

THE CASE FOR PUBLIC SINGLE-SEX EDUCATION

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INTRODUCTION

Single-sex education, by itself, is a controversial issue. There is ongoing debate about its educational effectiveness and the social ramifications of separating the sexes in education. However, there is a large and growing body of sociological and anthropological evidence to suggest that single-sex education can be exceptionally beneficial to some students. This is not to say that all members of society, nor even most, are best served by same-sex education. Available studies, however, indicate that as a form of education that is individualized to the greatest degree possible in a large and diverse society, single-sex education is a legitimate and worthwhile option, when offered as an exception to the general rule, coeducation.

What this article advocates—public single-sex education—is likely to be far more contentious than simply noting the benefits of learning in the absence of the other sex. The introduction of public funds into the dispute highlights and aggravates all of the other criticisms because it legitimates an educational method, which is grounded in the necessity of segregating the sexes, with a governmental stamp of approval. However, publicly-supported single-sex schooling is the best, perhaps only, way to ensure that all students, especially those who cannot afford to attend private schools, can gain from the educational experience.

The existence of public funds should not render single-sex education unconstitutional nor should it place a substantial public policy barrier in the path of single-sex schools. One of the common myths surrounding this issue is that there is a tangible distinction between public and private schools. Virtually all private schools receive some amount of public assistance. Those who acquiesce to single-sex schooling in the private realm but draw the line when the state becomes involved are forced to base their distinction on *degrees* of public support and not the *existence* of government support.

Another common misconception about single-sex schools is that sex classifications of this type necessarily involve a misogynist desire to perpetuate stereotypes of the proper roles of men and women. As will be discussed, however, single-sex schools actually

do much to combat these stereotypes and promote gender equality. As with any issue that implicates the possibility of invidious gender discrimination, this is an emotion-laden subject. However, reasonable people can disagree about the merits of single-sex education. There is desperate need for a generous and open-minded look into the potential benefits of single-sex education, both as a method of educational reform and as an expression of educational diversity. Too often, well-intended discussions of the subject denigrate into categorical dismissals (at best) or vitriolic *ad hominem* attacks (at worst).

Perhaps it is best, then, to begin on common ground. The state of American education is on the decline. While opinions may vary wildly as to precisely how urgent the situation truly is, at least all agree that there is room for improvement. A sizable and persuasive body of evidence suggests that same-sex education at an early age is an innovative method of effectively educating and socializing young children. It allows teachers and administrators the freedom to structure an educational program around the unique learning characteristics of boys and girls, who are acutely receptive to learning different things at different times. At an older age, too, students benefit from single-sex education. Some feel the learning environment is more fertile and welcoming in the absence of the other sex; others feel the friendships they make are more genuine and rewarding than in standard coeducational schools. Whatever the reason, the single-sex option appears to enhance the caliber of many students' education, in addition to enriching the quality of their lives.

While this article strongly advocates public single-sex education as an alternative to coeducation, it does not champion the replacement of coeducation. All arguments contained herein should be read with this in mind: The world is sexually integrated. School systems are overwhelmingly coeducational. The addition of a selection of single-sex schools to the mix will not and should not change that. Rather, their addition would simply multiply the diversity of educational choices confronting all students.

While there are many studies that suggest the beneficial nature of single-sex education for both sexes, the literature reveals that there is far more agreement about the efficacy of same-sex education for females than there is for males. Consequently, in the interest of not rehashing this evidence, a substantial portion of

the article is devoted to asserting that single-sex instructional settings can be just as beneficial to males of all ages as it is to females. This is not to de-emphasize the successes of all-female education. Indeed, the major premise of the article is that both sexes, because they develop physiologically, intellectually, and emotionally at different tempos, can benefit equally from single-sex instruction.

Part I of this article consists of a constitutional analysis of public single-sex education. It concludes that the Fourteenth Amendment's guarantee of Equal Protection of the laws is not a categorical bar and discusses several cases in which public same-sex schooling has been judicially endorsed. Furthermore, the section asserts that single-sex education is a legitimate social goal, as opposed to single-race education, for a reasonable state to pursue. It addresses particular concerns harbored by many that single-sex instruction is "separate but equal" education which stigmatizes females because too often female schools are inferior to their male counterparts.

Part II conducts a statutory analysis of the two biggest hurdles to public single-sex education: Title IX of the Education Act Amendments of 1972, which prohibits gender discrimination in public colleges and universities, and the Equal Education Opportunities Act of 1974, which prohibits gender discrimination at the elementary and secondary school levels. The section concludes that neither statute prohibits the establishment of new single-sex schools.

Part III consists of a policy analysis which discusses first, the actual performance of single-sex education by referring to three prominent examples of the policy in action: The Virginia Military Institute's remedial plan to establish a separate Virginia Women's Institute for Leadership rather than opening its own doors to women, the Detroit Male Academies, Detroit's attempt to combat its educational crisis by addressing the particular and urgent problems of the city's boys, and the nationwide trend towards use of single-sex classrooms. Next, the section addresses some troublesome aspects about and recurring criticisms of single-sex education.

Finally, Part IV attempts to highlight exactly what is at stake if we fail to allow states and local school districts the freedom to support individualized and innovative education programs that successfully address the particular social, developmental, and ac-

ademic concerns and problems that confront students of both sexes.

I. CONSTITUTIONAL ANALYSIS

A. *Single-Sex Schools Not Per Se Unconstitutional*

While there is ongoing debate over the pedagogical success of educating the sexes separately,¹ it is clear that there is no per se constitutional prohibition of public single-sex education. The courts have directly addressed the issue in four major cases and have endorsed publicly-funded single-sex schooling explicitly in three of those cases, and implicitly in one. In *Williams v. McNair*² in 1970, a South Carolina federal court upheld the women-only admissions policy of Winthrop College, a public liberal arts college in Rock Hill, South Carolina. In doing so, it stressed diversity of the state's educational system as a justification for the legitimate discriminatory treatment. That is, the provision of a single-sex academic environment in a sea of mixed-sex settings served to enhance the diversity of options for all students.

It was important to the court in *Williams* that, viewing the educational system as a whole, there were plenty of options open to male college applicants within South Carolina. Had the state attempted to deny men's access to the only college available to them, then a violation of Equal Protection would undeniably have occurred. As it was, however, "these plaintiffs have a complete range of state institutions they may attend. They are free to attend either an all-male or, if they wish, a number of co-educational institutions at various locations over the State."³ Thus, as long as acceptable alternatives were available to all students, the state's provision of a school open only to students of one sex did not infringe the constitutional rights of the excluded students.

However, the *Williams* court upheld the single-sex admissions policy using the lenient rational basis test, which has since been

1. Compare REGINALD R. DALE, MIXED OR SINGLE-SEX SCHOOLS? (1964-74) (arguing that coeducational schools are preferable to single-sex schools because they create a microcosm of society that better prepares children for life outside the classroom) with Valerie E. Lee & Anthony S. Bryk, *Effects of Single-Sex Secondary Schools on Student Achievement and Attitudes*, 78 J. OF EDUC. PSYCH. 381 (1986) (discussing a study which revealed that students attending single-sex schools outperform students attending coeducational schools in all eleven areas tested, including attitude, behavior, academic achievement, and sex role stereotyping).

2. 316 F. Supp. 134, 137 (D.S.C. 1970), *aff'd* 401 U.S. 951 (1971).

3. *Id.* at 137-38.

replaced by a more stringent intermediate scrutiny analysis for gender-based classifications. As such, its precedential value has been brought into question.

Nevertheless, six years later in *Vorchheimer v. School District of Philadelphia*,⁴ the Third Circuit, using the intermediate scrutiny test discussed below, permitted an all-male public high school to exclude girls, provided that an equal all-female facility existed. The court found that the female plaintiff was not denied Equal Protection of the laws because "enrollment is voluntary and the educational opportunities offered to girls and boys are essentially equal."⁵ Again, the court was persuaded by the system-wide diversity of options for the female high school student. Given the availability of both all-female and coed public schools, she was not effectively excluded from an education equivalent to that offered at the boys' high school. In addition, the student was not assigned to a same-sex school; rather, her decision, made from a full menu of educational options, was entirely voluntary.⁶ An equally divided Supreme Court affirmed the result without opinion.⁷

In 1982, the Supreme Court finally addressed the public single-sex education issue directly in *Mississippi University for Women v. Hogan*.⁸ Writing for the Court, Justice O'Connor rejected the nursing college's all-female admissions policy as a violation of the Equal Protection Clause. Mississippi's proffered justification for

4. 532 F.2d 880 (3rd Cir. 1976), *aff'd mem. by an equally divided Court*, 430 U.S. 703 (1977).

5. *Id.* at 881.

6. *But see* Gibbons, J., dissenting: Her choice was "voluntary," but only in the same sense that Mr. Plessy voluntarily chose to ride the train in Louisiana." *Id.* at 889. Some scholars have noted that the court's determination that the male and female facilities were equal was irresponsible, and that the inequities were acknowledged in later litigation under Pennsylvania's Equal Rights Amendment in *Newburg v. Board of Public Educ.*, 9 Phila. 556 (C.P. Phila. County 1983), *aff'd*, 478 A.2d 1352 (Pa. Super. Ct. 1984). *See, e.g.*, Deborah L. Rhode, *Association and Assimilation*, 81 N.W. U. L. REV. 106, 138 (1986) ("Compared with Girls High, Central's library, instructional and computer facilities were far more substantial; its math and science curricula were superior; its faculty had almost three times as many doctoral degrees; its students scored higher on college entrance and national merit exams; and its college scholarship resources were over twice as large."); Note, *Inner-City Single-Sex Schools: Educational Reform or Invidious Discrimination?* 105 HARV. L. REV. 1741, 1747-48 (1992) ("[t]he Third Circuit rather blithely scrutinized the 'essential equality' of the two schools, confidently declaring that the 'academic facilities are comparable,' and then parenthetically conceding, 'with the exception of those in the scientific field where [the male school's] are superior.' The Court failed to consider whether the disparity in science facilities denied Susan Vorchheimer—an excellent math and science student—equal educational opportunity.")

7. 430 U.S. 703 (1977).

8. 458 U.S. 718 (1982).

the discrimination was that it was necessary to remedy past discrimination against women in higher education. However, because women had not traditionally been discriminated against in the nursing field, the state's important interest did not survive intermediate-level constitutional scrutiny.

While at first glance the Court seems to have dealt a powerful blow to public single-sex education, a closer look has led some to view *Hogan* as "a tacit endorsement," rather than a rejection, of the educational alternative.⁹ First, the Court specifically limited its ruling to the nursing school, allowing the rest of the university to remain all-female. In addition, because Mr. Hogan had no other coeducational or single-sex nursing programs available to him locally, the Court never reached the issue of the constitutionality of a system with "separate but equal" public colleges for both men and women.

The most recent opportunity for a federal court to address this difficult issue was in *United States v. Virginia*,¹⁰ where the Fourth Circuit scrutinized the male-only admissions policy of the Virginia Military Institute, a largely state-supported college in Lexington, Virginia. The lower court upheld the school as contributing to the state's important interest in a diverse educational system and determined that the single-sex policy was substantially related to that interest. On appeal, the Fourth Circuit, while it agreed that educational diversity was an important state interest and single-sex education was substantially related to that interest, nevertheless reversed the district court because Virginia only provided this educational option to men. Because women did not also enjoy a same-sex alternative to coeducation, the discriminatory admissions policy was not justifiable. However, and importantly for purposes of this article, the court affirmed the physiological and psychological differences between the sexes and concluded that single-sex education can be "pedagogically justifiable."¹¹

9. Bennett L. Safierstein, *Revisiting Plessy at the Virginia Military Institute: Reconciling Single-Sex Education with Equal Protection*, 54 U. PITT. L. REV. 637, 654 (1993); see also Note, *supra* note 6, at 1749 (the Court "has seemingly left open the possibility that a system of boys-only and girls-only schools could be justified on the grounds that such a system would provide important benefits to all students achievable only through single-sex schooling.")

10. 976 F.2d 890 (4th Cir. 1992).

11. *Id.* at 898.

This case, along with *Williams*, *Vorchheimer*, and *Hogan*, seem to suggest that as long as a state offers the single-sex education alternative to both males and females so that neither are denied a substantially equal educational opportunity, it would not contravene the Equal Protection Clause of the Fourteenth Amendment.

B. *Fundamental Legitimacy of Single-Sex Education*

Once it is determined that there is no per se constitutional bar to single-sex education, it is next necessary to establish the basic proposition that single-sex schooling is a legitimate and desirable form of education for a state to offer its citizens. As a society, we do not permit race-based classifications of any sort in education. No amount of proven pedagogical benefits or popular demand would justify such disparate treatment based on race. Given that race segregation has no part in American education, why are gender-based distinctions permissible, let alone desirable? Critics argue first that, as with race segregation, the separation of the sexes will stigmatize one sex, namely females, and second, that male schools, like white schools, will inevitably be superior to female schools, as they have always been in the past.

1. *Stigmatization*

First, critics warn of the potentially damaging emotional impact on females who attend school separately from males. They fear that these females may be stigmatized by being siphoned off into different facilities from males in the same way that black children suffered feelings of inferiority when they were not allowed to attend school with white children. The fundamental difference, however, is that females will have the choice of attending a single-sex school as an alternative to coeducation, while black students were categorically denied all options save one, a black school. That is, because existing school systems are almost entirely integrated by gender (i.e., coeducational), the single-sex alternative is simply one additional option for females; their choice has been expanded rather than restricted. The dissent in *Hogan* articulated that “[i]t was characteristic of racial segregation that segregated facilities were offered, not as alternatives to increase the choices available to blacks, but as the sole alterna-

tive.”¹² Females who exercise a voluntary choice are unlikely to be stigmatized as inferior. To the contrary, many women who attend single-sex schools feel a sense of empowerment and freedom to excel beyond traditional stereotypes.

In addition to the presence of a choice for women, gender and race segregation in education are different in another fundamental respect. Women have not confronted the kind of categorical exclusion from education, punctuated by physical violence, that black Americans have encountered. That is, “gender separation has never been as systematically institutionalized in the United States as was racial separation.”¹³ Historically, single-sex schools have been a rarity in our public education system, as most schools were generally open to both sexes from their inception.¹⁴ In addition, unlike the situation with racial segregation, “gender separation in schools is less likely to be accompanied by gender separation in all contexts—for instance, in the family and housing.”¹⁵

While the justifications for racial separation were based on hatred and notions of black inferiority, gender separation is advocated out of a desire to improve the educational experience of females. Indeed, single-sex schools have enviable records of female academic performance, especially with minority females.¹⁶ Many civil rights advocates warn others of the dangers of a narrow and rigid view of gender equality as gender identity, especially where there is evidence that gender separation can be beneficial and empowering. As one commentator remarked:

If single-sex schools ultimately promote race and gender equality by providing a more effective education to minorities, women, and in particular, minority women, it would be an ironic betrayal of *Brown* and *Hogan* to read their holdings to bar all forms of gender separation.¹⁷

Given the possibility that single-sex education may offer important educational benefits, it is regrettable that “they will never be realized as long as a post-*Brown* notion of equality forbids school systems even to experiment with the idea.”¹⁸ Viewing same-sex

12. *Hogan*, 458 U.S. at 741 n.9.

13. Note, *supra* note 6, at 1760.

14. Note, *Single-Sex Public Schools: The Last Bastion of ‘Separate But Equal?’* 1977 DUKE L.J. 259, citing B. HOWARD, *THE MIXED SCHOOL: A STUDY OF COEDUCATION* 41-48 (1928).

15. Note, *supra* note 6, at 1760.

16. See *infra* notes 55-70 and accompanying text.

17. *Id.* at 1759.

18. Saferstein, *supra* note 9, at 641-42.

education as empowering rather than degrading demonstrates the fundamental difference between race and gender separation in the classroom.

Supreme Court jurisprudence appears to recognize this difference between race and sex when it affords a higher level of constitutional review for race-based classifications than it does for gender distinctions. The *Vorchheimer* court declared that

[w]e are committed to the concept that there is no fundamental difference between races and therefore, in justice, there can be no dissimilar treatment. But there are differences between the sexes which may, in limited circumstances, justify disparity in law.¹⁹

These differences explain why we feel automatic indignation at the specter of separate bathrooms for the races, but not at the thought of men's and women's rooms. This also explains our acceptance of single-sex sports teams in public schools but not single-race teams.²⁰ Males and females are physically different. Females display greater endurance, while males possess greater strength and are, on average, taller and heavier than women. These differences constitute legitimate reasons to separate males and females on school sports teams. The differing historical treatment of race and gender, "combined with the effect of physical differences between the sexes on athletic performance, suggests that separate can indeed be equal between the sexes but will always be unconstitutional in the racial context."²¹

In addition, the Court has never extended the *Brown v. Board of Education*²² ban on "separate but equal" education facilities from racial to gender classifications.²³ The Supreme Court in *Ho-*

19. 532 F.2d at 886.

