



United States v. Virginia

Overview

Students will learn about the Equal Protection Clause of the US Constitution and the functions of the Supreme Court through a documentary about *United States v. Virginia*. Using a “philosophical chairs” debate, students will further explore the ideas of “equality” and “equal protection” and how they relate to their everyday lives.

Grades

10 & 11

Course

Civics and Economics; US History

North Carolina Standard Course of Study for Civics and Economics

- Objective 2.01: Identify principles in the United States Constitution.
- Objective 2.06: Analyze court cases that demonstrate how the United States Constitution and Bill of Rights protect the rights of individuals.
- Objective 5.01: Evaluate the role of debate, consensus, compromise, and negotiation in resolving conflicts.
- Objective 5.02: Identify the jurisdiction of state and federal courts.
- Objective 5.06: Analyze roles of individual citizens, political parties, the media, and other interest groups in public policy decisions, dispute resolution, and government action.
- Objective 10.02: Develop, defend, and evaluate positions on issues regarding diversity in American life.
- Objective 10.06: Discuss the consequences and/or benefits of the freedom of economic, legal, and political choices.

North Carolina Standard Course of Study for US History

- Objective 12.02: Evaluate the impact of recent constitutional amendments, court rulings, and federal legislation on United States' citizens.
- Objective 12.04: Identify and assess the impact of social, political, and cultural changes in the United States.

Materials

- *United States v. Virginia* Documentary (Voices of American Law DVD, available at voicesofamericanlaw.org)
- Projector or TV with DVD Player
- *United States v. Virginia* Viewing Guide (attached)
- *United States v. Virginia* Viewing Guide answer key (attached)
- *United States v. Virginia* Decision handout (attached)
- Post-it notes
- *United States v. Virginia* Philosophical Chairs Reflection sheet (attached)
- Extending the Equal Protection Clause homework assignment (attached)

Essential Questions:

- What does equality mean in our society?
- Why might some minority groups need laws granting them special protection?
- How do groups with opposing views resolve conflicts using the political system?
- Should the meaning of the Constitution change over time?

Duration

90 minutes

Teacher Preparation

The “Philosophical Chairs” activity requires the moving of student desks into a U-shape. Teachers may want to consider reserving the library in order to make arranging the class into this shape easier. Likewise, teachers can have their last period of students arrange the room in this fashion the day before leading the lesson, so that the furniture is already arranged when students enter.

Student Preparation

As this lesson addresses potentially sensitive topics, such as discrimination based on gender, it is important students are prepared to respectfully deal with controversy. Firm expectations of respect, safety, and civil communication must be present in the classroom in order for this lesson to be successful.

Procedure

Warm Up: Equal Protection Clause

1. Write the following excerpt from the Equal Protection Clause of the Fourteenth Amendment on the board: "No state shall...deny to any person within its jurisdiction the equal protection of the laws." Ask for volunteers from the class to discuss their ideas about the meaning of the Clause, using the following discussion prompts:
 - What does it mean for a state to equally protect all of its citizens?
 - Can you think of any past examples of states denying certain groups equal protection?
 - Is it possible for every law to treat all people the same way? Explain.
 - What about the law that says that driver's licenses cannot be issued to people under the age of sixteen? Is that acceptable, even though it does not apply to all people equally? Why or why not?

Documentary: *United States v. Virginia*

2. Explain to students that you will be showing a documentary about the Supreme Court case *United States v. Virginia* which deals with the constitutionality of single sex education in public institutions. Remind students to treat the controversial issues presented in the film with sensitivity. At the conclusion of the documentary, do not reveal the Court's decision.

Teacher's Synopsis of the Case:

The Virginia Military Institute (VMI) boasted a long and proud tradition as Virginia's only exclusively male public undergraduate higher learning institution. The United States brought suit against Virginia and VMI alleging that the school's male-only admissions policy was unconstitutional insofar as it violated the Fourteenth Amendment's equal protection clause. On appeal from a District Court ruling favoring VMI, the Fourth Circuit reversed. It found VMI's admissions policy to be unconstitutional. Virginia, in response to the Fourth Circuit's reversal, proposed to create the Virginia Women's Institute for Leadership (VWIL) as a parallel program for women. On appeal from the District Court's affirmation of the plan, the Fourth Circuit ruled that despite the difference in prestige between the VMI and VWIL, the two programs would offer "substantively comparable" educational benefits. The United States appealed to the Supreme Court.

Question:

Does Virginia's creation of a women's-only academy, as a comparable program to a male-only academy, satisfy the Fourteenth Amendment's Equal Protection Clause?

