Distinction Without a Difference: U.S. Military Academies and the Battle for Affirmative Action After *SFFA*

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Abstract: *In* Students for Fair Admissions v. Presidents and Fellows of Harvard College*, the United States Supreme Court issued a landmark decision barring the use of race as an independent factor in college admissions decisions. However, in a brief footnote, the Court held that the opinion did not apply to the federal military academies, since the interests of military academies are "potentially distinct" from other universities. The military academies are therefore the last institutions in higher education to consider race in their application practices and yet the Court has offered little justification as to why. This article explores the legal and doctrinal implications of this exemption, analyzing the ambiguity of the carveout and its broader effects on affirmative action jurisprudence. First, the article traces the historical impact of race in the military and its role in crafting affirmative action jurisprudence. Next, the article asserts that the carveout undermines the Court's rationale for race-blind admissions decisions since the same arguments favoring affirmative action in the military could apply to non-military professions. Considering such similarities, this article attempts to reason with potential constitutional and political justifications for why the Court could have provided such an exemption for the military academies. It also critiques the Court's narrow application of the exemption, questioning whether it represents an ad hoc justification that undermines the uniform application of constitutional principles. Consequently, this article offers the Court's habitual deference to the executive branch in the context of defense policy as one potential justification for the distinction. Finally, this article acknowledges that the military's effectiveness depends on its ability to consider race when promoting diversity in its leadership. However, to preserve the narrow carveout in the future, the military academies can no longer emphasize their similarity to other universities. Rather, the academies must*

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embrace the distinction in subsequent affirmative action litigation. This article attempts to arm the military with arguments in support of the distinction and considers the potential impact of such arguments on future cases.

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INTRODUCTION

A young cadet stands at attention on the parade grounds at the United States Military Academy. The weight of his uniform bears on his shoulders with the centuries of tradition it carries. His polished dress shoes reflect the sharp outlines of the stone buildings that loom above him as silent observers of history. The halls of America's military academies have long served as crucibles for shaping military leaders. The academies are fixtures of the American story, where cadets and midshipmen are carefully crafted into the leaders of tomorrow.

Yet, behind the idealized image of American excellence lies a complex reality: the military academies, like all other universities, have historically struggled with issues of race, access, and inclusion. While the military prides itself on a commitment to merit-based advancement, it cannot escape the difficult realities that shape American life: racial disparities in education and opportunity continue to impact the nation. The military, like all institutions, is not immune to these forces. However, in *Students for Fair Admissions v. President and Fellows of Harvard College*, the Supreme Court made a subtle yet significant distinction between the military academies and traditional universities regarding their use of race-conscious admissions policies.[1] In a footnote, the Court suggested that the interests of the military academies may be distinct,[2] prompting one to question how a Court that supports a race-blind constitution could make such an exception. Whether affirmative action belongs at the military academies is not a simple question—it involves considerations of political trends, national identity, and military readiness. The role of diversity at the academies is tied to broader efforts to ensure that the military reflects the society it defends and generates leaders who can succeed in a world marked by cultural complexity.

This article provides a historical overview of race relations in the military and the ubiquity of military interests in modern affirmative action cases. Drawing on such interests, it ultimately asserts that the Supreme Court should never have distinguished between the military academies and other universities concerning affirmative action. It proposes that federal military academies do not differ from other selective institutions with respect to

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[1] Students for Fair Admissions Inc. v. Presidents and Fellows of Harv. Coll., 600 U.S. 181 (2023).

[2] Id. at 22, n.4 ("The United States as amicus curiae contends that race-based admissions programs further compelling interests at our Nation's military academies. No military academy is a party to these cases, however, and none of the courts below addressed the propriety of race-based admissions systems in that context. This opinion does not address the issue, in light of the potentially distinct interests that military academies present.").

diversity as a compelling interest. In doing so, it considers both constitutional and political rationales for the Court's vague distinction in *SFFA* despite decades of precedent suggesting otherwise.