20. See 45 C.F.R. § 86.34(c) (allowing "separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact."); *Ritacco v. Norwin School Dist.*, 361 F. Supp. 930 (W.D. Pa. 1973) (rule requiring separate male and female teams for interscholastic non-contact sports does not violate Equal Protection); *Clark v. Arizona Interscholastic Ass'n.*, 695 F.2d 1126 (9th Cir. 1982), cert. denied, 464 U.S. 818 (1983) (excluding males from female volleyball team is a permissible means of promoting equal opportunities for females in sports).

21. Virginia P. Croudace & Steven A. Desmarais, *Where the Boys Are: Can Separate Be Equal in School Sports?* 58 S. CAL. L. REV. 1425, 1457 (1984).

22. 347 U.S. 483 (1954).

23. David Hoffman, *Challenge to Single-Sex School Under Equal Protection: Mississippi University for Women v. Hogan*, 6 HARV. WOMEN'S L.J. 163, 173 (1983) ("*Brown v. Board of Education* struck down the 'separate but equal' doctrine as applied to race. As applied to sex, however, the doctrine is still alive . . ."); Lisa K. Hsiao, "*Separate But Equal*" Revisited: *The Detroit Male Academies Case*, 1992/1993 ANN. SURV. AM. L. 85, 92 (1993) ("*Brown* mandated that with regard to race . . . 'the doctrine of 'separate but equal' has no place.' However, the

gan specifically stated that because Mississippi did not have any other single-sex colleges from which Mr. Hogan could choose, “we are not faced with the question of whether States can provide ‘separate but equal’ undergraduate institutions for males and females.”²⁴ In addition, although *Brown* had been legal precedent since 1954, in 1971 the Supreme Court nevertheless applied Equal Protection to gender discrimination using the relaxed rational basis test.²⁵ While the courts and Congress alike have “mandated sexual equality in education” through careful intermediate scrutiny review,²⁶ Title IX,²⁷ and the Equal Education Opportunities Act,²⁸ they have not “precluded ‘separate’ facilities as a way of attaining this equality even in the public setting.”²⁹

However, to ensure that a student’s choice to attend a particular school is in fact voluntary, it may be that a state must offer its citizens a full range of educational options; that is, all-male, all-female, and coeducational facilities. Only then would a student’s choice be considered a voluntary selection from amongst every conceivable option rather than a settlement on a second best school because of a lack of any other viable alternative. In fact, the district court judge in the VMI case seemed to agree when he opined that “the criticism which might be directed toward Virginia’s higher educational policy is not that it maintains VMI as an all-male institution, but rather that it fails to maintain at least one all-female institution.”³⁰ Indeed, this is precisely the reason that the Fourth Circuit reversed the lower court opinion permitting VMI to continue its mission unadjusted. In *Vorchheimer*, the court allowed the state to maintain two same-sex public high schools because they were largely equal and the additional panoply of coeducational options provided the students with a full

Court has never extended this holding to gender-based classifications.”); Pamela J. Smith, *All-Male Black Schools and the Equal Protection Clause: A Step Forward Toward Education*, 66 TUL. L. REV. 2003, 2016 (1992) (“the Supreme Court . . . in *Brown* . . . was referring to de jure segregation by race, not separation by sex.”).

24. *Hogan*, 458 U.S. at 720 n.1.

25. *Reed v. Reed*, 404 U.S. 71 (1971).

26. See *infra* notes 41-181 and accompanying text.

27. See *infra* notes 182-194 and accompanying text.

28. See *infra* notes 195-201 and accompanying text.

29. Caren Dubnoff, *Does Gender Equality Always Imply Gender Blindness? The Status of Single-Sex Education for Women*, 86 W. VA. L. REV. 295, 309 (1984); see also Louis Fischer, *Case Law Dealing With Sex-Segregated Public Schools*, 25 EQUITY AND EXCELLENCE 45, 46 (1991) (“It is safe to conclude that [public] sex-segregated schooling at the high school level will be upheld if it is voluntary and if the quality of education available to males and females is substantially equal.”)

30. *Virginia*, 766 F. Supp. at 1414.

and free choice. As mentioned, in *Hogan*, the court specifically declined to address the issue because the plaintiff did not have the full range of choices available, a men's college in addition to a coeducational university. Viewed together, *U.S. v. Virginia*, *Vorchheimer*, and *Hogan* seem to confirm that a state wishing to provide a same-sex alternative to coeducation must take care to provide substantially equal programs for males and females in addition to their coeducational institutions.

A second response to the argument that single-sex education stigmatizes women and perpetuates pervasive gender discrimination in society is that, given that coeducation is the rule and single-sex education is the exception in this country, if gender discrimination is indeed being taught at school, it seems the blame should be placed with the dominant coeducational schools.³¹ That is, "[c]oeducation has not proved to be a panacea for overcoming gender differences . . ."³² Ninety percent of the country's schools are coeducational and yet gender inequities persist. Some studies show that coeducation may be part of the problem.³³ Consequently, it might be that single-sex schooling is actually a viable educational alternative that can combat the vestiges of gender discrimination, rather than perpetuate them.

2. *Underfunded Female Schools*

In addition to the fear that separate educational facilities will stigmatize females, many opponents express doubt as to whether the "equal" facilities would truly be equal. Even if one were to agree that "separate but equal" is acceptable in educating the two sexes and that it does not stigmatize females, the female facilities

31. However, the notion of widespread gender discrimination in education is hotly debated. For example, according to the National Center for Educational Statistics of the U.S. Department of Education, 67% of high school girls proceed to college, while only 58% of boys do so. In addition, while twenty years ago women were only 41% of the undergraduate population, today they comprise 55% of college students. Moreover, the percentage of women earning master's degrees is 54%, up from 40% in 1970; the percentage of women receiving doctoral degrees is up to 39% from 14%; the percentage of women earning medical degrees is 36% up from 8%; and the percentage of women receiving law degrees is now at 40% from 5%. Rita Kramer, *Girls "Cheated" at School?* WALL ST. J., March 1, 1994, at A12.

32. Jennifer Jones, *Outcomes of Girls' Schooling: Unraveling Some Social Differences*, 34 AUSTRALIAN J. OF EDUC. 153, 154 (1990).

33. See, e.g., Note, *supra* note 6, at 1757 ("Educational studies also suggest that coeducational schools may pose greater danger to gender equality than do single-sex schools."); Cheri Kramarae & Paula A. Treichler, *Power Relationships in the Classroom*, in GENDER IN THE CLASSROOM, 41, 56 (1990) (suggesting that male dominance in the classroom is detrimental to female learning).

are unlikely to be of the same quality as those provided for males. Female schools have traditionally lacked the funding, skilled staff, and quality curriculum that male schools have had.³⁴ In addition, a college like VMI “offers its all male graduates access to a vast network of potential contacts in business, political, and social circles” to which women have no access.³⁵ For these critics, only an absolute guarantee that the programs will be equalized to the greatest level of detail would prevent a denial of Equal Protection for the excluded sex.³⁶

The problem is that by their very nature, schools designed for the special needs of girls will be “different” from schools designed for the special needs of boys. If they were not different, there would be no point in establishing them. That is, “‘different’ schools should not automatically create a presumption of ‘inferior’ and ‘superior’ schools.”³⁷ As one scholar frames the issue, “separate-but-equal as educational policy remains a perplexing misnomer. In some respects separate is better. In other respects it is worse. But never is it likely to be equal.”³⁸ This is in large part due to intangible factors such as different school reputations (which is a function of the age and size of the school), differing ages of facilities, differing capabilities and specialties of teachers, the network of connections to which alumni of schools have access, and the like. There is no possible way to equalize these factors and still be looking at different schools. It would be impossible, for example, to ensure that all schools had the same reputations, that everyone had access to a particular “good old boy” alumni network, that every school building and piece of equipment within were the same age, or that every schoolteacher had the same qualifications and areas of expertise. Adherence to the formalistic logic that would erase all differences between schools would entail the eradication of any school with something unique to offer its students, including single-sex schools.

34. See, e.g., DAVID TYACK & ELIZABETH HANSOT, *LEARNING TOGETHER: A HISTORY OF COEDUCATION IN AMERICAN SCHOOLS* (1990).

35. Charles J. Russo & Susan J. Scollay, *All Male State-Funded Military Academies: Anachronism or Necessary Anomaly?* 82 EDUC. L. REP. 1073, 1084 (1993).

36. See, e.g., Saferstein, *supra* note 9, at 671 (“[F]or two single-sex schools to be considered equal, only very minor differences in the tangible and intangible factors could be tolerated.”).

37. Daniel Gardenswartz, *Public Education: An Inner-City Crisis! Single-Sex Schools: An Inner-City Answer?* 42 EMORY L.J. 591, 644 (1993).

38. Rhode, *supra* note 6, at 143.

This is not to say that care should not be taken to ensure substantially equal academic programs, and this may not have been done in the past. If students are to have a valid choice among options, for example, the all-male school cannot fail to offer English classes. For a boy who wished to attend that school for its single genderness, it is not an answer that he could attend the coed school down the road that does teach English. However, it would be impossible, even unwise, to require that all schools teach English in the exact same manner, especially given the substantial gender-related learning differences discussed below.³⁹ Again, if schools were not permitted to be different or to strive to serve the individual needs of their local communities, the entire national school system would consist of a bland series of exact educational replicas, each new school identically mirroring the last.

Single-sex education is not only a constitutionally sound goal for a state desiring to enrich the educational choices of its citizens, it is also a fundamentally legitimate goal for a just and equal society. Because single-sex schooling has proven empowering to many girls and women and educationally beneficial to males and females alike, and separating the sexes is fundamentally different than segregating the races, a state can offer single-sex education and still maintain its vigilant commitment to equality between the sexes.

C. *Intermediate Scrutiny*

Once single-sex education passes the threshold inquiries of *per se* constitutionality and basic social legitimacy, the harder question becomes: under what circumstances can single-sex educational programs survive more penetrating constitutional analysis? The Supreme Court's jurisprudence regarding sex-based classifications has evolved into an intermediate level scrutiny test, a test more stringent than the deferential rational basis test, applied to economic-based classifications, and less rigorous than the unyielding strict scrutiny review, saved for race-based classifications. Unlike strict scrutiny, intermediate scrutiny still allows some forms of discrimination when it is based on natural differences between the sexes. The mid-level test requires a state's gender discriminatory policy first, to advance an important and reason-

39. See *infra* notes 153-164 and accompanying text.

able governmental interest. Second, the policy must be directly and substantially related to that state interest.⁴⁰ Finally, the policy must be based on real differences between the sexes rather than stereotypic notions about the proper roles of men and women.⁴¹

1. *Important State Interest*

A state that wishes to provide a public single-sex school option for its school-age citizens must first prove the existence of important governmental interests that are advanced by the exclusionary admissions policies. There are three primary state interests furthered by publicly-supported single-sex education: excellence in education, a self-confident citizenry with well-developed leadership skills, and system-wide diversity in education. It is important to note from the outset that there is ongoing debate over whether the single-sex admissions policies of schools in fact contribute to these interests. However, a state must only be able to prove that it reasonably could have concluded that single-sex education advances its asserted state interests. This article maintains that because there is substantial evidence that such admissions policies do achieve these educational and developmental goals for many students, states should not only be free to implement them, they should be actively encouraged to do so.

a. *Excellence in Education*

The first important interest a state wishing to provide for single-sex schools may assert is a well-educated citizenry. There are a number of sociological studies that conclude that single-sex schools are superior to coeducational institutions in academic results, faculty-student interaction, intellectual self-esteem, and in all aspects of a student's experience, except for social life.⁴² This appears to be true at both the college-level⁴³ and primary- and secondary-school levels.⁴⁴ Courts, too, have recognized these potential benefits. For example, the *Williams* court noted that

40. *Craig v. Boren*, 429 U.S. 190, 197-98 (1976).

41. *Hogan*, 458 U.S. at 724-25.

42. *See, e.g., Lee & Bryk, supra* note 1.

43. *See, e.g., ALEXANDER ASTIN, FOUR CRITICAL YEARS: EFFECTS OF COLLEGE ON BELIEFS, ATTITUDES AND KNOWLEDGE* (1977) (arguing that the single-sex college experience is likely to lead to higher academic and professional achievement). *But see Hoffman, supra* note 23, at 173 ("There is no convincing evidence one way or another of the relative academic achievement of women at single-sex schools, as compared with women at coeducational institutions.")

44. *See, e.g., Lee & Bryk, supra* note 1.

"there is a respectable body of educators who believe that 'a single-sex institution can advance the quality and effectiveness of its instruction by concentrating upon areas of primary interest to only one sex.'"⁴⁵

Some critics, however, contend that single-sex education is not the successful educational method that proponents make it out to be.⁴⁶ They maintain that the case for single-sex education is overstated because most single-sex schools are small, private schools with small classes, low student-faculty ratios, specialized curricula, and well-endowed programs and facilities. In addition, students enrolled in such fee-charging private schools are likely to come from more advantaged backgrounds.⁴⁷ Finally, private schools are likely to be highly selective.⁴⁸ With these strikes against coeducation built into the studies, critics complain, it is no wonder single-sex education appears to be the panacea so many think it is.

However, while some studies may be so skewed, there are a number of studies which have made adjustments for these contingencies and have nonetheless confirmed the efficacy of single-sex education. For example, a study controlling for socioeconomic background found that girls in all-female institutions still outperform their coeducational peers.⁴⁹ Other studies made proper adjustments for student background, student ability, and school selectivity and still revealed favorable results for both boys and girls.⁵⁰ Holding student background, peer, and social characteristics constant, another study focusing on math achievement showed that single-sex secondary education promotes both academic achievement and orientation when compared to mixed-sex education, especially for girls.⁵¹

Therefore, while there is ongoing debate about the desirability of single-sex education and there are many who maintain that

45. *Williams*, 316 F. Supp. at 137 (quoting Stipulations numbers 19 and 20).

46. Hsiao, *supra* note 23, at 108.

47. Emmanuel Jimenez & Marlaine E. Lockheed, *Enhancing Girls' Learning Through Single-Sex Education: Evidence of a Policy Conundrum*, 11 EDUC. EVALUATION & POL'Y ANALYSIS, Summer 1989, at 117, 122, 126.

48. Herbert W. Marsh, *Effects of Attending Single-Sex and Coeducational High Schools on Achievement, Attitudes, Behaviors, and Sex Differences*, 81 J. OF EDUC. PSYCH. 70 (1989).

49. Conroy, *NEW WOMAN*, Sept. 1990.

50. Marcia K. Gilroy, *Single-Sex Schooling and its Effect on Achievement, Attitudes and Behaviors* (1990) (unpublished Ph.D. dissertation, University of Michigan) (study conducted in six independent secondary schools).

51. Jimenez & Lockheed, *supra* note 47, at 119-120.

coeducation is the more effective educational method,⁵² the fact is that single-sex education does indeed work for many students. As mentioned, the benefits cited in numerous studies are accurate and untainted by the effects of other factors. The objective is not to replace all mixed-sex schools with same-sex schools. Rather, the goal is to present a full menu of schools from which a student can choose the one that is most closely tailored to the way she learns and creates the environment in which she feels the most comfortable. Put bluntly, the goal is "education by whatever means."⁵³ The exact educational benefits of single-sex instruction frequently vary depending on the gender of the student.⁵⁴

(i) *Girls and Women*

A variety of different studies conclude that single-sex education is beneficial to female academic achievement.⁵⁵ For example, after analyzing data from the National Center for Education Statistics, sociologist Cornelius Riordan determined that girls in single-sex schools outscore girls in coed schools by a full half-grade on four general academic ability tests and by a full grade level on science tests.⁵⁶ The absence of male peers from the classroom appears to create a more openly academic, less pressure-filled atmosphere for many girls. As a result, while generally adolescent girls frequently strive to conceal their academic successes for fear of intimidating boys, girls in girls' schools are more likely on average than coed schoolgirls to want others to remember them foremost as brilliant students.⁵⁷ In addition to superior grades, girls' school attendees tend to be more conscientious

52. See, e.g., Dale, *supra* note 1; J. Kenway & S. Willis, *Countering Sexism the Single-Sex Way: A Flawed Proposition*, in GENDER AND EDUCATION (P. Porter ed.).

53. Smith, *supra* note 23, at 2015.

54. The benefits to males and females are listed separately in order to demonstrate that single-sex education is beneficial to males, and not just females. Many scholars feel that same-gender environments are desirable for females, but not for males. See, e.g., *infra* notes 270-284 and accompanying text.

55. See, e.g., Lee & Bryk, *supra* note 1 (arguing that single-sex education is most beneficial to females); Powell & Powell, *For Girls Schools of Their Own*, 43 INDEPENDENT SCHOOL 55 (1983); Cornelius Riordan, *Public and Catholic Schooling: The Effect of Gender Context Policy*, 93 AM J. OF EDUC. 518 (1985).

56. Note, *supra* note 6, at 1757, citing CORNELIUS RIORDAN, GIRLS AND BOYS IN SCHOOL: TOGETHER OR SEPARATE? 95, table 5.3 (1990).

