); Matthew Richmond & Carrie Hahnel, *How Are Public Institutions of Higher Education Funded?*, BELLWETHER: DOLLARS & DEGREES (2024), https://bellwether.org/wp-content/uploads/2024/04/DollarsAndDegrees_1_Bellwether_April2024.pdf [perma.cc/92XT-2SCB] (discussing the revenue breakdown of public higher education institutions); *Public*

discriminate on the basis of sex because many simply accept federal grants or loans.[65]

However, courts have struggled to determine the exact scope of what constitutes federal financial assistance.[66] In *Grove City College v. Bell*, the Supreme Court rejected the argument that the scope of Title IX coverage extends only to institutions receiving direct federal aid, such as federal grants, recognizing forms of indirect assistance as federal financial assistance under Title IX.[67] Specifically, the Court held that a private university that does not otherwise receive federal financial assistance, but enrolls students who receive Department of Education Basic Educational Opportunity Grants to finance their education, is a recipient of federal financial assistance and must comply with Title IX.[68] The Court recognized that federal financial assistance encompasses indirect forms of assistance and that a recipient need not directly apply for the assistance to be characterized as a recipient of "Federal financial assistance" for purposes of Title IX.[69] In doing so, the Court declined to impose a limitation not

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School Revenue Sources, NAT'L CTR. FOR EDUC. STAT. (last updated May 2024), https://nces.ed.gov/programs/coe/indicator/cma/public-school-revenue [perma.cc/MW5Y-Z5JW] (finding that eleven percent of elementary and secondary public school revenues came from federal sources in the 2020–2021 school year). In 2020–2021, Title IX at a minimum covered approximately 98,577 public primary schools, 70,055 public secondary schools, and 1,892 public post-secondary institutions across the United States, unless an exception applied. *Digest of Education Statistics: Summary of Enrollment, Teachers, and Schools Table 105.50*, NAT'L CTR. FOR EDUC. STAT. (Sept. 2022), https://nces.ed.gov/programs/digest/d22/tables/dt22_105.50.asp [perma.cc/8KWQ-53MU].

65. *See, e.g.*, Richard Vedder, *There Are Really Almost No Truly Private Universities*, FORBES (Apr. 8, 2018), https://www.forbes.com/sites/richardvedder/2018/04/08/there-are-really-almost-no-truly-private-universities [perma.cc/E9QV-AG5C] (discussing private schools' reliance on federal funds). *See generally Title IX and Sex Discrimination*, *supra* note 8 (providing information on the scope of Title IX coverage across public and private schools).

66. *See* CHRISTINE J. BACK & JARED P. COLE, CONG. RSCH. SERV., R47109, FEDERAL FINANCIAL ASSISTANCE AND CIVIL RIGHTS REQUIREMENTS 18–24 (2022) (providing background on the federal financial assistance requirement in civil rights statutes and the difficulty in clearly defining its scope).

67. 465 U.S. 555, 569–70 (1984).

68. *Id.* at 563.

69. *Id.* at 564 ("[T]he language of § 901(a) contains no hint that Congress perceived a substantive difference between direct institutional assistance and aid received by a school through its students. . . . There is no basis in the statute for the view that only institutions that themselves apply for federal aid or receive checks directly from the Federal Government are subject to regulation.").

apparent on the face of Title IX, given the need to "accord [Title IX] a sweep as broad as its language."[70]

To further clarify the scope of Title IX and the other civil rights spending statutes after *Grove City*, the Supreme Court found a limit to the types of aid that establish Title IX liability where the beneficiary of financial assistance was not an intended recipient.[71] In *United States Department of Transportation v. Paralyzed Veterans of America*, the Court clarified that while "Title IX coverage extends to Congress' intended recipient, whether receiving the aid directly or indirectly, it does not . . . follow[] the aid past the recipient to those who merely benefit from the aid."[72] By focusing the analysis on the intended recipients of financial support, the Court held that commercial airlines are not "recipients" of federal grants offered to airport operators simply because they benefit from such grants, and thus are not within the scope of section 504 of the Rehabilitation Act of 1973, a civil rights statute analogous to Title IX.[73] The Court rejected the argument that airlines are recipients of federal financial assistance because the airport operators "convert the cash into runways," thereby assisting airlines.[74] Recognizing the intended beneficiaries of the grants as airport operators, and not airlines, the Court refused to extend the scope of federal financial assistance beyond Congress's intended recipient.[75]

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70. *Id.* (quoting N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 521 (1982)).

71. *See* U.S. Dep't of Transp. v. Paralyzed Veterans of Am., 477 U.S. 597 (1986). In *Paralyzed Veterans of America*, the Supreme Court analyzed the meaning of federal financial assistance for purposes of section 504 of the Rehabilitation Act. *See id.* at 603–12. Section 504 of the Rehabilitation Act and Title IX are analogous civil rights statutes, both of which require recipients of federal financial assistance to comply with nondiscrimination obligations and were enacted pursuant to Congress's Spending Clause authority. *See id.* at 605–06. Accordingly, the Supreme Court affords the civil rights spending statutes the same scope. *See id.* at 605–10 (relying on Title IX case law to determine the scope of section 504 of the Rehabilitation Act). *See generally* Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (prohibiting exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin); Rehabilitation Act of 1973, 29 U.S.C. § 794 (prohibiting the same on the basis of disability alone); Age Discrimination Act of 1975, 42 U.S.C. §§ 6101–07 (prohibiting the same on the basis of age).

72. 477 U.S. at 607.

73. *Id.* at 609. *See generally* 29 U.S.C. § 794(a) (prohibiting discrimination on the basis of disability alone by "program[s] or activit[ies] receiving Federal financial assistance").

74. *Paralyzed Veterans of Am.*, 477 U.S. at 606–07.

75. *Id.* at 607–10.

More recently, a federal district court again grappled with the scope of federal financial assistance, considering whether recipients of Paycheck Protection Program (PPP) loans authorized under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) must comply with Title IX.[76] Given the hardship the COVID-19 pandemic inflicted on schools, many private schools that did not otherwise receive federal funds accepted PPP loans.[77] The Small Business Administration (SBA)—the agency which implemented the program—made clear that receipt of SBA loans, including PPP loans, constitutes federal financial assistance, carrying with it the application of certain nondiscrimination obligations.[78] Consistent with SBA guidance, the court found that receipt of PPP loans does trigger such obligations prescribed by Title IX.[79]

Turning to the Department of Education's Title IX regulations has proved to be of little help in the search for Title IX's boundaries.[80] The regulations offer some guidance on what

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76. *See* Karanik v. Cape Fear Acad., Inc., 608 F. Supp. 3d 268 (E.D.N.C. 2022).

77. *Cf. id.* at 277–78 (detailing Cape Fear Academy's alleged receipt of a PPP loan).

78. *Frequently Asked Questions Regarding Participation of Faith-Based Organizations in the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loan Program (EIDL)*, U.S. SMALL BUS. ADMIN. 2–3 (2020), https://www.sba.gov/sites/default/files/2020-06/SBA%20Faith-Based%20FAQ%20Final-508.pdf [https://perma.cc/6VA6-UPW4].

79. *Karanik*, 608 F. Supp. 3d at 281. The defendants contended that it was not federal financial assistance because, while the loan was issued pursuant to the SBA's lending authority under the CARES Act, a private lender issued the loan. *Id.* at 282 (detailing and rejecting this argument). The court rejected this, reasoning that the intended recipients of the loan were the schools. *Id.*

80. *See* Khan, *supra* note 46, at 693 ("Some regulations offer up direction, but they too avoid offering a universal understanding."). Note that Title IX gives regulatory authority to each federal agency "which is empowered to extend Federal financial assistance to any education program or activity . . . ." 20 U.S.C. § 1682. As such, each agency that extends federal financial assistance to educational institutions can implement its own Title IX regulations. However, to ensure consistent application and enforcement of Title IX, twenty-one agencies promulgated what is known as the "Title IX Common Rule" which standardizes enforcement of Title IX. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 65 Fed. Reg. 52858 (Aug. 30, 2000) ("This final common rule provides for the enforcement of Title IX . . . by the agencies identified above."). The common rule is largely identical to the Department of Education's Title IX regulations given the Department's expertise and leadership in Title IX. *See id.* at 52859 ("[The Department of Education]'s regulations are the model for these Title IX regulations for

types of funding qualify as federal financial assistance as administered by the Department, defining "Federal financial assistance" to include direct grants or loans, as well as "[a]ny other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty."[81] The regulations clarify that a "[r]ecipient" is any entity "to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance . . . ."[82]

Some courts seek guidance from these regulations and interpret the absence of an explicit reference to tax exemptions from the regulation to mean the Department of Education does not consider it to be a form of federal financial assistance.[83] Others, however, do not afford weight to the regulations, finding the meaning of federal financial assistance to be unambiguous.[84] Further, while agency regulations are often useful in ascertaining the meaning of a statute, the level of deference courts will afford to the Department's regulations is now even more uncertain given the recent Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, which overruled *Chevron* and held that courts are not required to defer to reasonable agency

several reasons [including their] leadership role in Title IX enforcement . . . ."); *see also Title IX Legal Manual*, *supra* note 37, at ch. II.3 ("In the Title IX common rule, the substantive nondiscrimination obligations of recipients, for the most part, are identical to those established by the Department of Education under Title IX.").

81. 34 C.F.R. § 106.2 (2024). The Department of Education has authority to issue regulations to effectuate Title IX pursuant to 20 U.S.C. § 1682.

82. 34 C.F.R. § 106.2 (2024).

83. *See, e.g.*, Johnny's Icehouse, Inc. v. Amateur Hockey Ass'n of Ill., 134 F. Supp. 2d 965, 971–72 (N.D. Ill. 2001) ("What is conspicuously absent from that laundry list is income tax exemption.").

84. *See* E.H. *ex rel.* Herrera v. Valley Christian Acad., 616 F. Supp. 3d 1040, 1049–50 (C.D. Cal. 2022) (relying on the purpose of Title IX to determine what constitutes federal financial assistance, bypassing an analysis on the implementing regulations). Further, given the varying and inconsistent definitions of federal financial assistance across federal agencies, there still exists widespread confusion over what it means. *Compare* 34 C.F.R. § 106.2(g) (2024) (defining federal financial assistance in the Department of Education Title IX regulations), *with* 28 C.F.R. § 42.102(c) (2024) (defining federal financial assistance in Department of Justice Title VI regulations).

interpretations, and should instead exercise independent judgment in statutory interpretation.[85]

The confusion surrounding the scope of Title IX liability is a problem. While Title IX has ensured that students seeking an education at public institutions are protected, those at private institutions are left to wonder whether they are afforded the same protections under the statute.

