this Court noted in *Cannon v. University of Chicago*, 441 U. S. 677, 770–711 (1979), when Congress passed Title IX, it expected the new provision to be interpreted consistently with Title VI, which had been its model.

B

The Court discounts the importance of Title VI to the proper interpretation of Title IX for three reasons. First, it notes that "[i]t is Congress' intention in 1972, not in 1964, that is of significance in interpreting Title IX." *Ante*, at —— (citing *Cannon v. University of Chicago*, 441 U. S. 677, 710–711 (1979)). This point begs the question, however, since there is no evidence that in 1972, when it passed Title IX, Congress thought Title VI applied to employment discrimination. The second reason advanced by the Court for disregarding Title VI is that it, unlike Title IX, includes a section, i. e. §604, 42 U. S. C. §2000d–3, expressly stating that Title VI applies only to discrimination against fund beneficiaries, not to employment discrimination *per se*. But in an earlier version of the legislation that was to become Title IX, the amendment was drafted as a modification of Title VI, simply adding the word "sex." In the end, it is true, Title IX was enacted as a statute separate from Title VI, but the reason for this approach was strategic, not substantive. Supporters feared that if Title VI were opened for amendment, Title VI itself might be "gutted" on the floor of the Congress. Sex Discrimination Regulations: Hearings Before the Subcomm. on Postsecondary Education and Labor, House of Representatives—Review of regulations to implement Title IX, 94th Cong., 1st Sess. p. 409 (1975). Finally, to break the link between Titles VI and IX, the Court stresses that the House version of the Senate's Bayh Amendment originally contained a provision, §1004, equivalent to §604 of Title VI, explicitly stating that no section of the 1972 legislation applied to discrimination in employment, but this provision was eliminated by the Conference. *Ante*,
A strong argument, however, can be made that there was a non-substantive reason for eliminating §1004 from the House bill. In 1975 hearings before the House Subcommittee on Postsecondary Education and Labor, Representative O'Hara, Chairman of that Subcommittee, while explaining the background of Title IX to a witness, noted that this change was made at conference simply to eliminate, as quietly as possible, a recently discovered drafting error. Sex Discrimination Regulations: Hearings Before the Subcommittee on Postsecondary Education and Labor, House of Representatives—Review of regulations to implement Title IX, 94th Cong., 1st Sess. p. 409 (1975). Even without reference to Senator O'Hara's remarks, made in 1975, it is clear that, at the time of the Conference on the House bill and the Senate's Bayh Amendment, §1004 of the House bill was a drafting mistake; it stated that no section of the House bill applied to employment, though sections of the House Bill, as well as the Senate version, contained express changes to the employment discrimination provisions of Title VII and the Equal Pay Act. Since the analogous provision of Title VI, §604, had been regarded as a mere clarification, the Court is on weak ground in arguing that the Conference Report's use of the ritualistic words "the House receded" reveals a substantive change rather than the quiet correction of an obvious drafting error at a very late stage in the legislative process.

C

In concluding that the legislative history indicates Title IX was intended to extend to employment discrimination, the Court is forced to rely primarily on the statements of a single

The first statement, ante, at —— (quoting 118 Cong. Rec. 5803 (1972)), is ambiguous. Senator Bayh did state that faculty employment would be covered by his amendment after mentioning the sections enacting Title IX but prior to any mention of those amending Title VII and the Equal Pay Act. Immediately thereafter, however, he stated that Title IX's enforcement powers paralleled those in Title VI. Yet Title VI has never provided for fund termination to redress discrimination in employment.

Next, the Court quotes Bayh's statements that (i) he regarded "sections 1001-1005" as "[c]entral to [his] amendment" and (ii) "[t]his portion of the amendment covers discrimination in all areas," including employment. Ante, at —— (quoting 118 Cong. Rec. 5807 (1972)). But, § 1005 of the Bayh amendment is the section amending Title VII and thus §§ 1001-1005 cover employment discrimination regardless of whether Title IX does. Moreover, the Court uses an ellipsis rather than include the following words from the second Bayh statement:

"Discrimination against the beneficiaries of federally assisted programs and activities is already prohibited by title VI of the 1964 Civil Rights Act, but unfortunately the prohibition does not apply to discrimination on the basis of sex. In order to close this loophole, my amendment sets forth prohibition and enforcement provisions which generally parallel the provisions of title VI." 118 Cong. Rec. 5807 (1972) (in ellipses ante, at ——).

Thus, for a second time, Bayh indicated to the Senate that he regarded Title IX of his amendment as parallel to Title VI...
rather than as a substantial departure from Title VI.

In the third Bayh statement, ante, at ___ (quoting 118 Cong. Rec. 5812 (1972)), the Senator was responding to a question from Senator Pell regarding Title IX, and the Court assumes that each sentence in that response refers to Title IX. But, as the Court of Appeals for the First Circuit noted in Islesboro:

“A fair reading both of the colloquy . . . , as well as the discussion immediately preceding and following the above-quoted passage, indicates that Senator Bayh divided his analysis into three sections, two of which were specifically aimed at students (admissions and services), the third at employees (employment). While Senator Bayh’s response was more extended than it needed to be for a direct answer to Senator Pell’s question, we think HEW’s reading is strained. We think this particularly in light of the fact that the discussion was an oral one and thus not as precise as a response in written form, . . . .” 593 F. 2d, at 427.

Rather than support the Court’s view, it is fair to say that the legislative history accords with the natural reading of the statute. Title IX prohibits discrimination only against beneficiaries of federally funded programs and activities, not all employment discrimination by recipients of federal funds. Title IX is modelled after Title VI, which is explicitly so limited—and to the extent statements of Senator Bayh can be read to the contrary, they are ambiguous.13

As indicated above, when critical words, in this case “em-

13 The Court devotes considerable time to describing post-enactment actions or inaction on the part of subsequent Congresses. See ante, at ___.___. The fact that, in 1975, Congress considered, but failed to enact, resolutions disapproving HEW’s regulations is essentially irrelevant in determining the intent of the enacting Congress in 1972. Similarly, the fact that a subsequent Congress considered, but failed to enact bills limiting Title IX’s coverage with respect to employment discrimination does not indicate that the 1972 Congress meant to include employment discrimina-
ployment discrimination," are absent from a statute and its meaning is otherwise clear, reliance on legislative history to add omitted words is rarely appropriate. Only when legislative history gives clear and unequivocal guidance as to congressional intent should a court presume to add what Congress failed to include. And, however else one might describe the legislative history relied upon by the Court today, it is neither clear nor unequivocal.

III

As the sole issue before us is the meaning of §901(a) of Title IX, I repeat the relevant language:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . ." §901(a).

The Court acknowledges that, in view of the lack of support for its position in this language, it must look to the "legislative history for evidence as to whether or not §901 was meant to prohibit employment discrimination". Ante, at —. Although the Court examines at length the truncated legislative history, it ignores other factors highly relevant to intent: (i) whether the ambiguity easily could have been avoided by the legislative draftsman; (ii) whether Congress had prior experience and a certain amount of expertise in legislating with respect to this particular subject; and (iii) whether existing legislation clearly and adequately proscribed and remedied the conduct in question. When these factors are considered, there is no reason to read sex employment discrimination language into §901.

If there had been such an intent, no legislative draftsman—even one of modest accomplishments—would have written §901 as above set forth. The draftsman would have
been guided, of course, by the employment-discrimination language in Title VII and the Equal Pay Act, language specifically addressing this problem. Moreover, although these other statutes had been enacted by an earlier Congress, at the time Title IX was being drafted and considered, Title VII and the Equal Pay Act were also amended to proscribe explicitly employment discrimination in educational institutions on the basis of sex. Congress would hardly have enacted a third statute addressing this problem, but, in contrast to the other two, use language ambiguous at best.

In addition, a comparison of the provisions of Title VII and Title IX suggests that Congress would not have enacted the inconsistent provisions of the latter with respect to remedies and procedures. Title VII is a comprehensive anti-discrimination statute with carefully prescribed procedures for conciliation by the EEOC, federal court remedies available within certain time limits, and certain specified forms of relief, designed to make whole the victims of illegal discrimination and available unless discriminatory conduct falls within one of several exceptions. See 42 U. S. C. §2000e et seq. This thoughtfully structured approach is in sharp contrast to Title IX, which contains only one extreme remedy, fund termination, apparently now available at the request of any female employee who can prove discrimination in employment in a federally funded program or activity. This cutoff of funds, at the expense of innocent beneficiaries of the funded program, will not remedy the injustice to the employee. Indeed, Title IX does not authorize a single action, such as employment, reemployment, or promotion, to rectify employment discrimination. And Title IX, unlike Title VII, has no time limits for action, no conciliation provisions, and no guidance as to procedure. Compare 20 U. S. C. §1681

It is interesting to note that, whereas Congress itself provided for administrative procedures to redress employment discrimination in Title VII, see 42 U. S. C. §2000e et seq., it enacted no comparable provisions in Title
et seq. (Title IX) with 42 U. S. C. §2000e et seq. (Title VII). The Solicitor General conceded at oral argument that appropriate relief for the two employees who initiated this suit was available under Title VII. See transcript of oral argument, 27. Finally, Congress delegated the administration of Title IX to the Department of Health, Education and Welfare. Title VII and the Equal Pay Act are administered by the Department of Labor and EEOC. It is most unlikely that Congress would intend not only duplicate substantive legislation but also enforcement of these provisions by different departments of government with different enforcement powers, areas of expertise, and enforcement methods. The District

IX, see 20 U. S. C. §1681 et seq. Such administrative procedures as are available under Title IX are part of the regulations promulgated by HEW, 45 CFR §§80.7--80.10.

