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Legal Sidebar

Federal Court Rejects Legal Challenge to Race-Conscious Admissions at the U.S. Naval Academy

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In 2023, in *Students for Fair Admissions (SFFA) v. Harvard*, the Supreme Court held that the race-conscious admissions policies at Harvard College and the University of North Carolina (UNC) were unconstitutional. The Court reasoned that the justifications for the policies and the manner in which the policies were implemented could not be reconciled with the Equal Protection Clause of the Fourteenth Amendment. In response, some suggested that the Supreme Court had not only ruled against these two institutions, but had "effectively ended . . . the use of affirmative action in college admissions" altogether.

The Supreme Court's opinion acknowledged, however, that the "propriety of race-based admissions systems" in the nation's military academies was not before the Court: "This opinion . . . does not address the issue, in light of the potentially distinct interests that military academies may present." Based on this carveout, the extent to which military academies may, within the bounds of the Equal Protection guarantee, use race in admissions remains an open question.

Three current cases—against the U.S. Naval Academy (USNA), U.S. Air Force Academy, and U.S. Military Academy at West Point—are addressing this unresolved question: whether the Constitution permits the military academies to consider race in admissions. One case has proceeded to trial and resulted in an opinion on the merits: On December 5, 2024, a federal district court rejected a constitutional challenge to the USNA's race-conscious admissions system. The court predicated its opinion on both Supreme Court precedents on race-conscious admissions at civilian colleges and the principle that the courts are to defer to Congress and the President on "military matters." This Sidebar summarizes this decision, outlining these two strands of the court's analysis, and notes the status of the two other military academy cases. The Sidebar then offers considerations for Congress.

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Background

Equal Protection Generally

The Equal Protection Clause of the Fourteenth Amendment provides that no state, including no state educational institution, may deny to individuals the "equal protection of the laws." The federal government, including any federal service academy, must comply with the same equal protection guarantee by virtue of the Fifth Amendment. A principle underlying equal protection is that "all persons similarly circumstanced shall be treated alike" by the government. Put differently, if the government subjects classes of individuals to differential treatment, the Equal Protection guarantee is implicated.

A court evaluating whether a governmental classification on the basis of race complies with the Equal Protection guarantee will apply "strict scrutiny" to that classification. To pass strict scrutiny, the government must demonstrate that (1) the differential treatment furthers a compelling governmental interest and (2) the means chosen by the government is "narrowly tailored" to advance that interest. In this means-ends analysis, the first part of the government's burden probes whether the government has a sufficient reason or purpose for the classification, and the second asks whether the government's chosen policy has a sufficiently close fit to or nexus with the justification.

Equal Protection Cases on Affirmative Action at Civilian Higher Education Institutions

The Supreme Court first confronted whether a race-conscious admissions policy is consistent with the requirements of strict scrutiny in 1978. In *Regents of the University of California v. Bakke*, the medical school at the University of California at Davis had reserved 16 out of 100 admissions seats for minority applicants deemed to be disadvantaged; White disadvantaged applicants were not eligible for these 16 slots. The medical school's justification for its race-conscious admissions program—the educational benefits that flow from a diverse student body—was accepted as "compelling" by the Supreme Court's controlling opinion. In discussing how a school may further this interest, the controlling opinion cited approvingly to a Harvard program that used race as a "plus" factor in admissions. The controlling opinion concluded, however, that the medical school's two-track admissions program was not "narrowly tailored" because certain applicants were either eligible for or excluded from "a specific percentage of the seats in an entering class" solely on the basis of their race.

Twenty-five years later, in *Gratz v. Bollinger*, the Supreme Court endorsed *Bakke*'s proposition that the educational benefits that flow from a diverse student body are a compelling interest sufficient to justify race-conscious admissions. The Court held that the undergraduate admissions system at the University of Michigan was not, however, narrowly tailored to advance that interest because the system automatically assigned "decisive" weight to an applicant's status of belonging to an underrepresented racial minority group, exceeding the "plus" factor limitation found in *Bakke*. The same day, the Court in *Grutter v. Bollinger* approved the University of Michigan law school's admissions policy because applicants were considered together, in a holistic fashion. The Court clarified that for such policies to be narrowly tailored, the policies must not amount to "racial balancing" (or seeking a "specific percentage" of students of a particular race), must follow "serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity [that] the university seeks," and "must be limited in time."