However, this article acknowledges that the military's approach will have to change in the future because of the *SFFA* distinction. The military academies now face similar legal challenges specific to military affirmative action.[3] Having previously asserted that no distinction exists,[4] the academies must now embrace the *SFFA* distinction to defend their own policies. In anticipation of such attacks, this article offers constitutional arguments the military can make if the Court chooses to independently evaluate whether it can use benign racial classifications. Employing such arguments could aid in preserving affirmative action in the military for the time being. As history indicates, sustaining diversity through military affirmative action policies is a national security imperative.

I. HISTORICAL OVERVIEW OF THE MILITARY'S ROLE IN AFFIRMATIVE ACTION

Black soldiers have served in every major American war.[5] However, throughout most of the nation's history, Black soldiers were forced to serve in segregated units led by White officers.[6] When Henry Flipper graduated from the United States Military Academy at West Point (USMA) in 1877, he became the first Black cadet to complete four years at the Academy.[7] Born a slave in Thomasville, Georgia, Cadet Flipper became the Army's first Black officer when he received his commission.[8] Major General John Schofield, the USMA superintendent at the time, would recall the experience in his annual report, writing: "To send to West Point . . . a young man born in slavery is to assume that half a generation is sufficient to raise a colored man to the social, moral, and intellectual level which the average white man

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[3] Students for Fair Admissions v. U.S. Mil. Acad. At W. Point, 709 F. Supp. 3d 118 (S.D.N.Y. 2024); Students for Fair Admissions v. U.S. Naval Acad., No. RDB-23-2699, 2024 WL 4057002 at 1 (D. Md. Sept. 5, 2024).

[4] See, e.g., Grutter v. Bollinger, 539 U.S. 306, 331 (2003) ("At present, 'the military cannot achieve an officer corps that is *both* highly qualified *and* racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies.'") (quoting Brief of Lt. Gen. Julius W. Becton, Jr., et al. as Amici Curiae in Support of Respondents, Grutter v. Bollinger, 539 U.S. 306 (2003) (No. 02-241)).

[5] Bryan W. Leach, Race as Mission Critical: The Occupational Need Rationale in Military Affirmative Action and Beyond, 113 Yale L.J. 1093, 1109 (2004).

[6] Id. at 1110.

[7] Patri O'Gan, Duty, Honor, Country: Breaking Racial Barriers at West Point and Beyond, Nat'l Museum of Afr. Am. Hist. and Culture (May 2, 2022), https://nmaahc.si.edu/explore/stories/west-point.

[8] Id.

has reached in several hundred years."[9] Although written in 1880, the Major General Schofield's racially charged comments over the commissioning of West Point's first Black officer are perhaps a metaphor for a tide shift in the military's approach to its composition. The history of race relations in the military is a story of an institution that engaged in categorical racial exclusion and then pioneered modern integration strategies with the goal of better representing the country it serves.[10]

The military did not formally abolish its practice of racial segregation until the end of World War II, when President Truman issued Executive Order 9981.[11] The Order mandated "equal treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin."[12] Although the Order was groundbreaking for its time, it was largely based on the military's determination that integrating the ranks would facilitate a "more efficient" fighting force.[13] However, it was not until after the conclusion of the Korean War, in the immediate wake of *Brown v. Board of Education*, that the military finally integrated its last segregated unit.[14]

Nevertheless, integration presented the military with a new challenge. Nearly a century after Cadet Flipper's graduation, in the aftermath of the Vietnam War, the military found itself in what has been referred to as the "time of troubles."[15] While the number of Black enlisted soldiers increased, the stagnant growth in the commissioning of Black officers fostered racial tumult in the ranks.[16] Race riots became a common trend on military posts throughout the United States, many of which resulted in the death of American troops at the hands of those suppressing the riots.[17] Lieutenant General Frank Petersen reported one instance where violence escalated to such an extent that an entire aircraft carrier was pulled offline due to its ineffectiveness.[18] He wrote, "[Marine] platoons that were 80% minority were being led

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[9] Id.

[10] Mario L. Barnes, "But Some of [Them] Are Brave": Identifying Performance, The Military, and the Dangers of An Integration Success Story, 14 Duke J. L. and Pol'y 693, 700 (2007).

[11] Leach, supra note 5.