The administrative procedures enacted by Congress in the U. S. C and by HEW in the CFR are quite different, though addressing a single problem. The HEW regulations provide for Administrative-Procedure-Act hearings, followed by judicial review. See 45 CFR §§80.9--80.11. In contrast, EEOC acts first as conciliator, attempting to settle employment disputes, and then, if it so desires, as counsel for the victims of discrimination in subsequent de novo judicial proceedings. See 42 U. S. C. §2000e, et seq.

An employee could presumably bring actions against the school district under Title VII, Title IX, and the Equal Pay Act, seeking redress of his or her wrong in the form of back pay and injunctive relief, and, in addition, request that funds be terminated.

The Court's decision will result in needless duplication of governmental bureaucracy. Although HEW would prefer to have no involvement in employment discrimination, see Brief of Solicitor General 37, n. 26, it will be required to maintain a staff of employees to enforce the anti-discrimination in employment portion of Title IX. And these employees will duplicate the large staffs of the EEOC and the Department of Labor already devoted to employment discrimination.

From the viewpoint of educational institutions, there will now be two sets of federal regulations and regulators overseeing their employment practices. These different governmental departments may, or may not, have the same substantive standards and filing requirements at any given time. At the present time, the HEW and EEOC procedures in the event
Court in Romeo Community Schools v. HEW, 438 F. Supp. 1021 (ED Mich. 1977), aff'd 600 F. 2d 581 (CA6) cert. den., 444 U. S. 972 (1979), correctly observed:

"These governmental agencies, particularly the EEOC, were established specifically for the purpose of regulating discrimination in employment practices. These agencies have the expertise and their enabling legislation has provided them with the investigative and enforcement machinery necessary to compel compliance with regulations against sex discrimination in employment. HEW does not have similar enforcement authority." 438 F. Supp., at 1034.

Even the Solicitor General, in the brief on behalf of the federal respondents in this case, acknowledges what the Romeo Court thought was self evident:

"The Department of Education has only limited expertise in employment matters. Its view is that employment cases are better resolved under Title VII of the Civil Rights Act of 1964, which provides more appropriate remedies for such cases." Brief, p. 37.

In sum, the Court's decision today, finding an unarticulated intent on the part of Congress, is predicated on four assumptions that I am unwilling to impute to that body: (i) that Congress neglectfully or forgetfully failed to include language in §901 with respect to discrimination that would have made clear its intent; (ii) that Congress enacted a third statute proscribing sex discrimination in employment in educational institutions in the absence of any showing of a need for such duplicative legislation; and (iii) that Congress failed to include in the third statute appropriate procedural and remedial provisions relevant to employment discrimination; and (iv) of non-compliance are quite different. See discussion in text supra, at —.
nally, that it vested the authority to enforce the third statute in HEW, a department which even the Solicitor General concedes lacks the experience and the qualifications to oversee and enforce employment legislation.

Surely Congress has more common sense and expertise than to blunder in this way.

Mary—does this last sentence go too far?
POWELL, J., dissenting.

Title IX of the Education Amendments of 1972, 20 U. S. C. § 1681 et seq., prohibits discrimination on the basis of sex in education programs and activities receiving federal funds. In 1975, the Department of Health, Education, and Welfare (HEW) promulgated regulations prohibiting discrimination on the basis of gender in employment by fund recipients. 34 CFR § 106.51(a)(1). Today, the Court upholds the validity of these regulations, relying on the statutory language, its legislative history, and several post-enactment events. Because I believe the Court’s interpretation is neither consistent with the statutory language nor supported by its legislative history, I dissent. 2

Although the majority begins with the language of the

1 As noted by the Court, ante, at —, n. 4, HEW’s duties under Title IX were transferred to the Department of Education in 1979 by § 301(a)(3) of the Department of Education Organization Act, Pub. L. 95-88, 91 Stat. 678, 20 U. S. C. § 3441(a)(3) (1976 ed., Supp. IV). I follow the majority in referring to both agencies as HEW since many of the relevant acts in this case took place before the reorganization. See ante, at —, n. 4.

2 The Court acknowledges that the post-enactment events it discusses only “lend credence” to its interpretation of the statute. Ante, at —.
statute, it quotes the relevant language in its entirety only in the opening paragraphs of the opinion. In the section consider­
ing the statute’s meaning, the Court quotes two words of the statute and paraphrases the rest, thereby suggesting an interpretation actually at odds with the language used in the statute. Thus, according to the Court, “[s]ection 901’s broad directive that ‘no person’ may be discriminated against on the basis of gender appears, on its face, to include employees as well as students.” Ante, at - . This is not what the statutory language provides.

In relevant part, the statute states:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . .” Education Amendments of 1972, § 901(a), 20 U. S. C. § 1681(a).

A natural reading of these words would limit the statute’s scope to discrimination against those who are enrolled in, or who are denied the benefits of, programs or activities receiving federal funding. It tortures the language chosen by Congress to conclude that not only teachers and administrators, but also secretaries and janitors, who are discriminated against on the basis of sex in employment, are thereby (i) denied participation in a program or activity; (ii) denied the benefits of a program or activity; or (iii) subject to discrimination under an education program or activity. Moreover, Congress made no reference whatever to employers or em-

\[\text{I agree with the majority that employees who directly participate in a federal program, i.e., teachers who receive federal grants, are, of course, protected by Title IX. See ante, at - . Respondents Elaine Dove and Linda Potz were not, however, participants in any grant program or in any other federally funded program or activity. Elaine Dove was a teacher and Linda Potz a guidance counselor. Both alleged only discrimination in employment.}\]
ployees in Title IX, in sharp contrast to quite explicit lan-
guage in other statutes regulating employment practices.

It is noteworthy that not one of the other five Courts of
Appeals to consider the question before us reached the
conclusion that HEW's interpretation is supported by the
statutory language. The issue was presented initially to the
Court of Appeals for the First Circuit in Islesboro School
Committee v. Califano, 593 F. 2d 424, 426 (CA1), cert. de-
nied, 444 U. S. 972 (1979), and that decision has been fol-
lowed by most other Courts of Appeals to consider the ques-
tion. There, the court concluded that "[t]he language of
section 901, 20 U. S. C. § 1681, on its face, is aimed at the
beneficiaries of the federal monies, i. e., either students at-
tending institutions receiving federal funds or teachers en-
gaged in special research being funded by the United States
government." The court went on to point out that this read-
ing of "the plain language of the statute is buttressed by an
examination of the specific exemptions mentioned in the stat-
ute," all of which relate to students, not employees. 5  Ibid.

In the next appellate decision, Romeo Community Schools
v. HEW, 600 F. 2d 581 (CA6), cert. denied, 444 U. S. 972
(1979), the Court of Appeals for the Sixth Circuit also re-
jected the interpretation of the statute now relied on by this

4See, e. g., 42 U. S. C. § 2000e-2 (Title VII: "[i]t shall be an unlawful
employment practice for an employer-"); 29 U. S. C. § 206(d)(1) (Equal
Pay Act: "[n]o employer having employees. . .").

5The Court today not only finds this point unconvincing, but concludes
that the "absence of a specific exclusion for employment among the list of
exceptions tends to support the Court of Appeal's conclusion that Title IX
does protect employees." Ante, at — (citation omitted). I am unable
to follow this reasoning. The absence of employment-related exceptions
may not be conclusive proof that employment is not within the scope of the
statute. But I fail to see how that absence affirmatively indicates that the
statute was intended to apply to employees. Indeed, if Congress did in-
tend to cover employees, it is anomalous that it did not provide exceptions
similar to those in Title VII. For example, Title VII does not proscribe
Court, noting that "as actually written, the statute is not nearly so broad. The words 'no person' are modified by later language which clearly limits their meaning." 600 F. 2d, at 584. The court concluded that the statute "reaches only those types of disparate treatment" that involve discrimination against program beneficiaries. 600 F. 2d, at 584. The court concluded that the statute "reaches only those types of disparate treatment" that involve discrimination against program beneficiaries. 600 F. 2d, at 584.

II

A

The Court acknowledges, as it must, that § 901 of Title IX

"The question also has been presented to the Courts of Appeals for the Fifth, Eighth, and Ninth Circuits. In Junior College Dist. of St. Louis v. Califano, 597 F. 2d 119, 121 (CA8), cert. denied, 444 U. S. 972 (1972) the Court of Appeals for the Eighth Circuit considered HEW's arguments but "adopted" the Court of Appeals for the First Circuit's decision in Islesboro. And in Seattle University v. HEW, 621 F. 2d 992, 998 (CA9 1980), cert. granted sub nom. United States Dept. of Ed. v. Seattle Univ., 449 U. S. 1099 (CA9 1980), the Court of Appeals for the Ninth Circuit followed the three earlier circuit decisions, noting that each of those courts had held that the plain language of Title IX did not support HEW's position. Even in the decision below, in which the Court of Appeals for the Second Circuit upheld the regulations, the court did not base its decision on the statutory language, and stated that the "language is more ambiguous than HEW suggests." 629 F. 2d, at 777.