57. Jimenez & Lockheed, *supra* note 47, at 121, citing Jones, Schallcrass, & Dennis (1972) (studying New Zealand secondary schools).

with their homework, spending more time studying rather than on extracurricular activities.⁵⁸

In addition to the beneficial effects of all-female environments on student academic achievement, many studies have revealed that girls and women attending single-sex institutions hold higher aspirations regarding college and beyond than their counterparts in coeducational institutions.⁵⁹ First, graduates of girls' high schools are more likely than graduates of coed high schools to proceed to college and to attend highly-selective four-year colleges.⁶⁰ And once they graduate, women from these schools are twice as likely as graduates of coeducational schools to receive doctorate degrees.⁶¹ In addition, while in college, women attending all-female institutions are more likely to develop high career aspirations and attain leadership positions, both in student government and beyond.⁶² A study conducted in 1973 and reconfirmed in 1986 by George Washington University Professor Elizabeth Tidball revealed that women's college graduates were more likely than women who attended coed schools to be notable achievers listed in *Who's Who of American Women*.⁶³ In 1983, for example, Catholic girls' school graduates made up half of the women in Congress.⁶⁴ In addition, over a third of women

58. Marsh, *supra* note 48, at 73 (the subjects of the study were 2,332 Catholic high school students attending one of 47 single-sex or 33 coeducational schools); Jimenez & Lockheed *supra* note 47, at 121 (discussing a study of 1,223 New Zealand students in two single-sex and one coed school. Boys in single-sex schools likewise preferred to spend additional time on their homework); Edison J. Trickett, et al., *The Independent School Experience: Aspects of the Normative Environments of Single-Sex and Coeducational Secondary Schools*, 74 J. OF EDUC. PSYCH. 374-81 (1982) (study of 15 single-sex and coed independent schools assessing 9 dimensions of classroom environments revealed that single-sex schoolgirls and boys alike tended to spend more time on studies and less on non-academic activities).

59. See, e.g., VALERIE E. LEE & H.M. MARKS, SUSTAINED EFFECTS OF THE SINGLE-SEX SECONDARY SCHOOL EXPERIENCE ON ATTITUDES, BEHAVIORS, AND VALUE IN COLLEGE (1988). See also *Virginia*, 766 F. Supp. at 1412; ASTIN, *supra* note 43.

60. PATRICIA A. BAUCH, SINGLE-SEX SCHOOLING AND WOMEN'S EDUCATION 10 (1989).

61. Deborah Beroset Diamond, *Forces of Change May Strengthen Single-Sex Schools*, CHICAGO TRIBUNE, June 2, 1991, at Womanews 1.

62. Hsiao, *supra* note 23, at 106-07 (1993); ASTIN *supra* note 43, at 233.

63. Elizabeth Tidball, *Perspectives on Academic Women and Affirmative Action*, 54 EDUC. REC. 130 (1973). See also *Vorchheimer*, 532 F.2d at 882 n.2 (noting that the defendants relied on testimony given by Dr. Tidball); Gardenswartz, *supra* note 37, at 623 (citing study by Dr. Tidball). Some women's college graduates include Cokie Roberts, Diane Sawyer, Geraldine Ferraro, Julia Child, Gloria Steinem, Meryl Streep, Barbara Walters, Ali MacGraw, and Lesley Stahl. Diamond, *supra* note 61.

64. JAMES S.J. HENNESSY, THE CHURCH IN THE UNITED STATES TWENTY YEARS AFTER VATICAN II. (1983), cited in BAUCH, *supra* note 60, at 22; see also Diamond, *supra* note 61 (noting that over 40% of the women in Congress attended women's colleges).

on Fortune 1000 Boards of Directors attended women's colleges.⁶⁵

Frequently, these career aspirations, developed in all-female environments, involve non-traditional female fields such as math, science, and engineering.⁶⁶ The Women's College Coalition in Washington D.C. confirms that women in all-female colleges more frequently major in economics, math, and science.⁶⁷ This pattern is, in large part, attributable to a sense of empowerment engendered by same-sex atmospheres, and consequently, an increase in self-regard, which "heightens achievement motivation" for women.⁶⁸ According to one study, while this achievement motivation has a tendency to increase for boys as they get older, it decreases for girls.⁶⁹ Thus, the added boost to achievement that single-sex educational settings can provide may be increasingly important for females as they proceed through the educational system.

The demonstrated success of single-sex education for female academic and career achievement establishes that a state's interest in educational excellence for its female citizens is well-served by all-female educational institutions. As an interim president for Texas Women's University—one of two all-female public colleges in the country—expressed TWU's mission: "We are meeting a compelling state need in educating women of all ages and backgrounds and life circumstances."⁷⁰

(ii) *Boys and Men*

As with females, various studies indicate that many males also tend to display superior academic success at single-sex institutions. Boys in boys' schools outperform their coeducated coun-

65. Diamond, *supra* note 61.

66. CARNEGIE COMMISSION ON HIGHER EDUCATION, REPORT ON OPPORTUNITIES FOR WOMEN IN HIGHER EDUCATION, 73-75 (1973); Note, *supra* note 6, at 1758; Margaret Rankin, *Math, Science No Longer a Man's World*, WASHINGTON TIMES, April 15, 1991, at M6.

67. Rankin, *supra* note 66.

68. Nanci M. Monaco & Eugene L. Gaier, *Single-Sex Versus Coeducational Environment and Achievement in Adolescent Females*, ADOLESCENCE, Fall 1992, at 584; BAUCH, *supra* note 60, at 15 (noting that in addition to higher achievement aspirations, this sense of empowerment also manifests itself in women's pursuit of non-traditional careers and a heightened concern for gender equity).

69. C. RIVERS, R. BARNETT & G. BARUCH, BEYOND SUGAR AND SPICE, HOW WOMEN GROW, LEARN AND THRIVE 220-221 (1970), citing CARNEGIE COMMISSION ON HIGHER EDUCATION, *supra* note 66.

70. Barry Shlachter, *Woman's University Thrives While Bucking Trend*, FORT WORTH STAR-TELEGRAM, Oct. 31, 1993, at State 5 (quoting Pat Sullivan).

terparts in general scholastic and extracurricular activities.⁷¹ In addition, boys' schools appear to have a better record in promoting male reading skills, which tend to lag behind the reading skills of same-age females.⁷² This disparity in learning tempos between the sexes has an enormous impact on the self-esteem problems many boys suffer as a result of being continually compared to girls in elementary and secondary school.⁷³ Boys in boys' schools also report spending more time on homework and achieve better results in math than boys in coeducational environments.⁷⁴ At the college level, it appears that same-sex environments designed for the unique learning styles of men, particularly the disciplinary focuses of The Citadel and VMI, have positive effects in encouraging men's academic discipline.⁷⁵

In addition, as with females, many studies conclude that males who attend single-sex schools display heightened educational and career aspirations. For example, a 1988 study revealed that boys' school graduates were more likely than coed school attendees to attend private and four-year colleges, rather than community colleges.⁷⁶ In addition, students at men's colleges were more likely to participate in honors programs than students at coed schools.⁷⁷ Graduation rates at single-sex institutions also indicate the desirability of single-sex schooling for many men. One author has noted that The Citadel, a public all-male military college in Charleston, South Carolina brought "65.4 percent of its undergraduates who enrolled in the fall of 1987 to their baccalaureate degrees in 1991, in contrast to Clemson University . . . where the percentage is 37.6, and 34.5 percent for the University of South Carolina's main campus in Columbia."⁷⁸ Like women's colleges, men's schools have enviable records of producing a substantial percentage of students who pursue post-graduate degrees. For example, 13 percent of the all-male Wabash College

71. See, e.g., Lee & Bryk, *supra* note 1, at 381-95.

72. Note, *supra* note 6, at 1757, citing RIORDAN, *supra* note 56, at 55.

73. See *infra* notes 153-164 and accompanying text.

74. See, e.g., Lee & Bryk, *supra* note 1; Jimenez & Lockheed, *supra* note 47, at 121, citing Jones, Schallcrass, & Dennis (1972) (studying New Zealand secondary school students).

75. David Riesman, *Quixotic Ideas for Educational Reform*, SOCIETY, March-April 1993, at 17, 21.

76. Lee & Marks, *supra* note 59; BAUCH, *supra* note 60, at 10 (citing same study).

77. ASTIN, *supra* note 43, at 232.

78. Riesman, *supra* note 75, at 21.

graduates go on to receive a Ph.D., a higher percentage than at Harvard, Yale, or Princeton.⁷⁹

Finally, just as women's colleges enhance the 'career aspirations of females, men's colleges are more likely to produce males seeking a career in certain respected fields, notably the law, business, and college teaching.⁸⁰ In addition, a men's college education tends to increase the expected starting salaries of males in business.⁸¹

(iii) *Minorities*

Not only does same-sex schooling appear to enhance the academic achievement and career aspirations of both males and females, such schooling also seems to provide particular benefits to minorities of both genders. Single-sex schools enroll a higher percentage of minority students than coeducational schools, especially girls' schools and women's colleges.⁸² These minorities tend to outpace non-minorities, even within the single-sex setting. According to one study, both minority girls and boys in single-sex schools score an entire grade level higher than coeducated students on four different academic achievement tests.⁸³ Single-sex schools also have a proud record of minority graduation rates. For example, The Citadel graduates black students at a higher rate than any other South Carolina college or university.⁸⁴ Because of the success of single-sex environments, many black Americans fear the consequences of a legal prohibition of public single-sex schools because the particular benefits they provide are not normally accessible to many minorities who cannot afford private school tuition.⁸⁵

79. Anthony DePalma, *Picture a Men's College Circa '56: That's Wabash*, NEW YORK TIMES, April 22, 1992, at B8.

80. *Virginia*, 766 F. Supp. at 1412, citing ASTIN, *supra* note 43.

81. *Id.*

82. BAUCH, *supra* note 60, at 3-4 ("55% of girls' schools enroll over 11% minority students compared to 51% for boys' and 47% for coed schools.") See also, Diamond, *supra* note 61 ("According to the Women's College Coalition, nearly half of the colleges, not counting predominantly black schools, have greater than 10 percent minority students, and more than one in five has a minority enrollment of 20 percent or more.")

83. Note, *supra* note 6, at 1757, citing RIORDAN, *supra* note 56, at 111, table 5.7, 112.

84. Riesman, *supra* note 75, at 21 (52% in four years).

85. Robert Bobb, *VMI's Fate Means Much for African-Americans*, RICHMOND TIMES-DISPATCH, Sept. 8, 1993, at op/ed. See also Vorchheimer, 532 F.2d at 888 (remarking that due to the high cost of tuition, "[t]he existence of private schools is no more an answer to [students who prefer a single-sex education] than it is to the plaintiff.")

Based on the preceding sociological evidence, a state could reasonably conclude that its important interest in well-educated and highly motivated female, male, and minority citizens is furthered by single-sex educational facilities. Even assuming the verity of the contrary studies sounding the praises of coeducation,⁸⁶ the fact that one system of education has proven beneficial to some does not necessarily mean that it will be equally so for all. Single-sex education, like coeducation, has obviously proven beneficial to many students. The state's choice is not between absolutes; the provision of single-sex education does not preclude the provision of coeducation, or vice versa. There is a compelling need for a variety of suitable options in order to maximize the effectiveness of a state's overall education system.

b. *Self-Confidence and Leadership*

In addition to excellence in education as an important state objective furthered by public single-sex education, confidence and leadership are qualities that a state has an interest in promoting among its citizens. Same-gender schooling appears to be an effective way of promoting these desirable qualities in females and males alike.

(i) *Girls and Women*

Numerous studies confirm that a single-sex educational environment enhances the self-confidence and leadership capabilities of both girls and women.⁸⁷ These successes appear to be, in part, due to the removal of males, who tend to dominate classroom discussion and teacher attention. With males out of the picture, females are free to explore the various roles typically co-opted by males. In addition, single-sex schools provide females with "warm and supportive" role models, which they tend to rely upon to a greater degree than males do.⁸⁸ Positive role models combined with the increased attention they receive from their teachers, enhance girls' sense of self-worth and competence. On the other hand, coeducational schools may not produce such encouraging results for many females. For example, a director of

86. See, e.g., DALE, *supra* note 1 (lauding coeducation's ability to present students with a realistic picture of interacting in an integrated society); TYACK & HANSOT, *supra* note 34.

87. See, e.g., Jimenez & Lockheed, *supra* note 47 (single-sex schools outperform coeducational schools in terms of female achievement); Lee & Bryk, *supra* note 1 (coeducation may even be damaging to the academic and social development of female students).

88. Monaco & Gaier, *supra* note 68, at 581.

the Project on the Status of Women at the Association of American Colleges warned that, as opposed to single-sex schools, "for every year a woman attends a coeducational college, her confidence decreases."⁸⁹

(ii) *Boys and Men*

As with females, some single-sex schools appear to successfully enhance male self-esteem and achieve positive male development. The all-male Wabash College in Indiana, for example, prides itself on being particularly "conducive to achievement, growth and building self-esteem."⁹⁰ Similarly, schools with a challenging adversative approach and a heavy reliance on strict discipline appear to be quite successful in male character development. Within such environments, students "can build their self-esteem" because "[t]hey have to work hard for success. By earning things, they gain a sense of accomplishment."⁹¹

While most would agree that, in general, girls and women stand to benefit dramatically from any increase in self-esteem, the consensus for males' need for such ego enhancement is more hotly contested. However, few would deny that males, like all youth, need role models and moral guidance. Indeed, many feel the need is urgent. Because males commit 90 percent of violent crimes, "society desperately needs male developmental education."⁹² In fact, in 1981, males were arrested for armed robbery thirteen times more often than females, and for murder and non-negligent manslaughter the arrest rate was seven times higher for males than females.⁹³ Boys need to learn at a young age to channel their aggression, to become responsible, and to "affirm their masculinity within society rather than at its expense."⁹⁴

An educational forum that has proven especially effective for male socialization is the military setting. At the high school level,

89. Diamond, *supra* note 61.

90. Ellen Futterman, *Two Schools of Thought: Little Wabash College in Indiana is One of the Few All-Male Institutions Left, But the Debate Goes on Over Admitting Women*, ST. LOUIS POST-DISPATCH, May 14, 1992, at 1E.

91. Thomas Huang, *Guarding Tradition: At the Marine Military Academy in Harlingen, Kids Get Old-Fashioned Discipline in an All-Male Environment*, DALLAS MORNING NEWS, Feb. 20, 1994, at 1F (quoting Mel Whitehurst, a psychologist from Plano, Texas).

92. Thomas C. Linn, *We Need All-Male Schools*, USA TODAY, Nov. 18, 1993, at 15A.

93. Kingsley R. Browne, *Biology, Equality and the Law: The Legal Significance of Biological Sex Differences*, 38 SW. L.J. 617, 621 (1984), citing BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 182 (1982-83).

94. Linn, *supra* note 92.

military school attendance is increasing dramatically. Some 11,000 students receive a military high school education each year.⁹⁵ Part of the reason for the growth is that many people view such schools as a haven from the violence so prevalent in public schools today, and as a place for young men to learn to function properly and honorably within society. Military academies "offer students a more structured and disciplined alternative to public schools, many of which have lost the ability to control classrooms."⁹⁶ Basic male development and discipline must be emphasized in early education so that young men, with proper role models to guide them, develop character and not stereotypical notions of masculinity. Society would be wise to ensure that "at least a small corner of the vast education world . . . be reserved for institutions that concentrate on civilizing the male of the species—exclusively."⁹⁷

Unlike females, whose sense of responsibility and nurturing nature are largely forced upon them by biological reality, males must be taught to be responsible.⁹⁸ For example, in 1991 some 1.2 million children were born to unwed mothers, almost 30% of live births in the country.⁹⁹ While the women must assume some responsibility for the future of the child, the only force encouraging the father to take similar responsibility is the pressure of social mores. The stigma faced by males who refuse to act responsibly, however, is not as painful as it once was. Yet a general sense of social justice and individual responsibility can be instilled at a young age and, because the need is particularly urgent for males, this can be accomplished most effectively by a program designed exclusively for males. Carol Gilligan, a well-known women's studies expert, noted that for females the moral imperative is "an injunction to care."¹⁰⁰ But males must develop

95. Huang, *supra* note 91.

96. *Id.* (citing officials at the Association of Military Colleges and Schools in Alexandria, Virginia).

97. Robert Holland, *VMI's Cause is All About Diversity*, RICHMOND TIMES-DISPATCH, Sept. 8, 1993, at op/ed.

98. One study compared the relative attachments of both males and females to infants and concluded, that while the attachment is part of an innate predisposition for females, for males it was socially learned from females or forced upon them by the norms of kinship systems. Browne, *supra* note 93, at 649, citing Rossi, *A Biosocial Perspective on Parenting*, in *THE FAMILY* 5 (1978).

99. Charles Murray, *The Coming White Underclass*, WALL ST. J., Oct. 29, 1993, at op/ed page.

100. Michael McGough, *Romeboys: The Case for Single-Sex Schools*, THE NEW REPUBLIC, Dec. 16, 1991, at 7.

this care focus and can do so most naturally in an all-male setting because “they have to take care of each other, they have to listen to each other’s needs.”¹⁰¹ When boys learn to take care of each other, and take responsibility for their social and sexual actions, society as a whole is the primary beneficiary.

