

***U. S. v. COMMONWEALTH OF VIRGINIA AND  
COMMONWEALTH OF VIRGINIA v. U. S.***

**SEX DISCRIMINATION**

Docket Nos. 94-1941 and 94-2107, consolidated; argued January 17, 1996

**Petitioner:** United States of America/Virginia Military Institute.

**Respondent:** United States of America/Commonwealth of Virginia.

**Facts**

An all male state supported college, The Virginia Military Institute (VMI), emphasizes rigorous physical and mental training. All cadets are required to wear the same uniforms, live in the same austere quarters, attain the same level of physical fitness, and undergo the same constant scrutiny by other cadets.

In response to a complaint from a female high school student, the United States brought suit against Virginia and VMI for allegedly violating the prohibitions against sex discrimination.

The case went back and forth between the federal district and appeals courts. Finally, the Fourth Circuit ruled that establishment of a separate Virginia Women's Institute for Leadership (VWIL) satisfied the anti-sex bias provisions of the law. The court concluded that VMI and VWIL are substantially comparable because "both seek to teach discipline and prepare students for leadership. The missions are similar and the goals are the same. The mechanisms for achieving the goals differ...but the difference is attributable to a professional judgment of how best to produce the same opportunity."

The Supreme Court granted both the government's petition challenging the adequacy of Virginia's parallel-program remedy and VMI's separate petition as to whether or not the appellate court was correct in imposing a parallel program at all.

While conceding that some women may wish to attend VMI and could succeed there, Virginia nevertheless seeks judicial deference to its single-sex policy to take into account the differing educational needs and interests of male and female students. The state noted that it supports not only 14 coeducational public colleges, but also a number of private institutions of higher learning, including four that are all-female and one that is all-male. Virginia also argues that the appeals court's requirement for a college separate from VMI to be created for women disregards student needs and preferences, the professional judgment of educators, and the irrationality of having to expend limited public resources to open a VWIL program--the demand for which is virtually nonexistent.

The government argued that Virginia has no law or written policy regarding single-sex education, that the exclusion of women from VMI is unconstitutional per se, and that the merits or demerits of single-sex education have no bearing on the case. The government also challenged the creation of VWIL as an equal entity because it does not insist upon the same level of harassment as VMI and there are no barracks at the facility. Students at VWIL live in housing provided by the sponsoring women's college and are afforded a level of privacy not available at VMI.

## **Significance**

A ruling by the Supreme Court that all gender distinctions are inherently suspect and subject to judicial scrutiny could usher in a wholly unintended new dispute. At the same time that such a holding may remove harmful stereotypes, it could also undo programs designed to meet the needs of inner city boys or abused women who require gender-specific support. To the extent that single-sex education is advantageous, eliminating public support for all-male and all-female schools would undercut the educational opportunities of students incapable of paying the substantial tuition charged by private single-sex schools.

In addition, there is the question of whether a state should be ordered to establish a program (such as that at VWIL) if the costs would far exceed the benefits by siphoning funds from popular education programs to support a facility that has garnered little interest on the part of students.