The other appellate decision was entered by the Court of Appeals for the Fifth Circuit in Dougherty Cty. School System v. Harris, 622 F. 2d 735 (CA5 1980), cert. pending sub nom. Bell v. Dougherty Cty. School System, No. 80–1023. There, the Court of Appeals for the Fifth Circuit held the regulations invalid because they did not limit fund termination to the offending program or activity. In reaching this decision, the court noted that program-specific regulations might be sustainable in some instances, e. g., if they prohibited discrimination in pay against female teachers paid with federal funds relative to the amounts paid male teachers with federal funds. The court noted that an argument can be made that in such a case, the woman teacher is "denied the benefits of" or "subject to discrimination under" the federal program. 622 F. 2d, at 737–738. But there is no indication it would agree with this Court that the statutory language supports program-specific regulations prohibiting all kinds of discriminatory employment practices with respect to all types of employees, i. e., hourly employees, secretaries and administrators as well as teachers.
“does not expressly include ... employees.” But it finds a strong negative inference in the fact that § 901 does not “exclude employees from its scope”. *Ante*, at ———. The Court then turns to the “legislative history for evidence as to whether or not § 901 was meant to prohibit employment discrimination”. *Ibid.* I agree with the several Courts of Appeals that have concluded unequivocally that the statutory language cannot fairly be read to proscribe employee discrimination. Only rarely may legislative history be relied upon to read into a statute operative language that Congress itself did not include. To justify such a reading of a statute, the legislative history must show clearly and unambiguously that Congress did intend what it failed to state. The Court’s elaborate exposition of the history of Title IX falls far short of this standard.

Title IX originated in a floor amendment sponsored by Senator Bayh to Senate Bill, S. 659, 92nd Cong., 2d Sess. (1972). The amendment was intended to close loopholes in earlier civil rights legislation; three problem areas had been identified in hearings by a special House Committee in 1970. See Discrimination Against Women: Hearings on Section 805 of H.R. 16098 before the Special Subcommittee on Education of the House Committee on Education and Labor, 91st Cong., 2d Sess. (1970). Title VII of the Civil Rights Act of 1964, though generally barring employment discrimination on the basis of sex, race, religion, or national origin, did not apply to discrimination "with respect to employment of individuals to perform work connected with the educational activities of [educational] institutions." Pub. L. No. 88–352, title VII, § 702, 78 Stat. 255. And the Equal Pay Act of 1963

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1 See, e. g., *Citizens to Preserve Overton Park v. Volpe*, 410 U. S. 402, 412 n. 28 (1973) (“Because of this ambiguity [in the legislative history] it is clear that we must look primarily to the statutes themselves to find the legislative intent.”).
banned discrimination in wages on the basis of sex, 29 U. S. C. §206(d)(1), but it did not apply to administrative, executive, or professional workers, including teachers. See 29 U. S. C. § 213(a) (1970) (no longer in force). Finally, Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000d, barred discrimination on the basis of “race, color, or national origin,” but not sex, in any federally funded programs and activities.

The Bayh floor Amendment, No. 874, introduced in 1972, 118 Cong. Rec. 5803 (1972) (print of amendment), closed these loopholes. Section 1005 amended Title VII to cover employment discrimination in educational institutions. Ibid. Sections 1009–1010 amended the Equal Pay Act so that discrimination in pay on the basis of sex was barred, even for teachers and other professionals. Ibid. And §§ 1001–1003 created a new Title IX banning discrimination on the basis of sex in federally funded educational programs and activities, thus effectively extending Title VI's prohibition to sex discrimination in such programs.

Since the amendments to Title VII and the Equal Pay Act explicitly covered discrimination in employment in educational institutions, there was no need to include §§ 1001–1003 of the Bayh Amendment to proscribe such discrimination. Instead, Title IX presumably was enacted, as its language clearly indicates, to bar discrimination against beneficiaries of federally funded educational programs and activities. This interpretation of Title IX is confirmed by the fact that it was modeled after Title VI, a statute limited in scope to discrimination against beneficiaries of federally funded programs, not general employment practices of fund recipients. 42 U. S. C. § 2000d-3. And, as this Court noted in Cannon v. University of Chicago, 441 U. S. 677, 770–711

1 The operative language in the two provisions is virtually identical. Compare 42 U. S. C. § 2000d (Title VI) with 20 U. S. C. § 1681a (Title IX).

42 U. S. C. § 2000d-3 states:

"Nothing contained in this subchapter shall be construed to authorize ac-
(1979), when Congress passed Title IX, it expected the new provision to be interpreted consistently with Title VI, which had been its model.

B

The Court discounts the importance of Title VI to the proper interpretation of Title IX for three reasons. First, it notes that "[i]t is Congress' intention in 1972, not in 1964, that is of significance in interpreting Title IX." Ante, at —— (citing Cannon v. University of Chicago, 441 U. S. 677, 710-711 (1979). This point begs the question, however, since there is no evidence that in 1972, when it passed Title IX, Congress thought Title VI applied to employment discrimination. The second reason advanced by the Court for disregarding Title VI is that it, unlike Title IX, includes a section, i. e. § 604, 42 U. S. C. § 2000d-3, expressly stating that Title VI applies only to discrimination against fund beneficiaries, not to employment discrimination per se. But in an earlier version of the legislation that was to become Title IX, the amendment was drafted as a modification of Title VI, simply adding the word "sex." In the end, it is true, Title IX was enacted as a statute separate from Title VI, but the reason for this approach was strategic, not substantive. Supporters feared that if Title VI were opened for amendment, Title VI itself might be "gutted" on the floor of the Congress. Sex Discrimination Regulations: Hearings Before the Subcomm. on Postsecondary Education and Labor, House of Representatives—Review of regulations to implement Title IX, 94th Cong., 1st Sess. p. 409 (1975).

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lent to § 604 of Title VI, explicitly stating that no section of the 1972 legislation applied to discrimination in employment, but this provision was eliminated by the Conference. Ante, at ___ . A strong argument, however, can be made that there was a non-substantive reason for eliminating § 1004 from the House bill. In 1975 hearings before the House Subcommittee on Postsecondary Education and Labor, Representative O'Hara, Chairman of that Subcommittee, while explaining the background of Title IX to a witness, noted that this change was made at conference simply to eliminate, as quietly as possible, a recently discovered drafting error. Sex Discrimination Regulations: Hearings Before the Subcommittee on Postsecondary Education and Labor, House of Representatives—Review of regulations to implement Title IX, 94th Cong., 1st Sess. p. 409 (1975). Even without reference to Representative O'Hara's remarks, made in 1975, it is clear that, at the time of the Conference on the House bill and the Senate's Bayh Amendment, § 1004 of the House bill was a drafting mistake; it stated that no section of the House bill applied to employment, though sections of the House Bill, as well as the Senate version, contained express changes to the employment discrimination provisions of Title VII and the Equal Pay Act. Since the analogous provision of Title VI, §604, had been regarded as a mere clarification, the Court is on weak ground in arguing that the Conference Report's use of the ritualistic words "the House receded" reveals a substantive change rather than the quiet correction of an obvious drafting error at a very late stage in the legislative process. C

In concluding that the legislative history indicates Title IX was intended to extend to employment discrimination, the

Court is forced to rely primarily on the statements of a single senator.\textsuperscript{11} The first statement, \textit{ante}, at \textemdash{} (quoting 118 Cong. Rec. 5803 (1972)), is ambiguous. Senator Bayh did state that faculty employment would be covered by his amendment after mentioning the sections enacting Title IX but \textit{prior to any mention of those amending Title VII and the Equal Pay Act}. Immediately thereafter, however, he stated that Title IX's enforcement powers paralleled those in Title VI. Yet Title VI has never provided for fund termination to redress discrimination in employment.

Next, the Court quotes Bayh's statements that (i) he regarded "sections 1001-1005" as "[c]entral to [his] amendment" and (ii) "[t]his portion of the amendment covers discrimination in all areas," including employment. \textit{Ante}, at \textemdash{} (quoting 118 Cong. Rec. 5807 (1972)). But, §1005 of the Bayh amendment is the section amending Title VII and thus §§1001-1005 cover employment discrimination regardless of whether Title IX does.\textsuperscript{12} Moreover, the Court uses an ellipsis rather than include the following words from the second Bayh statement:

"Discrimination against the beneficiaries of federally assisted programs and activities is already prohibited by title VI of the 1964 Civil Rights Act, but unfortunately the prohibition does not apply to discrimination on the basis of sex. In order to close this loophole, my amendment sets forth prohibition and enforcement provisions which generally parallel the provisions of title VI." 118 Cong. Rec. 5807 (1972) (in ellipses \textit{ante}, at \textemdash{}).

Thus, for a second time, Bayh indicated to the Senate that he regarded Title IX of his amendment as parallel to Title VI

\textsuperscript{11} The most dependable sources of legislative intent are the reports of the responsible committees. Because Title IX is the result of a floor amendment, there is no explanation of its meaning in reports from the relevant House and Senate Committees.

