

FEDERAL COURTS
TAKE HOME EXAMINATION
FALL 1996
Professor Gilles

INSTRUCTIONS:

1. This examination is due no later than 6.00 pm. on Wednesday December 18, 1996 at the office of Professor Mark Strasser, Room 121. As a matter of convenience the exam may be turned in earlier. If your examination is late your points score will be reduced by 10% for each twenty four hour period that you are late (e.g. an examination turned in at or after 6:01 p.m. on December 18, 1996 will have a 10 % point reduction; and an examination turned in at or after 6.01 p.m. on December 19 will have a 20% point reduction).

2. The examination must have a title page reading:
"GILLES FEDERAL COURTS
Examination No.

3. Place your examination in the correct box, marked "Gilles Federal Courts" (other examinations are being handed in to the same location and it is your responsibility to ensure the examination is in the correct box). If Professor Strasser is not there when you want to turn in your exam then ask David Ralston (the secretary down the hall) to let you into Professor Strasser's office to place the examination in the appropriate box.

4. This is an "open book/closed mouth" examination. You MAY use your casebook, any reference books, your notes and any outline (outside research is NOT necessary). You may NOT talk to others about this examination. Once the examination is released (i.e., after 8:00 p.m. on November 21, 1996) you may not talk to anyone about the examination until after 6:00 p.m. on December 18.

5. This examination consists of one fact pattern followed by a series of questions.

Question 1 is worth 33% of your grade

Question 2A is worth 33% of your grade

Question 2B is worth 33% of your grade

6. There is a word limit of 1200 words on each question, i.e.

Question 1 - 1200 words

Question 2A - 1200 words

Question 2B - 1200 words

You MUST observe the word limit on each question or your grade will be penalized. At the end of each question write: "I certify that my answer to this question does not exceed 1,200 words.

Exam. No. NOTE: A false certification of the number of words used is an honor code violation.

Fact Pattern

In May 1995, Fredricka Mantle sought admission to SFS (Virginia's State Farmers School). This is a state owned and state run institution founded in 1830. Its mission, to train "Virginia's farmers," reflects Virginia's long history as a farming state and many of its alumni have gone on to successful careers not just as farmers, but as politicians, lawyers and businessmen. Today, SFS is widely respected for its research in scientific and business areas. It offers a four year college degree and has highly renowned courses in a wide range of subjects, from aqua-farming to soil mechanics, and from basic chemistry to business finance.

One unique and central feature of the SFS program is its requirement that all students go through an intense period of practical training. For 2 months in each year of study, students must work as agricultural workers on the school's home farm. During the "home farm assignment," the students are forced to sleep in bunks in large barns, wash in outside showers, and follow a grueling physical schedule (students rise at dawn and perform manual work until sunset). The aim of the home farm assignment is twofold - first it recreates the farming of the 19th century allowing students to appreciate the strength of the early Virginia farmers; secondly it builds stamina, self reliance and discipline in the student. Typically about 3% of students undergoing the home farm assignment drop out of school due to the extreme physical and mental demands of the program.

The state of Virginia has numerous other state schools, including the University of Virginia. These state colleges and universities are open to men and women and several offer the same courses (such as soil mechanics, business finance etc.) as those offered at SFS, but none offer the intensive home farm assignment of SFS.

Ms. Mantle's application was rejected by SFS solely on the grounds that the school was a single sex school and did not accept women students. The decision to reject Ms. Mantle's application was made on July 16, 1995 by Dr. Philip Donner, a state employee, who holds the position of President of SFS. Dr Donner admitted that Ms. Mantle met all the school's admissions requirements and was rejected solely because of her gender. At trial he testified that although SFS's founding Charter (enacted by the Virginia legislature in 1830) did not directly speak to the admission of woman, no woman had ever been admitted to the school. Under the power granted to the President of SFS in the Charter "to regulate the admission, training and graduation of students," Dr. Dormer (and all former presidents of SFS) had adopted an Admissions Policy which provided that "the severe physical and mental requirements, the lack of privacy and the adversarial nature of the School's programs make it unsuitable for females and hence admission is limited to males." On cross examination, Dr. Donner also testified that he had stated to a close friend that, I don't care what the constitution requires, if we admit women it will destroy this institution."

Ms. Mantle filed a Sec. 1983 action in the United States District Court for the Eastern District of Virginia claiming that her constitutional right to equal protection had been denied. The complaint alleged that SFS, a state educational institution, violates the 14th Amendment's

guarantee of equal protection of the law when it admits only males.' She named as defendants Dr. Philip Dormer (in both his official and personal capacity) and the state of Virginia. She sought \$60,000 in damages covering the difference in the cost of tuition between SFS and the private agricultural college she has attended on being rejected by SFS, and an injunction ordering SFS to amend its admission policy and to admit her as a transfer student to complete her education.

On August 12, 1996 the District Court entered judgment for Ms. Mantle. In its 20 page opinion, the District Court held that:

In light of the United States Supreme Court's ruling in *U.S. v. Virginia*, - U.S. -, 116 S. Ct. 2264 (1996)(holding that Virginia's maintenance of the Virginia Military Institute as a college exclusively for males, violated the Equal Protection Clause of the 14th Amendment), I find that the state of Virginia may not maintain a single sex state university such as SFS. Moreover I find that Dr. Dormer acted maliciously in that he intended to cause an injury to Ms. Mantle's constitutional rights. I therefore issue an injunction requiring the state of Virginia and Dr. Donner to immediately amend the school's admission policy to allow the admission of women; to admit Ms. Mantle for the 1996-1997 academic year, and to pay Ms. Mantle \$60,000 in damages (for the difference in tuition for the 1995-1996 year).