[12] Exec. Order No. 9981, 13 Fed. Reg. 4313 (July 26, 1948).

[13] Leach, supra note 5, at 1110.

[14] Id.

[15] Robert Knowles, The Intertwined Fates of Affirmative Action and the Military, 45 Loy. U. Chi. L.J. 1027, 1032 (2014).

[16] Leach, supra note 5, at 1110.

[17] Knowles, supra note 15, at 1033 ("In just two years, 1969 and 1971, the Defense Department recorded over 300 racial incidents, including "race riots" on military bases, resulting in the deaths of seventy-one American troops. In the fall of 1972, operations on two navy aircraft carriers were brought to a halt by racial unrest.").

[18] Leach, supra note 5, at 1110–1111.

by lieutenants from Yale who had never dealt with Blacks."[19] Consequently, the Assistant Secretary of Defense, James Render, reported to President Nixon that the volatility and racial tension stemmed from a lack of understanding between Black enlisted servicemembers and the White officers who led them.[20] Data supported the frustration, as studies during the 1970s concluded that Black servicemembers were more likely to be assigned to combat rather than support occupations, and were promoted at slower rates in comparison to White servicemembers.[21] The military feared these discrepancies would only worsen as it transitioned away from conscription toward an all-volunteer force.[22] The Defense Department therefore established the Defense Race Relations Institute to facilitate training in race relations for servicemembers.[23] Despite such changes, the growing frustration in the military—combined with the public's changing attitude toward race—made it clear to the Department of Defense that concerted policy efforts to enhance racial representation in the officer corps were necessary.[24] Thus, the military began using affirmative action policies in its appointment procedures.

A. Structure and Impact of the Military's Race-Conscious Policies

The college admissions process is inextricably intertwined with the overall makeup of the military's leadership. The careers of most military officers begin not with a decision to join the armed forces, but rather with a decision to attend college.[25] The majority of military officers generally receive their commission by attending one of the three federal service academies,[26] or through participation in a Reserve Officers' Training Corps program

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[19] Id.

[20] Knowles, supra note 15, at 1033.

[21] The American War Library, Vietnam War Casualties by Race, Ethnicity and Natl Origin, https://www.americanwarlibrary.com/vietnam/vwc10.htm (last visited Dec. 5, 2024) (Early in the war, Black soldiers made up eleven percent of the fighting force, but twenty percent of the total casualties. In response to protests, President Johnson ordered that Black participation in combat units be limited. As a result, the Black casualty rate was cut to just over eleven percent in 1969.).

[22] Knowles, supra note 15, at 1034.

[23] Id.

[24] Id.

[25] Approximately seventeen percent of officers commission via an academy, forty percent from ROTC, seventeen percent Officer Training/Candidate School (OTS/OCS), twenty-one percent from direct appointment, and five percent from other sources. All such officer tracks require some form of a four-year degree. OCS and Direct appointment officers generally attend traditional universities after some form of prior enlisted service. See Off. of the Undersecretary of Def. Pers. & Readiness, U.S. Dep't of Def., Career Progression of Minority and Women Officers 18 (1999).

[26] The three federal service academies include the United States Military Academy at West Point ("USMA" or "West Point"), the United States Naval Academy ("USNA" or "Annapolis"), and the United States Air Force Academy ("USAF").

(ROTC) at a college or university. ROTC allows students to attend a college or university while taking *separate* courses tailored to military leadership, whereas at military academies, students' *entire* experience is structured around their development as military leaders.[27] ROTC serves as the largest source of military officers.[28] For the Army alone, ROTC produces over 3,000 officers annually, while West Point produces roughly 1,000 per year.[29] That said, both service academy graduates and ROTC graduates are commissioned as the same rank upon completion of their training, and they generally serve in the same capacity in their initial assignments.[30]

The early use of race-conscious policies in the military consisted of three primary strategies: (1) setting broad integration objectives and examining the impact of those objectives over time; (2) implementing race-conscious admissions policies at the service academies and at universities that offer ROTC programs; and (3) enhancing the representation of traditionally underrepresented races on promotion boards.[31] As a result of such policies, any officer who failed to report discrimination amongst their subordinates was relieved of their position, and service academies began considering race as a factor in admissions decisions.[32]

