

# The Burger Court Opinion Writing Database

## *Mississippi University for Women v. Hogan*

458 U.S. 718 (1982)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 17, 1982

Re: No. 81-406 - Mississippi University for Women, et al  
v. Joe Hogan

MEMORANDUM TO: Al Stevas

FROM: The Chief Justice

WJB

I agree with your treatment but not the terminology. I have thought in such a case you treat the "unruly" paper as "lodged" but not "filed."

We can let the matter stand where it is until argument.

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

April 2, 1982

Re: No. 81-406 - Mississippi Univ. for Women v. Hogan

Dear Lewis:

Will you take on a dissent in this case?

Regards,

A handwritten signature in black ink, appearing to be 'W. Powell', written in a cursive style.

Justice Powell

cc: Justice Rehnquist  
Justice Blackmun

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

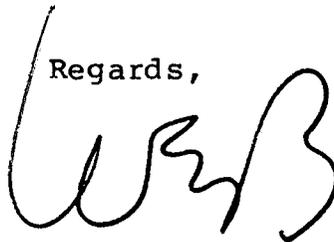
June 22, 1982

Re: No. 81-406 - Mississippi University  
for Women v. Hogan

Dear Lewis:

I agree with your dissent in this case. However, I am concerned about your characterization of the Court's opinion, at page 1, as holding "that no State now may provide even a single institution of higher learning open only to women students." The Court purports to limit its holding to MUW's nursing school, and much of its discussion focuses on the historical dominance of women in the nursing profession. The Court leaves open the possibility, for example, that there might be justification for preserving an all-women's liberal arts college. Overstating the scope of the Court's holding can create problems. I fear such statements may come back to haunt us. I can heartily join a narrower approach.

Regards,



Justice Powell

cc: Justice Blackmun  
Justice Rehnquist

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: The Chief Justice

Circulated: June 23, 1982

No. 81-406 - Mississippi University for Women v. Hogan

CHIEF JUSTICE BURGER, dissenting.

I agree fully with JUSTICE POWELL's dissenting opinion. I write separately, however, to emphasize that the Court's holding today is limited to the context of a professional nursing school. Ante, at 4-5, n. 7, 8-13. Since the Court relies heavily on its finding that women have traditionally dominated the nursing profession, see ante, at 10-13, it suggests that a State might well be justified in maintaining, for example, the option of an all-women's business school or liberal arts program.

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

**JUN 25 1982**

Circulated: \_\_\_\_\_

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1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-406

MISSISSIPPI UNIVERSITY FOR WOMEN, ET AL., PE-  
TITIONERS *v.* JOE HOGAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

CHIEF JUSTICE BURGER, dissenting.

I agree fully with JUSTICE POWELL's dissenting opinion. I write separately, however, to emphasize that the Court's holding today is limited to the context of a professional nursing school. *Ante*, at 4-5, n. 7, 8-13. Since the Court's opinion relies heavily on its finding that women have traditionally dominated the nursing profession, see *ante*, at 10-13, it suggests that a State might well be justified in maintaining, for example, the option of an all-women's business school or liberal arts program.

95

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 1, 1982



RE: No. 81-406 Mississippi University for Women v.  
Hogan

Dear Chief:

Sandra has agreed to take the opinion for the Court  
in the above.

Sincerely,

The Chief Justice  
cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

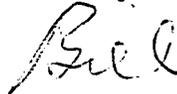
May 28, 1982

No. 81-406--Mississippi University for Women  
v. Hogan

Dear Sandra,

I agree.

Sincerely,



W.J.B., Jr.

Justice O'Connor  
Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

64 05 1 85 May 29, 1982

Re: 81-406 - Mississippi University v. Hogan

Dear Sandra,

I agree.

Sincerely yours,



Justice O'Connor

Copies to the Conference

cpm

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 28, 1982

Re: No. 81-406 - Mississippi University for Women v.  
Joe Hogan

---

Dear Sandra:

Please join me.

Sincerely,

*T.M.*  
T.M.

Justice O'Connor

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Blackmun

Circulated: JUN 21 1982

Recirculated: \_\_\_\_\_

No. 81-406 - Mississippi University for Women v. Hogan

JUSTICE BLACKMUN, dissenting.

Unless Mississippi University for Women wished to preserve an historical anachronism, one only states the obvious when he observes that the University long ago should have replaced its original statement of purpose and brought its corporate papers into the 20th century. It failed to do so and, perhaps in partial consequence, finds itself in this litigation, with the Court's opinion, ante, at 1 and n. 1, now taking full advantage of that failure, to MUW's embarrassment and discomfiture.