Rather than viewing all-male education as a sexist male desire to be separate, as many do, we should view it as a way to combat sexual harassment and archaic male attitudes towards women. As one scholar wrote, “for real change to occur, boys need to be resocialised [and] . . . unless appropriate male models in all-boys’ classes lead the way, boys will still emerge from the school system believing that they are superior.”¹⁰² Because maleness cannot be alienated from males without a fundamental loss of their humanity, it should be encouraged, properly channeled, and realized to its fullest potential.¹⁰³ All-male schools are the most effective forum for this type of focused developmental training. As one author warned: “The real injustice will be if we fail to recognize how men of character are developed.”¹⁰⁴

A state legislature could easily demonstrate a reasonable judgment that single-sex schooling furthers its legitimate interest in producing well-adjusted, self-confident leaders. Single-sex education is particularly well-structured to enhance the self-confidence of both females and males because it removes the potentially damaging presence of other-sex peers. For girls, this means freedom to assume traditional male leadership roles. For boys, this means freedom from unfavorable comparison to girls. For society, this means a program designed to combat the unnerving statistics of escalating male violence and skyrocketing illegitimacy rates.

c. *Educational Diversity*

Not only do single-sex schools promote important governmental interests in academic excellence and confident leaders, they also advance diversity in a state’s educational system. Most schools in the United States are coeducational. Indeed, there remain only four public single-sex colleges for those who desire

101. *Id.*, quoting J. Kristian Pueschel, director of the Boys Boarding School Coalition and assistant headmaster of the Trinity-Pawling School in Pawling, New York.

102. Jones, *supra* note 32, at 164.

103. Richard A. Hawley, *About Boys’ Schools: A Progressive Case for Ancient Form*, TEACHER’S COLLEGE RECORD, Spring 1991, at 445.

104. Linn, *supra* note 92.

single-sex instruction.¹⁰⁵ As such, many high school seniors effectively have no choice when it comes to selecting a college. A state which offers a single-sex option, in addition to its variety of coeducational institutions, has dramatically expanded the diversity of its entire system, and consequently has provided new opportunities for students to select the type of education most closely-tailored to his or her own developmental and learning needs.

Many criticize this argument for educational diversity, protesting that it is misleading to characterize a school which categorically excludes one sex as somehow facilitating diversity. This is not diversity, critics urge, this is exclusivity parading as diversity.¹⁰⁶ However, the key is to view the system as a whole, and not each individual institution within the system: "In our quest for the ideally diverse society, keep in mind that every institution need not be diverse internally . . ." ¹⁰⁷ The analysis must concentrate on whether there is equal educational opportunity for both sexes in the state as a whole.

System-wide diversity was upheld as an important state interest in *Heaton v. Bristol*.¹⁰⁸ The *Heaton* court, in affirming "separate but equal" colleges, noted that Texas's public school system was comprised largely of coeducational colleges, but with one all-male and one all-female college. Such a system

has been established to meet and fill the total and diverse educational needs of the State. So we must view the system as a whole in order to ascertain whether there is discrimination between the sexes, the entire system must be viewed, and not a single institution standing alone.¹⁰⁹

The *Vorchheimer* court, in agreement with such logic, extracted the very heart of the debate as it posed the question: "Do the Constitution and laws of the United States require that every

105. They are: Texas Women's University in Denton, Texas; Douglass College at Rutgers University in New Jersey; Virginia Military Institute in Lexington, Virginia; and The Citadel, in Charleston, South Carolina. This paucity of publicly-supported single-sex schools is alarming because there are many who desire to attend such schools and who could benefit dramatically from doing so, but who cannot afford private school tuition.

106. Mary M. Cheh, *An Essay on VMI and Military Service: Yes, We Do Have to Be Equal Together*, 50 WASH & LEE L. REV. 49, 58-59 (1993) ("[D]iversity in the VMI context is a reason to exclude, or to isolate and separate, constituent groups."); Marcia Berman, *An Equal Protection Analysis of Public and Private All-Male Military Schools*, 1991 UNIV. CHI. LEGAL F. 211, 222 (1991) ("Of course, Virginian women's educational options are not broadened by the existence of an all-male VMI; they are constricted.")

107. Mitch Neurock, *Don't Force VMI Open*, W&L LAW NEWS, Oct. 4, 1990, at 1, 10.

108. 317 S.W.2d 86 (Tex. Civ. App. 1958), *cert. denied*, 359 U.S. 230 (1959).

109. *Id.* at 99.

public school, in every public school system in the Nation, be coeducational?"¹¹⁰

The need for educational diversity is especially vivid when one considers the different ways in which the two sexes learn and develop. The best possible educational system would be one in which academic programs were designed exclusively for each individual, addressing each of his shortcomings, encouraging each of his strengths. Unfortunately, limited resources render this impossible. The most effective way to approach this ideal, however, is by making general classifications based on average needs. In the educational arena, the best way to isolate individuals by their particular developmental and educational needs is by gender, which is the primary determinant of learning differences.¹¹¹

Another valid criticism of single-sex education as a means to achieving diversity is that the "diversity" objective could be used to justify just about any discriminatory admissions policy. If excluding one gender achieves diversity, imagine how much more diversity a state could acquire by excluding one race or one ethnicity.¹¹² However, while there is currently no demonstrated pedagogical justification for separating learning groups based on race or ethnicity, there is proof that separating by gender does advance important educational goals. That is:

[b]ecause genuine psychological and physiological differences exist between gender groups, the Constitution tolerates laws that discriminate between two sexes. Unlike laws that discriminate on the basis of race—which are usually born of invidious stereotyping and racial animus—laws that discriminate on the basis of gender may result from fundamental psychological and physiological differences between males and females.¹¹³

As a state moves away from legitimate groupings based on real learning differences, to questionable groupings not supported by scientific or sociological studies, scrutiny by a court should increase exponentially.

The question to be asked when determining the legitimacy of such groupings is "whether there may be a sufficiently higher incidence of the trait within the included class than in the ex-

110. *Vorchheimer*, 532 F.2d at 881.

111. See *infra* notes 153-164 and accompanying text.

112. Saferstein, *supra* note 9, at 656-57 ("So long as a state maintained at least one fully integrated school, it would be free to increase diversity by offering options such as single-sex, single-race, or any other classification it might dream up.")

113. Jon Allyn Soderberg, *The Virginia Military Institute and the Equal Protection Clause: A Factual and Legal Introduction*, 50 WASH. & LEE L. REV. 15, 20 (1993).

cluded class to justify the different treatment."¹¹⁴ That is, as a group, do girls tend to exhibit characteristics that boys do not, which make all-female learning environments particularly effective for them, and vice versa? A showing by the state that there are substantial and generalizable differences between the sexes that affect the process in which they learn should be sufficient to "create a presumption that the classification is legitimate."¹¹⁵ Gender, in the single-sex schooling context, is an accurate and efficient proxy for real learning differences. It is "the best available tool" for developing an effective instructional setting for the greatest number of people.¹¹⁶ A homogenous education system will fail more individuals than an educational system that is individualized and particularized as much as efficiency considerations will allow.

Of course, diversity in the abstract is not the goal. Indeed, the Supreme Court in *Hogan* suggested that diversity by itself fails to comprise an important state interest.¹¹⁷ Just because a state has increased its educational options for one class does not mean it escapes the Court's constitutional scrutiny of its discriminatory policies. Justice O'Connor explained:

The issue is not whether the benefited class profits from the classification, but whether the State's decision to confer a benefit only upon one class by means of a discriminatory classification is substantially related to achieving a legitimate and substantial goal.¹¹⁸

However, this implies that when the state confers a single-sex benefit on both sexes, the benefit is not conferred "only upon one class" and the harm (i.e., decreased choice) suffered by the particular sex that is excluded from one school is minimal as long as there are other substantially equivalent options available. The Court has never recognized a constitutional right to attend a particular school.¹¹⁹ For example, in *Vorchheimer* the court found that, because the female plaintiff had a full range of educational options, from all-female to coeducation, her exclusion from the

114. *Craig*, 429 U.S. at 225-26.

115. *Browne*, *supra* note 93, at 678.

116. *Id.* at 680.

117. *Hogan*, 458 U.S. at 731, n. 17; Sharon K. Mollman, *The Gender Gap: Separating the Sexes in Public Education*, 68 *IND. L.J.* 149, 163 (1992) ("[D]iversity alone is an insufficient state interest to support a gender-based classification.")

118. *Hogan*, 458 U.S. at 731, n. 17.

119. *Id.* at 736 (Powell, J., dissenting) ("[T]here is, of course, no constitutional right to attend a state-supported university in one's home town.")

all-male high school was not a denial of Equal Protection. When a state pursues diversity as a direct means of achieving its important interest in educational excellence and does so by providing each of its citizens with a host of educational alternatives, the state's interest in diversity is elevated to legitimate constitutional proportions.

2. *Substantial Relationship*

Once a state has asserted important interests that it reasonably concludes are advanced by single-sex education, the next step in Equal Protection analysis is determining whether the gender classifications involved in single-sex school admissions policies are substantially related to those state interests. The fit between means and ends, in other words, must be extremely tight in order to overcome a presumption against gender-based distinctions.

The most obvious criticism of gender separation to achieve excellence in education is that academic success does not require femaleness or maleness. For example, a school district would have to "prove that boys suffer an educational disadvantage due to the presence of girls in the classroom"¹²⁰ and that "excluding girls is directly related to redressing these disadvantages."¹²¹ Critics conclude that excluding one sex cannot possibly be substantially related to a state's interest in providing first-rate education to its entire citizenry.

It is true that maleness or femaleness is not necessary to achieve academic success; rather, it is the nature of a same-sex environment that is crucial. As the Fourth Circuit observed in the VMI case:

It is not the maleness, as distinguished from femaleness, that provides justification for the program. It is the homogeneity of gender in the process, regardless of which sex is considered, that has been shown to be related to the essence of the education and training at VMI.¹²²

The argument that single-genderness is not essential to effective education ignores those fundamental differences between males and females, which are the legitimate basis for the exclusion and which are precisely the reason that single-sex education is a nar-

120. Mollman, *supra* note 117, at 167.

121. *Id.* at 165.

122. *Virginia*, 976 F.2d at 897.

rowly-tailored and highly effective way to educate each member of society to the best of her potential. The Fourth Circuit, even as it reversed the lower court, agreed that VMI's single sex status contributed to excellence and diversity in Virginia's educational system and that the same-sex classification was necessary to achieve those missions.¹²³ The problem was that Virginia failed to provide the same state-supported opportunity for women, who could likewise benefit from the exclusion of men.

There are numerous reasons catalogued in the sociological literature why males and females benefit from the exclusion of the opposite sex in a learning environment. These reasons substantiate the claim that single-sex education provides the requisite "tight fit" between the state's interest in quality education and the gender classifications inherent in same-sex admissions policies. Same-sex environments 1) provide relief from sexual pressures that distract students from their studies, 2) allow teachers to concentrate on and take advantage of the unique dispositions of each gender, and 3) encourage a fertile learning environment molded for the particular developmental characteristics of each sex.

a. *Relief from Sexual Distractions*

As Justice Powell forthrightly remarked in his *Hogan* dissent, a single-sex learning institution "can free its students of the burden of playing the mating game while attending classes, thus giving academic rather than sexual emphasis."¹²⁴ Many teenage girls appear to stress attractiveness to and popularity with boys as their primary focus in school.¹²⁵ It does not require rigorous thought to conclude that a preoccupation with sexual attractiveness ultimately will be damaging to academic achievement. Indeed, commentators of all ideological perspectives cite the problem of teenage pregnancy as one of the nation's most critical.¹²⁶ The distractions, however, are just as damaging to male

123. *Id.* at 897-898.

124. *Hogan*, 458 U.S. at 739 n.5 (citing Brief for Mississippi University for Women Alumnae Association as Amicus Curiae 2-3).

125. DEBORAH J. MIXELL, AN ANNOTATED BIBLIOGRAPHY OF THE RESEARCH COMPARING ACADEMIC ACHIEVEMENT AND ATTITUDES OF STUDENTS IN COEDUCATIONAL AND SINGLE-SEX SECONDARY SCHOOLS 10 (1989).

126. Planned Parenthood estimates that every day 2,795 teenagers become pregnant and 1,512 female teens drop out of school. Susan Chira, *Educators Ask if All-Girls' Schools Would Make a Difference in Inner Cities*, NEW YORK TIMES, Oct. 23, 1991, at B5. See also Murray, *supra* note 99 ("[I]llegitimacy is the single most important social problem of our

academic achievement. For example, one student at the all-male Wabash College explained that at Wabash “[t]here’s more of an opportunity to define yourself as a man rather than as someone in a relationship, and there also are less distractions when it comes to concentrating on your studies.”¹²⁷ This beneficial relief from other-sex pressures applies equally to the primary and secondary school levels. One vocal boys’ school teacher explained: “I like boys’ schools because the inter-sexual posturing that interferes with my work goes on somewhere else.”¹²⁸

Other pressures for boys may be relieved not only by the removal of females, but by the addition of a regimented environment as well. For example, a cadet at the Marine Military Academy in Texas complained of the pressures in his old public high school: “If you weren’t wearing designer clothes or your daddy wasn’t making \$100,000, you couldn’t fit in. It was all based on status. It’s based on merit here.”¹²⁹ Any time large amounts of energy are expended on posturing, flirting, grooming, or suppressing sexual urges in any type of school environment, less energy is directed at academic studies.¹³⁰

Both men and women agree on the benefits of the absence of the other sex. For example, a student at Texas Women’s University remarked that, “[m]en are a distraction in the classroom. [I’m here] because I wanted an education. I didn’t feel like being in the party scene.”¹³¹ Similarly, a student at the all-male Wabash College commented that women “provide a temptation for guys not to study. We’re here to study.”¹³²

While there may also be some offsetting negative aspects of single-sex environments, such as an initial tendency towards “cliquishness” with one’s own sex, the point is that single-sex atmospheres provide some students with substantial benefits which, they may feel, outweigh the drawbacks. One of these benefits is the removal of sexual and social tensions in the classroom.

time—more important than crime, drugs, poverty, illiteracy, welfare or homelessness because it drives everything else.”)

127. Futterman, *supra* note 90 (quoting Derek Schneider, a psychology major).

128. Hawley, *supra* note 103, at 441.

129. Huang, *supra* note 91.

130. See, e.g., Hawley, *supra* note 103, at 441 (“[S]exual distraction is an undeniable impediment to focused activity, to learning and development.”)

131. Shlachter, *supra* note 70 (quoting Tameca Minter-Henderson).

132. *Woman’s Place Not Wabash, Board Says*, NEW YORK TIMES, March 25, 1992, at A21 (quoting Steve Marcou).

b. *Dispositional Differences*

In addition to relieving students of the burdens of playing the "mating game," single-sex environments allow teachers to adjust their curriculum and teaching style to the particular behavioral patterns of males or females. The psychological and anthropological literature is replete with evidence indicating that the biological differences between the sexes transcend mere physical differences and extend to temperamental disposition and cognitive functioning.¹³³ These differences are not unique to our own culture or socialization patterns. Rather, they appear to be universal, affecting every known culture and even primates with DNA structures similar to that of humans.¹³⁴ Indeed, studies of newborn babies reveal that early "stereotypically" masculine and feminine behavior patterns are not attributable to social learning, but rather to the way cognitive functioning is "lateralized in the brain."¹³⁵ One sociologist generalizes that "males are more sexually active, more dominant, more deferred to, more aggressive, less responsible, less nurturant, and less emotionally expressive than females."¹³⁶

One of the greatest disposition differences between males and females is aggression,¹³⁷ which translates into disciplinary problems in the classroom. Males tend to disrupt class for a variety of reasons, whether it be to attract attention from females¹³⁸ or just to act on aggressive or hyperactive impulses.¹³⁹ This should be of particular concern to females, who typically require less discipline in the classroom and for whom the teacher's focus on male disciplinary problems may be most academically detrimental. In addition, the teacher's necessary additional attention to males in the classroom¹⁴⁰ may be internalized by females as a rejection or a signal that males are somehow more deserving of special attention. On the other hand, if the girls had their own

133. Browne, *supra* note 93, at 618.

134. *Id.* at 628-30.

135. *Id.* at 623; Christine Gorman, *Sizing up the Sexes*, TIME, Jan. 20, 1992, at 42.

136. *Id.* at 629, citing D'Andrade, *Sex Differences and Cultural Institutions*, in THE DEVELOPMENT OF SEX DIFFERENCES 201 (1966).

137. Boys display more aggressive behavior in physical and verbal activities from age two-and-a-half, when social play begins. Browne, *supra* note 93, at 620-21.

138. Rogers Worthington, *Milwaukee Idea Shapes a New School*, CHICAGO TRIBUNE, Dec. 1, 1991, at C25 ("[B]lack boys are best taught in a setting away from girls, whom they want to impress and who often outperform them in the classroom.")