C. THE INTERSECTION OF 501(C)(3) TAX-EXEMPT STATUS AND DISCRIMINATION IN SCHOOLS

Amidst the growing legal liability schools face regarding sexual harassment, private schools searched for ways to evade Title IX and shirk their responsibility to students. In particular, they turned to Title IX's Spending Clause language, recognizing that they could escape Title IX compliance so long as they are not recipients of federal financial assistance.[86] However, there is one significant federal government benefit that many of these private schools exploit, while still maintaining they do not receive federal financial assistance: the section 501(c)(3) tax exemption.[87]

1. Purpose of the 501(c)(3) Tax Exemption

Section 501(c)(3) of the Internal Revenue Code provides that corporations "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literacy, or educational purposes" are exempt from paying federal income taxes.[88] The Internal Revenue Service (IRS) grants such tax-exempt status to many churches, hospitals, schools, and relief organizations, among others.[89] In 2023, over one and a half million

85. 144 S. Ct. 2244, 2273 (2024). *See generally* Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984) (establishing "*Chevron* deference").

86. *See, e.g.*, Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, 96 F.4th 707, 710 (4th Cir. 2024) ("Concordia Prep moved to dismiss Appellees' Title IX claim on the ground that it was not subject to Title IX because it did not receive federal financial assistance.").

87. *See id.*; *see generally* 26 U.S.C. § 501(c)(3) (exempting educational and other organizations from federal income taxes).

88. 26 U.S.C. § 501(c)(3).

89. *See* INTERNAL REVENUE SERV., DEP'T OF THE TREASURY, NO. 557, TAX-EXEMPT STATUS FOR YOUR ORGANIZATION 26–30 (Feb. 26, 2025) (providing examples of 501(c)(3) organizations).

organizations claimed the 501(c)(3) tax exemption afforded to charitable organizations.[90]

Privileged tax treatment offered to charitable organizations can be traced back to 1894, when Congress sought to provide tax benefits to organizations that served desirable public purposes.[91] Since its enactment, the Supreme Court has articulated the rationale behind the exemption: These organizations confer a benefit on society, and the tax exemption serves to recognize that benefit.[92]

However, the Supreme Court imposed an important limitation on what organizations are entitled to the tax exemption in its landmark decision, *Bob Jones University v. United States*.[93] Known as the "public policy doctrine,"[94] the Court relied on the common law understanding that charities are meant to serve a public purpose and held that an organization seeking a 501(c)(3) tax exemption "must serve a public purpose and not be contrary

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90. *SOI Tax States – Tax-Exempt Organizations and Nonexempt Charitable Trusts – IRS Data Book Table 14*, INTERNAL REVENUE SERV. (last updated May 29, 2025), https://www.irs.gov/statistics/soi-tax-stats-tax-exempt-organizations-and-nonexempt-charitable-trusts-irs-data-book-table-14 [https://perma.cc/26UY-MSHR].

91. Tariff Act of 1894, ch. 349, § 32, 28 Stat. 509, 556 (1894) ("[N]othing herein contained shall apply to . . . corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes . . . .").

92. *See* Trinidad v. Sagrada Orden de Predicadores, 263 U.S. 578, 581 (1924) ("Evidently the exemption is made in recognition of the benefit which the public derives from corporate activities of the class named, and is intended to aid them when not conducted for private gain."); *see also* Boris I. Bittker & George K. Rahdert, *The Exemption of Nonprofit Organizations from Federal Income Taxation*, 85 YALE L.J. 299, 334 (1976) ("The rationale for exempting educational institutions from income taxes is substantially the same as that for exempting other charitable organizations."); Philip T. Hackney, *What We Talk About When We Talk About Tax Exemption,* 33 VA. TAX REV. 115, 122–24 (2013) (discussing the charitable tax exemption, available for "organizations [that] aid the poor, operate hospitals, advocate for the interests of members of business and labor, *educate children and adults*, operate pools and athletic facilities, and manage museums" (emphasis added)).

93. *See* 461 U.S. 574 (1983).

94. *See generally* MILAN N. BALL, CONG. RSCH. SERV., IF12788, THE PUBLIC POLICY DOCTRINE AND 501(C)(3) ORGANIZATIONS (2024) (explaining the origins of the public policy doctrine); Rev. Rul. 71-447, 1971-2 C.B. 230 ("[A] school not having a racially nondiscriminatory policy as to students is not 'charitable' within the common law concepts . . . and accordingly does not qualify as an organization exempt from Federal income tax.").

to established public policy."[95] The Court found that a nonprofit private school that discriminates on the basis of race is not entitled to a 501(c)(3) tax exemption because racial discrimination is contrary to public policy.[96]

2. Section 501(c)(3) Tax-Exempt Status and Title IX

Private educational institutions try to escape compliance with Title IX, claiming they do not receive federal financial assistance and thus are not subject to Title IX.[97] While they may not receive a direct federal grant or loan, many of these independent schools are organized as nonprofits, with their charitable mission being education.[98] Consequently, these schools can claim the 501(c)(3) tax exemption, thereby exempting them from federal income taxes.[99]

Accordingly, any endowments, tuition payments, and other fees a 501(c)(3) educational institution receives are tax-free.[100] These schools save significant amounts of money that they would otherwise have to spend on taxes, while diminishing the federal government's tax revenue.[101] Yet, the question remains whether

95. *Bob Jones Univ.*, 461 U.S. at 586. Scholars have generally recognized the purpose of exempting non-profit, charitable organizations from federal income tax as providing a benefit to organizations that serve a useful public purpose. *See, e.g.*, Hackney, *supra* note 92, at 125–26 (quoting *Bob Jones Univ.*, 461 U.S. at 588).

96. *Bob Jones Univ.*, 461 U.S. at 586, 592–95 ("It would be wholly incompatible with the concepts underlying tax exemption to grant the benefit of tax-exempt status to racially discriminatory educational entities . . . .").

97. *See, e.g.*, Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, 96 F.4th 707 (4th Cir. 2024) (finding that a tax-exempt, private school is not required to comply with Title IX and remanding for dismissal of plaintiffs' claims); Davis v. Winston Preparatory Sch., No. 21 Civ. 8209, 2025 WL 1795350, at *17 (S.D.N.Y. June 30, 2025) (dismissing the plaintiff's Title IX claim and stating that tax-exempt status is insufficient to find that a private school is subject to Title IX).

98. *See, e.g.*, *The Profit Myth: Understanding the Structure of New York Charter Schools*, N.Y.C. CHARTER SCH. CTR. (2011), https://oldsite.nyccharterschools.org/sites/default/files/resources/charter_school_profit_myth.pdf [https://perma.cc/WAQ4-9NEC] (noting, for example, that "[e]very single New York charter school is organized as a 501(c)(3) non-profit organization").

99. *See* TAX-EXEMPT STATUS FOR YOUR ORGANIZATION, *supra* note 89, at 26–30 (explaining the requirements for an educational organization to be granted 501(c)(3) status and highlighting private schools as a common educational organization).

100. 26 U.S.C. § 501(c)(3).

101. *See, e.g.*, Born & Looney, *supra* note 27, at 3 (estimating that in 2018 the tax-savings associated with private schools and universities was $1.7 billion).

an educational institution's 501(c)(3) tax-exempt status constitutes "Federal financial assistance" for purposes of Title IX.[102]

* * *

Part I of this Note presented the backdrop against which Title IX was enacted and its general framework, emphasizing its broad purpose: "to avoid the use of federal resources to support discriminatory practices."[103] This Part also introduced the enduring question of how to define the scope of "Federal financial assistance," and more specifically highlighted the intersection of 501(c)(3) tax-exempt status with Title IX applicability. Part II of this Note builds on this background by providing an overview of the current case law that seeks to answer whether a tax exemption constitutes federal financial assistance and outlining the various arguments that parties make.

II. INCONSISTENT INTERPRETATIONS ON WHETHER A TAX EXEMPTION CONSTITUTES FEDERAL FINANCIAL ASSISTANCE

The lack of clarity surrounding what constitutes "Federal financial assistance" has befuddled courts, leading to inconsistent applications of Title IX and a split in authority.[104] This Part presents the split in opinion, providing valuable framing to this Note's argument in Part III.

Section A describes the conflicting district court case law surrounding the scope of federal financial assistance for purposes of Title IX. It begins by presenting district court opinions that have held that federal financial assistance does not encompass tax-exempt status.[105] Next, this Section examines two

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102. While statistics on the difference in treatment between public and private schools may be helpful, there is little data available.

103. Cannon v. Univ. of Chicago, 441 U.S. 677, 704 (1979).

104. *Compare* Johnny's Icehouse, Inc. v. Amateur Hockey Ass'n of Ill., 134 F. Supp. 2d 965 (N.D. Ill. 2001) (holding that tax-exempt status does not fall within the meaning of federal financial assistance for purposes of Title IX), *with* E.H. *ex rel.* Herrera v. Valley Christian Acad., 616 F. Supp. 3d 1040 (C.D. Cal. 2022) (finding that tax-exempt status constitutes federal financial assistance under Title IX), *and* Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, No. RDB-20-3132, 2022 WL 2869041 (D. Md. July 21, 2022) (holding that federal financial assistance encompasses tax-exempt status and thus triggers Title IX liability), *rev'd and remanded*, 96 F.4th 707 (4th Cir. 2024).

105. *Johnny's Icehouse*, 134 F. Supp. 2d 965; Doe v. Horne, No. CV-23-00185-TUC-JGZ, 2023 BL 503895 (D. Ariz. Dec. 11, 2023). Later, this Note

recent district court opinions that held that the 501(c)(3) tax exemption is a form of federal financial assistance and thus triggers Title IX compliance.[106] Section B examines the recent Fourth Circuit decision, which found that tax-exempt status does not constitute "Federal financial assistance" for purposes of Title IX, consequently narrowing the scope of Title IX.[107]

A. CONFLICTING DISTRICT COURT CASE LAW ON WHETHER TAX-EXEMPT STATUS IS "FEDERAL FINANCIAL ASSISTANCE"

Since "Federal financial assistance" is undefined in Title IX and circuit courts have yet to thoroughly grapple with the scope of these words,[108] varying interpretations have emerged at the district court level.[109] District courts disagree as to whether federal income tax exemptions represent the kind of federal financial assistance envisioned by Title IX. This inconsistency is not only present in the Title IX context, but also in Title VI, the model statute for Title IX.[110] This question has recently resurfaced in two federal district courts which favored a broad interpretation of Title IX that includes tax exemptions as federal financial assistance, departing from a district court decision from twenty years prior.[111] Section A first examines district court

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further unpacks these analyses and critiques the arguments that these courts have relied upon. *See infra* Part III.

106. *See, e.g.*, *E.H. ex rel. Herrera*, 616 F. Supp. 3d 1040; *Buettner-Hartsoe*, 2022 WL 2869041.

107. Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, 96 F.4th 707 (4th Cir. 2024).

108. In 2024, the Fourth Circuit became the first appellate court to address this question. *Buettner-Hartsoe*, 96 F.4th at 714.

109. *See* cases cited *supra* note 104.