Historically, each branch of the military controlled the parameters of its own affirmative action scheme, and while the racial status of applicants was at the forefront of each branch's individual policy, the transparency of each branch in their racial representation goals remained inconsistent.[33] For instance, West Point's original affirmative action policy set specific benchmarks for historically underrepresented racial groups based on that group's "representation in the national population and in the national pool of college-bound people, and their representation in the Army."[34] The United States Air Force Academy's (USAFA) original policy, meanwhile, suggested that its

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[27] Army ROTC, Common Questions About ROTC, https://www.goarmy.com/careers-and-jobs/find-your-path/army-officers/rotc (last visited Apr. 14, 2025).

[28] U.S. Gov't Accountability Off., GAO-23-105857, Senior Reserve Officers' Training Corps: Actions Needed to Better Monitor Diversity Progress 1 (2023).

[29] Return-On-Investment of Service Academies, usmaData, https://usmadata.com/2023/09/07/return-on-investment-of-service-academies/ (last visited Dec. 6, 2024).

[30] Military One Source, Becoming an Officer in the Military After College, https://www.militaryonesource.mil/military-basics/new-to-the-military/becoming-a-military-officer-after-college/ (last visited Apr. 14, 2025).

[31] A promotion board is a panel of officers who review the records and performance of eligible officers and decide who should be promoted to the next rank. Knowles, supra note 15, at 1034.

[32] Additionally, ROTC programs, which had already been put in place at several large universities in the country, were subsequently established at several historically Black colleges and universities (HBCUs). Id. at 1035.

[33] Leach, supra note 5, at 1112.

[34] Id.

admissions practices did not differentiate between White and non-White candidates.[35] However, between 1991 and 1995, twenty-eight percent of White federal service academy applicants met the minimum criteria for admission, while only eighteen percent of non-White applicants met the same standard—and yet seventy-six percent of eligible non-White applicants received offers of admission, while fifty-one percent of eligible White applicants received offers.[36]

Comparably, the branches placed increased emphasis on diversifying ROTC programs through their allocation of ROTC scholarships. The branches set aside more ROTC scholarships for HBCUs than ever before, which resulted in HBCUs producing over forty percent of the Black officers who were commissioned via ROTC.[37] Additionally, newly commissioned Black officers received assignments to recruit students to apply for ROTC scholarships at HBCUs.[38]

Over time, these policies grew effective, and their impact on the military's racial composition was tangible. At West Point, cadets of traditionally underrepresented races increased from twenty percent in 2000 to thirty-six percent in 2021.[39] President Clinton touted the military's model as especially successful due to its emphasis on "education and training . . . giving us the most racially diverse and best-qualified military in history."[40] The military served as a model for meaningful integration due, in large part, to its affirmative action admissions policies at colleges and universities.

B. The Military's Role in the Development of Affirmative Action Jurisprudence

Given the interconnectedness of the military and higher education, the effectiveness of the military's race-conscious regime became a point of conversation in the larger legal debate over the role of affirmative action in American colleges and universities. While the military evaluated the success of its regime, concurrently, a conservative Congress and Supreme Court grew increasingly suspicious of affirmative action. For example, in 1989,

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[35] Id.

[36] Id.

[37] Id. at 1113–14.

[38] Id. at 1114.

[39] At the Naval Academy, the same number increased from nineteen percent to thirty-seven percent. Phillip Elliot, Affirmative Action Still an Option at West Point, But Supreme Court Likely to Have Final Say, Time, July 6, 2023 (July 6, 2023, 2:43 PM), https://time.com/6292620/affirmative-action-west-point-military-academies-supreme-court/.

