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IN FOCUS

June 23, 2025

Affirmative Action at Military Service Academies Under the Trump Administration

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."

In 2023 and 2024, SFFA filed complaints against U.S. Naval Academy (USNA), U.S. Air Force Academy, and U.S. Military Academy (West Point), challenging the constitutionality of the academies' race-based admissions policies.

In 2025, President Trump assumed office and issued an executive order announcing that no element of the Department of Defense (DOD) can implement race- or sex-based preferences. The Secretary of Defense followed suit with corresponding memoranda, and in response to the order and memoranda, the three aforementioned service academies changed their admissions policies.

This InFocus summarizes the legal background applicable to these cases, the relevant executive action from the Trump Administration, and the status of the pending cases in light of these developments. It closes with considerations for Congress.

Legal Background

Affirmative Action at Civilian Institutions

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 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.

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 Court accepted as "compelling" the medical school's justification for its race-conscious admissions program: the educational benefits that flow from a diverse student body. In discussing how a school may further this interest, the controlling opinion approvingly cited 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 based on their race.

In 2023, in *Gratz v. Bollinger*, the Supreme Court held that the undergraduate admissions program at the University of Michigan was not narrowly tailored because the system automatically assigned "decisive" weight to an applicant's status of belonging to an underrepresented racial minority group, exceeding *Bakke*'s "plus" factor limitation. 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. 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."

In 2013, the Court in *Fisher v. University of Texas* clarified that "some" 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. The Court emphasized that the Harvard and UNC admissions policies were not sufficiently coherent or measurable for purposes of judicial review under strict scrutiny, pointing to, among other things, the complexity of the institutions' policies and goals; the overbroad, underinclusive, and arbitrary racial classifications used; and the use of race as a negative factor for Asian applicants. In a footnote, the Court stated that its opinion applied only to civilian institutions in light of the

"potentially distinct interests" possessed by military academies.

Judicial Deference to the Military

The courts have accorded "great deference" to the government in cases involving military and national security affairs. This judicial deference reflects both the roles committed by the Constitution to Congress and to the President in the military context, and the relative informational disadvantages faced by the courts in appraising questions in which national security is at stake. The Court has nonetheless cautioned that the Constitution "envisions a role for all three branches" in national security cases when constitutional rights are at issue.

Cases Against the Service Academies

Following *Harvard*, SFFA 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, a federal district court rejected SFFA's equal protection challenge. The court found that the USNA has a distinct compelling national security interest in developing a diverse officer corps, which the court said aids in the military's cohesiveness, recruitment, retention, and legitimacy. The court acknowledged deference to the USNA's asserted national security interest. The court also held that the USNA's policies are narrowly tailored to the Academy's national security interest, determining, for example, that "race is nondeterminative and taken into consideration only as one of many factors" in admissions. SFFA appealed to the U.S. Court of Appeals for the Fourth Circuit.

SFFA 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. On May 14, 2025, the district court granted a 60-day stay of the applicable filing deadlines.

Executive Action and Policy Changes

Executive Order

On January 27, 2025, President Trump issued an executive order establishing that the "policy of [the] Administration [is] that the Department of Defense . . . and every element of the Armed Forces should operate free from any preference based on race or sex," and directing the Secretary of Defense to "conduct an internal review [of] all instances of race and sex discrimination and activities designed to promote a race- or sex-based preferences system."

Two days later, the Secretary of Defense issued a memorandum prohibiting any component of the DOD from "establish[ing] sex-based, race-based, or ethnicity-based goals for . . . academic admission[.]" On May 9, 2025, the Secretary instructed the Secretaries of the Navy, Air Force, and Army to certify, within 30 days, that the admissions offices of their service academies will "1) Apply no consideration of race, ethnicity, or sex; and 2) Offer admission based exclusively on merit" beginning with the 2026 admissions cycle.

Changes in Admissions Policies

In court filings submitted after the January 27, 2025, executive order, the USNA, Air Force Academy, and West Point each represented that they have revised their admissions policies such that race and ethnicity are no longer factors in admissions decisions. The USNA and the Air Force Academy filed unopposed motions to pause briefings in their cases on the grounds that the parties required additional time to review the updated admissions policies and assess their litigating positions. The courts granted these motions.

With regard to West Point, the Department of Justice filed an unopposed motion to stay the case for 60 days, which the district court granted. Upon an unopposed motion, the court subsequently stayed the applicable deadlines for an additional 60 days.

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 courts defer 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 individual cases. If they are not mooted on account of the changes in policies, 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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