Disruptive Implications of the \'Ml Case

by Phyllis Schlafly *January 1, 1996*

The Virginia MilitarJ Institute case now before the U.S. Supreme Court provides one more exampie of how the liberals and the feminists constantly try to use the judiciary to impose their warped social views on America. Their aim is to get judges to decide cases on the basis of what they would like social policy to be, rather than on the criteria of what the U.S. Constitution permits, allows or forbids.

For the past 20 years, the Supreme Court has treated cases involving sex discrimination differently from cases involving race discrimination. In race cases, the Court applies a test known as "strict scrutiny, [11] which means that racial classifications by government are inherently "suspect" and always violate the Constitution (except, of course, for affirmative action).

Gender cases, however, are not considered inherently suspect and are given what is called "intermediate scrutiny. " This standard has worked pretty well and there is no claim that it is unworkable, unjust, defective, or a failure.

Now, however, Janet Reno's Department of Justice is not only pursuing the feminists' goal of forcing VMI to admit women, but has additionally requested the Supreme Court to change current policy and rule that sex is a "suspect class" exactly like race. The Court should reject Ms. Reno's effort to use the justices as activists in a feminist cause.

Applying strict scrutiny to the Vl\.11 case would not only require VMI to be sex integrated, but the rule would have to apply to all single-sex colleges, most of which are women's colleges, and all of which receive taxpayer funding.

If the Court were to rule that strict scrutiny must be applied in gender cases, it would open up a Pandora's box of lawsuits each and every time men and women are treated differently. This would be especially disruptive to the military, where there are quite a few ways where, for common sense reasons, gender differences exist.

Men register for the draft men, not women. Men, but not women, are involuntarily assigned to direct combat positions. The n1ilitary provides separate quarters and facilities for men and women. Men must run two miles in 15 minutes and 54 seconds and accomplish 52 push-ups, whereas women are only required to run two miles in i8 minutes, 54 seconds, and do 18 push-ups.

Our miiitary allows mothers, but not fathers, to take "non-chargeable" leave after the birth of a child. Women are permitted to apply for and receive early discharge from their term of enlistment by reason of pregnancy, while men have no comparable ground to get eariy discharge. Women are considered fit for duty with up to ten percent more body fat than men. Women are given a military clothing allowance larger than is provided to men. Women are permitted to have longer hair, while men must have very short hair or shave their heads. Women are allowed to wear earrings and make-up while in uniform, while men may not.

Applying strict scrutiny to ail these differences would turn running our army and navy over to the courts. That would be downright ridiculous, but nobody ever said that the feminists' ideology and objectives were based on common sense.

Applying strict scrutiny to gender cases would have other disruptive ramifications in all areas of law, especially at the state level. Take the issue of girls' athletics at schools and coileges, which is already under attack by the feminists under Title IX.

Would strict scrutiny require that all teams include both girls and boys regardless of physical differences? Would it require just a few girls to be on the teams, or girls and boys in equal numbers? Or would it require that the schoo] or college field a girls' team for every boys' team? Or would it require that equal funds be spent on girls' and boys' athletics? If the Supreme Court "legislates" strict scrutiny, only the Supreme Court can define it. So, bring on the lawsuits.

The Hawaii Supreme Court recently indulged in its own judicial activism by applying strict scrutiny to its state marriage laws, ordering a trial on the application of two homosexuals to get a marriage license, and ruling that the state must prove a compelling state interest to justify its requirement that only one man and one woman can marry. This case is yet to be resolved, but it would be dramatically affected by a strict scrutiny holding in the VMI case.

It is considered settled law under U.S. Supreme Court decisions in *Maher v. Roe* (1977) and *Harris v. A1cRae* (1980) that taxpayers have no obligation to pay for abortions. However, feminist ideology is to the contrary, as shown by state cases persuaded by the ACLU and by published articles written by Justice Ruth Bader Ginsburg. A strict scrutiny ruling on gender would open up the abortion funding cases agam.

We can only devoutly hope that the Supreme Court restrains its own impulses to indulge in the liberal/fe1ninist passion for rewriting our laws to conform to their own social agenda. That's not the proper job of the Justices.