[40] President William Clinton, Address at the National Archives on Affirmative Actions Programs (July 19, 1995).

the Court held in *City of Richmond v. J.A. Croson Co.* that "generalized assertions" of past racial discrimination could not justify benign racial classifications such as quotas.[41] Justice O'Connor held that the use of benign racial classifications was presumptively invalid, as they violated the Equal Protection Clause of the 14th Amendment when they were not tied to a specific injury.[42] In 1995, the Court doubled down in *Adarand Constructors, Inc. v. Pena*, imposing strict scrutiny against racial classifications from the federal government.[43]

The military's first direct implication in the affirmative action debate came in 2003 in *Grutter v. Bollinger* and *Gratz v. Bollinger*.[44] In both cases, the Court held that race-conscious admissions practices used by the University of Michigan's undergraduate program and law school required strict scrutiny.[45] The Court upheld the law school's admission policy since it did not assign points based on race, but rather used race in a holistic review process as one factor out of many.[46] The Court agreed with the law school's position that diversity contributes to cross-cultural understanding and enriches the classroom experience by fostering enlightening conversation.[47] In support of this holding, the Court made direct reference to an amicus brief filed by military generals and Department of Defense officials documenting the military's longstanding use of affirmative action in integrating its force.[48] Justice O'Connor, once again writing for the majority, noted the military's position that a "highly qualified, racially diverse officer corps . . . is essential to the military's ability to . . . provide national security."[49] Importantly, the Court agreed that no distinction was warranted between affirmative action at service academies and other institutions, writing, "it requires only a small step . . . to conclude that our country's other most selective institutions must remain both diverse and selective" since ROTC programs at such institutions substantially produce military officers.[50] Justice O'Connor's note exemplifies the breadth and typicality of judicial deference to military policy making.[51] Yet, the Court held that an emphasis on diversity in elite civilian

[41] City of Richmond v. J.A. Croson Co., 488 U.S. 469, 470 (1989).
[42] Id. at 491.
[43] Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 202 (1995).
[44] Grutter v. Bollinger, 539 U.S. 306 (2003); Gratz v. Bollinger, 539 U.S. 244 (2003).
[45] *Grutter*, 539 U.S at 308; *Gratz*, 539 U.S. at 270.
[46] *Grutter*, 539 U.S. 295.
[47] Id. at 330.
[48] Id. at 331 (citing Brief of Lt. Gen. Julius W. Becton, Jr., et al., as Amici Curiae in Support of Respondents, Grutter v. Bollinger, 539 U.S. 306 (2003) (No. 02-241).
[49] Id.
[50] Id. (noting the role of both military and civilian colleges in "preparing students for work and citizenship . . . with a fundamental role in maintaining the fabric of society.").
[51] See, e.g., Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008).

professions should also be prioritized for similar reasons.[52] Despite Justice O'Connor's apparent openness to affirmative action, the Court's support came alongside the qualification that the need for race-conscious admissions would one day dissipate, a form of "constitutional sunsetting."[53]

C. SFFA Footnote 4 and Subsequent Litigation

In 2023, the military's arguments in favor of affirmative action were once again brought to the forefront in the case of *Students for Fair Admissions v. President and Fellows of Harvard College*.[54] This time, despite a similar amicus brief filed by military leaders, the Court gave almost no consideration to the military's stated need for diversity.[55] In one fell swoop, the Court did away with race-conscious admissions programs in higher education, holding that affirmative action programs violated the Equal Protection Clause.[56] In stark contrast to its treatment in *Grutter*, the only response to the military's amicus brief came in a footnote, where the Court inexplicably deemed the interests of service academies as "potentially distinct" from other institutions.[57] In a scathing dissent, Justice Sotomayor referred to this 'carveout' as contributing to the opinion's "arbitrariness" since it was well established in *Grutter* that national security interests at the service academies are also implicated at other institutions.[58] For the time being, race-conscious admissions practices persist at service academies—but no place else.

In response to the Court's decision not to apply *SFFA* to military academies, Students for Fair Admissions filed separate emergency injunctions against West Point and the Naval Academy to prevent them from engaging in race-conscious practices.[59] The Court denied the emergency injunctions, citing the record as underdeveloped.[60] The cases are currently before federal appellate courts, and if the Court grants certiorari in either case, an

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[52] *Grutter*, 539 U.S. at 331.

[53] Id. at 342, 346.

[54] Students for Fair Admissions Inc. v. Presidents and Fellows of Harv. Coll., 600 U.S. 181 (2023).

[55] Id. at 22.

[56] Id. at 181.