110. *Compare* Fulani v. League of Women Voters Educ. Fund, 684 F. Supp. 1185, 1192 (S.D.N.Y. 1988) ("[T]he League receives federal assistance indirectly through its tax exemption and directly through grants . . . ."), *and* McGlotten v. Connally, 338 F. Supp. 448, 461 (D.D.C. 1972) (finding tax-exempt status constitutes federal financial assistance in the Title VI context), *with* Stewart v. N.Y. Univ., 430 F. Supp. 1305, 1314 (S.D.N.Y. 1976) (finding federal tax benefits insufficient to trigger liability under Title VI). *See also* Grove City Coll. v. Bell, 465 U.S. 555, 566 (1984) (discussing how Title IX was modelled after Title VI of the Civil Rights Act of 1964); CHRISTINE J. BACK & JARED P. COLE, CONG. RSCH. SERV., R47109, FEDERAL FINANCIAL ASSISTANCE AND CIVIL RIGHTS REQUIREMENTS 1 (May 18, 2022) (providing background information on Title IX and the other nondiscrimination Spending Clause statutes).

111. *Compare E.H. ex rel. Herrera*, 616 F. Supp. 3d 1040 (finding that tax-exempt status constitutes federal financial assistance under Title IX), *and Buettner-Hartsoe*, 2022 WL 2869041 (holding that federal financial assistance

opinions that have interpreted Title IX narrowly, finding that tax exemptions do not constitute federal financial assistance. Then, this Section explores district court opinions that have found federal financial assistance to encompass the 501(c)(3) tax exemption.

1. Narrow Interpretation: Tax-Exempt Status is not Federal Financial Assistance

Prior to the most recent cases that have examined the scope of federal financial assistance in the Title IX context, some federal district courts limited federal financial assistance to more direct forms of aid and found that tax-exempt status is not sufficient to mandate Title IX compliance.[112]

Over twenty years ago, a federal district court in Illinois held that 501(c)(3) tax-exempt status is not a form of federal financial assistance and thus does not trigger liability under Title IX.[113] The plaintiffs in *Johnny's Icehouse, Inc. v. Amateur Hockey Association of Illinois, Inc.* alleged that a hockey association organized as a 501(c)(3) nonprofit that administered hockey programs on behalf of Illinois public schools discriminated against a girls' hockey team on the basis of sex, in violation of Title IX.[114] The court granted the defendants' motion to dismiss, finding that the association was not subject to the requirements under Title IX and rejecting the plaintiffs' argument that the hockey association was a recipient of federal financial assistance due to its tax-exempt status.[115] In its decision, the court

encompasses tax-exempt status and thus triggers Title IX liability), *rev'd and remanded*, 96 F.4th 707 (4th Cir. 2024), *with Johnny's Icehouse*, 134 F. Supp. 2d 965 (holding that tax-exempt status does not fall within the meaning of federal financial assistance for purposes of Title IX).

112. *See Johnny's Icehouse*, 134 F. Supp. 2d at 971 ("What is conspicuously absent from that laundry list is income tax exemption."); *Stewart*, 430 F. Supp. at 1314 (finding federal tax benefits insufficient to trigger liability under Title VI); *see also* Bachman v. Am. Soc'y of Clinical Pathologists, 577 F. Supp. 1257, 1263–64 (D.N.J. 1983) (holding that an organization's tax-exempt status does not make it a recipient of federal financial assistance for purposes of section 504 of the Rehabilitation Act, another nondiscrimination Spending Clause statute).

113. *Johnny's Icehouse*, 134 F. Supp. 2d at 965.

114. *Id.* at 966.

115. *Id.*

looked to the definition of "Federal financial assistance" in the Department of Education Title IX regulations, which state that:

> *Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Department:
>
> (1) A grant or loan of Federal financial assistance . . . .
>
> (2) A grant of Federal real or personal property . . . .
>
> (3) Provision of the services of Federal personnel.
>
> (4) Sale or lease of Federal property . . . .
>
> (5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.[116]

Central to the court's decision was the fact that tax-exempt status is "conspicuously absent from that laundry list . . . ."[117] The court reasoned that since the income tax exemption is not listed in the definition, it thus does not trigger Title IX compliance.[118] Further, in its cursory analysis, the court also emphasized that

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116. 34 C.F.R. § 106.2 (2024).

117. *Johnny's Icehouse*, 134 F. Supp. 2d at 971. The full definition in the Department of Education regulation reads:

> *Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Department:
>
> (1) A grant or loan of Federal financial assistance, including funds made available for:
>
> (i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and
>
> (ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.
>
> (2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.
>
> (3) Provision of the services of Federal personnel.
>
> (4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.
>
> (5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

34 C.F.R. § 106.2(g) (2024).

118. *Johnny's Icehouse*, 134 F. Supp. 2d at 971–72.

the scope of Title IX is limited to entities that receive federal money and does not apply to mere beneficiaries of a program.[119] The court cited the Supreme Court decision in *Paralyzed Veterans* to conclude that since tax-exempt status is not a direct transfer of money to a program, it does not fall under the definition of federal financial assistance.[120]

This analysis failed to recognize that in *Paralyzed Veterans*, the primary inquiry was to identify the intended recipient of the aid, not whether there was a direct transfer of money.[121] In *Grove City*, the Supreme Court made clear that indirect forms of assistance *are* sufficient for Title IX liability,[122] and *Paralyzed Veterans* further clarified that while indirect forms of assistance are sufficient, the relevant organization must have been the intended recipient of the assistance, rather than a mere beneficiary.[123] In *Grove City*, while the assistance to the school was indirect, the school was the intended beneficiary.[124] Whereas in *Paralyzed Veterans,* the airline was never the intended beneficiary of the aid—they merely benefited from the aid.[125]

Most recently, a federal district court in Arizona again found that an organization's 501(c)(3) tax-exempt status does not subject the organization to Title IX liability, granting the defendants' partial motion to dismiss.[126] The court rejected the plaintiffs' contention that the catch-all provision in the Department

119. *Id.* (citing U.S. Dep't of Transp. v. Paralyzed Veterans of Am., 477 U.S. 597, 606–07 (1986)).

120. *Id.*

121. *Paralyzed Veterans*, 477 U.S. at 606–07 (explaining that the key inquiry in identifying the scope to which Title IX extends is to identify the intended recipient of the assistance and that coverage does not extend to those who simply benefit from assistance).

122. Grove City Coll. v. Bell, 465 U.S. 555, 564 (1984) ("There is no basis in the statute for the view that only institutions that themselves apply for federal aid or receive checks directly from the Federal Government are subject to regulation.").

123. *Paralyzed Veterans*, 477 U.S. at 606–07.

124. *Id.* ("It was clear in *Grove City* that Congress' intended recipient was the college, not the individual students to whom the checks were sent from the Government.").

125. *Id.* at 607 (stating that the intended recipients of the funds were the airports, rather than the airlines). This Note will explore the distinction between beneficiaries and recipients, and posits that 501(c)(3) organizations are in fact the intended recipients of federal financial assistance. *See infra* Part III.A.1.

126. Doe v. Horne, No. CV-23-00185-TUC-JGZ, 2023 BL 503895, at *2 (D. Ariz. Dec. 11, 2023).

of Education's regulations encompasses tax-exempt status, arguing that the enumerated categories in the Department of Education regulations refer to affirmative assistance, and thus the catch-all provision should also only include affirmative grants of aid.[127] The court subsequently stated that tax-exempt status is not an affirmative grant because "the bestowment of 501(c)(3) status does not, by and in itself, provide the 501(c)(3) organization with federal money . . . . In fact, the benefit of not having to pay certain taxes is realized only if the tax-exempt organization earns income which would otherwise be taxed."[128]

While some district courts have excluded income tax exemption as a form of federal financial assistance,[129] recently two district courts have not found this reasoning persuasive.[130]

2. Broad Interpretation: Tax-Exempt Status is Federal Financial Assistance

In July 2022, over twenty years after the decision in *Johnny's Icehouse*, two federal district courts rejected the notion that federal financial assistance does not include a tax exemption. Instead, these courts affirmed Title IX's expansive scope and found that 501(c)(3) tax-exempt status qualifies as federal financial assistance for purposes of Title IX.[131]

In *E.H. ex rel. Herrera v. Valley Christian Academy*, a federal district court in the Central District of California examined whether a high school football player could bring a Title IX claim against a private school that barred her from playing on its

127. *Id.* at *3.

128. *Id.*

129. Note that in *Bachman v. American Society of Clinical Psychologists*, the federal district court in New Jersey also found that tax-exempt status of a school is not a form of federal financial assistance. 577 F. Supp. 1257, 1264 (D.N.J. 1983). However, the court's reasoning relied on the argument that federal financial assistance only encompasses direct federal aid which the Supreme Court subsequently rejected in *Grove City*. *See* Grove City Coll. v. Bell, 465 U.S. 555, 569–70 (1984).

130. *See* E.H. *ex rel.* Herrera v. Valley Christian Acad., 616 F. Supp. 3d 1040, 1050 (C.D. Cal. 2022) (finding that tax-exempt status constitutes federal financial assistance under Title IX); Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, No. RDB-20-3132, 2022 WL 2869041 (D. Md. July 21, 2022) (holding that a tax exemption is sufficient to subject a school to Title IX obligations), *rev'd and remanded*, 96 F.4th 707 (4th Cir. 2024).

131. *E.H. ex rel. Herrera*, 616 F. Supp. 3d at 1050; *Buettner-Hartsoe*, 2022 WL 2869041, at *3.

premises against its team.[132] The defendant school was a private religious school organized as a nonprofit, affording it federal tax-exempt status pursuant to 26 U.S.C. § 501(c)(3).[133] In answering whether the school is required to comply with Title IX obligations, the district court first sought guidance from existing case law in both the Title IX and Title VI contexts.[134] The court referenced *Johnny's Icehouse*, recognizing that at least one district court had previously interpreted federal financial assistance narrowly under Title IX to not extend to federal income tax exemption.[135] However, the court also examined two district court cases which had found that tax-exempt status constitutes federal financial assistance under Title VI,[136] which is widely recognized as the model statute for Title IX and similarly extends only to recipients of federal financial assistance.[137] Consequently, relying on existing district court case law proved of little use given conflicting case law regarding the scope of federal financial assistance in the Title VI and Title IX contexts.[138]

Accordingly, the *Herrera* court relied on the purpose of Title IX to determine the scope of federal financial assistance.[139] The court emphasized that the purpose of Title IX was to eliminate discrimination on the basis of sex in educational programs that benefit from federal financial assistance, and to ensure that

132. *E.H. ex rel. Herrera*, 616 F. Supp. 3d at 1044.

133. *Id.* at 1048.

134. *Id.* at 1050.

135. *Id.* (citing Johnny's Icehouse, Inc. v. Amateur Hockey Ass'n of Ill., 134 F. Supp. 2d 965, 972 (N.D. Ill. 2001)).

136. *Id.* (first citing McGlotten v. Connally, 338 F. Supp. 448, 461 (D.D.C. 1972); and then citing Fulani v. League of Women Voters Educ. Fund, 684 F. Supp. 1185, 1192 (S.D.N.Y. 1988)).

137. 42 U.S.C. § 2000d; *see, e.g.*, Grove City Coll. v. Bell, 465 U.S. 555, 566 (1984) (explaining that Title VI served as the blueprint for Title IX).

