Supplementary Material

Chapter 10: The Reagan Era—Equality/Gender

Mississippi University for Women v. Hogan, 458 U.S. 718 (1982)

Joe Hogan was rejected for admission by the School of Nursing at Mississippi University for Women (MUW) solely because the School of Nursing at MUW did not accept men. Hogan sued the University, claiming that the all-women admissions policy violated the equal protection clause of the Fourteenth Amendment. The local district court rejected his claim, but that ruling was reversed by the Court of Appeals for the Fifth Circuit. Hogan appealed to the Supreme Court of the United States.

The Supreme Court by a 5–4 vote ruled that Hogan had a constitutional right to be admitted into the School of Nursing. Justice O'Connor's majority opinion insisted that Mississippi had failed to meet the intermediate scrutiny standard required of gender discriminations. Why did she think Mississippi failed the intermediate scrutiny standard? Why did the dissents disagree? Who has the better of the argument? O'Connor's opinion asserted that states must provide "an exceedingly persuasion justification" for gender distinctions. Is this merely a rephrasing of intermediate scrutiny or a more demanding standard? Hogan was one of the first instances when O'Connor cast a crucial vote with the more liberal wing of the Court. Did this case anticipate a later drift to the left or was this simply special pleading for women?

JUSTICE O'CONNOR delivered the opinion of the Court.

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We begin our analysis aided by several firmly established principles. Because the challenged policy expressly discriminates among applicants on the basis of gender, it is subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment. . . . That this statutory policy discriminates against males rather than against females does not exempt it from scrutiny or reduce the standard of review. Our decisions also establish that the party seeking to uphold a statute that classifies individuals on the basis of their gender must carry the burden of showing an "exceedingly persuasive justification" for the classification. The burden is met only by showing at least that the classification serves "important governmental objectives and that the discriminatory means employed" are "substantially related to the achievement of those objectives."

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Although the test for determining the validity of a gender-based classification is straightforward, it must be applied free of fixed notions concerning the roles and abilities of males and females. Care must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions. . . .

If the State's objective is legitimate and important, we next determine whether the requisite direct, substantial relationship between objective and means is present. The purpose of requiring that close relationship is to assure that the validity of a classification is determined through reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions about the proper roles of men and women. . . .

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The State's primary justification for maintaining the single-sex admissions policy of MUW's School of Nursing is that it compensates for discrimination against women and, therefore, constitutes

educational affirmative action. As applied to the School of Nursing, we find the State's argument unpersuasive.

In limited circumstances, a gender-based classification favoring one sex can be justified if it intentionally and directly assists members of the sex that is disproportionately burdened. However, we consistently have emphasized that "the mere recitation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme." . . .

It is readily apparent that a State can evoke a compensatory purpose to justify an otherwise discriminatory classification only if members of the gender benefited by the classification actually suffer a disadvantage related to the classification.

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Mississippi has made no showing that women lacked opportunities to obtain training in the field of nursing or to attain positions of leadership in that field when the MUW School of Nursing opened its door or that women currently are deprived of such opportunities. In fact, in 1970, the year before the School of Nursing's first class enrolled, women earned 94 percent of the nursing baccalaureate degrees conferred in Mississippi and 98.6 percent of the degrees earned nationwide. . . .

Rather than compensate for discriminatory barriers faced by women, MUW's policy of excluding males from admission to the School of Nursing tends to perpetuate the stereotyped view of nursing as an exclusively woman's job. By assuring that Mississippi allots more openings in its state-supported nursing schools to women than it does to men, MUW's admissions policy lends credibility to the old view that women, not men, should become nurses, and makes the assumption that nursing is a field for women a self-fulfilling prophecy. Thus, we conclude that, although the State recited a "benign, compensatory purpose," it failed to establish that the alleged objective is the actual purpose underlying the discriminatory classification.

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MUW permits men who audit to participate fully in classes. Additionally, both men and women take part in continuing education courses offered by the School of Nursing, in which regular nursing students also can enroll. The uncontroverted record reveals that admitting men to nursing classes does not affect teaching style, that the presence of men in the classroom would not affect the performance of the female nursing students, and that men in coeducational nursing schools do not dominate the classroom. In sum, the record in this case is flatly inconsistent with the claim that excluding men from the School of Nursing is necessary to reach any of MUW's educational goals.

Thus, considering both the asserted interest and the relationship between the interest and the methods used by the State, we conclude that the State has fallen far short of establishing the "exceedingly persuasive justification" needed to sustain the gender-based classification. Accordingly, we hold that MUW's policy of denying males the right to enroll for credit in its School of Nursing violates the Equal Protection Clause of the Fourteenth Amendment.

CHIEF JUSTICE BURGER, dissenting.