\textsuperscript{12} See description of various sections of the Bayh Amendment, \textit{supra}, at \textemdash{}. See also 118 Cong. Rec. 5803 (1972) (print of amendment).
rather than as a substantial departure from Title VI. In the third Bayh statement, ante, at ___ (quoting 118 Cong. Rec. 5812 (1972)), the Senator was responding to a question from Senator Pell regarding Title IX, and the Court assumes that each sentence in that response refers to Title IX. But, as the Court of Appeals for the First Circuit noted in Islesboro:

“A fair reading both of the colloquy . . ., as well as the discussion immediately preceding and following the above-quoted passage, indicates that Senator Bayh divided his analysis into three sections, two of which were specifically aimed at students (admissions and services), the third at employees (employment). While Senator Bayh's response was more extended than it needed to be for a direct answer to Senator Pell's question, we think HEW's reading is strained. We think this particularly in light of the fact that the discussion was an oral one and thus not as precise as a response in written form, . . . .”

593 F. 2d, at 427.

Rather than support the Court's view, it is fair to say that the legislative history accords with the natural reading of the statute. Title IX prohibits discrimination only against beneficiaries of federally funded programs and activities, not all employment discrimination by recipients of federal funds. Title IX is modelled after Title VI, which is explicitly so limited—and to the extent statements of Senator Bayh can be read to the contrary, they are ambiguous."

As indicated above, when critical words, in this case “em-
ployment discrimination," are absent from a statute and its meaning is otherwise clear, reliance on legislative history to add omitted words is rarely appropriate. Only when legislative history gives clear and unequivocal guidance as to congressional intent should a court presume to add what Congress failed to include. And, however else one might describe the legislative history relied upon by the Court today, it is neither clear nor unequivocal.

III

As the sole issue before us is the meaning of § 901(a) of Title IX, I repeat the relevant language:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . ." § 901(a).

The Court acknowledges that, in view of the lack of support for its position in this language, it must look to the "legislative history for evidence as to whether or not § 901 was meant to prohibit employment discrimination". Ante, at . Although the Court examines at length the truncated legislative history, it ignores other factors highly relevant to congressional intent: (i) whether the ambiguity easily could have been avoided by the legislative draftsman; (ii) whether Congress had prior experience and a certain amount of expertise in legislating with respect to this particular subject; and (iii) whether existing legislation clearly and adequately proscribed and remedied the conduct in question. When these factors are considered, there is no justification for reading sex employment discrimination language into § 901.

If there had been such an intent, no legislative draftsman—ever, one of modest accomplishments—would have written § 901 as above set forth. The draftsman would have
been guided, of course, by the employment-discrimination language in Title VII and the Equal Pay Act, language specifically addressing this problem. Moreover, although these other statutes had been enacted by an earlier Congress, at the time Title IX was being drafted and considered, Title VII and the Equal Pay Act were amended to prescribe explicitly employment discrimination in educational institutions on the basis of sex. Congress hardly would have enacted a third statute addressing this problem, but, in contrast to the other two, use language ambiguous at best.

In addition, a comparison of the provisions of Title VII and Title IX suggests that Congress would not have enacted the inconsistent provisions of the latter with respect to remedies and procedures. Title VII is a comprehensive anti-discrimination statute with carefully prescribed procedures for conciliation by the EEOC, federal court remedies available within certain time limits, and certain specified forms of relief, designed to make whole the victims of illegal discrimination and available unless discriminatory conduct falls within one of several exceptions. See 42 U. S. C. § 2000e et seq.

This thoughtfully structured approach is in sharp contrast to Title IX, which contains only one extreme remedy, fund termination, apparently now available at the request of any female employee who can prove discrimination in employment in a federally funded program or activity. This cutoff of funds, at the expense of innocent beneficiaries of the funded program, will not remedy the injustice to the employee. Indeed, Title IX does not authorize a single action, such as employment, reemployment, or promotion, to rectify employment discrimination. And Title IX, unlike Title VII, has no time limits for action, no conciliation provisions, and no guidance as to procedure. Compare 20 U. S. C. § 1681 et seq.

It is interesting to note that, whereas Congress itself provided for administrative procedures to redress employment discrimination in Title VII, see 42 U. S. C. § 2000e et seq., it enacted no comparable provisions in Title
(Title IX) with 42 U. S. C. §2000e et seq. (Title VII). The Solicitor General conceded at oral argument that appropriate relief for the two employees who initiated this suit was available under Title VII. See Transcript of Oral Argument, 27.

Finally, Congress delegated the administration of Title IX to the Department of Health, Education and Welfare. In contrast, Title VII and the Equal Pay Act are administered by the Department of Labor and EEOC. It is most unlikely that Congress would intend not only duplicate substantive legislation but also enforcement of these provisions by different departments of government with different enforcement powers, areas of expertise, and enforcement methods. The IX, see 20 U. S. C. §§1681 et seq. Such administrative procedures as are available under Title IX are part of the regulations promulgated by HEW, 45 CFR §§80.7-80.10.

The administrative procedures enacted by Congress in the U. S.C and by HEW in the CFR are quite different, though addressing a single problem. The HEW regulations provide for Administrative-Procedure-Act hearings, followed by judicial review. See 45 CFR §§80.9-80.11. In Contrast, EEOC acts first as conciliator, attempting to settle employment disputes, and then, if it so desires, as counsel for the victims of discrimination in subsequent de novo judicial proceedings. See 42 U. S. C. §2000e, et seq.

An employee could presumably bring actions against the school district under Title VII, and the Equal Pay Act, seeking redress of his or her wrong in the form of back pay and injunctive relief, and, in addition, request that funds be terminated under Title IX.

The Court's decision will result in needless duplication of governmental bureaucracy. Although HEW would prefer to have no involvement in employment discrimination, see Brief of Solicitor General 37, n. 26, it will be required to maintain a staff of employees to enforce the anti-discrimination in employment portion of Title IX. And these employees will duplicate the large staffs of the EEOC and the Department of Labor already devoted to employment discrimination.

From the viewpoint of educational institutions, there will now be two sets of federal regulations and regulators overseeing their employment practices. These different governmental departments may, or may not, have the same substantive standards and filing requirements at any given time. At the present time, the HEW and EEOC procedures in the event
District Court in *Romeo Community Schools v. HEW*, 438 F. Supp. 1021 (ED Mich. 1977), aff'd 600 F. 2d 581 (CA6) *cert. den.*, 444 U. S. 972 (1979), correctly observed:

"These governmental agencies, particularly the EEOC, were established specifically for the purpose of regulating discrimination in employment practices. These agencies have the expertise and their enabling legislation has provided them with the investigative and enforcement machinery necessary to compel compliance with regulations against sex discrimination in employment. HEW does not have similar enforcement authority." 438 F. Supp., at 1034.

Even the Solicitor General, in the brief on behalf of the federal respondents in this case, acknowledges what the *Romeo* Court thought was self evident:

"The Department of Education has only limited expertise in employment matters. Its view is that employment cases are better resolved under Title VII of the Civil Rights Act of 1964, which provides more appropriate remedies for such cases." Brief, p. 37.

In sum, the Court's decision today, finding an unarticulated intent on the part of Congress, is predicated on five perceptions of congressional action that I am unable to share: (i) that Congress neglectfully or forgetfully failed to include language in § 901 with respect to discrimination that would have made clear its intent; (ii) that Congress enacted a third statute proscribing sex discrimination in employment in educational institutions in the absence of any showing of a need for such duplicative legislation; (iii) that Congress failed to include in the third statute appropriate procedural and remedial provisions relevant to employment discrimination; (iv) of non-compliance are quite different. See discussion in text *supra*, at —.
that it vested the authority to enforce the third statute in HEW, a department that even the Solicitor General concedes lacks the experience and the qualifications to oversee and enforce employment legislation; and (v) finally, that in Title VI it gave a new "remedy" for employment discrimination to women, but did not make that remedy available to those discriminated against on the basis of race.

Surely Congress has more common sense and expertise than to blunder in this way. What do you think of this change? We aren't blaming Congress, but the change is designed to shift the focus to the Court.
POWELL, J., dissenting.

Title IX of the Education Amendments of 1972, 20 U. S. C. § 1681 et seq., prohibits discrimination on the basis of sex in education programs and activities receiving federal funds. In 1975, the Department of Health, Education, and Welfare (HEW) promulgated regulations prohibiting discrimination on the basis of gender in employment by fund recipients. 34 CFR § 106.51(a)(1). Today, the Court upholds the validity of these regulations, relying on the statutory language, its legislative history, and several post-enactment events. Because I believe the Court's interpretation is neither consistent with the statutory language nor supported by its legislative history, I dissent.

Although the Court begins with the language of the statute,

1 As noted by the Court, ante, at —, n. 4, HEW's duties under Title IX were transferred to the Department of Education in 1979 by § 301(a)(3) of the Department of Education Organization Act, Pub. L. 69-88, 93 Stat. 678, 20 U. S. C. § 3441(a)(3) (1976 ed., Supp. IV). I follow the Court in referring to both agencies as HEW since many of the relevant acts in this case took place before the reorganization. See ante, at —, n. 4.