138. *Compare Johnny's Icehouse*, 134 F. Supp. 2d at 972 (holding that tax-exempt status is insufficient to subject a school to Title IX requirements), *with McGlotten*, 338 F. Supp. at 461 (holding that "assistance provided through the tax system is within the scope of Title VI"), *and Fulani*, 684 F. Supp. at 1192 (holding that receiving financial assistance through tax-exempt status is sufficient to enforce Title VI and Title IX requirements).

139. *E.H. ex rel. Herrera*, 616 F. Supp. 3d at 1050 ("Absent any controlling precedent nor 'strong legislative history to the contrary,' the Court finds that 'the plain purpose of the statute is controlling.'" (citing *McGlotten*, 338 F. Supp. at 461)).

federal money is not used to fund discriminatory programs.[140] The court reasoned that because of this purpose, the distinction between distribution methods are unhelpful and not pertinent to the inquiry.[141] As such, the court held that a school's tax-exempt status confers upon it a significant federal financial benefit, and thus is a form of federal financial assistance that compels the school to satisfy Title IX obligations.[142]

In *Buettner-Hartsoe v. Baltimore Lutheran High School Association*, five former students of a private, Lutheran high school sued the school in 2020.[143] The students alleged that they reported instances of sexual harassment and assault to school officials, who failed to investigate, report, or take meaningful action to address such assault and harassment, resulting in a hyper-sexualized school culture, in violation of Title IX.[144] The school contended that it was not a recipient of federal financial assistance and thus was not subject to the requirements of Title IX.[145] A Maryland district court denied the school's motions, finding that its 501(c)(3) tax-exempt status is a form of federal financial assistance and that it must comply with Title IX.[146]

In its analysis, the court first considered *Grove City*, which recognized indirect forms of assistance as federal financial assistance and found "no basis in the statute for the view that only institutions that themselves apply for federal aid or receive checks directly from the federal government are subject to regulation [under Title IX]."[147] Keeping in mind that indirect financial assistance is within the scope of Title IX, the court turned its attention to the overall purpose of tax exemptions.[148] In *Regan v. Taxation with Representation of Washington*, the Supreme Court recognized tax-exempt status as a valuable benefit

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140. *Id.*; *see also* Cannon v. Univ. of Chi., 441 U.S. 677, 704 (1979) (referring to a core purpose of Title IX as being to ensure federal resources are not used to support discriminatory practices).

141. *E.H. ex rel. Herrera,* 616 F. Supp. 3d at 1050 (citing *McGlotten*, 338 F. Supp. at 461).

142. *Id.*

143. No. RDB-20-3132, 2022 WL 2869041, at *1 (D. Md. July 21, 2022), *rev'd and remanded*, 96 F.4th 707 (4th Cir. 2024).

144. *Id.*; *see* 20 U.S.C. § 1681(a) (prohibiting discrimination on the basis of sex under education programs).

145. *Buettner-Hartsoe*, 2022 WL 2869041, at *1.

146. *Id.* at *6.

147. *Id.* at *4 (quoting Grove City Coll. v. Bell, 465 U.S. 555, 564 (1984)).

148. *Id.*

to organizations that is administered by the tax system, akin to a type of congressional subsidy.[149] The Court explained that "[a] tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income."[150] In effect, the tax exemption frees up funds that would otherwise be unavailable to an organization if it was not provided this tax benefit.[151]

Recognizing the important policy implications of granting an organization 501(c)(3) tax-exempt status, the court also highlighted the pivotal decision in *Bob Jones University v. United States* and argued that an organization that discriminates on the basis of sex cannot be said to "demonstrably serve and be in harmony with the public interest."[152] Thus, a school cannot continue discriminatory practices while also claiming the charitable organization tax exemption.[153] Taking into account Supreme Court jurisprudence and the overall purpose of Title IX,[154] the court held that tax exemption is a form of federal financial assistance and a private school "cannot avail itself of federal tax exemption but not adhere to the mandates of Title IX."[155]

Additionally, both *Herrera* and *Buettner-Hartsoe* reference two prior district court decisions that acknowledged tax-exempt

149. 461 U.S. 540, 544 (1983).

150. *Id.*

151. *See* Stanley S. Surrey, *Federal Income Tax Reform: The Varied Approaches Necessary to Replace Tax Expenditures with Direct Governmental Assistance*, 84 HARV. L. REV. 352, 384 (1970) (discussing how the charitable deductions function as federal financial assistance); *see also* Richard L. Schmalbeck, *The Impact of Tax-Exempt Status: The Supply-Side Subsidies*, 69 LAW & CONTEMP. PROBS. 121, 130–32 (2006) (referring to tax exemptions as a form of subsidy); Daniel Halperin, *Is Income Tax Exemption for Charities a Subsidy?*, 64 TAX L. REV. 283, 284 (2011) (arguing that tax exemptions amount to subsidies); Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 674 (1970) ("Granting tax exemptions to churches necessarily operates to afford an indirect economic benefit . . . .").

152. *Buettner-Hartsoe*, 2022 WL 2869041, at *4 (quoting Bob Jones Univ. v. United States, 461 U.S. 574, 592 (1983)).

153. *Id.*; *see also* Green v. Connally, 330 F. Supp. 1150, 1161 (D.D.C. 1971) ("[T]he general and well-established principle that the Congressional intent in providing tax deductions and exemptions is not construed to be applicable to activities that are either illegal or contrary to public policy.").

154. *See* Cannon v. Univ. of Chicago, 441 U.S. 677, 704 (1979) ("Congress wanted to avoid the use of federal resources to support discriminatory practices . . . ."); *see also* Franklin v. Gwinnett Cnty. Pub. Schs., 503 U.S. 60, 75 (1992) ("Congress surely did not intend for federal moneys to be expended to support the intentional actions it sought by statute to proscribe.").

155. *Buettner-Hartsoe*, 2022 WL 2869041, at *3.

status as within the scope of federal financial assistance for purposes of Title VI.[156] In *McGlotten v. Connally*, the District Court for the District of Columbia found that the purpose of Title VI—to combat racial discrimination in programs receiving federal financial assistance—compels the conclusion that "assistance provided through the tax system is within the scope of Title VI of the 1964 Civil Rights Act . . . ."[157] Ten years later, the federal district court for the Southern District of New York contemplated tax-exempt status as a form of federal financial assistance in both the Title VI and Title IX contexts.[158] In *Fulani v. League of Women Voters Education Fund*, the plaintiff alleged that the League of Women Voters criterion for participation in the primary debates were discriminatory against her on the basis of race and sex.[159] Here, the court cited the organization's tax-exempt status as a form of federal financial assistance, thus conferring upon it Title VI liability.[160]

While the decisions in *Herrera* and *Buettner-Hartsoe* seemed to indicate a growing interpretation of Title IX that is aligned with its broad directive,[161] the Fourth Circuit reversed the Maryland district court opinion and thereby narrowed the scope of Title IX.[162]

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156. *See* E.H. *ex rel.* Herrera v. Valley Christian Acad., 616 F. Supp. 3d 1040, 1050 (C.D. Cal. 2022) (first citing McGlotten v. Connally, 338 F. Supp. 448, 461 (D.D.C. 1972); and then citing Fulani v. League of Women Voters Educ. Fund, 684 F. Supp. 1185, 1192 (S.D.N.Y. 1988)); *Buettner-Hartsoe*, 2022 WL 2869041, at *4 (first citing *McGlotten*, 338 F. Supp. at 461; and then citing *Fulani*, 684 F. Supp. at 1192). *See, e.g.*, Grove City Coll. v. Bell, 465 U.S. 555, 566 (1984) (explaining that Title VI served as the blueprint for Title IX).

157. 338 F. Supp. at 461.

158. *See Fulani*, 684 F. Supp. 1185.

159. *Id.* at 1186.

160. *Id.* at 1192 ("[T]he League receives federal assistance indirectly through its tax exemption and directly through grants from the Department of Energy and the EPA."). While the organization received direct federal grants in addition to maintaining tax-exempt status, thus making it not a dispositive factor in this decision, it is still noteworthy that the court considered the organization's tax-exempt status as one form of federal financial assistance they received.

161. Note too that in 1999, the Eleventh Circuit hinted at the idea that tax-exempt status may qualify as federal financial assistance under Title IX, stating in a footnote that "appellant's allegation that tax-exempt status constitutes 'Federal financial assistance' is neither immaterial nor wholly frivolous." M.H.D. v. Westminster Schs., 172 F.3d 797, 802 n.12 (11th Cir. 1999).

162. Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, 96 F.4th 707, 714–15 (4th Cir. 2024).

B. THE FOURTH CIRCUIT'S NARROW INTERPRETATION OF "FEDERAL FINANCIAL ASSISTANCE"

In 2024, the Fourth Circuit became the first circuit court to directly weigh in on whether federal financial assistance encompasses tax-exempt status in the Title IX context.[163] The Fourth Circuit granted the school's interlocutory appeal in *Buettner-Hartsoe* to address this question and ultimately reversed the 2022 district court decision.[164] The Fourth Circuit held that a school's tax-exempt status does not make it a recipient of federal financial assistance for purposes of Title IX.[165]

In finding that tax-exempt status does not trigger liability under Title IX, the court focused on the text of the statute[166] and stated that "receiving Federal financial assistance" means "taking or accepting federal financial aid, help, or support"[167] and should be limited to affirmative forms of assistance.[168] The court reasoned that to "receive" financial assistance requires funds to actually change hands, and that tax-exempt status merely withholds a tax burden and is not an affirmative transfer of funds.[169] To arrive at its conclusion that "receiving" federal financial aid requires affirmatively taking or accepting aid, the court also relied on the Supreme Court's decision in *Paralyzed Veterans*, which held that "receiving Federal financial assistance" only applies to the intended recipient of the aid, not to those who solely benefit from the aid.[170] The Fourth Circuit acknowledged that a tax exemption represents a significant tax benefit,[171] but reasoned that because there is no direct transfer of funds, the school can only be understood to be a beneficiary, not a recipient of financial assistance.[172]

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163. *See id.* at 714.

164. *Id.* at 710.

165. *Id.*

166. *Id.* at 711–12 (examining the plain text of Title IX).

167. *Id.* at 712.

168. *Id.* at 714.

169. *Id.* at 714–15.

170. *See id.* at 713 (noting that Title IX extends to "those who receive the aid, but does not extend as far as those who benefit from it" (quoting U.S. Dep't of Transp. v. Paralyzed Veterans of Am., 477 U.S. 597, 607 (1986))).

171. *Id.* at 713 ("Tax exempt status is a tax benefit." (citing Bob Jones Univ. v. United States, 461 U.S. 574, 587–88 (1983))).

172. *Id.* at 714.