Conclusion:

No. In a 7-to-1 decision, the Court held that VMI's male-only admissions policy was unconstitutional. Because it failed to show "exceedingly persuasive justification" for VMI's gender-biased admissions policy, Virginia violated the Fourteenth Amendment's equal protection clause. Virginia failed to support its claim that single-sex education contributes to educational diversity because it did not show that VMI's male-only admissions policy was created or maintained in order to further educational diversity. Furthermore, Virginia's VWIL could not offer women the same benefits as VMI offered men. The VWIL would not provide women with the same rigorous military training, faculty, courses, facilities, financial opportunities, or alumni reputation and connections that VMI affords its male cadets. Finally, the Fourth Circuit's "substantive comparability" between VMI and VWIL was misplaced. The Court held that the Fourth Circuit's "substantive comparability" standard was a displacement of the Court's more exacting standard, requiring that "all gender-based classifications today" be evaluated with "heightened scrutiny." When evaluated with such "heightened scrutiny," Virginia's plan to create the VWIL would not provide women with the same opportunities as VMI provides its men and so it failed to meet requirements of the equal protection clause. [NOTE: Justice Ginsberg's announcement of the Court's opinion (below) may be considered an address to the American public. It is a plain-spoken and forceful summary of the majority position.]

3. Distribute the attached Viewer's Guide handout before showing the film, review the questions, and ask students to fill in the blanks with the correct answers as they watch. The documentary is approximately 25 minutes.

Analyzing the Decision

4. Students may be surprised to see that the case video ends without revealing the Supreme Court's decision. Depending on your curriculum, before revealing the outcome of the case, you may wish to review important information about the Supreme Court and its functions.
 - Remind students that the Supreme Court is made up of nine justices, nominated by a President of the United States and confirmed by the United States Senate.
 - Explain that while the Court's official decision is contained in a "**majority opinion**," some of the justices may have a different viewpoint. For example, some might agree with the ultimate decision reached by the majority, but for different reasons. This is called a **concurring opinion**. Other justices may disagree with both the reasoning and the decision in the majority opinion. These justices express their views in **dissenting opinions**.
 - You may touch on various parts of the appellate process including:
 - Petitions for certiorari – A request by a party who wants the Supreme Court to review a decision made by a lower federal or state court.
 - Amicus briefs – A legal opinion from a person or group that supports a particular side of an issue before the Supreme Court. For example, the ACLU offering an amicus brief in a First Amendment case.
 - Oral arguments – A spoken presentation (argument) before a judge that explains the legal reasons why their side should prevail.
 - Stare decisis: The legal principle by which judges are obliged to respect the precedents established by prior decisions.
 - Recuse: when a judge removes his/herself from presiding over a trial due to a conflict of interest.
5. Distribute the attached "*United States v. Virginia* Decision" handout and instruct students to silently read the decision. While they are reading, instruct students to underline information they think is interesting and to write down their opinion of the decision – do they agree or disagree with the Court's decision? Why or why not?
6. After the allotted time, ask for volunteers to read each paragraph aloud. Reading aloud will enable you to explain any words or concepts that the class finds to be difficult to understand.
7. Solicit student opinions about the decision. Discuss the following questions:
 - In your opinion, did the Supreme Court make the correct decision? Why?
 - Why do you think Justice Thomas recused himself from the case?
 - *His son was attending VMI at the time and he felt there was a conflict of interest.*
 - Do you think that there are benefits to single sex education?
 - Do you think VMI made any changes to their system once women were admitted? If so, what changes do you think they would make?

United States v. Virginia: The Aftermath

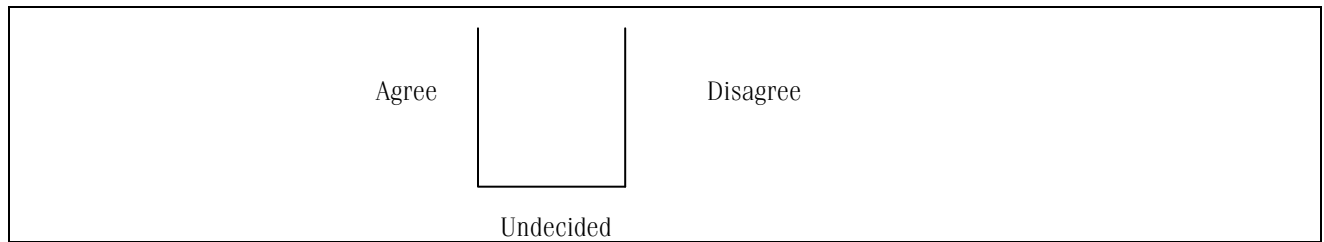
8. Instruct students to fill out the rest of their viewing guide as they watch the "Aftermath" portion of the documentary. After concluding the "Aftermath" section, review the viewing guide. The "Aftermath" is approximately 15 minutes.

