**SHORT SUMMARY OF THE *VMI* CASE**

**CASE HISTORY**

Founded in 1839, the Virginia Military Institute (VMI) was a male-only college dedicated to preparing “citizen soldiers” for leadership in civilian life and in the military. In 1990, a female high school student applied for but was denied admission, as many others had been in recent years. She contacted the U.S. Attorney General’s office, which filed a lawsuit against the state of Virginia and VMI, claiming the woman’s 14th Amendment right to equal protection of the laws was being violated.

The district court hearing the case ruled in VMI’s favor. The case was appealed to the Fourth Circuit Court of Appeals, which reversed the lower court and ordered Virginia to do something to fix the constitutional violation. In response, Virginia proposed a parallel program for women: the Virginia Women’s Institute for Leadership (VWIL), located at another college. This satisfied the district court and the appeals court, which noted that although the VWIL degree lacked the historical benefit and prestige of a VMI degree, the educational opportunities at the two schools were sufficiently comparable.

In 1996 the case was appealed to the U.S. Supreme Court, which overturned the ruling of the appeals court and required VMI to admit females.

**MAJORITY OPINION OF THE SUPREME COURT**

The Supreme Court based its decision on the following reasoning:

1. The government must have an “exceedingly persuasive justification”—i.e., a very strong argument—in order to discriminate by gender. Federal and state governments are denying the right to equal protection, the Court said, “when a law or official policy denies to women, simply because they are women, full citizenship stature—equal opportunity to aspire, achieve, participate in, and contribute to society based on their individual talents and capacities.” To justify a discriminatory policy, the government must prove that the policy is necessary for “important governmental objectives. The justification … must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females. The heightened review standard … means that categorization by sex may not be used to create or perpetuate the legal, social, and economic inferiority of women.”

Virginia claimed that VMI’s rigorous training program would be harmed if women were admitted, but the Court disagreed. The Court admitted that some modifications in hous- ing and training programs would be needed for women. However, it did not accept Virginia’s argument that VMI’s training methods are “inherently unsuitable to women” because of “gender-based developmental differences” and “typically male or typically female tendencies.” A government that controls the “gates to opportunity” may not “exclude qualified individuals based on ‘fixed notions concerning the roles and abilities of males and females.’ The State’s justification for excluding all women from “citizen-soldier” training for which some are qualified … does not rank as “exceedingly persuasive.”

1. In order to not violate the constitution, the government must provide an equal opportunity when it sets up a separate program for women. The Court said, “VWIL affords women no opportunity to experience the rigorous military training for which VMI is famed. Kept away from the pressures, hazards, and psychological bonding characteristic of VMI’s adversative training, VWIL students will not know the feeling of tremendous accomplishment commonly experienced by VMI’s successful cadets. Virginia maintains that methodological differences are justified by the important differences between men and women in learning and developmental needs, but generalizations about “the way women are,” estimates of what is appropriate for most women, no longer justify denying opportunity to women whose talent and capacity place them outside the average description. VWIL does not qualify as VMI’s equal. The VWIL program is a pale shadow of VMI in terms of the range of curricular choices and faculty stature, funding, prestige, alumni support and influence.”

Ginsburg, J., **delivered the opinion of the Court, in which** Stevens, O’Connor, Kennedy, Souter, **and** Breyer, JJ., **joined.** Rehnquist, C. J., **filed an opinion concurring in the judgment.** Scalia, J., **filed a dissenting opinion.** Thomas, J., **took no part in the consideration or decision of the case.** *(Editor’s Note: Justice Thomas did not participate in this decision because his son was a student at VMI.)*

**DISSENTING OPINION OF JUSTICE SCALIA**

“Today the Court shuts down an institution that has served the people of the Commonwealth of Virginia with pride and distinction for over a century and a half. To achieve that desired result, it rejects (contrary to our established practice) the factual findings of two courts below, sweeps aside the precedents of this Court, and ignores the history of our people. It rejects the finding that there exist 'gender-based developmental differences’ supporting Virginia’s restriction of the ‘adversative’ method to only a men’s institution, and the finding that the all-male composition of the Virginia Military Institute (VMI) is essential to that institution’s character. As to precedent: it drastically revises our established standards for reviewing sex- based classifications. And as to history: it counts for nothing the long tradition, enduring down to the present, of men’s military colleges supported by both states and the federal Government.

The question to be answered … is whether the exclusion of women from VMI is ‘substantially related to an important governmental objective.’ It is beyond question that Virginia has an important state interest in providing effective college education for its citizens. That single-sex instruction is an approach substantially related to that interest should be evident enough from the long and continuing history in this country of men’s and women’s colleges. But beyond that, as the Court of Appeals here stated: ‘That single-gender education at the college level is beneficial to both sexes is a fact established in this case. If Virginia were to include women in VMI, the school would eventually find it necessary to drop the adversative system altogether.’”