Despite that failure, times have changed in the intervening 98 years. What was once an "Institute and College" is now a genuine university, with a two-year School of Nursing established 11 years ago and then expanded to a four-year baccalaureate program in 1974. But respondent Hogan "wants in" at this particular location in his home city of Columbus. It is not enough that his State of Mississippi offers baccalaureate programs in nursing open to males at Jackson and at Hattiesburg. Mississippi thus has not closed the doors of its educational system to males like Hogan. Assuming that he is qualified -- and I have no reason whatsoever to doubt his qualifications -- those doors are open and his maleness alone does not prevent his gaining the additional education he professes to seek.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Blackmun**

Circulated: \_\_\_\_\_

Recirculated: JUN 22 1982

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-406

**MISSISSIPPI UNIVERSITY FOR WOMEN, ET AL., PE-  
TITIONERS v. JOE HOGAN**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE BLACKMUN, dissenting.

Unless Mississippi University for Women wished to pre-serve an historical anachronism, one only states the obvious when he observes that the University long ago should have replaced its original statement of purpose and brought its corporate papers into the 20th century. It failed to do so and, perhaps in partial consequence, finds itself in this litigation, with the Court's opinion, *ante*, at 1 and n. 1, now taking full advantage of that failure, to MUW's embarrassment and discomfiture.

Despite that failure, times have changed in the intervening 98 years. What was once an "Institute and College" is now a genuine university, with a two-year School of Nursing established 11 years ago and then expanded to a four-year baccalaureate program in 1974. But respondent Hogan "wants in" at this particular location in his home city of Columbus. It is not enough that his State of Mississippi offers baccalaureate programs in nursing open to males at Jackson and at Hattiesburg. Mississippi thus has not closed the doors of its educational system to males like Hogan. Assuming that he is qualified—and I have no reason whatsoever to doubt his qualifications—those doors are open and his maleness alone does not prevent his gaining the additional education he professes to seek.

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April 5, 1982

81-406 Mississippi Univ. for Women v. Hogan

Dear Chief:

I will be glad to undertake a dissent in this case.

Sincerely,

The Chief Justice

lfp/ss

cc: Justice Rehnquist  
Justice Blackmun

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 28, 1982

81-406 Mississippi University v. Hogan

Dear Sandra:

In due time, I will circulate a dissent in this case.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

06/18/82

From: Justice Powell

Circulated: JUN 18 1982

Recirculated: \_\_\_\_\_

No. 81-406: Mississippi University for Women v. Hogan  
Justice Powell, dissenting.

The Court's opinion genuflects deeply to conformity. Left without honor--indeed, held unconstitutional--is an element of diversity that has characterized much of American education and enriched much of American life. The Court holds today that no State now may provide even a single institution of higher learning open only to women students. It gives no heed to the efforts of the State of Mississippi to provide abundant opportunities for young men and young women to attend coeducational institutions, and none to the preferences of the more than 40,000 young women who over the years have evidenced their approval of an all-women's college by choosing Mississippi University for Women (MUW) over seven coeducational universities within the State. The Court decides today that the Equal Protection Clause makes it unlawful for the State to provide women with a traditionally popular and respected choice of educational environment. It does so in a case

June 22, 1982

81-406 Mississippi University for Women v. Hogan

Dear Chief:

Thank you for your note about my dissent.

It is true that Sandra refers primarily to the school of nursing at MUW, but the rationale of her opinion applies with equal force to every other school or department of this university. Moreover, she affirms the decision of the Court of Appeals that explicitly applies to MUW as a "single sex collegiate institution". See A-12 of the Petition for Certiorari.

If Sandra, in a response to my dissent, argues that there is a difference between a single sex department of nursing and other departments of a university, I will then address her argument. For it to be at all persuasive, however, she would have to revise a great deal of the rhetoric, as well the holding, in her opinion.

Sincerely,

The Chief Justice

lfp/ss

cc: Justice Blackmun  
Justice Rehnquist

8, 11, 12

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: JUN 24 1982

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-406

MISSISSIPPI UNIVERSITY FOR WOMEN, ET AL.,  
PETITIONERS v. JOE HOGAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE POWELL, dissenting.

The Court's opinion genuflects deeply to conformity. Left without honor—indeed, held unconstitutional—is an element of diversity that has characterized much of American education and enriched much of American life. The Court holds today that no State now may provide even a single institution of higher learning open only to women students. It gives no heed to the efforts of the State of Mississippi to provide abundant opportunities for young men and young women to attend coeducational institutions, and none to the preferences of the more than 40,000 young women who over the years have evidenced their approval of an all-women's college by choosing Mississippi University for Women (MUW) over seven coeducational universities within the State. The Court decides today that the Equal Protection Clause makes it unlawful for the State to provide women with a traditionally popular and respected choice of educational environment. It does so in a case instituted by one man, who represents no class, and whose primary concern is personal convenience.