I agree generally with Justice POWELL's dissenting opinion. I write separately, however, to emphasize that the Court's holding today is limited to the context of a professional nursing school. Since the Court's opinion relies heavily on its finding that women have traditionally dominated the nursing profession, it suggests that a State might well be justified in maintaining, for example, the option of an all-women's business school or liberal arts program.

JUSTICE BLACKMUN, dissenting.

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. . . Mississippi thus has not closed the doors of its educational system to males like Hogan. Assuming that he is qualified—and I have no reason whatsoever to doubt his qualifications—those doors

are open and his maleness alone does not prevent his gaining the additional education he professes to seek.

I have come to suspect that it is easy to go too far with rigid rules in this area of claimed sex discrimination, and to lose—indeed destroy—values that mean much to some people by forbidding the State to offer them a choice while not depriving others of an alternative choice.

While the Court purports to write narrowly, declaring that it does not decide the same issue with respect to "separate but equal" undergraduate institutions for females and males, . . . there is inevitable spillover from the Court's ruling today. That ruling, it seems to me, places in constitutional jeopardy any state-supported educational institution that confines its student body in any area to members of one sex, even though the State elsewhere provides an equivalent program to the complaining applicant. The Court's reasoning does not stop with the School of Nursing of the Mississippi University for Women.

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JUSTICE POWELL, with whom JUSTICE REHNQUIST joins, dissenting.

The Court's opinion bows deeply to conformity. Left without honor—indeed, held unconstitutional—is an element of diversity that has characterized much of American education and enriched much of American life. The Court in effect holds today that no State now may provide even a single institution of higher learning open only to women students. It gives no heed to the efforts of the State of Mississippi to provide abundant opportunities for young men and young women to attend coeducational institutions, and none to the preferences of the more than 40,000 young women who over the years have evidenced their approval of an all-women's college by choosing Mississippi University for Women (MUW) over seven coeducational universities within the State. The Court decides today that the Equal Protection Clause makes it unlawful for the State to provide women with a traditionally popular and respected choice of educational environment. It does so in a case instituted by one man, who represents no class, and whose primary concern is personal convenience.

It is undisputed that women enjoy complete equality of opportunity in Mississippi's public system of higher education. Of the State's 8 universities and 16 junior colleges, all except MUW are coeducational. At least two other Mississippi universities would have provided respondent with the nursing curriculum that he wishes to pursue.

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Coeducation, historically, is a novel educational theory. From grade school through high school, college, and graduate and professional training, much of the Nation's population during much of our history has been educated in sexually segregated classrooms. . . .

The sexual segregation of students has been a reflection of, rather than an imposition upon, the preference of those subject to the policy. It cannot be disputed, for example, that the highly qualified women attending the leading women's colleges could have earned admission to virtually any college of their choice. Women attending such colleges have chosen to be there, usually expressing a preference for the special benefits of single-sex institutions. Similar decisions were made by the colleges that elected to remain open to women only.

. . . Despite the continuing expressions that single-sex institutions may offer singular advantages to their students, there is no doubt that coeducational institutions are far more numerous. But their numerical predominance does not establish—in any sense properly cognizable by a court—that individual preferences for single-sex education are misguided or illegitimate, or that a State may not provide its citizens with a choice.

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The issue in this case is whether a State transgresses the Constitution when—within the context of a public system that offers a diverse range of campuses, curricula, and educational alternatives—it seeks to accommodate the legitimate personal preferences of those desiring the advantages of an all-women's college. In my view, the Court errs seriously by assuming—without argument or discussion—that the equal protection standard generally applicable to sex discrimination is appropriate here. That standard was designed to free women from "archaic and overbroad generalizations . . . ." In no previous

case have we applied it to invalidate state efforts to expand women's choices. Nor are there prior sex discrimination decisions by this Court in which a male plaintiff, as in this case, had the choice of an equal benefit.

By applying heightened equal protection analysis to this case, the Court frustrates the liberating spirit of the Equal Protection Clause. It prohibits the States from providing women with an opportunity to choose the type of university they prefer. And yet it is these women whom the Court regards as the victims of an illegal, stereotyped perception of the role of women in our society.

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The record in this case reflects that MUW has a historic position in the State's educational system dating back to 1884. More than 2,000 women presently evidence their preference for MUW by having enrolled there. The choice is one that discriminates invidiously against no one. And the State's purpose in preserving that choice is legitimate and substantial. Generations of our finest minds, both among educators and students, have believed that single-sex, college-level institutions afford distinctive benefits.

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In sum, the practice of voluntarily chosen single-sex education is an honored tradition in our country, even if it now rarely exists in state colleges and universities. Mississippi's accommodation of such student choices is legitimate because it is completely consensual and is important because it permits students to decide for themselves the type of college education they think will benefit them most. . . .

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