Philosophical Chairs

9. Inform students that they will discuss a series of questions regarding the issues surrounding the VMI case by participating in an activity called Philosophical Chairs. Explain that it is a verbal and physical way of debating issues, but with a small twist – you can change your position throughout the discussion.
10. Provide students with a post-it note and instruct them to write down their response – agree, disagree, or undecided – to one of the following discussion topics listed below. Do not allow students to share their viewpoints yet to avoid influencing each other's opinions.
 - Female cadets at VMI received special treatment.
 - If women and men are equal, no accommodations should have been made for female cadets.
 - The doctrine of "separate but equal" is acceptable in regards to VMI and VWIL.
 - Gender normed fitness standards are fair.
 - VMI should have remained a single-sex institution.
 - There are benefits to single sex education.
 - Women should be allowed in the military.

Students should hold onto their post it notes until desks are properly arraigned.

11. Instruct students to set up their desks into the "U" formation below:



12. Collect student slips and position students in their chosen areas (agree, disagree, or undecided). Write the discussion expectations listed below on the board and review with students before beginning the discussion.
 - Listen carefully to what others are saying
 - Analyze what others say.
 - Speak and encourage others to speak.
 - Use relevant background knowledge, including life experiences, in a logical way
 - Remain engaged and respectful when controversy arises.
 - Focus on ideas, not personalities.
 - Refer to other points made by classmates, using their names when doing so.

13. Select one student to start the discussion by stating why they chose their particular stance on the issue. After they have stated their opinion, choose a student with an opposing viewpoint and instruct them to quickly summarize what they just heard (referring to that student by name) and then to state their own opinion. For example, “Paul, I heard you say that you feel women should not be allowed into VMI, since you believe they are unable to meet the same physical standards as men. However, I disagree because...”

14. Continue with the discussion, with students explaining why they have taken their agree or disagree position. The teacher should act as a moderator and not allow students to talk over one another.

15. As the conversation continues, students are allowed to change their position by moving to the opposite side of the room if they feel that a strong point is made by a member of the opposing team. The students in the undecided section can move to either side of the room at any time during the discussion as well. Students are encouraged to move whenever they feel that someone on has made an extremely valid argument.

16. At the conclusion of the discussion, distribute the attached reflection sheet and have students silently reflect on the discussion using the remaining class time. If time permits, review the reflection sheet with the students and discuss the following questions:
 - Why is it important that all public institutions provide equal protection?
 - How does our school provide equal protection? Are there areas that you feel don't provide equal protection?
 - Do you think that given time the VWIL would have become equal to the VMI in terms of prestige?
 - Would you consider going to VMI? Why or why not?

Resources

- Oyez: US Supreme Court Media – Summarizes the background information, major questions, and decisions surrounding Supreme Court cases.
 - <http://www.oyez.org/>
- Cornell Law School: Legal Information Institute – Good primary source resource for Supreme Court opinions.
 - <http://www.law.cornell.edu/>

Differentiation

AIG

- Provide students with copies of the syllabus (official summary) of the Supreme Court’s opinion regarding *United States v. Virginia*. Have students summarize the arguments and then write a response to the decision. Was it the right decision? Why or why not? (Syllabus available here: <http://www.law.cornell.edu/supct/html/94-1941.ZS.html>)
- Keeping the principle of state decisions in mind, how does *Brown v. Board of Education* relate to *US v. Virginia*?

Multiple Intelligences: Verbal-Linguistic: Interpersonal: Intrapersonal

Name _____



United States v. Virginia Viewing Guide

1. What type of institution is VMI? Public or private? What does that mean?
2. What was the Supreme Court's decision in the *Mississippi University for Women v. Hogan*? Why was the ruling significant for VMI?
3. What prompted the Justice Department (DOJ) to send a letter to VMI? How did VMI respond?
4. Describe the "rat system" in place at VMI? What is its purpose?
5. What did Judge Kiser decide in regards to VMI's all male policy?
6. What were VMI's three options for complying with Equal Protection laws?
 - a.
 - b.
 - c.
7. According to the DOJ, why didn't the Mary Baldwin program fulfill Equal Protection requirements?
8. What question would the Supreme Court be deciding in this case?

Aftermath of the Case

9. Describe how VMI's Alumni Association reacted to the Court's decision.

10. Why did VMI ultimately reject the option to privatize?

11. What alterations to the buildings and the policies did VMI make to accommodate women?

12. What was a potential problem with the fitness test that all students had to complete at the end of their first year? Who was against changing it?