It is undisputed that women enjoy complete equality of opportunity in Mississippi's public system of higher education. Of the State's eight universities and 16 junior colleges, all except MUW are coeducational. At least two other Mississippi universities would have provided respondent with

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 25, 1982

81-406 Mississippi University for Women v. Hogan

Dear Sandra:

In view of the change in the final paragraph of the Court's opinion, I am revising the final note in my dissent. I enclose a copy.

Sincerely,



Justice O'Connor

Copies to the Conference

LFP/vde

lfp/ss 06/25/82

81-406 Mississippi University for Women v. Hogan

(Revision of n. 17 p. 11, will now be n. 18).

The Court, in the opening and closing sentences and note 7 of its opinion, states the issue in terms only of a "professional nursing school" and "decline[s] to address the question of whether MUW's admissions policy, as applied to males seeking admission to schools other than the School of Nursing, violates the Fourteenth Amendment." This would be a welcome limitation if, in fact, it left MUW free to remain an all-women's university in each of its other schools and departments--which include four schools and more than a dozen departments. Cf. nn. 13-15, supra. The question the Court does not answer is whether MUW may remain a women's university in every respect except its school of nursing. This is a critical question for this university and its responsible board and officials. The Court holds today that they have deprived Hogan of constitutional rights because MUW is adjudged guilty of sex discrimination. The logic of the Court's entire opinion, apart from its statements mentioned above, appears to apply sweepingly to the entire university. The

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall ✓  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

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Recirculated: JUN 28 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-406

MISSISSIPPI UNIVERSITY FOR WOMEN, ET AL.,  
PETITIONERS v. JOE HOGAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE POWELL, dissenting.

The Court's opinion bows deeply to conformity. Left without honor—indeed, held unconstitutional—is an element of diversity that has characterized much of American education and enriched much of American life. The Court holds today that no State now may provide even a single institution of higher learning open only to women students. It gives no heed to the efforts of the State of Mississippi to provide abundant opportunities for young men and young women to attend coeducational institutions, and none to the preferences of the more than 40,000 young women who over the years have evidenced their approval of an all-women's college by choosing Mississippi University for Women (MUW) over seven coeducational universities within the State. The Court decides today that the Equal Protection Clause makes it unlawful for the State to provide women with a traditionally popular and respected choice of educational environment. It does so in a case instituted by one man, who represents no class, and whose primary concern is personal convenience.

It is undisputed that women enjoy complete equality of opportunity in Mississippi's public system of higher education. Of the State's eight universities and 16 junior colleges, all except MUW are coeducational. At least two other Mississippi universities would have provided respondent with

in effect

11-12  
style changes as marked

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 24, 1982

Re: No. 81-406 Mississippi University for Women v.  
Hogan

Dear Lewis:

Please join me in your dissent.

Sincerely,

WHR/gb

Justice Powell

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 10, 1982

Re: 81-406 - Mississippi University for  
Women v. Hogan

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 25, 1982

Re: 81-406 - Mississippi University for  
Women v. Hogan

Dear Sandra:

The judgment that we are affirming does not, as I understand the case, apply to anything except the School of Nursing on the one hand and Mr. Hogan on the other. If you are only affirming it in part, what are you doing with the rest of the judgment? In other words, I would much prefer that you not add the additional language that you have proposed.

Respectfully,



Justice O'Connor

Copies to the Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice O'Connor**

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PP. 4, 7

~~SDOC  
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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-406

**MISSISSIPPI UNIVERSITY FOR WOMEN, ET AL., PETITIONERS v. JOE HOGAN**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[May —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the issue of whether a state statute that excludes males from enrolling in a state-supported professional nursing school violates the Equal Protection Clause of the Fourteenth Amendment.

I

The facts are not in dispute. In 1884, the Mississippi legislature created the Mississippi Industrial Institute and College for the Education of White Girls of the State of Mississippi, now the oldest state-supported all-female college in the United States. 1884 Miss. Gen. Laws, ch. XXX, §6. The school, known today as Mississippi University for Women (MUW), has from its inception limited its enrollment to women.<sup>1</sup>

<sup>1</sup>The charter of MUW, basically unchanged since its founding, now provides:

"The purpose and aim of the Mississippi State College for Women is the moral and intellectual advancement of the girls of the state by the maintenance of a first-class institution for their education in the arts and sciences, for their training in normal school methods and kindergarten, for their instruction in bookkeeping, photography, stenography, telegraphy, and typewriting, and in designing, drawing, engraving, and painting, and their industrial application, and for their instruction in fancy, general, and practical needlework, and in such other industrial branches as experience, from

*Join*

pp. 7, 9-10, 13

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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Recirculated: JUN 14 1982