2 The Court acknowledges that the post-enactment events it discusses only "lend credence" to its interpretation of the statute. Ante, at —.
ute, it quotes the relevant language in its entirety only in the opening paragraphs of the opinion. In the section considering the statute's meaning, the Court quotes two words of the statute and paraphrases the rest, thereby suggesting an interpretation actually at odds with the language used in the statute. Thus, according to the Court, "[s]ection 901's broad directive that 'no person' may be discriminated against on the basis of gender appears, on its face, to include employees as well as students." *Ante.* at ___. This is not what the statutory language provides.

In relevant part, the statute states:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. ..." *Education Amendments of 1972, § 901(a), 20 U. S. C. § 1681(a).*

A natural reading of these words would limit the statute's scope to discrimination against those who are enrolled in, or who are denied the benefits of, programs or activities receiving federal funding. It tortures the language chosen by Congress to conclude that not only teachers and administrators, but also secretaries and janitors, who are discriminated against on the basis of sex in employment, are thereby (i) **denied participation** in a program or activity; (ii) **denied the benefits of** a program or activity; or (iii) subject to discrimination **under** an education program or activity. Moreover, Congress made no reference whatever to employers or em-

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*I agree with the Court that employees who directly participate in a federal program, i. e., teachers who receive federal grants, are, of course, protected by Title IX. See *ante,* at ___. Respondents Elaine Dove and Linda Potz were not, however, participants in any grant program or in any other federally funded program or activity. Elaine Dove was a teacher and Linda Potz a guidance counselor. Both alleged only discrimination in employment.*
ployees in Title IX, in sharp contrast to quite explicit language in other statutes regulating employment practices. It is noteworthy that not one of the other five courts of appeals to consider the question before us reached the conclusion that HEW's interpretation is supported by the statutory language. The issue was presented initially to the Court of Appeals for the First Circuit in Islesboro School Committee v. Califano, 593 F. 2d 424, 426, cert. denied, 444 U. S. 972 (1979), and that decision has been followed by most other courts of appeals to consider the question. There, the court concluded that "[t]he language of section 901, 20 U. S. C. § 1681, on its face, is aimed at the beneficiaries of the federal monies, i.e., either students attending institutions receiving federal funds or teachers engaged in special research being funded by the United States government." The court went on to point out that this reading of "the plain language of the statute is buttressed by an examination of the specific exemptions mentioned in the statute," all of which relate to students, not employees. In the next appellate decision, Romeo Community Schools v. HEW, 600 F. 2d 581, cert. denied, 444 U. S. 972 (1979), the Court of Appeals for the Sixth Circuit also rejected the interpretation of the statute now relied on by this Court, not-


2 The Court today not only finds this point unconvincing, but concludes that the "absence of a specific exclusion for employment among the list of exceptions tends to support the Court of Appeals' conclusion that Title IX does protect employees." Ante, at — (citation omitted). I am unable to follow this reasoning. The absence of employment-related exceptions may not be conclusive proof that employment is not within the scope of the statute. But I fail to see how that absence affirmatively indicates that the statute was intended to apply to employees. Indeed, if Congress did intend to cover employees, it is anomalous that it did not provide exceptions similar to those in Title VII. For example, Title VII does not proscribe bona fide seniority plans, 42 U. S. C. § 2000e-2(h).
ing that "as actually written, the statute is not nearly so broad. The words 'no person' are modified by later language which clearly limits their meaning." 600 F. 2d, at 584. The court concluded that the statute "reaches only those types of disparate treatment" that involve discrimination against program beneficiaries. 6 Ibid.

II

A

The Court acknowledges, as it must, that § 901 of Title IX "does not expressly include ... employees." But it finds a

4 The question also has been presented to the Courts of Appeals for the Fifth, Eighth, and Ninth Circuits. In Junior College Dist. of St. Louis v. Califano, 697 F. 2d 119, 121, cert. denied, 444 U. S. 972 (1972) the Court of Appeals for the Eighth Circuit considered HEW's arguments but "adopted" the Court of Appeals for the First Circuit's decision in Islesboro. And in Seattle University v. HEW, 621 F. 2d 992, 993, cert. granted sub nom. United States Dept. of Ed. v. Seattle Univ., 449 U. S. 1009, the Court of Appeals for the Ninth Circuit followed the three earlier circuit decisions, noting that each of those courts had held that the plain language of Title IX did not support HEW's position. Even in the decision below, in which the Court of Appeals for the Second Circuit upheld the regulations, the court did not base its decision on the statutory language, and stated that the "language is more ambiguous than HEW suggests." 629 F. 2d, at 777.

The other appellate decision was entered by the Court of Appeals for the Fifth Circuit in Dougherty Cty. School System v. Harris, 622 F. 2d 735 (CA 5 1980), cert. pending sub nom. Bell v. Dougherty Cty. School System, No. 80-1023. There, the Court of Appeals for the Fifth Circuit held the regulations invalid because they did not limit fund termination to the offending program or activity. In reaching this decision, the court noted that program-specific regulations might be sustainable in some instances, e. g., if they prohibited discrimination in pay against female teachers paid with federal funds relative to the amounts paid male teachers with federal funds. The court noted that an argument can be made that in such a case, the woman teacher is "denied the benefits of" or "subject to discrimination under" the federal program. 622 F. 2d, at 737-738. But there is no indication it would agree with this Court that the statutory language supports program-specific regulations prohibiting all kinds of discriminatory employment practices with respect to all types of employees, i. e., hourly employees, secretaries and administrators as well as teachers.
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strong negative inference in the fact that §901 does not "exclude employees from its scope." Ante, at —. The Court then turns to the "legislative history for evidence as to whether or not §901 was meant to prohibit employment discrimination." Ibid. I agree with the several Courts of Appeals that have concluded unequivocally that the statutory language cannot fairly be read to proscribe employee discrimination. Only rarely may legislative history be relied upon to read into a statute operative language that Congress itself did not include. To justify such a reading of a statute, the legislative history must show clearly and unambiguously that Congress did intend what it failed to state.1 The Court's elaborate exposition of the history of Title IX falls far short of this standard.

Title IX originated in a floor amendment sponsored by Senator Bayh to Senate Bill, S. 659, 92nd Cong., 2d Sess. (1972). The amendment was intended to close loopholes in earlier civil rights legislation; three problem areas had been identified in hearings by a special House Committee in 1970. See Discrimination Against Women: Hearings on Section 805 of H.R. 10898 before the Special Subcommittee on Education of the House Committee on Education and Labor, 91st Cong., 2d Sess. (1970). Title VII of the Civil Rights Act of 1964, though generally barring employment discrimination on the basis of sex, race, religion, or national origin, did not apply to discrimination "with respect to employment of individuals to perform work connected with the educational activities of [educational] institutions." Pub. L. No. 88--352, title VII, §702, 78 Stat. 255. And the Equal Pay Act of 1963 banned discrimination in wages on the basis of sex, 29 U. S. C. §206(d)(1), but it did not apply to administrative,

1See, e. g., Citizens to Preserve Overton Park v. Volpe, 410 U. S. 402, 412 n. 29 (1971) ("Because of this ambiguity [in the legislative history] it is clear that we must look primarily to the statutes themselves to find the legislative intent.").

The Bayh floor Amendment, No. 874, introduced in 1972, 118 Cong. Rec. 5803 (1972) (print of amendment), closed these loopholes. Section 1005 amended Title VII to cover employment discrimination in educational institutions. Ibid. Sections 1009–1010 amended the Equal Pay Act so that discrimination in pay on the basis of sex was barred, even for teachers and other professionals. Ibid. And §§ 1001–1003 created a new Title IX banning discrimination on the basis of sex in federally funded educational programs and activities, thus effectively extending Title VI's prohibition to sex discrimination in such programs.

Since the amendments to Title VII and the Equal Pay Act explicitly covered discrimination in employment in educational institutions, there was no need to include §§ 1001–1003 of the Bayh Amendment to proscribe such discrimination. Instead, Title IX presumably was enacted, as its language clearly indicates, to bar discrimination against beneficiaries of federally funded educational programs and activities. This interpretation of Title IX is confirmed by the fact that it was modelled after Title VI, a statute limited in its scope to discrimination against beneficiaries of federally funded programs, not general employment practices of fund recipients. 8

42 U. S. C. § 2000d–3. 9 And, as this Court noted in Cannon

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8 The operative language in the two provisions is virtually identical. Compare 42 U. S. C. § 2000d (Title VI) with 20 U. S. C. § 1681a (Title IX).

9 42 U. S. C. § 2000d–3 states:

"Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any department or agency or labor organization except where a primary
v. *University of Chicago*, 441 U. S. 677, 770–711 (1979), when Congress passed Title IX, it expected the new provision to be interpreted consistently with Title VI, which had been its model.