139. See, e.g., James Q. Wilson, *On Gender*, PUBLIC INTEREST, Summer 1993.

140. See, e.g., Jimenez & Lockheed, *supra* note 47, at 122.

school or classroom, teachers would be able to focus less on discipline and more on academic subjects.

Interestingly, just as females in a same-sex environment are free to concentrate more time on academic activities than on disciplinary procedures, it also appears that with the absence of females, males in all-male schools require somewhat less focus on discipline as compared with males in coeducational schools.¹⁴¹ According to Harvard University sociologist and expert on gender differences, David Riesman, this is because, “[m]en need to be in an environment where their tricks and games are of no avail.”¹⁴² Once isolated from an audience for their pranks, boys, too, are able to concentrate on learning rather than posturing.

In contrast to male aggression in the classroom, females tend to exhibit more cooperative behavior such as sharing and coalition-forming.¹⁴³ According to Carol Gilligan, women respond best to a supportive educational system, while men thrive in an adversative environment.¹⁴⁴ For example, while “men play competitively, with a strong motive to win[,] [w]omen . . . attempt to achieve the best outcome for all players. They form alliances in order to minimize both their own losses as well as those of others.”¹⁴⁵ Males, on the other hand, are more likely to assist other males and actively refrain from assisting females.¹⁴⁶ As a result, many women’s college defenders offer as one reason for their support for single-sex education that the environment is more supportive and empowering, a kind of all-female “refuge.”¹⁴⁷ As one Texas Women’s University student who had re-

141. For example in one study of two high schools in Philadelphia, one coed and one all-male, there was a higher rate of male dropouts, disciplinary suspensions, and disciplinary referrals in the coed school than in the all-male school. Leon Bass, *A Comparison of Achievement and Attitudes of Black Male Students Attending Co-educational and All-Male Urban High Schools*, (1981)(unpublished Ph.D. dissertation, Temple University). See also Frank W. Schneider & Larry M. Coutts, *The High School Environment: A Comparison of Coeducational and Single-Sex Schools*, 74 J. OF EDUC. PSYCH. 898-906 (1982)(study of 2029 students from five coed, 4 all-female, and 4 all-male high schools in Southwestern Ontario revealed that coed schools place more emphasis on non-academic activities and less emphasis on discipline).

142. Terry Carter, *U.S., Ex-AG Locked in 'Rat Line' Battle*, L.A. DAILY J., April 17, 1991, at 1.

143. Browne, *supra* note 93, at 627, citing M. SPIRO, GENDER AND CULTURE: KIBBUTZ WOMEN REVISITED 74, 75 (1979).

144. Linn, *supra* note 92.

145. Monaco & Gaier, *supra* note 68, at 587.

146. Jimenez & Lockheed, *supra* note 47, at 122.

147. Clarence Page, CHICAGO TRIBUNE, May 13, 1990, at 3 (quoting female students who protested the attempt at forcing Mills College to integrate men because the men would jeopardize the “empowerment” that the “affirming” and “supportive” all-female “refuge” provided them). “Better Dead Than Co-ed!” was the battle cry of California’s

cently transferred from a coed university described it, "[y]ou don't have quite the competition you have at a coeducational institution, not the sense of aggressiveness. It's more laid-back."¹⁴⁸ In short, there appears to be a fundamental difference between the way that females and males prefer to interact that makes single-sex learning environments particularly appealing and effective for many students.

The general dispositional and behavioral differences between the sexes are most effectively addressed and catered to when the genders are separated. Many critics, however, reject this as proof of the desirability of educating the sexes separately. Rather, they maintain that the only reason the genders behave differently is because our society socializes them from a very young age to act in stereotypical manners. These critics feel that if we could remove the social pressures, there would be no dispositional differences that would necessitate different learning and teaching environments.

However, at least one famous experiment attempting to accomplish just such an eradication of socially-manufactured gender roles has proven the difficulty of the task. In 1910, the Israeli Kibbutz movement set out to emancipate women by freeing them from "the yoke of domestic service."¹⁴⁹ This entailed relieving women of childrearing obligations and the opening of previously male occupations to females. But, by 1975 the new generation of women, while they believed the sexes were completely equal, "rejected the proposition that equality means identity."¹⁵⁰ As a result, the division of labor based on gender differences returned, women expressed renewed interest in traditionally feminine items like fashion and cosmetics and expressed a desire to once again care for their children.¹⁵¹ It became clear that "[d]espite conscious attempts to discourage the development of sex differences, the typical pattern emerged."¹⁵²

Behavioral gender differences have a legitimate biological origin and are not entirely based upon stereotypical, gender role

Mills College supporters as they successfully protested the move by the governing board in 1990 to admit men. Beverly Beyette, *Since Voting to Stay Women-Only, Mills is Banking on Innovation*, LOS ANGELES TIMES, Dec. 31, 1990, at E1.

148. Shlachter, *supra* note 70.

149. Browne, *supra* note 93, at 630.

150. *Id.* at 631, citing SPIRO, *supra* note 143, at 20-21.

151. *Id.*

152. *Id.* at 627, citing SPIRO, *supra* note 143, at 74.

socialization. Consequently, single-sex education, which attempts to exploit these gender differences in order to maximize the efficacy of education for members of both sexes, is legitimately and substantially related to a state's interest in well-educated and well-adjusted citizens.

c. *Learning Differences*

In addition to differing behavioral dispositions, it also appears that males and females learn differently. Physiological and psychological differences between girls and boys require different teaching techniques at different times.¹⁵³ For example, girls become proficient at reading, writing, and verbal fluency earlier than boys and they tend to remain ahead of boys in these areas throughout their school years.¹⁵⁴ In addition, girls develop fine muscle coordination before boys do, and they reach puberty about two years sooner.¹⁵⁵ In contrast, boys demonstrate logical and quantitative skills and they develop large motor coordination earlier than do girls.¹⁵⁶ Because the learning schedules of girls and boys are rarely in sync, it follows that a homogenous academic program "will unavoidably miss either the masculine or the feminine mark, if not both."¹⁵⁷ For example, boys in all-male settings appear to have higher reading confidence than boys in coeducational settings because they are not constantly being compared to girls, who generally outpace boys in this area.¹⁵⁸

The structure and focus of existing single-sex schools reflect the genuine learning differences in girls and boys. For example, boys' schools typically are highly-structured with greater disciplinary emphasis, while girls' schools are community-oriented, with a more caring atmosphere and attentive teachers.¹⁵⁹ There is a great body of literature suggesting that females benefit from the absence of males in the classroom, both socially and academically.¹⁶⁰ However, there is oft-neglected evidence that there are

153. Hawley, *supra* note 103, at 440.

154. Browne, *supra* note 93, at 622, citing Kipnis, *Intelligence, Occupational Status and Achievement Orientation*, in *EXPLORING SEX DIFFERENCES* 104 (1976).

155. Hawley, *supra* note 103, at 440.

156. *Id.* See also Browne, *supra* note 93, at 622, citing L. WILLERMAN, *THE PSYCHOLOGY OF INDIVIDUAL AND GROUP DIFFERENCES* 391 (1979) (observing that "males have the edge" in quantitative abilities while females tend to be superior in verbal fluency).

157. Hawley, *supra* note 103, at 440.

158. Marsh, *supra* note 48, at 74.

159. BAUCH, *supra* note 60, at 4-6 (studying single-sex Catholic schools).

160. See e.g., Lee & Bryk, *supra* note 1 (random sample of 1807 students in 75 Catholic schools, 45 of which were single-sex, revealed that the students in the single-sex schools

also certain learning environments more conducive to male developmental needs and academic achievement. As one boys' school instructor commented, "schooling [boys] within a structure designed to realize and to celebrate their distinctive developmental features has resulted in a high count of the most long standing and most demonstrably effective schools in the world."¹⁶¹

At both the secondary and college level, there is evidence that some males thrive best in an educational setting entirely suffused with a confrontational and disciplinary focus. The Marine Military Academy in Texas is an all-male high school with a regimented lifestyle and a demanding honor code. A large proportion of the 500 young men attending the Academy thrive both academically and developmentally.¹⁶² Often boys with budding behavioral problems are straightened out at the Academy and more than 90 percent of its graduates proceed to college. At the college level, The Citadel and the Virginia Military Institute both boast proud records of socializing and educating young men in an adversative setting. These extreme environments have never been replicated successfully in a coeducational setting, though it has been attempted at the national service academies.¹⁶³ Even if they could be replicated, it is not clear that many females would benefit from such educational methodology. What is clear, however, is that:

You have to get away from the notion that if you put everyone in a bowl and mix it up, everybody gets the same and everybody's going to benefit from that experience—that's not nec-

outperformed their coeducational counterparts in all eleven tested areas, including attitude, behavior, and academic performance); Jimenez & Lockheed, *supra* note 47 (single-sex schooling is more effective for female students, and coeducational schooling is more effective for male students); Jones, *supra* note 32 (the absence of males in the classroom is a contributing factor to the evidence showing that girls in single-sex schools take more math and science courses at a higher level than they do in coed schools); Monaco & Gaier, *supra* note 68 (women in single-sex settings demonstrate higher self-confidence, vocational maturity, and overall aspirations than do women in coeducational environments); RIORDAN, *supra* note 56 (single-sex schoolgirls outscore coed schoolgirls on general academic and science tests); BAUCH, *supra* note 60 (females in single-sex settings hold less stereotypic attitudes about the role of women, tend to be more politically active in school, and possess higher educational and career aspirations than females in coed schools).

161. Hawley, *supra* note 103, at 440.

162. Huang, *supra* note 91.

163. See, e.g., William A. Devan, *Toward a New Standard in Gender Discrimination: The Case of Virginia Military Institute*, 33 WM. & MARY L. REV. 489, 520-30 (1992) (discussing the elimination of certain disciplinary measures and traditional rituals upon the admission of women to West Point).

essarily true in education. Education should be about how to teach and how to learn best.¹⁶⁴

Given that the sexes do not learn or develop in exactly the same manner, must every educational setting be the same? While it is true that not every individual, maybe not even most individuals in society, learn best or feel most comfortable in same-sex atmospheres, there should be some freedom for those who can benefit from these settings to have access to them. For these individuals, single-sex schools are the key to realizing academic success.

In sum, single-sex educational settings are substantially related to a state's important interest in educational excellence, well-adjusted and confident leaders, and system-wide educational diversity precisely because they take into account real gender differences. That is, single-sex schools provide relief from sexual pressures, allowing students to concentrate on their studies and they provide an educational atmosphere suited to the behavioral and learning differences between the sexes; and finally, single-sex schools create an environment where males and females are able to forge enduring and rewarding friendships.

3. *Perpetuation of Stereotypes*

Once it is determined that single-sex education is substantially related to important state interests in superior education, self-confidence and leadership, and system-wide diversity in education, Equal Protection analysis requires a state to demonstrate that the gender classifications used not be based on stereotypical notions of men and women, but on real differences between the sexes.¹⁶⁵ Many opponents assert that single-sex education allows boys and men to seclude themselves, thereby perpetuating their idea of male superiority which persists unchallenged by the uncomfortable presence of females.¹⁶⁶ However, the ultimate goal of single-sex education is not excluding females, whether out of a sense of superiority, intimidation, or just plain dislike. Rather,

164. Rankin, *supra* note 66 (quoting Peter Mirjaniian, associate director of the Women's College Coalition).

165. *Hogan*, 458 U.S. at 724-25 ("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.")

166. *See, e.g.*, Mollman, *supra* note 117, at 166 (single-sex schools "either exacerbate the troubles inner-city boys now face, or they alleviate those problems by perpetuating a stereotype of male superiority.")

the final objective is the best education system possible, achievable for many by same-sex learning environments.

The gender classifications involved in this alternative form of education are based on real and quantifiable differences, not on sexist generalizations or stereotypes.¹⁶⁷ There have been several studies conducted about the learning differences among black American schoolchildren in the context of Detroit's experiment with educational reform through its Male Academies. The findings about black boys and girls apply to boys and girls in general:

African-American boys are more aggressive, have shorter attention spans, have slower maturation rates, are less cooperative, are physically larger, are more influenced by peer groups, have a greater interest in math than reading, are louder, have larger and more sensitive egos, are not as neat, and are better at oral communication than African-American girls.¹⁶⁸

These gender differences are real and warrant different treatment in the educational sphere.¹⁶⁹

One potentially devastating consequence of these behavioral differences between males and females is that an educational system designed for one behavioral pattern will inevitably neglect the special needs of the other, or worse, may view the other behavioral pattern as deviant. For example, boys' aggression in the classroom is often felt to eclipse the more quiet and mature attitude of girls of the same age. By the same token, a teacher who attempts to target girls' learning preferences will be forced to, at best, ignore the more disruptive boys, or at worst, channel them off to special programs for behavioral disorders.¹⁷⁰

Not only are gender classifications for single-sex education based on real differences between males and females, but there is also much evidence to suggest that single-sex education actually reduces stereotypes about the proper roles of men and women.

167. As one lawyer for VMI quipped in response to the assertion that VMI's admissions policy was designed to preserve male superiority: "Sometimes I think the government's lawyers think that God didn't create the differences between men and women, but that VMI did." Carter, *supra* note 142.

168. Smith, *supra* note 23, at 2041, citing JAWANZA KUNJUFU, COUNTERING THE CONSPIRACY TO DESTROY BLACK BOYS 37 (1986).

169. Even Supreme Court precedent recognizes the differences between men and women. *See, e.g.*, Michael M. v. Sonoma County Superior Court, 450 U.S. 465 (1981) (imposing statutory rape penalties on men only is justified by the burden already imposed on pregnant females); Rostker v. Goldberg, 435 U.S. 57 (1981) (exclusion of women from the draft is permissible because federal law prevents them from assuming combat roles).

170. Jean L. Griffin et al., *Odds Stacked Against Young Black Males*, CHICAGO TRIBUNE, Nov. 24, 1991, at C1.

As mentioned, women attending women's colleges were less likely to pursue a career in a traditionally-female field, such as nursing or teaching.¹⁷¹ Another study demonstrated that girls who attended girls' schools were less likely than coeducated girls to harbor attitudes such as the incompatibility of work and motherhood, and the role of men as the primary achievers.¹⁷²

In addition, same-sex learning environments appear to liberate the sexes to cross stereotypical gender lines. For females, single-sex schools "eliminate the conflict between assertiveness and sex role stereotypes for women."¹⁷³ So girls, who tend to shy away from competition with boys for fear of appearing unfeminine or intimidating, are free to pursue leadership roles that might normally be the exclusive province of boys in a coed school.¹⁷⁴ For males, when, in a boys' school "every activity (including 'feminine' pursuits such as art, theater, and . . . cheerleading) will by definition be the preserve of boys, there is less of a stigma attached to such unsterotypical behavior."¹⁷⁵ If there are no girls around to ridicule boys participating in these activities and no need for posturing on the part of boys to disassociate oneself from such "girlie" endeavors, presumably more boys will experiment and become comfortable in these areas. Just as the presence of males may discourage females from excelling in science classes, competing in student government, or attending metal-working classes, the presence of females may discourage males from excelling in reading classes, joining the choir, or enrolling in home economics classes. Conversely, in single-sex settings there are no such staked-out gender territories to infringe upon. At the college level, too, it appears that sex role stereotypes are blurred. A Wabash College professor confirms that in the all-male environment a student is "more willing to read a poem he wrote aloud, or try out for the glee club, than a young man in a coed setting."¹⁷⁶

Finally, it appears that the fears about encouraging stereotypical behavior in single-gender schooling is unfounded. During a 1989 experiment, a female senior high school student at the coed Buckingham, Browne and Nichols School in Cambridge,

171. Tidball, *supra* note 63.

172. Lee & Bryk, *supra* note 1.

173. Monaco & Gaier, *supra* note 68, at 587.

174. Jones, *supra* note 32, at 154.

175. McGough, *supra* note 100.

176. DePalma, *supra* note 79 (quoting Professor Thomas Cole).

Massachusetts dressed up as a boy to attend class at the all-male Roxbury Latin School in Boston. She went undercover with some trepidation: "I dreaded unbearably crude jokes in class, [and] boys slapping my rear in camaraderie . . ." She also feared the harm an all-male environment would do to male perceptions of gender relations. However, she concluded that boys "may spend eight hours each day with hardly a female in sight, but this doesn't mean they don't know how to treat girls."¹⁷⁷

A former coeducational educator who found himself teaching at a boys' school expressed similar initial worries about encouraging stereotypes in a single-sex setting: "I wondered whether boys without girls might not evolve into forms of barbarism unfamiliar to me."¹⁷⁸ He was, however, delighted to report some twenty-two successful years later that, "the boys express more straightforward support and affection for one another than I had ever thought possible among schoolchildren."¹⁷⁹ In addition to finding that the boys did not display destructive and hypermasculine behavior, he found it astounding that they "set such staggeringly high goals for their intellectual, athletic, and artistic performance."¹⁸⁰ He concluded: "Until I observed it in a boys' school, I never saw adolescents so self-directed or so resourceful."¹⁸¹

Separating the sexes for purposes of custom-designing an educational atmosphere to fit the developmental schedules and characteristics of each of the sexes, is based not on stereotypical ideas about the proper roles of men and women in society, but rather on the fact that males and females are different, biologically, psychologically, and developmentally.