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-406

MISSISSIPPI UNIVERSITY FOR WOMEN, ET AL., PETITIONERS *v.* JOE HOGAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

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"The purpose and aim of the Mississippi State College for Women is the moral and intellectual advancement of the girls of the state by the maintenance of a first-class institution for their education in the arts and sciences, for their training in normal school methods and kindergarten, for their instruction in bookkeeping, photography, stenography, telegraphy, and typewriting, and in designing, drawing, engraving, and painting, and their industrial application, and for their instruction in fancy, general, and practical needlework, and in such other industrial branches as experience, from

1 P. 1, 6, 13

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

Circulated: \_\_\_\_\_

Recirculated: JUN 23 1982

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-406

**MISSISSIPPI UNIVERSITY FOR WOMEN, ET AL., PETITIONERS v. JOE HOGAN**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the narrow issue of whether a state statute that excludes males from enrolling in a state-supported professional nursing school violates the Equal Protection Clause of the Fourteenth Amendment.

I

The facts are not in dispute. In 1884, the Mississippi legislature created the Mississippi Industrial Institute and College for the Education of White Girls of the State of Mississippi, now the oldest state-supported all-female college in the United States. 1884 Miss. Gen. Laws, Ch. XXX, §6. The school, known today as Mississippi University for Women (MUW), has from its inception limited its enrollment to women.<sup>1</sup>

<sup>1</sup>The charter of MUW, basically unchanged since its founding, now provides:

"The purpose and aim of the Mississippi State College for Women is the moral and intellectual advancement of the girls of the state by the maintenance of a first-class institution for their education in the arts and sciences, for their training in normal school methods and kindergarten, for their instruction in bookkeeping, photography, stenography, telegraphy, and typewriting, and in designing, drawing, engraving, and painting, and their industrial application, and for their instruction in fancy, general, and practical needlework, and in such other industrial branches as experience, from

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 24, 1982

Re: No. 81-406 Mississippi University for Women v. Hogan

Dear Lewis,

As I understand, you are concerned that the Court's opinion can be interpreted as applying to all of Mississippi University for Women, partially because the opinion of the Court of Appeals, which we affirm, was not limited to the School of Nursing. I believe that the combined effect of the narrow language in the Court's opinion and the fact that we affirm judgments, not opinions, should allay that concern. On the other hand, I certainly prefer that the opinion be clear. To alleviate any confusion, I propose to add the words "insofar as it applies to the School of Nursing" to the end of the last sentence of the opinion.

Sincerely,



Sandra D. O'Connor

Justice Powell

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 25, 1982

Re: 81-406 Mississippi University for Women v.  
Hogan

Dear John,

Because of your objection to the addition to the last paragraph which expressed the limited nature of the judgment, I will return to the original language of Part IV. I will amend, however, subject to any other objection, Footnote 7, as follows:

Although some statements in the Court of Appeals' decision refer to all schools within MUW, see 646 F. 2d, at 1119, the factual underpinning of Hogan's claim for relief involved only his exclusion from the nursing program, Complaint ¶ 8-10, and the Court of Appeals' holding applies only to Hogan's individual claim for relief. 646 F. 2d, at 1119-1120. Additionally, during oral argument, counsel verified that Hogan sought only admission to the School of Nursing. Tr. of Oral Argument 24. Because Hogan's claim is thus limited, and because we review judgments, not statements in opinions, Black v. Cutter Laboratories, 351 U.S. 292 (1956), we decline to address the question of whether MUW's admissions policy, as applied to males seeking admission to schools other than the School of Nursing, violates the Fourteenth Amendment.

Sincerely,



Sandra D. O'Connor

Justice Stevens

Copies to the Conference

PP. 4, 5

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

Circulated: \_\_\_\_\_

Recirculated: JUN 28 1982

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-406

**MISSISSIPPI UNIVERSITY FOR WOMEN, ET AL.,  
PETITIONERS v. JOE HOGAN**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

[June —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the narrow issue of whether a state statute that excludes males from enrolling in a state-supported professional nursing school violates the Equal Protection Clause of the Fourteenth Amendment.

I

The facts are not in dispute. In 1884, the Mississippi legislature created the Mississippi Industrial Institute and College for the Education of White Girls of the State of Mississippi, now the oldest state-supported all-female college in the United States. 1884 Miss. Gen. Laws, Ch. XXX, §6. The school, known today as Mississippi University for Women (MUW), has from its inception limited its enrollment to women.<sup>1</sup>

<sup>1</sup>The charter of MUW, basically unchanged since its founding, now provides:

"The purpose and aim of the Mississippi State College for Women is the moral and intellectual advancement of the girls of the state by the maintenance of a first-class institution for their education in the arts and sciences, for their training in normal school methods and kindergarten, for their instruction in bookkeeping, photography, stenography, telegraphy, and typewriting, and in designing, drawing, engraving, and painting, and their industrial application, and for their instruction in fancy, general, and practical needlework, and in such other industrial branches as experience, from