The court did not find persuasive the district court's analysis, which reasoned that tax-exempt status is akin to the kind of indirect grants that the Supreme Court already found does trigger Title IX compliance in *Grove City*.[173] The Fourth Circuit distinguished tax-exempt status from the indirect grants at issue in *Grove City*, reasoning that in *Grove City* there was still an affirmative grant of aid to the school, albeit indirect, whereas tax-exempt status "merely allows organizations to keep the money they otherwise would owe in income tax."[174] In finding that "receiving Federal financial assistance" requires an affirmative grant of aid, the court stated that "tax exemption is distinguishable from the federal grants in *Grove City* as tax exemption is an indirect benefit, as opposed to federal financial aid through indirect means."[175]

The Fourth Circuit's holding in *Buettner-Hartsoe* relied on the notion that aid must be an affirmative grant[176] and emphasized that merely benefitting from federal funding does not trigger Title IX compliance to arrive at its conclusion that tax-exempt status does not constitute federal financial assistance under Title IX.[177]

* * *

In the decades since its passage, federal courts at the district-court level have both broadened and narrowed the scope of Title IX, and scholars similarly have struggled to reach a consensus.[178] Notably, some courts are of the view that an expansive interpretation of federal financial assistance that encompasses tax-exempt status is appropriate and best effectuates the

173. Grove City Coll. v. Bell, 465 U.S. 555, 563–64 (1984).

174. *Buettner-Hartsoe*, 96 F.4th at 714.

175. *Id.*

176. *Id.*

177. *Id.* at 713.

178. *Compare* Sam Kiehl, *From Tax-Exemptions to Title IX: Independent Schools and the § 501(c)(3) Conundrum*, 14 WAKE FOREST L. REV. ONLINE 1 (2024), https://www.wakeforestlawreview.com/wp-content/uploads/2024/02/14-Wake-Forest-L.-Rev.-Online-1.pdf [https://perma.cc/5DTP-YMZQ] (arguing Congress should amend Title IX to make clear that 501(c)(3) tax exemption is federal financial assistance), *and* Khan, *supra* note 46, at 691–94 (arguing for an expansive interpretation of federal financial assistance), *with* William A. Jordan, Note, *Why 501(c)(3) Tax-Exempt Status Does Not Count as Federal Financial Assistance Under Title IX*, 109 IOWA L. REV. 1807 (2024) (conducting a statutory analysis of Title IX and concluding that federal financial assistance does not encompass a tax exemption).

purpose of Title IX.[179] Other courts have held that federal financial assistance does not include the 501(c)(3) tax exemption, adopting a narrow interpretation and requiring an affirmative grant of aid.[180] Only in 2024 did the first federal appellate court consider this question, and to the detriment of Title IX and its promise to students, the court narrowed Title IX's scope, finding that 501(c)(3) tax-exempt status does not constitute federal financial assistance for purposes of Title IX.[181] Part III argues that both the plain text and legislative history of Title IX make clear that federal financial assistance extends to tax-exempt status, therefore subjecting 501(c)(3) schools to Title IX liability.

III. TAX-EXEMPT STATUS CONSTITUTES "FEDERAL FINANCIAL ASSISTANCE" UNDER TITLE IX

Part III of this Note conducts a statutory analysis of Title IX, arguing that tax-exempt status constitutes federal financial assistance, and as a result, Title IX compliance extends to private schools organized as 501(c)(3) nonprofits. Section A first considers the text of the statute, applying various tools of statutory analysis. This includes a brief analysis of the Title IX regulations that define federal financial assistance, arguing that the definition encompasses tax exemptions. Next, Section B utilizes methods of statutory interpretation that go beyond the text of the statute to discern congressional intent, arguing that Title IX must be afforded a broad scope and should not be limited to exclude tax-exempt status.[182] This Note concludes by arguing that interpreting federal financial assistance to include tax-exempt status best comports with Title IX's broad, remedial purpose.

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179. *See, e.g.*, E.H. *ex rel.* Herrera v. Valley Christian Acad., 616 F. Supp. 3d 1040, 1050 (C.D. Cal. 2022); Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, No. RDB-20-3132, 2022 WL 2869041, at *1 (D. Md. July 21, 2022), *rev'd and remanded*, 96 F.4th 707 (4th Cir. 2024).

180. Johnny's Icehouse, Inc. v. Amateur Hockey Ass'n of Ill., 134 F. Supp. 2d 965 (N.D. Ill. 2001); Doe v. Horne, No. CV-23-00185-TUC-JGZ, 2023 BL 503895, at *2–3 (D. Ariz. Dec. 11, 2023).

181. *Buettner-Hartsoe*, 96 F.4th at 707.

182. N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 521 (1982) ("There is no doubt that 'if we are to give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language.'" (alteration in original) (quoting United States v. Price, 383 U.S. 787, 801 (1966))).

A. A TEXTUAL ANALYSIS OF TITLE IX AND "FEDERAL FINANCIAL ASSISTANCE"

Justice Kagan has astutely observed that "we're all textualists now,"[183] and as such, when tasked with interpreting a statute, the starting point is the language of the statute itself.[184] Only after an analysis of the statutory text do some jurists look to other indicia of statutory meaning.[185] Accordingly, in ascertaining the meaning of Title IX, the analysis begins with examining the following words: "Federal financial assistance."[186] There are many canons of statutory interpretation that seek to understand the text of a statute, including those which use dictionaries and semantic canons, an analysis of statutory context, and references to existing case law.[187] Of most importance in statutory interpretation is the ordinary meaning rule, which states that the text of the statute should be taken in its natural and ordinary meaning.[188]

Three textually based arguments demonstrate that the ordinary meaning of "Federal financial assistance" includes tax exemptions. Subsection 1 first argues that the plain meaning of federal financial assistance is broad and encompasses all forms

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183. Harvard L. Sch., *The 2015 Scalia Lecture: A Dialogue with Justice Elena Kagan on the Reading of Statutes*, YOUTUBE (Nov. 25, 2015), https://www.youtube.com/watch?v=dpEtszFT0Tg.

184. *See* U.S. Dep't. of Transp. v. Paralyzed Veterans of Am., 477 U.S. 597, 604 (1986) ("The starting point of any inquiry into the application of a statute is the language of the statute itself." (citing Reiter v. Sonotone Corp., 442 U.S. 330, 337 (1979))).

185. *Compare* NLRB v. SW Gen., Inc., 580 U.S. 288, 305 (2017) (concluding that the text of the disputed statute was clear so the Court "need not consider extra-textual evidence"), *with id.* at 320–27 (Sotomayor, J., dissenting) (analyzing the text of the statute and then considering legislative history to inform its meaning and ultimately reach a different conclusion from the majority).

186. 20 U.S.C. § 1681(a).

187. *See, e.g.*, *NLRB*, 580 U.S. at 320 (Sotomayor, J., dissenting) (considering statutory context); *see also* New Prime Inc. v. Oliveira, 139 S. Ct. 532, 539–44 (2019) (using dictionary definitions, semantic canons, statutory context, and precedent to ascertain the ordinary meaning of the Federal Arbitration Act).

188. *See* Bostock v. Clayton Cnty., 140 S. Ct. 1731, 1738 (2020) (instructing courts to first examine the text of a statute and discern its ordinary meaning); ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 69 (2012) ("Words are to be understood in their ordinary, everyday meanings . . . ."); *see also* VALERIE C. BRANNON, CONG. RSCH. SERV., R45153, STATUTORY INTERPRETATION: THEORIES, TOOLS, AND TRENDS 19 (2018) ("Courts often begin by looking for the 'ordinary' or 'plain' meaning of the statutory text.").

of financial aid, affirmative or not. Subsection 2 then applies the general-terms canon of statutory interpretation, which instructs courts to afford general terms their full and fair scope, to further demonstrate that the ordinary meaning of Title IX includes tax-exempt organizations within its scope. Subsection 3 argues that Title IX's statutory context similarly proves that tax-exempt organizations are subject to its nondiscrimination requirements. Finally, Subsection 4 responds to the argument that Title IX regulations foreclose tax exemptions as a form of federal financial assistance.

1. The Plain Text of Title IX Extends Liability to Tax-Exempt Schools

In examining the plain text of Title IX, it becomes apparent that the text justifies a broad interpretation that encompasses tax exemptions as federal financial assistance. This Subsection analyzes the plain text of Title IX and employs dictionary definitions to assist in determining the statute's meaning. This Subsection first analyzes the plain text of "Federal financial assistance," and then what it means to "receive" federal financial assistance, ultimately finding that a reading of Title IX that excludes tax-exempt status as a form of federal financial assistance violates the plain text and ordinary meaning of "receiving Federal financial assistance."

a. "Federal Financial Assistance"

The plain text of "Federal financial assistance," a notably broad phrase, surely contemplates more than just direct loans. If Congress wished to restrict the statute's scope, they would have drafted Title IX using more narrow language and substituted "loan" or "grant" for the word "assistance."[189] The Supreme Court echoed this sentiment when it declined to limit the scope of Title IX to only students in *North Haven Board of Education v. Bell*, and instead afforded the statute as broad a scope as its

189. *See* N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 521 (1982) (discussing how Congress could have substituted language to change the scope of a statute). A long-standing canon of statutory interpretation posits that Congress drafts statutes deliberately, assigning meaning to the words it chooses. *See* Nina A. Mendelson, *Change, Creation, and Unpredictability in Statutory Interpretation: Interpretive Canon Use in the Roberts Court's First Decade*, 117 MICH. L. REV. 71, 81 (2018) (discussing how textual canons of interpretation assume Congress drafts legislation deliberately).

language.[190] Likewise, Congress urged courts to give Title IX "the broadest interpretation"[191] possible and emphasized the importance in applying Title IX "comprehensively and in a manner designed to eliminate discrimination on the basis of sex . . . throughout the American educational system."[192]

Dictionary definitions help underscore this conclusion and cast light on the ordinary meaning of this phrase.[193] Critical to understanding this phrase is the meaning of "assistance," which means "aid," "help," or "support."[194] And "financial," which modifies assistance, means "relating to finance."[195] Black's Law Dictionary defines "financial assistance" as "[a]ny economic benefit . . . given by one person or entity to another," which highlights Title IX's expansive terminology.[196] Of significance is Congress's use of such sweeping language that appears to include numerous arrangements that provide any type of economic benefit, whether that be an affirmative grant of funds or not.[197]

In finding indirect forms of assistance sufficient to subject an entity to Title IX, the Supreme Court previously recognized that the broad language contained in the statute indicates that Congress intended to "encompass *all* forms of federal aid."[198] Importantly, the Court has previously referred to tax exemptions as equivalent to a cash grant or subsidy, thereby recognizing the significant benefit it confers upon an organization.[199] In making

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190. 456 U.S. at 521.

191. S. REP. NO. 100-64, at 7 (1987), *as reprinted in* 1988 U.S.C.C.A.N. 3, 9.

192. H.R. Res. 190, 98th Cong. (1983).

193. Specifically helpful are dictionaries published close in time to when the statute was enacted. *See, e.g.*, Sandifer v. U.S. Steel Corp., 571 U.S. 220, 227 (2014) (using the dictionary definition from the era in which the statute was enacted to ascertain statutory meaning).

194. WEBSTER'S NEW COLLEGIATE DICTIONARY 54 (1961) (defining "assistance").

195. *Financial*, MERRIAM-WEBSTER DICTIONARY (last updated Sept. 4, 2025), https://www.merriam-webster.com/dictionary/financial [https://perma.cc/P6VE-6RDT].