SUMMARY

Working back through Equal Protection analysis, states have legitimate and important interests in the cultivation of a well-ed-

177. Julia Kennedy, *I Was a Boy for the Vanguard*, ROXBURY LATIN SCHOOL TRIPOD, 1989, at 10. Julia became "Justin" for the day. Many students resent the popular misperception that all-male schools turn out social Neanderthals or fail to teach males how properly to treat women. One student at Virginia's Hampden-Sydney College complains that "[i]t's not fair to say because we are all male, we are dinosaurs." Anita Manning, *Hampden-Sydney: Tradition, 'Magic'*, USA TODAY, Jan. 15, 1992, at 7A. In fact, many women prefer to date men from all-male schools because they frequently treat women better than men from coeducational colleges. See, e.g., Futterman, *supra* note 90 (interviewing Kim Small, a junior from Purdue).

178. Hawley, *supra* note 103, at 443.

179. *Id.* at 444.

180. *Id.*

181. *Id.*

ucated citizenry, the development of confident leaders, and the maintenance of system-wide educational diversity. One method available to states for achieving these interests is the provision of single-sex schooling. The establishment of same-sex schools is substantially related to those state interests because first, they permit students to learn free from other-sex distractions, making it more likely that academic achievement is their focus rather than social interaction; second, single-sex settings allow teachers the luxury of tailoring their curricula to track the dispositional characteristics and learning tempos of each sex, resulting in accelerated learning curves and boosted self-confidence for both males and females; and finally, when a state offers the single-sex school option in conjunction with its selection of coeducational schools, it advances its interest in state-wide educational diversity. Because single-sex admissions policies are the only method with which to achieve single-sex diversity and the precise academic and social benefits offered by same-sex schooling, these policies are the most narrowly tailored method of achieving a state's interests in education, leadership, and diversity. Finally, because the behavioral and learning differences between the sexes are real and not socially-engineered, single-sex admissions policies are not based on stereotypical notions of male and female social roles. Therefore, single-sex education, when offered for both male and female students as a voluntary alternative to coeducation, should not contravene the mandates of the Equal Protection Clause and should be a viable option for those states desiring to pursue such educational innovation.

II. STATUTORY ANALYSIS

Aside from the Equal Protection challenge, there are several statutory impediments to public single-sex education, which appear at first glance to pre-empt single-sex as an option. These are Title IX of the Education Amendments of 1972, which addresses gender discrimination at the college level, and the Equal Education Opportunities Act, which applies to elementary and secondary schools.

A. *Title IX of the Education Act Amendments of 1972*

In 1972, Congress passed a set of amendments to the Civil Rights Act of 1964. Title IX of those amendments intended to prohibit gender discrimination in admissions policies for all col-

leges and universities that receive federal funds. The statute reads:

(a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.¹⁸²

The provision, however, contained several exemptions to this blanket prohibition, including certain religious institutions, elementary and secondary schools, military institutions, and undergraduate institutions that have been traditionally and continually single-sex from their inception.¹⁸³

These exemptions allowing some public colleges to implement discriminatory admissions policies appear to signal that Congress did not intend to ban single-sex education entirely.¹⁸⁴ Why would Congress have provided for these exemptions? Some scholars suggest that many of the legislators' spouses or constituents were graduates of single-sex schools, so their motives for forging the exemptions were largely self-interested.¹⁸⁵ Somewhat less cynical, however, is the evidence offered in the legislative history of the Amendments that Congress was as yet unsure about the effectiveness of same-sex education. In fact, an earlier version of the bill would have banned single-sex elementary and secondary schools but was defeated in the Senate.¹⁸⁶ Senator Bayh commented that "no one even knows how many single-sex schools exist on elementary and secondary levels or what special qualities of the schools might argue for continued single-sex status."¹⁸⁷ It appears that the overriding congressional goal of Title IX was not mandatory coeducation, but rather the eradication of discrimination at existing coeducational colleges, which were the rule in 1972 and single-sex schools the exception.¹⁸⁸

182. 20 U.S.C. § 1681(a) (1988).

183. 20 U.S.C. § 1681(a)(1)-(5) (1988).

184. Some scholars even assert the exemptions are a legislative endorsement. *See, e.g.,* Hsiao, *supra* note 23, at 92 ("Although these statutes prohibit sex discrimination in educational programs and activities receiving federal funding, neither piece of legislation entirely prohibits sex-based segregation. In fact, Title IX exempts single-sex colleges and military schools from coverage . . . [This] legislative endorsement of the concept has made the Constitution's Equal Protection Clause the most serious obstacle to establishing and maintaining single-sex public schools.")

185. Rhode, *supra* note 6, at 137.

186. Dubnoff, *supra* note 29, at 306-307.

187. 118 Cong. Rec. 5804 (1972).

188. Saferstein, *supra* note 9, at 674.

The exemptions carve out a narrow class of allowable existing public single-sex schools. The hard question is whether states can establish *new* single-sex colleges in light of Title IX's prohibition of sex discrimination in admissions policies. As with the Equal Protection analysis above, it appears that a solution to the statutory barrier might be to establish both a men's and a women's college as an addition to the state's coeducational milieu. One possibility is to consider them as a unit for purposes of applying Title IX, and if the schools are substantially equal and there are plenty of coeducational options, there would in effect be no discriminatory state-supported preferential policy based on gender.¹⁸⁹

Another approach to analyzing this superficially damaging statute is to note that the purpose of the statute was to prevent "discrimination in educational programs and activities receiving federal funding," not to "entirely prohibit[] sex-based segregation."¹⁹⁰ Indeed, the law itself recognizes gender differences when it allows segregation for physical education classes, organized sports involving bodily contact, and sex education classes.¹⁹¹ In addition, separate scholarships can be granted on the basis of gender.¹⁹² Likewise, an institution is permitted to provide a service used disproportionately by one gender over the other.¹⁹³ In sum, Title IX's purpose is to ensure that students are not given different benefits, treatment, or services because of their gender.¹⁹⁴ Single-sex schools, assuming one is available for each sex, do not discriminate in this unlawful manner. As long as both sexes have the opportunity to attend substantially equal educational facilities, neither sex suffers impermissible gender discrimination, and Title IX would not appear to bar new single-sex schools.

B. *Equal Education Opportunities Act*

The Equal Education Opportunities Act of 1974 (EEOA), applies to elementary and secondary schools and provides in relevant part:

189. *Id.*

190. Hsiao, *supra* note 23, at 92.

191. 45 C.F.R. § 86.34(b), (c), and (e).

192. 45 C.F.R. § 86.37(b)(1).

193. 45 C.F.R. § 86.39 (including, for example, family planning services).

194. 34 C.F.R. § 106.31(b)(2)(1991).

No state shall deny equal educational opportunity to an individual on account of his or her *race, color, sex, or national origin*, by

(a) the deliberate segregation by an educational agency of students on the basis of *race, color, or national origin* among or within schools;

...
 (c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of *race, color, sex, or national origin* among the schools of such agency than would result if such students were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student.¹⁹⁵

Like Title IX, the EEOA on its face appears to prohibit public single-sex schools. However, note that references to "sex" are not present in section (a), the portion of the law forbidding "deliberate segregation;" rather, the word "sex" only appears in section (c), which forbids the *assignment* to a school on the basis of, among other things, sex. This rather confusing fading in and out of the word "sex" indicates that again, Congress' intent was not to prohibit single-sex education. Otherwise, Congress could easily have added "sex" to the list in section (a). The court in *Vorchheimer* reached this same conclusion when it questioned the suggestion that single-sex schools were banned because "the statute does not prohibit the states from segregating schools on the basis of sex although there is a specific proscription on segregation based on race, color or national origin."¹⁹⁶

Section (c) of the EEOA does prohibit the assignment to schools based on sex. However, this would not preclude a voluntary decision to attend a single-sex school. As long as there were enough substantially equal options from which a parent and student could choose, there would be no discriminatory "assignment" in violation of the statute.¹⁹⁷

An examination of the legislative history of the Act confirms that Congress did not intend to exterminate all forms of single-sex education. The Act was part of Nixon's "Busing Morato-

195. 20 U.S.C. § 1703(a),(c) (1988) (emphasis added).

196. *Vorchheimer*, 532 F.2d at 884.

197. Mollman, *supra* note 117, at 160 n.80, 173-74 (arguing that the EEOA effectively exempts voluntarily attended single-sex schools).

rium”¹⁹⁸ and was intended to address the use of busing in conjunction with attempts at racial integration. Indeed, most of the legislative debate surrounding the EEOA focused on busing; the issue of sex segregation was never raised.¹⁹⁹ Most likely, the statute was intended to prohibit sex segregation that was used as a proxy for race segregation. It appears that “[s]ex segregation became common in the south after *Brown*, as a way to comply with racial integration orders but still keep black boys and teachers away from white girls.”²⁰⁰

Also missing from the congressional debate was any mention that Congress intended to reverse its earlier policy, codified in Title IX, of exempting elementary and secondary schools from its prohibition of discriminatory admissions policies. If Congress had intended such a dramatic change in the law, presumably Congress would have at least discussed the issue. But, as mentioned, it did not.

In contrast to all of the above assertions, the Fifth Circuit in *United States v. Hinds County School Board* held that the EEOA did in fact prohibit all single-sex public schools.²⁰¹ However, this case concerned precisely the fear mentioned above, namely that the school was trying to conceal its intentional racial discrimination by accomplishing virtually the same result through separating the sexes. The intended result was to keep white boys away from black girls and black boys away from white girls. This, of course, was impermissible. Significantly, the *Hinds* court distinguished the case from *Vorchheimer* because the latter involved voluntary sex segregation in an otherwise coeducational system, rather than the assignment of students to sexually-segregated schools.²⁰² *Vorchheimer* and *Hinds* appear to suggest that so long as race discrimination is not at the foundation of the policy, and the choice to attend sex-segregated schools is truly voluntary and not forced either by school district assignment or by default in the absence of any other option, then single-sex education at the primary and secondary level is not prohibited by the EEOA.

198. 118 Cong. Rec. 8929 (1972).

199. *Vorchheimer*, 532 F.2d at 884 (“Not once during the extended and heated discussions was there any reference to single-sex schools.”)

200. Saferstein, *supra* note 9, at 675.

201. 560 F.2d 619 (5th Cir. 1977).

202. *Id.* at 624 n.7 (“In Amite County, on the other hand, all students in the system are assigned to sexually segregated schools at every level, from entry through graduation. Such a system can neither pass muster under *Vorchheimer*’s analysis or our own.”)

III. POLICY ANALYSIS

After all constitutional and statutory barriers to single-sex education are eliminated, a state must decide whether such an option is practical or even desirable. The state should consider first, the past track record and future prospects of active single-sex schools in other jurisdictions and second, the various criticisms leveled at the idea of educationally segregating the sexes.

A. *Single-Sex Education in Action*

There are three recent and controversial attempts to establish "separate but equal" educational facilities for males and females. One is at the college level, the others at the secondary school level. All are important because their outcomes will reflect the degree to which we as a society are committed to diversity in our educational systems and true and effective educational reform.

1. *Virginia Military Institute*²⁰³

Currently, the courts are considering a "separate but equal" challenge by the Department of Justice to the remedial plan offered by VMI, after the Fourth Circuit forced it to craft a solution to its Equal Protection violation of providing the single-sex option to men but not women. The proffered plan implements the above-mentioned idea that true and voluntary choice requires a full menu of selections for all students. Virginia seeks to begin offering its college-age citizens a choice from among a public all-female military school, a public all-male military school, forty 4-year coeducational public colleges, twenty-five 2-year coed colleges, one private all-male college, and five private all-female colleges—thus, making Virginia the most educationally diverse state in the Union.

The plan consists of a parallel VMI-type program at Mary Baldwin, a private women's college in Staunton, Virginia, which is about 30 miles north of VMI in Lexington. Virginia's former Governor Wilder proposed that the state will provide about \$6.9 million for start-up costs, an amount far smaller than the cost of redesigning VMI's barracks and adding appropriate facilities for

203. Similar all-male military education is also available at The Citadel in Charleston, South Carolina. Like VMI, The Citadel has recently proposed a remedial plan for women who wish to attend a public single-sex military school: The South Carolina Women's Leadership Institute Program.

women.²⁰⁴ In addition, the state would pay about \$5,900 a year per student, which is about equal to the amount Virginia currently pays for each VMI cadet.²⁰⁵

The new program would emphasize military training, physical fitness, character development, and leadership skills. It will not, however, utilize the brutal "Rat Line," a system of humiliation and intimidation that terrorizes first year cadets at VMI. This variation from VMI's style is what sets off warning bells for many critics. The Department of Justice has criticized the plan because it "omits the essential components and benefits of the unique VMI experience" and "designs programs based on gender stereotypes."²⁰⁶ There are others who object to the plan because "the women who apply to VMI will want the VMI experience, as is. These will be women who seek the whole VMI challenge, not a relaxed, special program."²⁰⁷

This, however, ignores the nearly universal experience of the national service academies which have indeed had to "relax" their programs with the admission of women.²⁰⁸ In addition, the argument does not consider the lack of demand for a female VMI. Only about 250 women out of 6.25 million enrolled in college participate in single-sex ROTC programs.²⁰⁹ This number is particularly distressing when considering that in order to make the conversion of VMI to a coeducational institution worthwhile, VMI would need aggressively to recruit enough women to comprise about ten percent of the entire student population. This is a formidable task considering first, the lack of interest expressed by female high school students and second, the difficulty of competing for recruits with the national service academies, which

204. Peter Baker, Robert O'Harrow, Jr., *Wilder May Begin Women's Program but Keep VMI All-Male*, WASHINGTON POST, Sept. 24, 1993, at D1.

205. *Id.*

206. *Id.* citing DOJ filing with U.S. District Court in Roanoke.

207. Berman, *supra* note 106, at 218.

208. *See, e.g.*, Carter *supra* note 142 (noting that the West Point administration had to consider more than 120 physiological differences between men and women in order to restructure the curriculum to accommodate the incoming female cadets). *See also* Devan, *supra* note 163, at 527 (commenting that where once morning runs were done together as a unit, since integration the runs are done in separate "ability groups" and "due to increased injuries among women, participants now wear running shoes rather than combat boots."); ALAN G. VITTEERS, REPORT OF THE ADMISSION OF WOMEN TO THE UNITED STATES ACADEMY: PROJECT ATHENA II 32 (1978) (reporting that while all cadets once attended boxing and wrestling courses, now females attend karate and self-defense classes instead); *Virginia*, 766 F. Supp. at 1439 (noting that cadets are no longer required to carry weapons during running exercises).

209. *Gender Equivalence Chimera*, L.A. DAILY J., Nov. 4, 1992, at 6.

must also attract a large contingent of women, but which have larger recruitment budgets.²¹⁰ To force Virginia to fund a school for which there will be little demand and which would nevertheless be inappropriately styled for the few women who would opt to attend VMI is to put form above substance and highlight the symbolic nature of the attack on VMI.

The very attributes that a woman might seek in VMI—the absolute equality of treatment, the relentless hazing and degradation involved in the barracks life-style, the complete absence of personal privacy—could not be accomplished in a coeducational atmosphere. Ironically, these attributes would be (and have been) the very first casualties of integration, and the sought-after experience would no longer be available.²¹¹ Those few women who would desire “the whole VMI challenge” would never be able to experience it. Again, this is because of the respective ways in which males and females learn and interact; men thrive in this sort of extreme and adversative system, while women excel in more supportive, cooperative settings. Harvard University sociologist and feminist David Riesman rejects as “inconceivable” that women would acquiesce to the rat treatment.²¹² The ferocity required in the VMI program is not conducive to the learning styles of most women. The basic paradox is: “What is, for women, identical to a system suited only for adolescent men?”²¹³

The answer to this question is embedded in the nature of the Virginia Women’s Institute for Leadership plan, which recognizes the physiological and psychological differences between the sexes. The designers of the plan, including the Mary Baldwin administration, intended to formulate an educational program that would be closely tailored to the way most women learn and interact, not for the way that men at VMI learn and interact. The school is designed to be most beneficial to the greatest number of women, thereby serving both educational interests as well as taxpayer interests by most efficiently and effectively utilizing the funds from Virginia’s coffers. A spokeswoman for Mary Baldwin elaborated that “[t]he leadership program as outlined in the plan

210. Tom Watson, *Justice Inquiry Threatens Va. All-Male Bastion*, LEGAL TIMES, May 1, 1989, at 9.

211. *Virginia*, 766 F. Supp. at 1414. In fact, these attributes have all but vanished from the national service academies. See, e.g., Devan, *supra* note 163, at 520-30.

212. Daniel Seligman, *Brother Rat Talks Back*, FORTUNE, July 1, 1991, at 95.

213. George Will, *Where’s the Government’s Tolerance of Diversity in Battle Against VMI?* ATLANTA J. & CONST., Feb. 1, 1993, at A10.

offers more benefits for women than would be the case if VMI were to go coed. A mirror image of the VMI methodology was never our intent."²¹⁴ Critics should at least be comforted that the administrators of a women's college, presumably expert in the ways in which women learn best, had a substantial hand in crafting this plan.

