

Gender and Discrimination

Terms:

coverture

Intermediate or Heightened Scrutiny

exceedingly persuasive justification

Assigned Cases:

Frontiero v. Richardson; *Craig v. Boren*; *Michael M. v. Sonoma County*; *U.S. v. VA*.

Questions for Reading Assigned Cases:

The standard for gender discrimination has changed over the years, from ordinary scrutiny in the early case of *Reed v. Reed* to strict scrutiny in *Frontiero* to intermediate scrutiny in *Craig v. Boren* to a more rigorous form of intermediate scrutiny in *U.S. v. VA*. Was the Court correct in lowering the level of scrutiny in *Craig*? Has it restored the level of scrutiny to something close to strict scrutiny in *U.S. v. VA*?

Additional Cases:

Reed v. Reed (1971) was the first gender discrimination case decided on constitutional grounds. An Idaho law established a presumption for choosing a male relative over a female relative with an equal degree of relationship as executor when an individual died without a will (intestate). The Supreme Court found that the law had no reasonable basis, contrary to Idaho's claim that men were generally more knowledgeable regarding financial and legal matters.

Personnel Administrator of Mass. v. Feeney (1979). A Massachusetts law gave hiring preference to honorably discharged veterans applying for state civil service positions. Feeney, a woman, was repeatedly passed over for promotions although she scored higher on her civil service examinations than did several males, who, benefitting from the veterans' benefit, received the promotions. She claimed that the veterans preference, because it had a disparate impact on women, led to gender-based discrimination. The Court held that the law was enacted to serve "legitimate and worthy purposes," by recognizing veterans' service and the time they had taken from their careers to serve. Although few women benefitted from the scheme, "veteran status is not uniquely male" and the law also placed many men who were not veterans at a disadvantage.

Mississippi University for Women v. Hogan (1982). Hogan, a male R.N., applied for MUW's B.S. in Nursing program and was denied admission because of his gender. MUW argued that it needed to maintain an all female identity so that women would have access to greater career opportunities. The Court, via Justice O'Connor, dismissed the state's argument, finding that women have not lacked opportunities to enter nursing and that the policy "tends to perpetuate the stereotyped view of nursing as an exclusively women's job." O'Connor wrote that a state must provide an "exceedingly persuasive justification" for programs restricted on the basis of gender.