B

The Court discounts the importance of Title VI to the proper interpretation of Title IX for three reasons. First, it notes that “[i]t is Congress’ intention in 1972, not in 1964, that is of significance in interpreting Title IX.” *Ante*, at -- (citing *Cannon v. University of Chicago*, 441 U. S. 677, 710–711 (1979). This point begs the question, however, since there is no evidence that in 1972, when it passed Title IX, Congress thought Title VI applied to employment discrimination. The second reason advanced by the Court for disregarding Title VI is that, unlike Title IX, it includes a section, i. e. § 604, 42 U. S. C. § 2000d–3, expressly stating that Title VI applies only to discrimination against fund beneficiaries, not to employment discrimination *per se*. But in an earlier version of the legislation that was to become Title IX, the amendment was drafted as a modification of Title VI, simply adding the word “sex.” In the end, it is true, Title IX was enacted as a statute separate from Title VI, but the reason for this approach was strategic, not substantive. Supporters feared that if Title VI were opened for amendment, Title VI itself might be “gutted” on the floor of the Congress. *Sex Discrimination Regulations: Hearings Before the Subcomm. on Postsecondary Education and Labor, House of Representatives—Review of regulations to implement Title IX, 94th Cong., 1st Sess.* p. 409 (1975).

Finally, to break the link between Titles VI and IX, the Court stresses that the House version of the Senate’s Bayh Amendment originally contained a provision, §1004, equiva-
lent to § 604 of Title VI, explicitly stating that no section of the 1972 legislation applied to discrimination in employment, but this provision was eliminated by the Conference. Ante, at ___. A strong argument, however, can be made that there was a non-substantive reason for eliminating § 1004 from the House bill. In 1975 hearings before the House Subcommittee on Postsecondary Education and Labor, Representative O'Hara, Chairman of that Subcommittee, while explaining the background of Title IX to a witness, noted that this change was made at Conference simply to eliminate, as quietly as possible, a recently discovered drafting error. Sex Discrimination Regulations: Hearings Before the Subcommittee on Postsecondary Education and Labor, House of Representatives—Review of Regulations to Implement Title IX, 94th Cong., 1st Sess. p. 409 (1975). Even without reference to Representative O'Hara's remarks, made in 1975, it is clear that, at the time of the Conference on the House bill and the Senate's Bayh Amendment, § 1004 of the House bill was a drafting mistake; it stated that no section of the House bill applied to employment, though sections of the House Bill, as well as the Senate version, contained express changes to the employment discrimination provisions of Title VII and the Equal Pay Act. Since the analogous provision of Title VI, § 604, had been regarded as a mere clarification, the Court is on weak ground in arguing that the Conference Report's use of the ritualistic words “the House receded” reveals a substantive change rather than the quiet correction of an obvious drafting error at a very late stage in the legislative process.

C

In concluding that the legislative history indicates Title IX was intended to extend to employment discrimination, the

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Court is forced to rely primarily on the statements of a single senator. The first statement, ante, at —— (quoting 118 Cong. Rec. 5803 (1972)), is ambiguous. Senator Bayh did state that faculty employment would be covered by his amendment after mentioning the sections enacting Title IX but prior to any mention of those amending Title VII and the Equal Pay Act. Immediately thereafter, however, he stated that Title IX’s enforcement powers paralleled those in Title VI. Yet Title VI has never provided for fund termination to redress discrimination in employment.

Next, the Court quotes Bayh’s statements that (i) he regarded “sections 1001–1005” as “[c]entral to [his] amendment” and (ii) “[t]his portion of the amendment covers discrimination in all areas,” including employment. Ante, at —— (quoting 118 Cong. Rec. 5807 (1972)). But, §1005 of the Bayh amendment is the section amending Title VII and thus §§1001–1005 cover employment discrimination regardless of whether Title IX does. Moreover, the Court uses an ellipsis rather than include the following words from the second Bayh statement:

“Discrimination against the beneficiaries of federally assisted programs and activities is already prohibited by title VI of the 1964 Civil Rights Act, but unfortunately the prohibition does not apply to discrimination on the basis of sex. In order to close this loophole, my amendment sets forth prohibition and enforcement provisions which generally parallel the provisions of title VI.” 118 Cong. Rec. 5807 (1972) (in ellipses ante, at ——).

Thus, for a second time, Bayh indicated to the Senate that he regarded Title IX of his amendment as parallel to Title VI

11 The most dependable sources of legislative intent are the reports of the responsible committees. Because Title IX is the result of a floor amendment, there is no explanation of its meaning in reports from the relevant House and Senate Committees.

12 See description of various sections of the Bayh Amendment, supra, at ——. See also 118 Cong. Rec. 5803 (1972) (print of amendment).
rather than as a substantial departure from Title VI.

In the third Bayh statement, ante, at —— (quoting 118 Cong. Rec. 5812 (1972)), the Senator was responding to a question from Senator Pell regarding Title IX, and the Court assumes that each sentence in that response refers to Title IX. But, as the Court of Appeals for the First Circuit noted in Islesboro:

"A fair reading both of the colloquy . . . , as well as the discussion immediately preceding and following the above-quoted passage, indicates that Senator Bayh divided his analysis into three sections, two of which were specifically aimed at students (admissions and services), the third at employees (employment). While Senator Bayh's response was more extended than it needed to be for a direct answer to Senator Pell's question, we think HEW's reading is strained. We think this particularly in light of the fact that the discussion was an oral one and thus not as precise as a response in written form, . . . ." 598 F. 2d, at 427.

Rather than supporting the Court's view, the legislative history accords with the natural reading of the statute. Title IX prohibits discrimination only against beneficiaries of federally funded programs and activities, not all employment discrimination by recipients of federal funds. Title IX is modeled after Title VI, which is explicitly so limited—and to the extent statements of Senator Bayh can be read to the contrary, they are ambiguous. 3

3 The Court devotes considerable time to describing post-enactment actions or inaction on the part of subsequent Congresses. See ante, at ——. The fact that, in 1975, Congress considered, but failed to enact, resolutions disapproving HEW's regulations is essentially irrelevant in determining the intent of the enacting Congress in 1972. Similarly, the fact that a subsequent Congress considered, but failed to enact bills limiting Title IX's coverage with respect to employment discrimination does not indicate that the 1972 Congress meant to include employment discrimina-
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As indicated above, when critical words, in this case "employment discrimination," are absent from a statute and its meaning is otherwise clear, reliance on legislative history to add omitted words is rarely appropriate. Only when legislative history gives clear and unequivocal guidance as to congressional intent should a court presume to add what Congress failed to include. And, however else one might describe the legislative history relied upon by the Court today, it is neither clear nor unequivocal.

III

As the sole issue before us is the meaning of § 901(a) of Title IX, I repeat the relevant language:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." § 901(a).

The Court acknowledges that, in view of the lack of support for its position in this language, it must look to the "legislative history for evidence as to whether or not § 901 was meant to prohibit employment discrimination". Ante, at ___. Although the Court examines at length the truncated legislative history, it ignores other factors highly relevant to congressional intent: (i) whether the ambiguity easily could have been avoided by the legislative draftsman; (ii) whether Congress had prior experience and a certain amount of expertise in legislating with respect to this particular subject; and (iii) whether existing legislation clearly and adequately proscribed and provided remedies for the conduct in question. When these factors are considered, there is no justification for reading sex employment discrimination language into § 901.

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If there had been such an intent, no competent legislative draftsman would have written § 901 as above set forth. The draftsman would have been guided, of course, by the employment-discrimination language in Title VII and the Equal Pay Act, language specifically addressing this problem. Moreover, although these other statutes had been enacted by an earlier Congress, at the time Title IX was being drafted and considered Title VII and the Equal Pay Act also were amended to proscribe explicitly employment discrimination in educational institutions on the basis of sex. Congress hardly would have enacted a third statute addressing this problem, but, in contrast to the other two, use language ambiguous at best.

In addition, a comparison of the provisions of Title VII and Title IX suggests that Congress would not have enacted the inconsistent provisions of the latter with respect to remedies and procedures. Title VII is a comprehensive anti-discrimination statute with carefully prescribed procedures for conciliation by the EEOC, federal court remedies available within certain time limits, and certain specified forms of relief, designed to make whole the victims of illegal discrimination and available unless discriminatory conduct falls within one of several exceptions. See 42 U. S. C. §2000e et seq. This thoughtfully structured approach is in sharp contrast to Title IX, which contains only one extreme remedy, fund termination, apparently now available at the request of any female employee who can prove discrimination in employment in a federally funded program or activity. This cutoff of funds, at the expense of innocent beneficiaries of the funded program, will not remedy the injustice to the employee. Indeed, Title IX does not authorize a single action, such as employment, reemployment, or promotion, to rectify employment discrimination. And Title IX, unlike Title VII, has no time limits for action, no conciliation provisions, and no guidance as to procedure. Compare 20 U. S. C. §1681 et seq.

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(Title IX) with 42 U. S. C. § 2000e et seq. (Title VII). The Solicitor General conceded at oral argument that appropriate relief for the two employees who initiated this suit was available under Title VII.\(^5\) See Tr. of Oral Arg., 27.

Finally, Congress delegated the administration of Title IX to the Department of Health, Education and Welfare. In contrast, Title VII and the Equal Pay Act are administered by the Department of Labor and EEOC. It is most unlikely that Congress would intend not only duplicate substantive legislation but also enforcement of these provisions by different departments of government with different enforcement powers, areas of expertise, and enforcement methods.\(^6\) The administrative procedures to redress employment discrimination in Title VII, see 42 U. S. C. § 2000e et seq., it enacted no comparable provisions in Title IX, see 20 U. S. C. § 1681 et seq. Such administrative procedures as are available under Title IX are part of the regulations promulgated by HEW, 45 CFR §§ 80.7-80.10.