2. *Detroit Male Academies*

An example of "separate but equal" public education at the primary and secondary level is Detroit's effort to address the acute problems facing young urban boys by developing its Male Academies. The programs were designed to stress self-esteem, rites of passage, role model interaction, and academic improvement for Detroit's young males, who are frequently outperformed by females in the classroom.²¹⁵ However, despite overwhelming parental and popular support,²¹⁶ the schools were prevented from implementing their single-sex admissions policies because the city failed simultaneously to address the particular problems facing young girls.²¹⁷ Girls have problems, too—critical ones like pregnancy, poverty, submission to men, and severe depression.

The disheartening aspect about this reflexive response, snuffing out an innovative reform effort designed to save a targeted population of inner city youth, however, is that it forbids the state from addressing one problem unless it can address them all at the same time. Essentially, the court that struck down the reform was saying either all of the city's educational problems are acted upon or none of them can be. Detroit was not sending a message of female inferiority or shrugging indifferent shoulders in the face of severe female crises. In fact, it had imminent plans to open up similar Female Academies.²¹⁸ But with limited resources it decided to address the most pressing problem first. Black boys were 66 percent of the school suspension cases (three times higher than girls' suspension rates), 54 percent of the dropouts (ten percent higher than the female dropout rate), and only 39

214. Robert O'Harrow, Jr., *U.S. Decries VMI Plan for Women*, WASHINGTON POST, Nov. 16, 1993, at E6 (quoting Crista Cabe).

215. Worthington, *supra* note 138.

216. About 1,200 students applied for a limited 560 spots. Laurel S. Walters, *The Plight of Black Male Schools*, CHRISTIAN SCIENCE MONITOR, Sept. 9, 1991, at 8.

217. *Garrett v. Bd. of Educ.*, 775 F. Supp. 1004 (1991).

218. *New Solution or Segregation?* USA TODAY, Jan. 15, 1992, at A7.

percent of the graduates (over seven percent lower than the female graduate rate).²¹⁹ Worst of all, says the Director of the Center for the Education of the African-American Male at Morgan State University, "the boys are the ones who end up killing each other."²²⁰ The Male Academies should not have been defeated by the courts before they even began their mission simply because they offered a temporarily partial solution.²²¹

In fact, Detroit already has existing single-sex schools, three for pregnant girls and one for boys who are in danger of expulsion.²²² Even within coeducational schools, there are special-education and remedial classes that are almost exclusively all-male.²²³ And Detroit is not alone. Many cities have public high schools for pregnant or teen-age mothers. Philadelphia has an all-female public high school for academically gifted girls.²²⁴ New York city has a special public school for gay students.²²⁵ While undoubtedly non-pregnant teens, slow learners, and heterosexual students have problems that need addressing as well, these cities were not categorically prevented from doing what they could to address the particular needs of specific elements of its school-age population simply because it did not simultaneously offer a solution to every problem facing every group. This is the kind of flexibility that is essential to the education reform that the country desperately needs.

One critic refers to the Male Academies as one of those "educational 'choices' which save some children by sacrificing

219. Hsiao, *supra* note 23, at 88. See also Note, *supra* note 6, at 1743 (reporting same statistics); Betty Greathouse & Saundra Sparling, *African American Male-Only Schools: Is that the Solution?* CHILDHOOD EDUC., Spring 1993, at 131 (only 19.6% of all 18- to 24-year old black males were enrolled in college in 1989; for black boys ages 16 to 19, the employment rate is only 35%, and black males account for 50% of total prison population though they make up only 6% of the U.S. population).

220. Worthington, *supra* note 138 (quoting Spencer Holland).

221. Walters, *supra* note 216. See *City of New Orleans v. Dukes*, 427 U.S. 297, 305 (1976) (Court deferred to state legislature and upheld a city ordinance even though it discriminated against new street vendors because it was intended to preserve the area's charm and enhance its economic viability through tourism); *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972) (Court deferred to state legislature's welfare allocation system and held that a classification of "need," which incidentally disadvantaged minority groups, was not automatically suspect because this would undermine the state's ability to make rational classifications), cited in Smith, *supra* note 23, at 2048.

222. Walters, *supra* note 216.

223. Worthington, *supra* note 138.

224. Chira, *supra* note 126.

225. Worthington, *supra* note 138.

others."²²⁶ More accurately, such choices save some children instead of sacrificing them all.

3. Nationwide Single-Sex Classrooms

Another educational reform attempt founded on the desirability of separating the sexes in school is the single-sex classroom. This innovation appears to be spreading throughout the nation, despite the Detroit Male Academies setback. Baltimore, Milwaukee, Washington D.C., Norfolk, and Dade County have all opened single-sex classrooms for both girls and boys.²²⁷ The results to date are encouraging. At the Robert W. Coleman elementary school in Baltimore, all-boy classrooms were designed "to help the boys catch up with the girls who tend to learn faster at that age."²²⁸ Shortly after the plan was implemented, school officials reported that all but one of the twenty first-graders were reading at the second-grade level, attendance had improved, and disciplinary problems had become rare.²²⁹ Similarly, Baltimore houses the Matthew Henson Elementary School, the country's longest all-boy classroom experiment. It too has noted a decrease in disciplinary problems, an increase in attendance levels, improved academic performances, and more positive attitudes.²³⁰ Similar results have been reported in Dade County, the site of Florida's first all-male kindergarten and first grade classes.²³¹

Another example was saluted by a dissenting judge in *Ibister v. Boys' Club* who described an experiment which separated 31 fourth-grade boys and girls and resulted in a number of beneficial consequences for both sexes.²³² For example, students seemed happier and more interested in academic subjects, the boys were more thoughtful and considerate of each other, the students developed better work habits, the boys participated in art, music, and foreign languages more freely, both sexes overcame fears of presenting oral reports to the class, and students

226. Hsiao, *supra* note 23, at 115.

227. Dennis Kelly, *Detroit Academies Develop Black Males, New Solution or Segregation?* USA TODAY, Jan. 15, 1992, at A7. See also Worthington, *supra* note 138 (discussing such innovations in Milwaukee, New York, Baltimore, and Detroit).

228. Jessamy Brown, *Coleman School's All-Male Class a Success*, BALTIMORE MORNING SUN, June 12, 1991, at 1D.

229. *Id.*

230. Tom Dunkel, *Self-Segregated Schools Seek to Build Self-Esteem*, WASHINGTON TIMES, March 11, 1991, at E1.

231. Barbara Kantrowitz, *Can the Boys Be Saved?* NEWSWEEK, Oct. 15, 1990, at 67.

232. 707 P.2d 212, 231 n.4 (Cal. 1985)(Kaus, J., dissenting).

were more at ease in studying the human body. These programs were successful largely because teachers did not have to try to direct classwork to the particular interests of both sexes; rather, they were free to concentrate and focus on the characteristics and interests of males or females. Another study revealed particular benefits of single-sex classes for female students, especially in physics classes, which can improve their achievement levels in subsequent coeducational environments.²³³

VMI and these embryonic experiments have seized onto what works in educating adolescents and young children. The success of VMI and the dramatic improvements already witnessed in cities willing to attempt educational reform via single-sex education are evidence that it is within a state's power to improve the condition of mediocrity that has paralyzed our educational system. The States and local communities, then, should be free in their laboratories to continue these experiments. Noted education reformer Dr. Theodore Sizer rejects "top-down mandates and standardized solutions,"²³⁴ for a problem that is as multi-faceted as the number of individual children in a school system. Effective reform must be decentralized, emanating from the individual schools and classrooms which are the closest and most sensitive to the individual needs, strengths, and weaknesses of the children and communities which they serve. The flexibility and accommodation which they can afford cannot be duplicated at the bureaucratized federal level.

The concern that not every school would be exactly alike if states were to provide single-sex education is well-founded. However, these differences are not detrimental; rather, they are the greatest strengths of the educational policy. Mandating coeducation would deprive many of a successful educational opportunity without any corresponding benefit to society. To the contrary, such forced uniformity would result in needless conformity and "unnecessary duplication of existing coeducational" options.²³⁵

B. *Single-Sex Education Criticized*

In addition to reviewing those successes of single-sex instruction, a well-informed state should likewise consider common crit-

233. T.J. Harvey, *Science in Single-Sex and Mixed Teaching Groups*, 27 *EDUC. RES.* 179 (1985).

234. *Changing Schools and Classrooms*, *TEACHER MAGAZINE*, May/June 1992, at 32, 35.

235. *United States v. Virginia*, counterclaim for defendants, C.A. No.: 90-126-R.

icisms of this method of education. Aside from the various criticisms scattered throughout the preceding text, there are four remaining powerful criticisms of public single-sex education. First, while single-sex education may be an admirable and viable educational alternative to coeducation, nevertheless, the state should not pay for the option because it involves state-supported gender separation. Second, single-sex schooling does not prepare students for a coeducational world. Third, if the market does not provide for this form of education, apparently there is no demand for it, and therefore the government should not be expected to provide it. And finally, while single-sex education may be beneficial, it is only beneficial and justifiable for women, not men.

1. *No State Support*

The first major criticism of publicly-supported single-sex schooling is that, while people should have the single-sex option, the state should not foot the bill. For example, many critics object that the Virginia Military Institute receives about \$9-11 million a year from state funds.²³⁶ Virginia taxpayers are both male and female, yet only the males of the species are allowed to reap the benefits of their tax dollars at work at VMI. In addition to this outright grant, VMI also receives considerable indirect support from the federal government through its ROTC program.²³⁷

However, there exist only a small handful of schools which receive no state or federal support.²³⁸ Most schools in the country receive some amount of public funding, which takes the form of tuition assistance, federal grants, tax exemptions, work-study programs, and scholarships. Therefore, while it is true that state-supported schools receive public funds to pursue their missions, it is also true that private schools do the same. For example, Virginia's 1990-92 budget allocated over \$40 million to tuition assistance specifically for private colleges.²³⁹ The Tuition Assistance

236. Mimi Hall, *All-Male School on the Defensive*, USA TODAY, April 4, 1991, at 6A; Felicity Barringer, *Banning of Women at Military College is Upheld*, NEW YORK TIMES, June 18, 1991, at A10.

237. Nell Henderson & Peter Baker, *For VMI Cadets, It's Still "Better Dead Than Coed,"* WASHINGTON POST, Feb. 2, 1990, at B1.

238. For example, Hillsdale College in Hillsdale, Michigan.

239. Devan, *supra* note 163, at 500-01. According to the Virginia Council on Higher Education report for 1986-87, female students attending private women's colleges received \$109 million in state support, while male students received about \$81 million. *An All-Male VMI*, WASHINGTON POST, Nov. 7, 1992, at A22.

Grant Act²⁴⁰ is one primary reason that Virginia boasts of so many prestigious private colleges, five of which are all-female, one of which is all-male. One of Virginia's "private" women's colleges, Hollins College, receives about \$1,500 per student in state assistance each year.²⁴¹ While VMI receives about a third of its budget from state funds, some estimate that private women's colleges, such as Hollins, receive only slightly less, about 20 percent of their operating costs from public money.²⁴² To determine that \$9-11 million in public support renders VMI unconstitutional, but that \$40 million does not likewise jeopardize "private" single-sex schools is "pure sophistry."²⁴³ Private school tuition assistance is merely a more palatable way for the state to go about doing indirectly what critics maintain it cannot do directly.²⁴⁴

If private single-sex schools are acceptable but public single-sex schools are not, the question boils down to this: How many public dollars does it take to render single-sex education unconstitutional? This question was apparently foremost in the minds of many women's college supporters, because all five of Virginia's "privately controlled but publicly assisted women's colleges . . . joined VMI in its petition to the Supreme Court."²⁴⁵ Dr. Cynthia Tyson, president of the all-women's Mary Baldwin College, says she supports VMI because she fears a defeat there will sound the death knell for the single-sex college.²⁴⁶

The second answer to the criticism that state money should not support an activity which excludes one sex is that the state does it all the time. Consider single-sex sports teams at public schools, battered women's shelters, state-run boot camps for young men, women's prisons, women's health clinics, and special public schools for pregnant students. In addition, note that Congress has itself authorized several sex-exclusive organizations,

240. Va. Code Ann. § 23-38.12 (Michie 1985) ("There is hereby established, from funds provided by law, a program of tuition assistance in the form of grants, . . . to or on behalf of bona fide residents of Virginia who attend private, accredited and nonprofit institutions of collegiate education in the Commonwealth . . .")

241. *Coed Pride*, WASHINGTON TIMES, May 11, 1990, at F2.

242. Suzanne Fields, *Assault on VMI Could Backfire on Feminists*, ATLANTA J. & CONST., Oct. 8, 1992, at A12.

243. Devan, *supra* note 163, at 501.

244. Dubnoff, *supra* note 29, at 296 ("It is no secret that the government provides considerable financial assistance to such [private] schools, both directly through programmatic aid and indirectly in the form of tax exemptions and grants to students. When the verbiage is stripped away, what remains is the vulnerable position that what is impermissible for the state to do directly is allowable for it to do indirectly.")

245. Holland, *supra* note 97.

246. *The Battle for VMI*, Wall St. J., Feb. 3, 1994, at A14.

such as the Daughters of the American Revolution,²⁴⁷ Sons of the American Revolution,²⁴⁸ and the Veterans of Foreign Wars of the United States.²⁴⁹

2. *It's Not a Coed World*

A second compelling criticism of public single-sex schooling is that it does not prepare students for the world in which they will eventually function as adults—a coed one.²⁵⁰ Opponents reject as short-sighted the argument that same-sex learning frees students from sexual pressures so they can focus on academics. They argue that “it is irrational to suggest that the distractions of the opposite sex are less distracting in the working world than in the classroom”²⁵¹

Certainly, no one doubts that it is indeed a sexually-integrated world. However, as discussed, single-sex schooling is an effective educational method for many students, male and female. These students are not taught, nor could they possibly believe, that they will only encounter members of their own sex throughout life. They merely seek to become as well-equipped, in whatever environments are best suited for their intellectual, social, and physical development, to face the world and all it offers. In addition, attending a single-sex school does not erase all other-sex contacts. In fact, the executive director of the Women’s College Coalition points out that students in nine out of ten women’s colleges can cross-register and take courses at coed institutions.²⁵²

Supporters of women’s colleges offer particularly pointed responses to the criticism that such schools do not prepare women for interaction with men. They assert that “just because male dominance is the ‘norm’ in the workplace does not mean that trial by fire is the best preparatory method for school chil-

247. 36 U.S.C. § 18-18(c) (1976).

248. 36 U.S.C. § 20(a)-(g) (1976).

249. 36 U.S.C. § 111-120 (1976) (excluding women from military combat).

250. See, e.g., Russo & Scollay, *supra* note 35 (“Virtually all elements of public life are now integrated by sex, and women increasingly hold leadership positions throughout corporate and professional America. A program of leadership training which does not reflect this very fundamental reality can neither be relevant nor effective. At best, it is anachronistic.”)

251. Deborah Barnes Rose, *Sex Discrimination in Higher Education—The United States Supreme Court and a Bastion of Tradition*, 1983 S. ILL. U. L.J. 71, 88.