196. *Financial Assistance*, BLACK'S LAW DICTIONARY (12th ed. 2024).

197. Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 674 (1970) ("Granting tax exemptions to churches necessarily operates to afford an indirect economic benefit . . . .").

198. Grove City Coll. v. Bell, 465 U.S. 555, 564 (1984) (quoting Grove City Coll. v. Bell, 687 F.2d 684, 691 (3d Cir. 1982)).

199. Regan v. Tax'n with Representation of Wash., 461 U.S. 540, 544 (1983) (describing tax exemptions as "a form of subsidy that is administered through the tax system").

this reference, the Court recognizes that 501(c)(3) tax-exempt status enables organizations to gain available funds in the amount of the tax burden from which they are relieved.[200] In the Title VI context, the United States District Court for the District of Columbia recognized tax benefits, including tax-exempt status, as substantial economic support from the government and found the difference between affirmative tuition grants and tax benefits "to be only a difference of degree."[201]

Finding the difference between affirmative grants and tax benefits to be insignificant echoes a commonly used principle in interpreting the Tax Code, the precise statute which grants the section 501(c)(3) tax benefit.[202] Known as the substance-over-form doctrine, this principle holds that the substance of a transaction, not its technical form, controls tax liability.[203] As announced in *Grove City*, "[n]othing in [Title IX] suggests that Congress elevated form over substance by making the application of the nondiscrimination principle dependent on the manner in which a program or activity receives federal assistance."[204] The 501(c)(3) tax exemption serves to afford a type of subsidy or economic benefit to organizations that serve a charitable purpose; Congress simply chose to administer that benefit through the Tax Code.[205]

The Fourth Circuit incorrectly stated that "assistance" connotes a financial grant, interpreting the phrase narrowly despite the overwhelming guidance from the Supreme Court to afford

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200. *Id.*

201. Green v. Kennedy, 309 F. Supp. 1127, 1134 (D.D.C. 1970); *see also* David A. Brennen, *Tax Expenditures, Social Justice, and Civil Rights: Expanding the Scope of Civil Rights Laws to Apply to Tax-Exempt Charities*, 2001 BYU L. REV. 167, 212 (2001) ("[T]here is no logical . . . reason for treating the tax benefits received by charities as anything other than equivalent to government grants or loans for purposes of interpreting relevant civil rights statutes.").

202. *See* 26 U.S.C. § 501(c)(3).

203. Summer Desloge, Note, *Clarity or Confusion?: The Common Law Economic Substance Doctrine and Its Statutory Counterpart*, 46 J. LEGIS. 326, 336 (2019) (describing the long-established substance-over-form doctrine).

204. Grove City Coll. v. Bell, 465 U.S. 555, 564 (1984).

205. *See* E.H. *ex rel.* Herrera v. Valley Christian Acad., 616 F. Supp. 3d 1040, 1050 (C.D. Cal. 2022) ("Distinctions as to the method of distribution of federal funds or their equivalent seem beside the point . . . ." (quoting McGlotten v. Connally, 338 F. Supp. 448, 461 (D.D.C. 1972))); *see also Green*, 309 F. Supp. at 1134 (referring to distinctions between tuition grants and tax benefits as an inconsequential difference of degree).

Title IX as broad a meaning as possible.[206] Assistance is not limited to the affirmative transfer of funds, as the Fourth Circuit erroneously believes. Rather, it encompasses any type of financial support that the federal government may provide to an entity.[207]

b. "Receiving"

Some courts argue that educational organizations organized as 501(c)(3) nonprofits cannot be said to "receive" federal financial assistance if there are no funds changing hands.[208] However, that interpretation of what it means "to receive" or to be a "recipient" is too narrow. To "receive" means "to take," "come into possession," and "accept with approval."[209] While the definition of "to receive" of course includes affirmative transfers of funds, it also leaves room for more passive actions such as "accepting" or consenting to being offered something.

In the case of 501(c)(3) status, an organization only becomes eligible for the tax exemptions after taking affirmative steps to apply for such status.[210] Only once the IRS deems the institution as a qualifying charitable organization and eligible for the exemption does it receive financial support in the form of a tax

206. *See* Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, 96 F.4th 707, 714 (2024) (stating that "assistance" only contemplates affirmative grants of aid). *But see* N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 521 (1982) (according Title IX "a sweep as broad as its language" (quoting United States v. Price, 383 U.S. 787, 801 (1966))).

207. *See* James C. Todd, Comment, *Title IX of the 1972 Education Amendments: Preventing Sex Discrimination in Public Schools*, 53 TEX. L. REV. 103, 110 (1974) ("If federal aid benefits a discriminatory program by freeing funds for the program, the aid assists it.").

208. *See Buettner-Hartsoe*, 96 F.4th at 712 ("[T]he phrase 'receiving Federal financial assistance' means taking or accepting federal financial aid, help, or support. . . . Title IX contemplates the transfer of funds from the federal government to an entity."); Gardner v. Sage Ridge School, No. 3:24-CV-00403-CLB, 2025 WL 1695131, at *6 (D. Nev. June 17, 2025) (emphasizing that a tax exemption is "not an affirmative transfer of money").

209. *See Receive*, BLACK'S LAW DICTIONARY (12th ed. 2024); *Receive*, BLACK'S LAW DICTIONARY (4th ed. 1951) (defining "receive" as "[t]o take into possession and control; accept custody of").

210. *See, e.g.*, *Applying for Tax Exempt Status*, INTERNAL REVENUE SERV. (last updated Aug. 20, 2025), https://www.irs.gov/charities-non-profits/applying-for-tax-exempt-status [https://perma.cc/L23H-ZE7L] (providing forms that organizations must complete prior to obtaining tax-exempt status).

exemption and recognize the gain in available funds.[211] Organizations accept the assistance offered via a tax exemption when they apply and are approved for 501(c)(3) status, and are free to terminate participation in the federal assistance program and avoid the Title IX requirements if they so desire.[212] Moreover, section 501(c)(3) of the Tax Code is an affirmative policy that recognizes certain organizations as beneficial to the public.[213] Maintaining tax-exempt status depends on ongoing compliance with certain requirements, including that the organization is not contrary to public policy and annual tax filings.[214] The IRS can deny or revoke 501(c)(3) status and the associated tax exemption for failure to meet these requirements.[215] An organization that takes the purposeful steps to apply for tax-exempt status and is affirmatively granted tax-exempt status by the IRS continues to

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211. *Exempt Organization – Exemption Application*, INTERNAL REVENUE SERV. (last updated Aug. 20, 2025), https://www.irs.gov/charities-non-profits/exempt-organization-exemption-application [https://perma.cc/X8TM-FUK9] (describing the process for applying for tax-exempt status).

212. U.S. Dep't of Transp. v. Paralyzed Veterans of Am., 477 U.S. 597, 605 (1986) (noting the contractual nature of Title IX, which effectively enters the recipient and Congress into an arrangement that triggers coverage under Title IX).

213. *See* TAX-EXEMPT STATUS FOR YOUR ORGANIZATION, *supra* note 89, at 26, 28 (describing the purposes of 501(c)(3) organizations as operating in ways that are beneficial to the community or to the public).

214. *See How to Stay Exempt*, INTERNAL REVENUE SERV. (last updated June 5, 2025), https://www.irs.gov/charities-non-profits/how-to-stay-exempt-1 [https://perma.cc/4RK9-39GD] (providing requirements for nonprofits to maintain tax-exempt status); *Exempt Organizations: Disclosure Requirements*, INTERNAL REVENUE SERV. (last updated Dec. 27, 2024), https://www.irs.gov/charities-non-profits/other-non-profits/exempt-organizations-disclosure-requirements [https://perma.cc/MX4Y-HTK3] (noting that tax-exempt organizations must file annual returns and providing relevant resources); *Exemption Requirements – 501(c)(3) Organizations*, INTERNAL REVENUE SERV. (last updated Aug. 20, 2025), https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations [https://perma.cc/5RMC-DJX7] (describing requirements for tax exemption, including restrictions on operating for the benefit of private interests and on engaging in political activity).

215. *See* Brennen, *supra* note 201, at 183 ("The public policy limitation provides that the Treasury may revoke or, where appropriate, deny tax-exempt charitable status of an organization that acts contrary to 'established public policy.'"); BALL, *supra* note 94 (explaining that the IRS can deny or revoke 501(c)(3) status if an organization violates fundamental public policy); Bob Jones Univ. v. United States, 461 U.S. 574, 586 (1983) ("[E]ntitlement to tax exemption depends on meeting certain common law standards of charity—namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy.").

receive financial assistance so long as the organization fulfills its ongoing compliance obligations with the IRS.[216]

Further, in understanding what it means to be a "recipient" of federal financial assistance, the Supreme Court previously distinguished between beneficiaries and recipients of federal financial assistance. In *Paralyzed Veterans*, the Court reaffirmed its holding in *Grove City*, stating that Title IX only extends to intended recipients of such assistance.[217] Crucial to the distinction between beneficiaries and recipients is Congress's intent.[218] In creating the 501(c)(3) tax exemption, Congress made clear that this tax benefit only extends to organizations that meet the charitable purposes identified in the statute.[219] The purpose of this arrangement is to provide charitable organizations with financial support in recognition of the benefits they provide to society.[220]

Thus, educational organizations organized as a 501(c)(3) nonprofit cannot be mere *beneficiaries* of 501(c)(3) tax-exempt status because this provision of the Tax Code was enacted with these very organizations in mind as the *recipients*.[221] The economic benefit that tax-exempt organizations realize is not an

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216. *See* TAX-EXEMPT STATUS FOR YOUR ORGANIZATION, *supra* note 89, at 10, 12 (discussing the required filings that 501(c)(3) organizations must complete to maintain tax-exempt status).

217. *Paralyzed Veterans of Am.*, 477 U.S. at 606 (holding that § 504 was analogous to Title IX in that Congress only intended § 504 to benefit recipients).

218. *See id.* (emphasizing the importance of determining whom Congress intended to receive the assistance and thus be subject to Title IX); *see also* Grove City Coll. v. Bell, 465 U.S. 555, 565–68 (1984) (analyzing Congress's intent to determine whether Congress meant to distinguish between indirect and direct forms of assistance in governing Title IX coverage).

219. *See* 26 U.S.C. § 501(c)(3) (recognizing "[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes" as exempt from income taxation); *see also Bob Jones Univ.*, 461 U.S. at 586 (explaining that entitlement to the tax exemption requires that the organization serve a public purpose); Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 673 (1970) ("Qualification for tax exemption is not perpetual or immutable; some tax-exempt groups lost that status when their activities take them outside the classification and new entities can come into being and qualify for exemption.").

220. *See Bob Jones Univ.*, 461 U.S. at 588 ("Congress sought to provide tax benefits to charitable organizations, to encourage the development of private institutions that serve a useful public purpose . . . .").

221. *Id.* at 587, 589 (recognizing educational organizations as beneficial to the public and thus deserving of assistance from the federal government as a way to incentivize such organizations).