13. What changes were made to the rat line? Was it due to women being admitted to VMI or a change in the culture at VMI?

14. Has VMI been able to meet its target for women in its classes? What is the target percentage?

15. After considerable time, has everyone supported the decision to make VMI a coeducational institutional?

United States v. Virginia Answer Key

1. What type of institution is VMI? Public or private? What does that mean?
VMI is a public institution which means it is supported by taxpayers through state funds.
2. What was the Supreme Court's decision in the *Mississippi University for Women v. Hogan*? Why was the ruling significant for VMI?
The Mississippi ruling stated that it was unconstitutional for public funded colleges to discriminate admissions on the basis of gender. The ruling was significant for VMI because they were a public, all male institution and they felt that allowing women would fundamentally alter VMI's mission.
3. What prompted the Justice Department (DOJ) to send a letter to VMI? How did VMI respond?
A female applicant was prohibited from attending VMI because of her gender. VMI responded that they "had always been an all-male institution and that they intended to continue that way." They filed suit and asked for a declaratory judgment on the constitutionality of their admissions policy.
4. Describe the "rat system" in place at VMI? What is its purpose?
It is a system for the first year students where they are treated to the same harsh conditions. You have to walk at a brace, eat four square meals at a brace, upperclassmen can make you do anything, there's no privacy in the barracks, responsible for knowing the information in the "Rat Bible",

The purpose is to put people under extreme pressure to see how well they can function, to foster an attention to detail, to inculcate a certain set of values, to teach self-discipline, etc.
5. What did Judge Kiser decide in regards to VMI's all male policy?
He ruled in VMI's favor saying that there is value in separate sex education and that there was value in VMI's adversative system of education.
6. What were VMI's three options for complying with Equal Protection laws?
 - a. **Admit women**
 - b. **Create parallel program for women**
 - c. **Go private**
7. According to the DOJ, why didn't the Mary Baldwin program fulfill Equal Protection requirements?
They were not equal programs – the teachers had lesser qualifications, their endowment wasn't comparable to VMI's, the systems were different, the facilities were different.
8. What question would the Supreme Court be deciding in this case?
Should an all-male school with VMI's unique history and system be required to open its doors to women?

Aftermath of the Case

9. Describe how VMI's Alumni Association reacted to the Court's decision.
Many of the alumni were angry – "We'll burn it before that happens" – and wanted to privatize to avoid admitting women.
10. Why did VMI ultimately reject the option to privatize?
It was too expensive; it would lose its status as a public institution which was a major component of the school's identity and it would hurt the school's image.
11. What alterations to the buildings and the policies did VMI make to accommodate women?
VMI added individual showers, shades on the doors, separate bathrooms and allowed women to have short hair, but not "buzz cuts".
12. What was a potential problem with the fitness test that all students had to complete at the end of their first year? Who was against changing it?
It was not gender normed, meaning different requirements for men and women. Many of the female cadets were against gender norming the test.

13. What changes were made to the rat line? Was it due to women being admitted to VMI or a change in the culture at VMI?
"Breakout" was moved to earlier in the year and climbing the mud hill was eliminated. No, there had been a push to make it more "professional"
14. Has VMI been able to meet its target for women in its classes? What is the target percentage?
No after ten years there are still unable to meet their target percentage of 10% women in their classes.
15. After considerable time, has everyone supported the decision to make VMI a coeducational institutional?
No, some alumni are still upset and some educational experts still believe that single sex education is valuable.

United States v. Virginia Decision

Facts of the Case:

The Virginia Military Institute (VMI) boasted a long and proud tradition as Virginia's only exclusively male public undergraduate higher learning institution. The United States brought suit against Virginia and VMI alleging that the school's male-only admissions policy was unconstitutional insofar as it violated the Fourteenth Amendment's equal protection clause. On appeal from a District Court ruling favoring VMI, the Fourth Circuit reversed. It found VMI's admissions policy to be unconstitutional. Virginia, in response to the Fourth Circuit's reversal, proposed to create the Virginia Women's Institute for Leadership (VWIL) as a parallel program for women. On appeal from the District Court's affirmation of the plan, the Fourth Circuit ruled that despite the difference in prestige between the VMI and VWIL, the two programs would offer "substantively comparable" educational benefits. The United States appealed to the Supreme Court.

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Decisions

Decision: 7 votes for United States, 1 vote(s) against

- Majority Opinion: Ginsburg [wrote opinion], Rehnquist, Stevens, O'Connor, Breyer, Kennedy, Souter
- Dissenting Opinion: Scalia
- Recused: Thomas

Legal provision: Equal Protection

Source: http://www.oyez.org/cases/1990-1999/1995/1995_94_1941

Name: _____



United States v. Virginia Philosophical Chairs Reflection Sheet

Topic: _____

Your original position: **Agree** **Disagree** **Undecided**

Your ending position: **Agree** **Disagree** **Undecided**

What were the strongest arguments presented by those who agreed?

What were the strongest arguments presented by those who disagreed?

Explain why your position changed or did not change and the rationale behind your thinking.

Source: <http://community.scholastic.com/scholastic/blog/article?blog.id=highschoolblog&message.id=22>
Adapted by the NC Civic Education Consortium