In the *Grutter* opinion, the Court credited an amicus brief from "high-ranking retired officers and civilian leaders of the United States military," who asserted that a "highly qualified, racially diverse officer corps . . . is essential to the military's ability to fulfill its principle [sic] mission to provide national security." The Court further quoted the brief for its assertion that "the military cannot achieve an officer

corps that is *both* highly qualified *and* racially diverse unless the service academies . . . use[] limited race-conscious recruiting and admissions policies."

In 2013, the Court in *Fisher v. University of Texas* held that "some, but not complete, judicial deference" to a civilian university's goal in using race is "proper," but that no judicial deference is to be paid to whether the "means chosen by the University to attain diversity are narrowly tailored to that goal."

In 2023, the Court in *SFFA v. Harvard* held that the race-conscious admissions policies at Harvard College and UNC violated the Equal Protection Clause, likely significantly impacting race-conscious admissions policies in higher education implemented under earlier jurisprudence. In finding that the Harvard and UNC admissions policies were not sufficiently coherent or measurable for purposes of judicial review under strict scrutiny, the Court pointed to complexities in the institutions' policies and interests, such as promoting "cross-racial understanding[] and breaking down stereotypes"; the insufficient relationship between these interests and the overbroad, underinclusive, and arbitrary racial classifications used by the institutions; the use of race as a negative factor for Asian applicants, effectively penalizing Asian applicants on the basis of their race; the use of the impermissible stereotype that an applicant of a particular race will articulate particular perspectives or viewpoints, and in that sense positing that individuals of a certain race think alike; and the absence of a "logical end point" to the use of race in admissions. In a footnote, the Court stated that its opinion applied only to civilian, not military, institutions in light of the "potentially distinct interests" possessed by military academies.

Judicial Deference to the Government on Military Matters

The courts have accorded "proper deference" to the government in cases involving military and national security affairs. This judicial deference respects the roles committed by the Constitution to Congress and to the President in the military context. For example, the Constitution assigns to Congress the authority to raise and support "Armies" and designates the President as Commander-in-Chief of the Army and Navy. The judicial deference also reflects the relative informational disadvantages faced by the courts in appraising questions in which national security is at stake. As the Supreme Court has conceded, "Unlike the President and some designated Members of Congress, neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people." Similarly, national security questions may not be susceptible to customary judicial scrutiny due to this informational asymmetry, the fluid nature of national security, and evidentiary limitations, among other considerations. Still, the Court has cautioned that the Constitution "most assuredly envisions a role for all three branches" in national security cases when constitutional rights are at issue, and as such the judiciary will not "abdicate" its role notwithstanding governmental "concerns of national security and foreign relations."

Affirmative Action in the Military Academies

Federal Court Upholds Race-Conscious Program at the USNA

Following *Harvard*, the plaintiff that successfully challenged the constitutionality of Harvard and UNC's admissions policies, the SFFA organization, mounted an Equal Protection challenge against the race-conscious admissions program at the USNA, a service academy located in Annapolis, Maryland, that prepares its students to become "officers in the Navy and Marine Corps." Applying strict scrutiny and extending judicial deference to the USNA, the U.S. District Court for the District of Maryland rejected the SFFA's Equal Protection challenge.

The district court interpreted *Harvard* to find that the educational benefits that flow from a diverse student body are no longer a compelling interest that justifies the use of race in admissions at civilian institutions.

The court observed, however, that *Harvard* "exempt[ed]" military academies from its ruling. The court found that the USNA has a distinct compelling national security interest in considering race in admissions: developing a diverse officer corps. According to the court, the USNA's use of race in admissions advances this national security interest in three respects. First, the court was persuaded by the USNA's arguments that historical racial discrimination and tension in the military undermined unit cohesiveness and thereby imperiled unit effectiveness; that greater racial diversity promoted trust within units and between enlisted members and officers, which would "lead[] to stronger decision-making and a more adaptable unit"; and that greater racial diversity would allow units to "address instances of racial discrimination more effectively" in that minority soldiers would be more inclined to report discrimination with minority leadership present.

Second, the district court was convinced that racial diversity promotes the government's national security interest "by improving recruitment and retention in the all-volunteer Navy and Marine Corps." The court referred, for example, to testimony that "a diverse group of recruiters helps to attract diverse recruits" and that "a diverse officer corps, particularly in special forces units, enables individuals to envision themselves succeeding in the Navy and Marine Corps." The court deemed such recruitment and retention efforts helpful in light of the all-volunteer nature of the military that operates in a "closed loop" in the sense that military officers come from within and cannot be readily replaced by experienced civilians. Recruitment and retention are significant with respect to the USNA, which the court called a "vital pipeline" to a mission-critical officer corps. The court credited the USNA with producing 20% of Navy and Marine Corps officers, 28% of officers in combat billets, and 40% of the Navy's most senior leadership.