The administrative procedures enacted by Congress in the U. S. C and by HEW in the CFR are quite different, though addressing a single problem. The HEW regulations provide for Administrative-Procedure-Act hearings, followed by judicial review. See 45 CFR §§ 80.9-80.11. In contrast, EEOC acts first as conciliator, attempting to settle employment disputes, and then, if it so desires, as counsel for the victims of discrimination in subsequent de novo judicial proceedings. See 42 U. S. C. § 2000e et seq.

An employee could presumably bring actions against the school district under Title VII, and the Equal Pay Act, seeking redress of his or her wrong in the form of back pay and injunctive relief, and, in addition, request that funds be terminated under Title IX.

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From the viewpoint of educational institutions, there will now be two sets of federal regulations and regulators overseeing their employment practices. These different governmental departments may, or may not, have the same substantive standards and filing requirements at any given
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Even the Solicitor General, in the brief on behalf of the federal respondents in this case, acknowledges what the *Romeo* court thought was self evident:

"The Department of Education has only limited expertise in employment matters. Its view is that employment cases are better resolved under Title VII of the Civil Rights Act of 1964, which provides more appropriate remedies for such cases." Brief of the Solicitor General, p. 37.

In sum, the Court's decision today, finding an unarticulated intent on the part of Congress, is predicated on five perceptions of congressional action that I am unable to share: (i) that Congress negligently or forgetfully failed to include language in §901 with respect to discrimination that would have made clear its intent; (ii) that Congress enacted a third statute proscribing sex discrimination in employment in educational institutions in the absence of any showing of a need for such duplicative legislation; (iii) that Congress failed to in-

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time. At the present time, the HEW and EEOC procedures in the event of non-compliance are quite different. See discussion in text supra, at ______.
clude in the third statute appropriate procedural and remedial provisions relevant to employment discrimination; (iv) that it vested the authority to enforce the third statute in HEW, a department that even the Solicitor General concedes lacks the experience and the qualifications to oversee and enforce employment legislation; and (v) finally, that in Title VI, it gave a new "remedy" for sex discrimination in employment, but did not make that remedy available to those discriminated against on the basis of race.

Surely Congress has more common sense and expertise than the Court would attribute to it.
SUPREME COURT OF THE UNITED STATES

No. 80-896

NORTH HAVEN BOARD OF EDUCATION ET AL.,
PETITIONERS, v. TERREL H. BELL, SECRETARY,
DEPARTMENT OF EDUCATION ET AL.

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

(April ——, 1982)

POWELL, J., dissenting.

Although the Court begins with the language of the stat-

1 As noted by the Court, ante, at ——, n. 4, HEW’s duties under Title IX were transferred to the Department of Education in 1979 by § 301(a)(3) of the Department of Education Organization Act, Pub. L. 96-88, 93 Stat. 876, 20 U. S. C. § 3441(a)(3) (1976 ed., Supp. IV). I follow the Court in referring to both agencies as HEW since many of the relevant acts in this case took place before the reorganization. See ante, at ——, n. 4.

2 The Court acknowledges that the post-enactment events it discusses only “lend credence” to its interpretation of the statute. Ante, at ——.
In relevant part, the statute states:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance. . . ." Education Amendments of 1972, § 901(a), 20 U. S. C. § 1681(a).

A natural reading of these words would limit the statute's scope to discrimination against those who are enrolled in, or who are denied the benefits of, programs or activities receiving federal funding. It tortures the language chosen by Congress to conclude that not only teachers and administrators, but also secretaries and janitors, who are discriminated against on the basis of sex in employment, are thereby (i) denied participation in a program or activity; (ii) denied the benefits of a program or activity; or (iii) subject to discrimination under an education program or activity. Moreover, Congress made no reference whatever to employers or em-

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1 I agree with the Court that employees who directly participate in a federal program, i. e., teachers who receive federal grants, are, of course, protected by Title IX. See ante, at . Respondents Elaine Dove and Linda Potz were not, however, participants in any grant program or in any other federally funded program or activity. Elaine Dove was a teacher and Linda Potz a guidance counselor. Both alleged only discrimination in employment.
ployees in Title IX, in sharp contrast to quite explicit lan-
guage in other statutes regulating employment practices.¹

It is noteworthy that not one of the other five courts of ap­
peals to consider the question before us reached the con­
clusion that HEW’s interpretation is supported by the statutory
language. The issue was presented initially to the Court of
Appeals for the First Circuit in Islesboro School Committee
v. Califano, 593 F. 2d 424, 428, cert. denied, 444 U. S. 972
(1979), and that decision has been followed by most other
courts of appeals to consider the question. There, the court
concluded that “[t]he language of section 901, 20 U. S. C.
§ 1681, on its face, is aimed at the beneficiaries of the federal
monies, i. e., either students attending institutions receiving
federal funds or teachers engaged in special research being
funded by the United States government.” The court went
on to point out that this reading of “the plain language of the
statute is buttressed by an examination of the specific ex­
emptions mentioned in the statute,” all of which relate to stu­

In the next appellate decision, Romeo Community Schools
v. HEW, 600 F. 2d 581, cert. denied, 444 U. S. 972 (1979),
the Court of Appeals for the Sixth Circuit also rejected the
interpretation of the statute now relied on by this Court, not-

¹ See, e. g., 42 U. S. C. § 2000e-2 (Title VII: “[i]t shall be an unlawful
employment practice for an employer—”); 29 U. S. C. § 206(d)(1) (Equal
Pay Act: “[n]o employer having employees . . .”).

² The Court today not only finds this point unconvincing, but concludes
that the “absence of a specific exclusion for employment among the list of
exceptions tends to support the Court of Appeal’s conclusion that Title IX
does protect employees.” *Ante,* at —— (citation omitted). I am unable
to follow this reasoning. The absence of employment-related exceptions
may not be conclusive proof that employment is not within the scope of the
statute. But I fail to see how that absence affirmatively indicates that the
statute was intended to apply to employees. Indeed, if Congress did in­
tend to cover employees, it is anomalous that it did not provide exceptions
similar to those in Title VII. For example, Title VII does not proscribe
ing that "as actually written, the statute is not nearly so broad. The words 'no person' are modified by later language which clearly limits their meaning." 600 F. 2d, at 584. The court concluded that the statute "reaches only those types of disparate treatment" that involve discrimination against program beneficiaries. 6

Ibid.

II

A

The Court acknowledges, as it must, that § 901 of Title IX "does not expressly include . . . employees." But it finds a

'The question also has been presented to the Courts of Appeals for the Fifth, Eighth, and Ninth Circuits. In Junior College Dist. of St. Louis v. Calofono, 597 F. 2d 119, 121, cert. denied, 444 U. S. 972 (1972) the Court of Appeals for the Eighth Circuit considered HEW's arguments but "adopted" the Court of Appeals for the First Circuit's decision in Isettilboro. And in Seattle University v. HEW, 621 F. 2d 992, 995, cert. granted sub nom. United States Dept. of Ed. v. Seattle Univ., 449 U. S. 1009 (1980), the Court of Appeals for the Ninth Circuit followed the three earlier circuit decisions, noting that each of those courts had held that the plain language of Title IX did not support HEW's position. Even in the decision below, in which the Court of Appeals for the Second Circuit upheld the regulations, the court did not base its decision on the statutory language, and stated that the "language is more ambiguous than HEW suggests." 629 F. 2d, at 777.

The other appellate decision was entered by the Court of Appeals for the Fifth Circuit in Dougherty Cty. School System v. Harris, 622 F. 2d 735 (1980), cert. pending sub nom. Bell v. Dougherty Cty. School System, No. 80-1023. There, the Court of Appeals for the Fifth Circuit held the regulations invalid because they did not limit fund termination to the offending program or activity. In reaching this decision, the court noted that program-specific regulations might be sustainable in some instances, e. g., if they prohibited discrimination in pay against female teachers paid with federal funds relative to the amounts paid male teachers with federal funds. The court noted that an argument can be made that in such a case, the woman teacher is "denied the benefits of" or "subject to discrimination under" the federal program. 622 F. 2d, at 737-738. But there is no indication it would agree with this Court that the statutory language supports program-specific regulations prohibiting all kinds of discriminatory employment practices with respect to all types of employees, t. e., hourly employees, secretaries and administrators as well as teachers.
strong negative inference in the fact that § 901 does not "exclude employees from its scope." *Ante*, at —. The Court then turns to the "legislative history for evidence as to whether or not § 901 was meant to prohibit employment discrimination." *Ibid.* I agree with the several Courts of Appeals that have concluded unequivocally that the statutory language cannot fairly be read to proscribe employee discrimination. Only rarely may legislative history be relied upon to read into a statute operative language that Congress itself did not include. To justify such a reading of a statute, the legislative history must show clearly and unambiguously that Congress did intend what it failed to state.7 The Court's elaborate exposition of the history of Title IX falls far short of this standard.