"economic ripple effect," but the very intended economic effect that Congress envisioned when enacting 26 U.S.C. § 501(c)(3).[222]

The Fourth Circuit mistakenly views 501(c)(3) tax-exempt organizations as mere beneficiaries of the federal benefit that a tax exemption provides.[223] This interpretation overlooks the mechanics of how an organization gains tax-exempt status. Organizations knowingly and intentionally seek out tax-exempt status because they have to apply for such status with the IRS.[224] Thus, they cannot be said to be mere beneficiaries because they take affirmative steps to apply for and accept this aid. More to the point, taken together with the broad definition of "Federal financial assistance" that encompasses any type of economic benefit, tax-exempt organizations are clearly recipients of federal financial assistance.[225]

2. The General-Terms Canon Lends Support for an Expansive Interpretation of Title IX

Other tools of statutory interpretation often favored by textualists and thought to indicate a provision's ordinary meaning are known as semantic canons.[226] Semantic canons still focus on a statute's text and are based in the rules of grammar and how

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222. *See Paralyzed Veterans of Am.*, 477 U.S. at 607 (holding that "economic ripple effects" are not sufficient to trigger Title IX coverage); *Bob Jones Univ.*, 461 U.S. at 587–88 (explaining that the purpose of 26 U.S.C. § 501(c)(3) was to provide an economic benefit to charitable organizations, including educational organizations).

223. *See* Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, 96 F.4th 707, 714 (4th Cir. 2024) ("Although tax exemption is a tax benefit [with beneficiaries], that does not mean it is 'Federal financial assistance' for Title IX purposes.").

224. *See Applying for Tax Exempt Status*, *supra* note 210 (outlining forms and applications for 501(c)(3) exemption as an educational organization).

225. *See* Grove City Coll. v. Bell, 465 U.S. 555, 564 (1984) ("There is no basis in the statute for the view that only institutions that themselves apply for federal aid or receive checks directly from the Federal Government are subject to regulation.").

226. *See* JOHN F. MANNING & MATTHEW C. STEPHENSON, LEGISLATION AND REGULATION 202 (2d ed. 2013) (explaining that semantic canons "are generalizations about how the English language is conventionally used and understood . . . . The use of semantic canons can therefore be understood simply as a form of textual analysis"); Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 HARV. L. REV. 2118, 2159–60 (2016) (reviewing ROBERT A. KATZMANN, JUDGING STATUTES (2014)) ("Semantic canons are generally designed to reflect the meaning that people . . . ordinarily intend to communicate with their choice of words.").

people ordinarily understand the written language.[227] The semantic canon of statutory interpretation known as the general-terms canon further supports a broad interpretation of Title IX that encompasses tax-exempt status. The canon counsels that unless indicated otherwise, general words should be afforded their full scope and not be "arbitrarily limited."[228] The Supreme Court adopted this principle in the Title IX context in *Grove City* when it declined to "read into [Title IX] a limitation not apparent on its face."[229] Importantly, this canon understands that Congress drafts statutes broadly, recognizing that at the time of drafting, legislators may not know or anticipate everything that might fit within a category.[230]

In the case of Title IX, there is no indication that Congress intended to limit "Federal financial assistance" and thus it would be a mistake to read such a limitation into the statute. Even if Congress did not expressly anticipate Title IX coverage to include tax-exempt organizations, that is no reason to conclude that the statute is ambiguous or inapplicable, and instead demonstrates the breadth of the provision.[231] Congress very well could have elected to enumerate specific types of financial assistance, but instead opted for a general term to allow for a broad and encompassing scope of coverage that includes the 501(c)(3) tax exemption.

3. Statutory Context Confirms That 501(c)(3) Tax-Exempt Status Subjects a School to Title IX Obligations

This analysis next considers the statutory context and structure of Title IX, applying a fundamental canon of statutory

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227. *See* BRANNON, *supra* note 188, at 26 ("The semantic canons frequently reflect the rules of grammar that govern ordinary language usage. Consequently, these rules might overlap with indicators of a provision's ordinary meaning . . . ." (footnote omitted)); SCALIA & GARNER, *supra* note 188, at 69–133 (explaining various semantic canons of statutory interpretation).

228. SCALIA & GARNER, *supra* note 188, at 101.

229. *Grove City Coll.*, 465 U.S. at 564.

230. United States v. South Half of Lot 7 & Lot 8, Block 14, 910 F.2d 488, 489, 490–91 (8th Cir. 1990) (holding that "[a]ny property, including money" includes both real and personal property, reasoning that there was no indication Congress intended to limit the ordinary meaning of property).

231. *See* Pa. Dep't of Corr. v. Yeskey, 524 U.S. 206, 212 (1998) ("[T]he fact that a statute can be 'applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.'" (quoting Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499 (1985))).

construction that the words of a statute must be read in their context, with a view to their place in the overall statutory scheme.[232]

The whole-act canon instructs courts to read statutes as a whole and not construe statutory phrases in isolation.[233] As recognized by the Supreme Court, statutory interpretation is a "holistic endeavor," and the statutory context often provides evidence of the text's meaning.[234] An analysis of Title IX that goes beyond the statute's ordinary meaning supports the conclusion that the text of Title IX and "Federal financial assistance" encompasses tax-exempt status.

Reading Title IX in its context with the numerous exceptions lends support to the notion that Congress meant to encompass tax exemptions as a form of federal financial assistance. Title IX explicitly excepts from Title IX coverage social fraternities and sororities, which are exempt from taxation under 26 U.S.C. § 501(a), specifically mentioning these organizations' tax-exempt status.[235] The absence of any other basis for tax exemption among Title IX's statutory exclusions indicates that Congress intended to include other tax-exempt institutions in Title IX's protection. Inserting statutory language in one provision and omitting that same language from other provisions of the same statute demonstrates that Congress "act[ed] intentionally and

232. *See* King v. Burwell, 576 U.S. 473, 492 (2015) (analyzing the text of the Affordable Care Act before considering the broader structure and statutory context).

233. *See id.* at 486 ("Our duty . . . is 'to construe statutes, not isolated provisions.'" (quoting Graham Cnty. Soil & Water Conservation Dist. v. United States *ex rel.* Wilson, 559 U.S. 280, 290 (2010))); United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . ."); *see also* BRANNON, *supra* note 188, at 23 (describing the importance of statutory context in interpreting a statute's language); SCALIA & GARNER, *supra* note 188, at 167 (2012) (describing this canon as the whole-text canon).

234. *Timbers of Inwood Forest Assocs.*, 484 U.S. at 371.

235. 20 U.S.C. § 1681(a)(6)(A). *See* 120 CONG. REC. 39992 (1974) (statement of Sen. Birch Bayh) (supporting an amendment to create an exception from Title IX for sororities and fraternities which "could not continue to exist without . . . indirect financial assistance from colleges and universities"); Chi Iota Colony of Alpha Epsilon Pi Fraternity v. City Univ. of N.Y., 443 F. Supp. 2d 374, 388 (E.D.N.Y. 2006), *vacated*, 502 F.3d 136 (2d Cir. 2007).

purposely in the disparate inclusion or exclusion."[236] If Congress wanted to exclude all tax-exempt private schools, the drafters could have expressly included that in the statute, like they did for social fraternities and sororities.

In its analysis of the meaning of federal financial assistance, the Fourth Circuit referred to the neighboring provision in Title IX, which vests regulatory and enforcement authority to agencies "empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract."[237] The court similarly relied on the broader statutory structure and context of Title IX and suggested that the use of "grant, loan, or contract" in 20 U.S.C. § 1682 should be read to limit federal financial assistance to affirmative forms of assistance.[238]

This analysis is mistaken for two reasons. First, as understood by the elephants-in-mouseholes canon, Congress "does not alter the fundamental details of a regulatory scheme in . . . ancillary provisions—it does not . . . hide elephants in mouseholes."[239] For instance, in *Sackett v. EPA*, the Supreme Court declined to adopt a broad scope of the Clean Water Act's jurisdiction over wetlands, reasoning that Congress would not include such a notable expansion in an obscure statutory provision governing state permitting programs.[240] Applying a similar line of logic, it would be an interpretive error to construe Title IX's enforcement and regulatory provision to drastically alter the scope of Title IX.

Second, even if federal financial assistance were read as limited to a "grant, loan, or contract," tax exemptions can be understood as a type of grant extended by the IRS. The Supreme Court has repeatedly characterized the 501(c)(3) tax exemption as a

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236. Russello v. United States, 464 U.S. 16, 23 (1983) (quoting United States v. Wong Kim Bo, 472 F.2d 720, 722 (5th Cir. 1972)); *see* Hamdan v. Rumsfeld, 548 U.S. 557, 578 (2006) ("A familiar principle of statutory construction . . . is that a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute.").

237. 20 U.S.C. § 1682; *see* Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n, 96 F.4th 707, 712 (4th Cir. 2024) (quoting 20 U.S.C. § 1682).

238. *Buettner-Hartsoe*, 96 F.4th at 712.

239. Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 468 (2001).

240. Sackett v. EPA, 143 S. Ct. 1322, 1340 (2023) ("[I]t would be odd indeed if Congress had tucked an important expansion to the reach of the CWA into convoluted language in a relatively obscure provision concerning state permitting programs.").

"grant" of tax benefits.[241] There is no textual basis for a limitation that finds "grant" to refer solely to affirmative, cash grants, and such a reading would again contradict the Supreme Court's instruction not to "read into [Title IX] a limitation not apparent on its face."[242]

4. Title IX Regulations

To be sure, critics will point to the Department of Education Title IX regulations, which offer a definition of "Federal financial assistance."[243] It is unclear how much weight the Department of Education regulations should be afforded in interpreting the scope of Title IX in light of *Loper Bright Enterprises v. Raimondo*.[244] This Section argues that even if a court were to determine that "Federal financial assistance" is ambiguous and decide to afford great deference to these regulations, the 501(c)(3) tax exemption falls within the definition of federal financial assistance as promulgated by the relevant Department.

As the courts in *Johnny's Icehouse, Inc.* and *Doe v. Horne* have pointed out, tax exemptions do not appear in the definition of "Federal financial assistance" offered by the Department of Education.[245] The *Johnny's Icehouse* court mistakenly interpreted its absence to be incontestable evidence that tax exemptions are not federal financial assistance.[246]

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241. *See* Bob Jones Univ. v. United States, 461 U.S. 574, 587 n.10 (1983) (referencing § 501(c)(3) as a grant of tax benefits); Allen v. Wright, 468 U.S. 737, 756 (1984) (describing § 501(c)(3) as a grant of tax exemptions from the IRS); Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 675 (1970) (referring to the "grant of a tax exemption").

242. Grove City Coll. v. Bell, 465 U.S. 555, 564 (1984).

243. 34 C.F.R. § 106.2 (2024). The relevant regulations for whether a tax exemption constitutes federal financial assistance are the Department of Treasury Title IX regulations, as that is the agency that extends this assistance. This is a nuance lost by many courts. Nonetheless, the Department of Treasury regulations mirror those of the Department of Education. *See supra* note 80 and accompanying text.

244. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2273 (2024) (holding that judges may not defer to an agency's interpretation of congressional statutes by relying on *Chevron* deference; rather, judges must "exercise their own independent judgment" to interpret the statutes).

245. Johnny's Icehouse, Inc. v. Amateur Hockey Ass'n of Ill., 134 F. Supp. 2d 965, 972 (N.D. Ill. 2001) (highlighting that tax exemption is not included in the definition); Doe v. Horne, No. CV-23-00185-TUC-JGZ, 2023 BL 503895, at *2 (D. Ariz. Dec. 11, 2023) (emphasizing the absence of tax-exempt status from the Department of Education's definition).

246. *Johnny's Icehouse*, 134 F. Supp. 2d at 971.

However, this overlooks the catch-all provision in the regulation that includes "[a]ny other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity."[247] The Cambridge Dictionary defines "arrangement" as an "agreement between two people or groups about how something happens or will happen."[248] Surely, 501(c)(3) tax-exempt status would be considered an "arrangement" with its core purpose being to provide an economic benefit to the qualifying organizations.[249] The 501(c)(3) tax exemption is an agreement between the eligible charitable organization and the IRS whereby, as long as the organization continues to meet certain requirements, the IRS agrees to consider the organization exempt from income taxation, thus affording the organization a significant financial benefit.[250]

The court in *Horne* read the catch-all provision too narrowly, arguing that the provision is limited to affirmative grants of resources similar to the types of assistance included in the regulation's enumerated categories.[251] It is true that a well-recognized canon of statutory interpretation instructs courts to interpret a catch-all provision that follows an enumerated list of more specific terms in light of common attributes shared by the specific terms.[252] In this case, the enumerated categories include grants or loans of various types of resources including funds, property, services, and personnel.[253]

While these do all appear to involve affirmative grants, nothing suggests that "Federal financial assistance" is thus limited to affirmative grants. Of significance is the use of the words "contract, agreement, or arrangement" in the catch-all phrase, as these words seem to encompass more passive arrangements as compared to affirmative grants of funds. Moreover, as discussed in Section A, 501(c)(3) tax-exempt status does in fact

247. 34 C.F.R. § 106.2(g)(5) (2024).

248. *Arrangement*, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/dictionary/english/arrangement [https://perma.cc/2BGM-TDEL].

249. *See supra* note 92 and accompanying text.

250. *See supra* note 214 and accompanying text.

251. Doe v. Horne, No. CV-23-00185-TUC-JGZ, 2023 BL 503895, at *3 (D. Ariz. Dec. 11, 2023).

252. *See* BRANNON, *supra* note 188, at 18 (defining the semantic canon known as ejusdem generis); SCALIA & GARNER, *supra* note 188, at 199 (describing the same).

253. 34 C.F.R. § 106.2 (2024).

require an affirmative act on the part of the organization to apply for and consequently be granted such status.[254] Accordingly, the catch-all phrase found in the Title IX regulations' definition of federal financial assistance certainly encompasses an arrangement such as the 501(c)(3) tax exemption.

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In sum, the plain text of "receiving Federal financial assistance" encompasses all forms of financial aid, including tax-exempt status. Moreover, Congress's decision to draft Title IX using such broad language must not be overlooked, and the general-terms canon provides that such a broad term not be unduly limited. Looking to the overall structure of Title IX and its neighboring provisions also signals Congress's intent for Title IX coverage to extend to schools that are exempt from taxation pursuant to § 501(c)(3) of the Tax Code. The legislative history of Title IX, which repeatedly affirms the statute's broad scope, further confirms that tax-exempt status is a form of federal financial assistance.

B. TITLE IX'S LEGISLATIVE HISTORY DEMONSTRATES CONGRESS'S INTENT FOR THE STATUTE TO BE INTERPRETED BROADLY

Title IX's legislative history communicates similarly broad ideals and protections that lend credence to this Note's central argument: Federal financial assistance encompasses exemptions from taxation.[255]

Where the text of a statute is not clear, legislative history provides meaningful insight into congressional intent and can be used to ascertain the scope of Title IX.[256] The legislative history makes clear that Congress intended Title IX to be a "strong and comprehensive measure,"[257] sought to eradicate discrimination on the basis of sex, and, more specifically, reduce federally

254. *See supra* Part III.A; *see also Applying for Tax Exempt Status*, *supra* note 210 (providing information on how organizations qualify for tax-exempt status).

255. *See supra* Part III.A.

256. *See* Frank H. Easterbrook, *What Does Legislative History Tell Us?*, 66 CHI.-KENT L. REV. 441, 443 (1990) ("Legislative history may be useful in showing the scope of an enactment."); *see also* BRANNON, *supra* note 188, at 38 (explaining various ways in which judges rely on a statute's legislative history in statutory interpretation).

257. 118 CONG. REC. 5806–07 (1972) (statement of Sen. Birch Bayh).

funded discrimination in schools.[258] As recognized in *Regan v. Taxation with Representation of Washington*, bestowing tax-exempt status upon an organization is a type of federal funding, because the government effectively foregoes revenue it would otherwise have collected through taxes on educational organizations.[259]

Especially where the statutory language is broad and undefined, like in the case of "Federal financial assistance," legislative history serves as "evidence as to whether Congress meant somehow to limit the expansive language of [Title IX]."[260] The Supreme Court has recognized statements made by Senator Birch Bayh as particularly indicative of congressional intent regarding the scope of Title IX, given his role as the primary sponsor of the statute.[261] On the day the amendment passed, Senator Bayh remarked about the need for a broad and comprehensive measure to safeguard against sex discrimination in educational programs.[262]

In a hearing before the subcommittee on postsecondary education regarding proposed regulations to enforce Title IX, Senator Bayh referred to Title IX's "Federal financial assistance" requirement and stated that "[i]f Federal aid benefits a discriminatory program by freeing funds for that program, the aid assists it, and I think that is rather clear."[263] Senator Bayh even highlighted a Texas Law Review article which specifically contemplated tax exemptions as a type of financial support and

258. *See* Khan, *supra* note 46, at 692 (arguing that in light of the broad goals of Title IX, the statute's drafters must have meant to be comprehensive when they included the term "Federal financial assistance" in the statutory text).

259. Regan v. Tax'n with Representation of Wash., 461 U.S. 540, 544 (1983). *See* Todd, *supra* note 207, at 125 (arguing for regulations that clarify that Title IX coverage includes "all programs in a school system that benefit from freeing of funds").

260. N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 522 (1982).

261. *Id.* at 526–27 ("Senator Bayh's remarks, as those of the sponsor of the language ultimately enacted, are an authoritative guide to the statute's construction.").

262. 118 CONG. REC. 5804 (1972) (statement of Sen. Birch Bayh) ("[A] strong and comprehensive measure is needed to provide women with solid legal protection from the persistent, pernicious discrimination which is serving to perpetuate second-class citizenship for American women."); *see N. Haven*, 456 U.S. at 522 (highlighting Senator Bayh's remarks as "the only authoritative indications of congressional intent regarding the scope of [Title IX]").

263. *Sex Discrimination Regulations: Hearings Before the Subcomm. on Postsecondary Educ. of the H. Comm. on Educ. & Lab.*, 94th Cong. 175 (1975) (statement of Sen. Birch Bayh).

analyzed a Fifth Circuit case regarding the reach of Title VI.[264] That case stated that the statutory language "did not foreclose including within a program all the activities 'benefitted' by the grant statute through the freeing of funds."[265]

While drafting Title IX and considering its accompanying regulations, Congress contemplated the broad scope that federal financial assistance encompasses. The statute's drafters purposely chose broad language that would include not just affirmative grants of funds, but the "freeing of funds," much like how a tax exemption frees up funds that would otherwise not be available to organizations if they had to pay that amount in income tax.[266]

Other benefits that tax-exempt status affords to organizations, such as the charitable tax deductions, were similarly contemplated in Title IX hearings and recognized as a significant benefit that would fall within the meaning of "Federal financial assistance."[267] By way of example, Senator Paul Simon highlighted such benefits that would qualify as federal financial assistance, explaining that "the University of Minnesota has an athletic association which is a nonprofit corporation where people donate money, and they are given tax deductions, so that indirectly there is a Federal subsidy to the University of Minnesota athletic program."[268]

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264. *Id.* (quoting the Fifth Circuit case and noting it "certainly substantiates [his] feeling").

265. *Id.*; Todd, *supra* note 207, at 111 (citing Board of Pub. Instruction v. Finch, 414 F.2d 1068, 1078 (5th Cir. 1969)).

266. *See* Born & Looney, *supra* note 27, at 4 (describing the 501(c)(3) tax exemption as a tax policy that subsidizes nonprofits and can save organizations significant amounts of money in taxes).

267. *Sex Discrimination Regulations: Hearings Before the Subcomm. on Postsecondary Educ. of the H. Comm. on Educ. & Lab.*, 94th Cong. 182 (1975) (statement of Sen. Paul Simon).

268. *Id.* While this Note focuses on the benefit organizations receive by not having to pay federal income tax, 501(c)(3) tax-exempt status also affords these organizations a significant benefit through the charitable contribution deduction, which is outside the scope of this Note. The charitable contribution deduction allows taxpayers to deduct from their taxable income the amount of money they donate to qualifying charitable organizations. In effect, the federal government is subsidizing donations to charitable organizations, thus increasing the amount of money these organizations receive because people will donate more money to charities since they can do so with tax-free dollars. Schmalbeck, *supra* note 151, at 122 (explaining that the charitable deduction "undoubtedly benefits the exempt institutions by stimulating such contributions").

Title IX's legislative history, which contemplates different forms of financial assistance and repeatedly highlights the statute's comprehensive nature, bolsters this Note's argument that Title IX must be interpreted as having an expansive scope of coverage that recognizes tax-exempt status pursuant to 26 U.S.C. § 501(c)(3) as federal financial assistance sufficient to subject an educational organization to its nondiscrimination requirements.

CONCLUSION

Title IX of the Education Amendments Act of 1972 guarantees that all people can enjoy the benefits of any education program or activity receiving federal financial assistance without concern for their sex. Title IX fills in significant gaps that Title VI of the Civil Rights Act of 1964 left open, ensuring that schools cannot discriminate on the basis of sex. This Note highlights courts' varying interpretations regarding the scope of Title IX and what constitutes "Federal financial assistance." More specifically, this Note examines how private schools abrogate Title IX compliance while still claiming a significant federal benefit through the 501(c)(3) tax exemption for charitable organizations.

Given the pervasiveness of sexual harassment and assault in schools today, Title IX protections are more important than ever, and the stakes could not be higher. Title IX's broad language plainly encompasses educational institutions that receive tax benefits due to their status as 501(c)(3) organizations. Moreover, the statute's legislative history makes clear that Congress intended Title IX's scope to be broad and that "receiving Federal financial assistance" extends to tax-exempt organizations. Private schools that maintain tax-exempt status like Concordia Preparatory School must comply with Title IX and fulfill obligations that are critical to ensuring a safe school environment free from discrimination.