



DEPARTMENT OF LAW
OFFICE OF THE
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R 75-565

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ATTORNEY GENERAL

76-85

March 17, 1976

Dr. George L. Hall, Executive Director
State Board of Directors for Community
Colleges of Arizona
1535 West Jefferson, Room 123
Phoenix, Arizona 85007

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Dear Dr. Hall:

This letter is in response to your letter to this office dated September 9, 1975, concerning the constitutionality of paragraph 3 of A.R.S. § 15-793.

A.R.S. § 15-793 provides that:

Unless the contrary appears to the satisfaction of the registering authority of the community college or university at which a student is registering, it shall be presumed that:

* * *

3. The domicile of a married woman is normally that of her husband, except where such a woman was an in-state student in continuous attendance immediately prior to her marriage, in which case such woman shall retain her in-state student status for tuition purposes.

It seems apparent that paragraph 3 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution no matter which judicial standard is used in applying that Clause. Reed v. Reed, 404 U.S. 71 (1971); Frontiero v. Richardson, 411 U.S. 677 (1973); Weinberger v. Wiensenfeld, 420 U.S. 636 (1975); Stanton v. Stanton, 421 U.S. 7 (1975); Samuel v. University of Pittsburgh, 375 F.Supp. 1119 (W.D.Pa. 1974), appeal by plaintiffs dismissed from order decertifying class action status for damage purposes, 506 F.2d 355 (3rd. Cir. 1974); and Olson v. Arizona Board of Regents, (Pima County Cause No. 146587, June 7, 1974), a copy of which accompanied your letter to this



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office. The statute, by establishing a presumption that the domicile of a married woman is that of her husband's, clearly creates an impediment for women not placed upon men, or, conversely, gives a preference to men, apparently for administrative convenience only. This is expressly prohibited by Reed, supra, where the United States Supreme Court stated:

To give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment 404 U.S. at 76.

Furthermore, it makes no difference that the presumption of domicile may be rebutted. Samuel, supra, at 1130-1134. Moreover, there is no proper basis upon which to sustain the difference in treatment, as in Schlesinger v. Ballard, 419 U.S. 498 (1975). Finally, in Olson, supra, the Pima County Superior Court specifically declared paragraph 3 of A.R.S. § 15-793 "unconstitutional in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution in that [it] discriminate[s] against women on the basis of sex."

In addition, if the above-quoted paragraph 3 were enforced, the educational institution enforcing the rule would violate the Title IX regulations issued under Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.). These regulations, which are contained in Part 86 of Title 45 of the Code of Federal Regulations, provide in pertinent part as follows:

§ 86.40 Marital or parental status.

(a) Status generally. A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

* * *

Of course, an educational institution which discriminates on the basis of sex in violation of Title IX risks losing all federal financial aid for educational purposes.

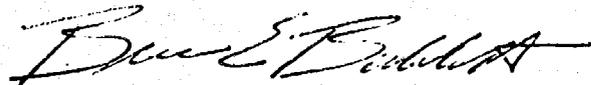
In light of the above, including specifically the holding of the Pima County Superior Court in Olson v. Board of Regents, supra, paragraph 3 of A.R.S. § 15-793 should not be given

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any effect. Rather, men and women students should be treated equally with respect to tuition status.

Should you have any questions concerning the above, please let us know.

Sincerely,



Bruce E. Babbitt
Attorney General

BEB:ASK:cl

cc: Janice L. McIlroy, Esq.
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