Title IX originated in a floor amendment sponsored by Senator Bayh to Senate Bill, S. 659, 92nd Cong., 2d Sess. (1972). The amendment was intended to close loopholes in earlier civil rights legislation; three problem areas had been identified in hearings by a special House Committee in 1970. See Discrimination Against Women: Hearings on Section 805 of H.R. 16098 before the Special Subcommittee on Education of the House Committee on Education and Labor, 91st Cong., 2d Sess. (1970). Title VII of the Civil Rights Act of 1964, though generally barring employment discrimination on the basis of sex, race, religion, or national origin, did not apply to discrimination "with respect to employment of individuals to perform work connected with the educational activities of [educational] institutions." Pub. L. No. 88-352, title VII, § 702, 78 Stat. 255. And the Equal Pay Act of 1963 banned discrimination in wages on the basis of sex, 29 U. S. C. § 206(d)(1), but it did not apply to administrative, executive, or professional workers, including teachers. See

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7See, e. g., *Citizens to Preserve Overton Park v. Volpe*, 410 U. S. 402, 412 n. 29 (1971) ("Because of this ambiguity [in the legislative history] it is clear that we must look primarily to the statutes themselves to find the legislative intent.").
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The Bayh floor Amendment, No. 874, introduced in 1972, 118 Cong. Rec. 5803 (1972) (print of amendment), closed these loopholes. Section 1005 amended Title VII to cover employment discrimination in educational institutions. *Ibid.* Sections 1009–1010 amended the Equal Pay Act so that discrimination in pay on the basis of sex was barred, even for teachers and other professionals. *Ibid.* And §§ 1001–1003 created a new Title IX banning discrimination on the basis of sex in federally funded educational programs and activities, thus effectively extending Title VI's prohibition to sex discrimination in such programs.

Since the amendments to Title VII and the Equal Pay Act explicitly covered discrimination in employment in educational institutions, there was no need to include §§ 1001–1003 of the Bayh Amendment to proscribe such discrimination. Instead, Title IX presumably was enacted, as its language clearly indicates, to bar discrimination against beneficiaries of federally funded educational programs and activities. This interpretation of Title IX is confirmed by the fact that it was modelled after Title VI, a statute limited in its scope to discrimination against beneficiaries of federally funded programs, not general employment practices of fund recipients. *8* 42 U. S. C. § 2000d–3. *9* And, as this Court noted in *Cannon*

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*8* The operative language in the two provisions is virtually identical. Compare 42 U. S. C. § 2000d (Title VI) with 20 U. S. C. § 1681a (Title IX).

*9* 42 U. S. C. § 2000d–3 states:

"Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any department or agency or labor organization except where a primary objective of the Federal financial assistance is to provide employment."
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v. University of Chicago, 441 U. S. 677, 770–711 (1979), when Congress passed Title IX, it expected the new provision to be interpreted consistently with Title VI, which had been its model.

B

The Court discounts the importance of Title VI to the proper interpretation of Title IX for three reasons. First, it notes that "[i]t is Congress' intention in 1972, not in 1964, that is of significance in interpreting Title IX." Ante, at —— (citing Cannon v. University of Chicago, 441 U. S. 677, 710–711 (1979). This point begs the question, however, since there is no evidence that in 1972, when it passed Title IX, Congress thought Title VI applied to employment discrimination. The second reason advanced by the Court for disregarding Title VI is that it, unlike Title IX, includes a section, i. e. §604, 42 U. S. C. §2000d-3, expressly stating that Title VI applies only to discrimination against fund beneficiaries, not to employment discrimination per se. But in an earlier version of the legislation that was to become Title IX, the amendment was drafted as a modification of Title VI, simply adding the word "sex." In the end, it is true, Title IX was enacted as a statute separate from Title VI, but the reason for this approach was strategic, not substantive. Supporters feared that if Title VI were opened for amendment, Title VI itself might be "gutted" on the floor of the Congress. Sex Discrimination Regulations: Hearings Before the Subcomm. on Postsecondary Education and Labor, House of Representatives—Review of regulations to implement Title IX, 94th Cong., 1st Sess. p. 409 (1975).

Finally, to break the link between Titles VI and IX, the Court stresses that the House version of the Senate's Bayh Amendment originally contained a provision, §1004, equivalent to §604 of Title VI, explicitly stating that no section of the 1972 legislation applied to discrimination in employment, but this provision was eliminated by the Conference. Ante,
at ——. A strong argument, however, can be made that there was a non-substantive reason for eliminating § 1004 from the House bill. In 1975 hearings before the House Subcommittee on Postsecondary Education and Labor, Representative O'Hara, Chairman of that Subcommittee, while explaining the background of Title IX to a witness, noted that this change was made at Conference simply to eliminate, as quietly as possible, a recently discovered drafting error. Sex Discrimination Regulations: Hearings Before the Subcommittee on Postsecondary Education and Labor, House of Representatives—Review of Regulations to Implement Title IX, 94th Cong., 1st Sess. p. 409 (1975). Even without reference to Representative O'Hara's remarks, made in 1975, it is clear that, at the time of the Conference on the House bill and the Senate's Bayh Amendment, § 1004 of the House bill was a drafting mistake; it stated that no section of the House bill applied to employment, though sections of the House Bill, as well as the Senate version, contained express changes to the employment discrimination provisions of Title VII and the Equal Pay Act. Since the analogous provision of Title VI, § 604, had been regarded as a mere clarification, the Court is on weak ground in arguing that the Conference Report's use of the ritualistic words “the House receded” reveals a substantive change rather than the quiet correction of an obvious drafting error at a very late stage in the legislative process.

C

In concluding that the legislative history indicates Title IX was intended to extend to employment discrimination, the Court is forced to rely primarily on the statements of a single

The first statement, ante, at — (quoting 118 Cong. Rec. 5803 (1972)), is ambiguous. Senator Bayh did state that faculty employment would be covered by his amendment after mentioning the sections enacting Title IX but prior to any mention of those amending Title VII and the Equal Pay Act. Immediately thereafter, however, he stated that Title IX’s enforcement powers paralleled those in Title VI. Yet Title VI has never provided for fund termination to redress discrimination in employment.

Next, the Court quotes Bayh’s statements that (i) he regarded “sections 1001–1005” as “[c]entral to [his] amendment” and (ii) “[t]his portion of the amendment covers discrimination in all areas,” including employment. Ante, at — (quoting 118 Cong. Rec. 5807 (1972)). But, §1005 of the Bayh amendment is the section amending Title VII and thus §§1001–1005 cover employment discrimination regardless of whether Title IX does. Moreover, the Court uses an
elipsis rather than include the following words from the second Bayh statement:

"Discrimination against the beneficiaries of federally assisted programs and activities is already prohibited by title VI of the 1964 Civil Rights Act, but unfortunately the prohibition does not apply to discrimination on the basis of sex. In order to close this loophole, my amendment sets forth prohibition and enforcement provisions which generally parallel the provisions of title VI." 118 Cong. Rec. 5807 (1972) (in ellipses ante, at ——).

Thus, for a second time, Bayh indicated to the Senate that he regarded Title IX of his amendment as parallel to Title VI rather than as a substantial departure from Title VI.

In the third Bayh statement, ante, at —— (quoting 118 Cong. Rec. 5812 (1972)), the Senator was responding to a question from Senator Pell regarding Title IX, and the Court assumes that each sentence in that response refers to Title IX. But, as the Court of Appeals for the First Circuit noted in Islesboro:

"A fair reading both of the colloquy . . . , as well as the discussion immediately preceding and following the above-quoted passage, indicates that Senator Bayh divided his analysis into three sections, two of which were specifically aimed at students (admissions and services), the third at employees (employment). While Senator Bayh's response was more extended than it needed to be for a direct answer to Senator Pell's question, we think HEW's reading is strained. We think this particularly in light of the fact that the discussion was an oral one and thus not as precise as a response in written form, . . . ." 593 F. 2d, at 427.

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Rather than supporting the Court's view, the legislative history accords with the natural reading of the statute. Title IX prohibits discrimination only against beneficiaries of federally funded programs and activities, not all employment discrimination by recipients of federal funds. Title IX is modelled after Title VI, which is explicitly so limited—and to the extent statements of Senator Bayh can be read to the contrary, they are ambiguous. 13

As indicated above, when critical words, in this case "employment discrimination," are absent from a statute and its meaning is otherwise clear, reliance on legislative history to add omitted words is rarely appropriate. Only when legislative history gives clear and unequivocal guidance as to congressional intent should a court presume to add what Congress failed to include. And, however else one might describe the legislative history relied upon by the Court today, it is neither clear nor unequivocal.

III

As the sole issue before us is the meaning of §901(a) of Title IX, I repeat the relevant language:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . ." § 901(a).

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13 The Court devotes considerable time to describing post-enactment actions or inaction on the part of subsequent Congresses. See ante, at . The fact that, in 1975, Congress considered, but failed to enact, resolutions disapproving HEW's regulations is essentially irrelevant in determining the intent of the enacting Congress in 1972. Similarly, the fact that a subsequent Congress considered, but failed to enact bills limiting Title IX's coverage with respect to employment discrimination does not indicate that the 1972 Congress meant to include employment discrimination within Title IX.