The Court of Appeals for the Fourth Circuit upheld the District Court's judgment without opinion. The United States Supreme Court has granted certiorari to review the judgment entered by the District Court. Briefs are scheduled to be filed in March, 1997.

Ms. Mantle is the sole plaintiff in this suit. The United States is not a party.

2. Ms. Mantle had considered, but rejected the idea of filing a suit in state court based on state law grounds. Virginia's Equal Rights Act prohibits unequal application of the law based on gender and provides a statutory cause of action for damages for anyone so deprived of their rights.

Question 1:

(word limit 1,200 words)

You represent the state of Virginia and Dr. Dormer. Advise them on possible grounds for their appeal and the relative strength of those grounds.

DO NOT ADDRESS WHETHER THERE IS A 14TH AMENDMENT VIOLATION -
You may assume that at least as of June 26, 1996 when the Supreme Court announced its decision in *US. v. Virginia* it was a violation of the Equal Protection Clause of the 14th Amendment for the state of Virginia to maintain SFS as a single sex institution.

It may help you to know the case history of the VMI case (*U.S. v. Virginia*). You do not need to read the case in full - just the summary which follows. In 1990 prompted by a complaint filed with the United States Attorney General by a female high school student denied admission to VMI because of her sex, the United States filed suit against the Commonwealth of Virginia in federal district court alleging that VMI's exclusively male admissions policy violated the Equal

Protection Clause of the 14th Amendment. (The United States may bring suit in federal court for discrimination in violation of the United States Constitution or laws). After a six day trial, on June 14, 1991, the District Court for the Western District of Virginia ruled for VMI, finding that the benefits of VMI's education would be lost if its single sex policy were abandoned. This decision was immediately appealed to the United States Court of Appeals for the Fourth Circuit which in October 1992 overturned the District Court's finding that Virginia had met the heightened scrutiny afforded to gender discrimination. The Fourth Circuit held that neither the program's goal of training citizen soldiers, nor its physical rigors and lack of privacy, nor its adversative teaching approach made it inherently unsuitable for women. The court concluded that none of the states proffered policy reasons were sufficient to justify a single sex school. The Fourth Circuit remanded to the District Court for the selection of a remedy, suggesting that the District Court consider ordering VMI to admit women or requiring the establishment of an equivalent single sex program for women.

On remand before the District Court, the state of Virginia proposed and did create a parallel program open only to women at Mary Baldwin a private liberal arts school for women. In 1994, the District Court held that this program (although inferior in terms of prestige, alumni influence, funding and classroom offerings), met the requirements of the Equal Protection Clause. On appeal, on June 29, 1995, a divided Fourth Circuit affirmed, 44 F.3d 1229 (1995). On appeal to the Supreme Court, on June 26, 1996, the United States Supreme Court, by a vote of 7 to 1 (Justice Thomas not participating), ordered VMI to admit women. It found 1) Virginia's rationales for maintaining the single sex school (the advantages of single sex education; the lack of privacy; the physical and mental rigors of the program; and the teaching method) did not constitute a showing of "exceedingly persuasive justification" required to justify the exclusion of women from VMI; and 2) that the remedial plan offered by Virginia did not afford both genders benefits comparable in substance so as to survive equal protection review. The majority opinion relied heavily on a 1982 case, *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982) (which held unconstitutional an all female state nursing school, since the state could not demonstrate an "exceedingly persuasive justification" for using a gender classification).

Question 2: There has been intense media coverage of federal court rulings in this and several other single sex state school cases. Congress currently has before it the two legislative proposals set out below. Please advise your clients on the impact such proposed legislation would have on the appeal, presuming each passes prior to the Court's decision in your case. Your advice should include an assessment of the constitutionality of the proposed statute and an assessment of how the proposed statute applies to this case. Please address each proposed statute separately, marking your answers Question 2A and then Question 2B.

Question 2A:
(Word limit 1,200)

The proposed "Damages for Unconstitutional State Action Act" ("DUSA"), is sponsored by Senator Kennedy of Massachusetts and provides:

" All federal courts may hear causes of action pursuant to Sec. 1983 against a State and may

award money damages against a State, where the State has allegedly violated the Equal Protection Clause of the 14th Amendment.

Sec. 2 The scope of liability of and the scope of immunity of a State under Sec. 1 shall be the same as the liability and immunity of municipalities under current Sec. 1983 law.”

Advise your client the state of Virginia on the constitutionality of this proposed statute and how the statute (if passed) would apply to the state of Virginia in this case. Your answer should include discussion of the constitutional provisions and/or decisions which you believe control the issue.

**Question 2B
(Word limit 1200)**

The proposed “Single-Sex-School Jurisdiction Act” (“SJS”), is supported by a coalition of conservative and women’s rights groups and sponsored by Senator Turman of North Carolina and Senator Feinstein of California. SJA provides that:

“Sec. 1. The Supreme Court of the United States shall not have appellate jurisdiction over any case against a State or any state official where the complaint or any subsequent appeal alleges that a state educational institution violates the 14th Amendment’s guarantee of equal protection of the law when it admits only one sex. In any pending appeal the Court shall:

- A) Forthwith dismiss the case for lack of jurisdiction; and
- B) Enter a finding in favor of the State and state official that no constitutional violation has occurred.”

A second section, Sec. 2, makes clear that the Act does not limit the power of the United States Supreme Court to hear an *original action* brought in that Court by the United States as plaintiff.

Advise your clients on the constitutionality of both subsections of Sec. 1 of the proposed statute and how the statute (if passed) would apply in this case. Your answer should include discussion of the theories , constitutional provisions and/or decisions which you believe control the issue.