252. Diamond, *supra* note 61 (citing Marcia Sharp of Women’s College Coalition in Washington, D.C.).

dren."²⁵³ That is, just because it is a harsh and unfair world does not mean that all of our childhood should be appropriately replete with harsh, unfair experiences so we are adequately prepared for what lies ahead. Others echo this argument:

[I]f one accepts the proposition that adequate self-esteem is a precondition of happiness, it is not unreasonable to value a temporary environment for some young women which might promote a more positive self-image at a very vulnerable time, and which might thereby better prepare them to face competitive realities later.²⁵⁴

In other words, single-sex education can indeed prepare women for a coed world, often more adequately than can a coeducational college. Moreover, many supporters point to university faculties, which are 90 percent male, and wonder whether that is an accurate reflection of the "real world." On the other hand, women's colleges boast an almost 50/50 ratio of male and female faculty members.²⁵⁵

Similarly, at men's schools male students are not shielded from coed realities. At Wabash College, the administration is particularly sensitive to the danger of a lack of female perspective in class discussion. There, students must take a class their sophomore year called "Cultures and Traditions," which is meant to ensure that the male students are "sensitive and responsive to gender issues."²⁵⁶ In addition, Wabash professors are required to include a woman's viewpoint in class discussion.²⁵⁷ Students at Hampden-Sydney College likewise come to the rescue of their all-male status: "We have excellent female professors. It's not like just because we go to an all-male school, we only deal with males."²⁵⁸

While some studies indicate that social development is a primary negative aspect of same-sex environments, especially when making the transition back into a sexually-integrated environment, others suggest that the such development is not particularly harmed. One boys' school teacher has noted that "boys from boys' schools have not as a body registered special difficulties in adapting to the coeducational conditions of university

253. Note, *supra* note 6, at 1758.

254. Dubnoff, *supra* note 29, at 328.

255. Diamond, *supra* note 61.

256. Futterman, *supra* note 90 (quoting Wabash President F. Sheldon Wettack).

257. DePalma, *supra* note 79.

258. Manning, *supra* note 177.

life.”²⁵⁹ The fear that single-sex schools will turn out socially-mal-adjusted individuals is possibly overstated. Gail Pebworth, the assistant athletic director and head swimming coach at Wabash College confirmed that the all-male environment does not turn the students into male chauvinists: “I’ve experienced absolutely no gender discrimination or sexist language. It’s a non-issue.”²⁶⁰

A related criticism saved specifically for all-male military colleges, like VMI, is that it ignores the reality of a sexually integrated military. They warn that “VMI’s ‘tradition’ of teaching future officers to doubt the abilities of female soldiers could lead to disaster in wartime.”²⁶¹ This is especially frustrating to critics given the exemplary performance of women in the Persian Gulf War.²⁶² These critics, however, at least in VMI’s case, overestimate the connection between VMI and the military (which is easy to do, given the name of the school). Some 85 percent of VMI graduates pursue civilian, not military careers.²⁶³ The mission of VMI is not to preserve an all-male stranglehold on the military; rather, its stated goal is to educate “citizen soldiers” for the Commonwealth of Virginia, through an adversative learning environment that has proven effective for 155 years. Unlike the service academies, which seek explicitly to produce military officers, VMI seeks to provide an education for men in a military environment. That is, “VMI is not a military school; it is a men’s school with a military environment.”²⁶⁴

Even if VMI’s primary mission were to produce soldiers for the U.S. military, however, it is not the case that VMI teaches its cadets to disrespect the capabilities of female soldiers any more than the Mississippi University for Women taught its nursing students to doubt the capabilities of male nurses. No single-sex schools should teach disrespect for the other sex. Single-sex environments are merely an effective educational and training environment for many students, whether soldiers or nurses. That the world in general and the military in particular are coed should not suggest that every institution in society, educational or otherwise, ought likewise be coeducational.

259. Hawley, *supra* note 103 at 440.

260. DePalma, *supra* note 79.

261. Marilyn Geewax, *Why Soldiers Should Learn About Women*, L.A. DAILY J., June 28, 1991, at 6.

262. *Wrong Gray Line*, NEW YORK TIMES, June 19, 1991, at A24.

263. Carter, *supra* note 142.

264. Neurock, *supra* note 107, at 3.

3. *Government Should Not Do Market's Work*

Some opponents note that the entire country has only 93 women's colleges and 5 men's colleges.²⁶⁵ In addition, coeducational primary and secondary schools far outnumber single-sex schools at that level. Apparently, the demand for single-sex education is not sufficient enough to support anything more than a minimal number of such schools, so why should the government be responsible for providing what people do not seek? They remark that "[t]he relative scarcity of single-sex schools in the private sector would suggest that whatever benefits do flow from this environment must be minor, else single-sex schools would be far more popular than they currently are."²⁶⁶

This is a powerful argument, a variation of which was used above to undercut the argument that Virginia should be forced to open up a VMI-style school for women even though there is no demand for it. Though tenuous, there may be a distinction. Take, for example, a battered women's shelter. No one doubts that there is demand for these shelters, yet the market does not provide for them. Should the government do the market's work in this case? Few would say no. The demand for a VMI, adversative-style education for women, however, is likely to be so low that it could be equated to the demand for a battered husband's shelter. Should the government provide these, in the absence of demand, in the name of formal equality? Few would say yes. On the other hand, single-sex colleges in general are likely to appeal to a much larger audience than would the narrow offerings of a VMI experience for women or a battered husband's shelter. This larger demand may be sufficient to support government action in this case where the market has failed.

Other examples of government action where markets fail are low income housing, national defense, and public education. For the special case of education, the question should be first, is the market providing for the service? If yes, our analysis is over. If no, the next question is, is there actual demand for the service? If yes, the government should provide it. If no, it should not. The calculus cannot ignore demand or else we force the government to act in the name absolutes, even where the action is inefficient.

265. The five men's schools are: VMI in Lexington, VA; Hampden-Sydney College in Hampden-Sydney, VA; Wabash College in Crawfordsville, IN; Morehouse College in Atlanta, GA; and The Citadel in Charleston, S.C.

266. Saferstein, *supra* note 9, at 671.

Consider, for example, the Detroit Male Academies, which were forced to admit 137 girls because a court determined it would be unfair to separate the sexes. However, due to lack of actual demand, only 27 girls enrolled.²⁶⁷ The same troubles would have occurred if the *Hogan* Court had mandated that the State of Mississippi establish an all-male nursing school to complement The Mississippi University for Women's all-female nursing program. The state would have been forced by a rigid conception of equality to expend valuable resources better spent on educational projects that would be of some use to a definable group of its citizens. The fact is that there is no practical demand for an all-male nursing school, and it seems absurd to force the state to cater to a non-existent demand.

In addition, it could well be that there is substantial latent demand for single-sex schools currently hidden by the unavailability of affordable single-sex schools to serve that demand. While there are indeed private single-sex schools to serve part of the demand for same-sex education, presumably there are many others who would elect to attend such a school if they could afford the private school tuition. If there were more public single-sex schools available, there is a substantial probability that more people would attend them.

Other reasons the market may not be providing single-sex schools include the apparent (though not actual) statutory restraints ensclosed in Title IX and the Equal Educational Opportunities Act.²⁶⁸ In addition, a director of the Women's College Coalition suggests that the lack of availability of single-sex schools is "[b]ecause a women's college is not culturally acceptable any longer, even though it might be best."²⁶⁹

4. *Single-Sex Education is Only Desirable For Women*

A less common criticism of public single-sex education is that it is unjustifiable as applied to men because historically, they have occupied privileged positions in society and therefore are not in need of the protection that single-sex environments offer. The male desire to attend school solely with other males, they posit, is evidence of sexism and a desire to exclude women so that they

267. PR newswire article in Nexis, Current, Nov. 8, 1991; *see also* Worthington, *supra* note 138.

268. *See supra* notes 182-202 and accompanying text.

269. Shlachter, *supra* note 70 (quoting Jadwiga Sebrechts).

can maintain their superior status in society. While women's colleges further "the goal of a truly equal society by allowing women an environment in which to develop leadership skills free from male dominance, . . . male-only colleges are perceived as seeking to exclude women from gaining access to the corridors of power and influence."²⁷⁰ Unlike female schools, male schools "inevitably perpetuate[] gender inequities,"²⁷¹ and should therefore be disallowed by both the Constitution and public policy.

In support of the argument that only females should benefit from single-sex options, critics first assert that coeducational schools are actually boys' or men's schools, so males do not need even more schools of their own. Coed schools are male schools, they contend, partially because teachers tend to favor male students, especially at the high school and college levels.²⁷² In addition, the aggressive male nature tends to eclipse females in the classroom. The increased attention that a girls' school offers to females, boys can already obtain from their coeducational schools.²⁷³

However, this ignores the unique problems that boys experience, especially the self-esteem problems young boys have when they are academically compared to girls of the same age.²⁷⁴ Critics too often make the assumption that males are either trouble-free or are better able than females to cope with their troubles without special programs. Either way, the argument plays into the assumption that men are somehow superior; an ironic stance for those who claim to be advocating gender equality.

In addition, critics assert that single-sex environments can free women from male dominance. Men, on the other hand, do not similarly need to be freed from female dominance. As one scholar describes the situation:

Boys and girls learn that girls are quiet, passive, and not quite as smart as boys. Co-ed schools thus perpetuate the subordination of women in our society. An all-girls school may offer an alternative to counteract this hidden curriculum.²⁷⁵

Once freed from male dominance in the classroom, females can shed their inhibitions, reclaim their confidence, and operate free

270. Hsiao, *supra* note 23, at 110, citing 16 W. EDUC. L. REP. 417, 427.

271. Mollman, *supra* note 117, at 172.

272. RIORDAN, *supra* note 56, at 55.

273. Mollman, *supra* note 117, at 174.

274. See *supra* notes 153-164 and accompanying text.

275. Mollman, *supra* note 117, at 170-71.

of any perceived notions of male superiority. Males, however, do not require such a time-out zone precisely because they have never been relegated to the background by the presence of females in virtually any conceivable setting. In sum, "women are the only true beneficiaries of single-gender experiences precisely because they may need—as men presumably do not—a 'safe haven' from the dampening influence of society's gender stereotypes."²⁷⁶

The first reaction that many might have to such an argument is that it is demeaning and insulting to women. Undoubtedly, coeducation has harmful effects for many females.²⁷⁷ Indeed, this is precisely one reason this article has advocated single-sex schools as a tailored form of education for female learning development and dispositional patterns. However, coeducation can also be detrimental to males. To say that women need a "safe haven," while men should just tough out their own difficulties is, once again, to concur with the stereotypes of feminine weakness and masculine strength. The argument for single-sex education is not about putting one sex in a position to beat down or pull ahead of the other sex. Rather, the debate is about effective ways to improve the overall quality of education for both sexes.

As additional proof that females alone are in need of single-sex schooling, these critics point out that coeducation has been discouragingly ineffectual in addressing the particular problems of girls and women. That is:

Coeducational schools, if they attempt to raise women's achievement behaviors in any formal way, often attempt to change the woman's image of herself through courses on women, hoping that this new image will affect her leadership behaviors and achievement motivation. The available findings point out the inefficacy of this approach.²⁷⁸

This is, indeed, a hollow manner in which to address the educational needs of females. If a coed school offers women's studies classes to females, however, it is already doing more to cater to the needs of women than it does to address the needs of males. As mentioned, coeducational institutions do precious little to emphasize basic male development and character-building. This has been cited as a primary reason the country is witnessing a

276. Cheh, *supra* note 106, at 58.

277. *See, e.g., supra* note 33.

278. Monaco & Gaier, *supra* note 68, at 588.

generation of young men with no moral bearings, no appropriate way to express their masculinity, and no sense of self-worth. The fact is that coeducational institutions do precious little to address the specific achievement needs of either males or females; it can fail them equally. Both sexes stand to benefit from an educational program that is sensitive to their unique educational and social needs. The debate should not descend into a squabble about which sex needs it more. This is not a race to the bottom; it is a charge to the top.

One final twist on the argument advanced by some opponents to general single-sex education is that all-female schools are beneficial to women, and only women, as long as they do not perpetuate female stereotypes.²⁷⁹ While all-female nursing schools and teachers' colleges should be rejected as anachronistic, "a more deferential posture might be appropriate when considering women's schools which more effectively advance the best interests of women."²⁸⁰

The problem with this argument is that it is arbitrary and paternalistic. It is arbitrary in the sense that stereotypes are also fluid over time. What is a stereotype today may not have been one yesterday and vice versa. As such, "[c]onstitutional decision-making based upon these changing values is bound to reach inconsistent results over time."²⁸¹ The argument is paternalistic in that what is stereotypical to some might be a proud achievement to others. Stereotypes are in the eye of the beholder. Consequently, males and females should be free to choose their own profession, and whether certain policymakers deem their choice stereotypical and not in their best interest is utterly irrelevant.

Basing any argument on the disadvantaged status of women, as most of the foregoing criticisms do, is inevitably self-defeating for three fundamental reasons. First, the remedial policy itself is likely to stigmatize and eventually victimize the group it purports to assist. It signals to the world that women are in need of special help. It says men can succeed in the presence of women, but women cannot do the same. Men segregate themselves by choice, but women do so out of necessity. Second, any time preferential treatment is extended to some and not others because of immutable characteristics like sex, it is likely to be met with substantial

279. Mollman, *supra* note 117, at 172-73.

280. Hoffman, *supra* note 23, at 174.

281. Devan, *supra* note 163, at 535.

resistance, not only from males who do not get the same treatment, but also from females who do not want unearned favoritism. Finally, as soon as the disadvantaged status of women is corrected, the argument for the educational policy vanishes. Those who favor single-sex education as a remedial measure, tie a successful educational method to a fixed point in time. Once this point is reached, the justification for single-sex education is swept away, leaving nothing but coeducation in its wake. The justification for single-sex education should be built on far less precarious ground, such as the fact that men and women are simply different in the way they learn and in the way they internalize the world around them.

Finally, the argument that females should be the only beneficiaries of single-sex education is inconsistent and unfair. If same-sex schooling is beneficial, both sexes should be free to reap those benefits. A boys' school teacher noted the inconsistency most succinctly:

Structuring schools so that they realize what is deepest and truest and best in females is currently regarded as a progressive educational attitude. Structuring schools so that they realize what is deepest and truest and best in males is not currently regarded as a progressive educational attitude (to put it mildly). This is unreasonable.²⁸²

This is not to dismiss all conceivable opposition to single-sex education. As with any educational system, there will inevitably be disagreement about what works best, and a state should consider all the options in light of its own particular goals. Legitimate criticisms of the single-sex alternative, however, should not eclipse the legitimate benefits. Those who prefer coeducation have plenty of state-provided options for themselves; those who prefer single-sex education should likewise have such a choice. Opposition should not wipe out the single-sex diversity we have remaining or block new attempts at educational reform through this means. The stakes of thwarting such improvements are far too high.

IV. IMPLICATIONS AND CONCLUSIONS

Single-sex schools appear to be making a comeback in the United States. Whether it be seen in entire schools or just class-

282. Hawley, *supra* note 103, at 434.

rooms, the trend is clear. Single-sex educational environments are a large part of educational reforms in urban areas and constitutional stumbling blocks placed in their paths could be devastating. Undeniably, the need for successful educational reform at every level of schooling is urgent. The National Commission on Excellence in Education issued a report, which enunciated the dire consequences of inaction: "The education foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a nation and a people."²⁸³ The best way to achieve actual and long-term reform is to experiment to determine what works. The evidence that same-sex education can be effective for males and females of all ages is encouraging, especially when one considers that violence, teen pregnancy, and various other social problems are positively correlated with low academic achievement.²⁸⁴

Those who are concerned about the damage that they feel single-sex schools may do to gender equity should maintain their vigilance in eradicating discrimination in society, but at the same time they should keep in mind the stakes of the game we are playing—the education of American youth. The question boils down to this: If a particular educational program is more effective for one sex in the absence of the other, can it be utilized by the state notwithstanding that it involves gender separation? The sexes are not fungible. Evidence suggests that due to deep-seated biological and affective differences, "providing men and women with similar educational environments cannot insure that both will profit equally."²⁸⁵ To best achieve true equality of the sexes, each must be free to pursue that educational track which best advances their intellectual, spiritual, physical, and social well-being, whether that track be a mixed-sex or a same-sex environment.

Above all, it is important to realize that no one advocates a uniformly single-sex educational system. Indeed, that extreme would be just as detrimental to educational diversity as the repetitive conformity of a wholly coeducational system. Students must have the choice to attend the school most suited to their needs. Those who oppose public single-sex education as a viable alternative to, not a replacement of, coeducation would deprive the

283. NATIONAL COMMISSION ON EXCELLENCE IN EDUCATION, A NATION AT RISK (1983).

284. Note, *supra* note 6, at 1756.

285. Monaco & Gaier, *supra* note 68, at 581.

freedom of educational choice from countless different individuals who choose to attend same-sex schools for countless different reasons. What is worse, they would do so not because they are being forced into the experience, but because they do not want others to enjoy the option. We would be wise to keep in the forefront of our minds Justice Blackmun's warning in *Hogan*:

I have come to suspect that it is easy to go too far with rigid rules in the 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.²⁸⁶

The federalist structure of our government provides a level of flexibility for individual states to craft local solutions to local problems. Justice Brandeis reflected in 1932:

It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country.²⁸⁷

The Framers allowed such flexibility to local populations because of the complex and unpredictable “crises of human affairs”²⁸⁸ that were bound to surface. The more difficult and multi-faceted an issue, the less likely it is that a uniform rule “will equally serve all its ends.”²⁸⁹ More specifically, gender equity is such a complex goal that a uniform and categorical solution, such as the elimination of all gender classifications, cannot possibly be used effectively to achieve that goal.

As evidenced by the success of single-sex schools across the country, local experimentation is working as it was intended. The danger, however, is the recent move to force publicly-supported single-sex schools, such as The Citadel and the Virginia Military Institute, to turn coeducational. Presumably, the two remaining public women's colleges in the country, Texas Women's University in Denton, Texas and Douglass College at Rutgers University in New Brunswick, New Jersey, soon will be subjected to the same pressures to integrate. Inevitably, the attack will spread into the nominally private realm and claim the country's ninety-four other single-sex schools. The loss to the diversity of

286. *Hogan*, 458 U.S. at 734 (Blackmun, J., dissenting).

287. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

288. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 415 (1819).

289. Dubnoff, *supra* note 29, at 336.

the American educational system will be incalculable. Some fear that if the recent resistance to public single-sex education as an emerging method of educational reform at the secondary school level, and the attack on diversity at the college level, continues unabated, the single-sex option may not be available in two decades.²⁹⁰ The States must be encouraged to fight the rush to homogenization.

290. BAUCH, *supra* note 60, at 23.