Third, the district court was persuaded that greater diversity among the officer ranks results in an officer corps that better reflects the diversity of the country, which increases the domestic and international legitimacy of the military. That legitimacy "in turn improves its unit cohesion and lethality and its recruitment and retention," the court explained.

The district court construed *Harvard* to impose a measurability requirement only on civilian institutions. The court determined that the USNA would nonetheless meet this requirement because the presented data "show measurable improvement in the racial and ethnic diversity of the Navy and Marine officer corps between 2001 and 2024."

The district court deferred to the USNA's asserted national security interest. Such "healthy" judicial deference with respect to the military, the court wrote, is predicated on "the judiciary's limited competence to review national security determinations" and the Constitution's "assignment of military authority" to the other branches. The court noted that judicial deference has been accorded to the government in equal protection challenges, citing *Hirabayashi v. United States* (upholding a "race-based curfew order"), *Korematsu v. United States* (upholding presidential "exclusion orders requiring Japanese Americans to leave military areas"), *Trump v. Hawaii* (upholding a presidential order "barring the entry into the United States of immigrants from eight foreign countries"). The court continued that judicial deference has also been owed to legislative and executive branch determinations on matters pertaining to military personnel, citing *Orloff v. Willoughby* (concerning the commissioning of officers), *Gilligan v. Morgan* (National Guard orders), *Chappell v. Wallace* (military discipline), and *Department of Navy v. Egan* (security clearance decisions).

The district court next held that the USNA's policies are narrowly tailored to the USNA's national security interest. First, as noted above, the court found that the challenged policies increased racial diversity in the Navy and Marine Corps officer ranks. Second, the court determined that "race is nondeterminative and taken into consideration only as one of many factors in order to assess the candidate's potential as a midshipman and eventual officer in the Navy or Marine Corps." The court further indicated that the USNA's racial classifications are coherent for purposes of strict scrutiny, as the classifications by the USNA are the same as those used by the Department of Defense, thereby allowing for proper comparison

of the racial demographics of applicants and students to officers. Third, the USNA's admissions program is not a zero-sum situation in which the admission of an underrepresented minority student may adversely impact the admissions prospects of another student because, the court wrote, there are "multiple avenues" for a student to gain admission and an applicant's successful use of one avenue leaves others open for other applicants. The court did not find evidence that the USNA's policies rely on the stereotypical notion that applicants of a particular race think alike.

Fourth, the court considered whether the USNA's race-conscious admissions policies are limited in duration. The court was convinced that the USNA's policies will terminate when the Navy and Marine Corps officer ranks "better represent[] racial and ethnic diversity among enlisted servicemembers and the American population." Fifth, the court determined that the use of race is necessary to further government's national security interest, as not considering race would have a "significant effect" on the diversity of the relevant officer corps. Finally, the court found that the USNA had made good-faith efforts to use race-neutral alternatives to attain its goals, although none were workable to achieve the level of diversity required to further its national security interest.

SFFA has initiated an appeal in the U.S. Court of Appeals for the Fourth Circuit.

Cases Against West Point and the Air Force Academy

SFFA has also brought Equal Protection challenges to the race-conscious admissions policies at West Point and the Air Force Academy. In the West Point case, the district court denied SFFA's motion for a preliminary injunction for want of a "full factual record." SFFA appealed to the U.S. Court of Appeals for the Second Circuit, submitted an emergency application for an injunction with the Supreme Court pending its appeal, and then withdrew its appeal after the Supreme Court declined the application due to an "underdeveloped" record. On December 10, 2024, SFFA filed a complaint against the Air Force Academy. Both cases remain pending at their respective district courts.

Considerations for Congress

The Supreme Court has suggested that judicial deference to Congress is at its "apogee" when Congress acts pursuant to its constitutional authority "to raise and support armies." The admissions policies at the service academies are governed in part by federal statute. Congress may amend these statutes, including by mandating the consideration of race in admissions, prohibiting race-conscious admissions, or requiring the use of certain race-neutral, diversity-enhancing measures. The extent to which judicial deference is granted to Congress in the specific context of military academy admissions and whether any statutory changes to the admissions policies of the military academies comply with the Constitution would be determined in particular cases. The three active cases involving the military academies may provide insights as to these questions and the statutory room that Congress may possess in this area.

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