[57] Id. at 213, n.4 ("The United States as amicus curiae contends that race-based admissions programs further compelling interests at our Nation's military academies . . . This opinion does not address the issue, in light of the potentially distinct interests that military academies present.").

[58] Id. at 356 (Sotomayor, J., dissenting).

[59] Students for Fair Admissions v. U.S. Mil. Acad. at W. Point, 709 F. Supp. 3d 118 (S.D.N.Y. 2024); Students for Fair Admissions v. U.S. Naval Acad., No. RDB-23-2699, 2024 WL 4057002 at *1 (D. Md. Sept. 5, 2024).

[60] Students for Fair Admissions v. U.S. Naval Acad., No. RDB-23-2699, at 3 (D. Md. Dec. 20, 2023) (per curiam).

interpretation of its "distinction" in *SFFA* could either open the door for other institutions with specific disciplinary interests or slam it shut entirely.

II. WHY THE DISTINCTION: COMPARING DIVERSITY AT MILITARY ACADEMIES WITH OTHER COLLEGES AND UNIVERSITIES

This section asks why the Court would find diversity compelling at the federal military academies but no place else. First, the section compares the role diversity plays in the military with the role of diversity elsewhere. Using arguments from the military's amicus briefs in *Grutter* and *SFFA*, it addresses whether the importance and benefits of diversity at the military academies are analogous to other areas requiring college degrees. Considering this comparison, the section then identifies other constitutional and political reasons why the Court might differ in its treatment of the military academies and other institutions when applying strict scrutiny to benign racial classifications. Although it is unlikely that the Court would view past discrimination in the military as sufficiently compelling after *Croson*,[61] this section asserts that the Court's tradition of deferential treatment toward national security ends may allow the military academies to be less particularized when identifying past discrimination.

A. The Military's Rationale for Diversity is Applicable in Other Contexts

The military's amicus brief in *SFFA* outlined why diversity is essential to the military's mission, yet the same arguments apply to other universities.[62] While the Court today is unlikely to uphold policies that facilitate diversity "for its own sake,"[63] its treatment of the military suggests that diversity's role in maintaining national security and social order is compelling. On its face, the college experience at West Point or the Naval Academy might seem different from that of a typical college or university. Students are expected to attend physical training early in the morning, spend their summers at field training exercises, and study a curriculum that emphasizes tactical competency.[64] While such experiences are certainly unique, the adverse impact of limiting diversity in higher education is not just detrimental to military

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[61] Kim Forde-Mazrui, The Constitutional Implications of Race-Neutral Affirmative Action, 88 Geo. L. J. 2331, 2340 (2000).

[62] Brief of Adm. Charles S. Abbot, et al., as Amici Curiae in Support of Respondents, Students for Fair Admissions Inc. v. Presidents and Fellows of Harv. Coll., 600 U.S. 181 (2023) (No. 20-1199).

[63] City of Richmond v. J.A. Croson Co., 488 U.S. 469, 496 (1989).

[64] U.S. Mil. Acad. at W. Point, Academic Program, https://www.westpoint.edu/academics/academic-program (last visited Dec 2, 2024).

academies. Given the role non-military institutions play in hosting ROTC programs and cultivating most of the officer corps, the amicus brief intentionally drew no distinctions between the applicability of diversity as a compelling interest in either situation and instead treated them essentially as equals.[65] The arguments employed by the military leaders in their amicus brief in favor of diversity apply equally to typical colleges and universities—and, in turn, to professions that hire from colleges and universities.

The military's primary argument in its *SFFA* amicus brief is based on occupational need.[66] It asserts that "growing and maintaining a highly qualified, diverse officer corps remains a U.S. national security imperative . . . ."[67] The military supports this claim by arguing that the historical ineffectiveness from racial tensions that plagued the military in the 1970s is still possible today if the Court limits diversity initiatives.[68] However, framing diversity as an occupational need argument is not exclusively applicable to the military. Many professions requiring a college degree possess the same occupational criteria that render diversity a compelling interest in the military context.

For instance, the military is merely one enforcer of national defense. Other entities with similar hierarchical structures and responsibilities pertaining to national security, such as the Central Intelligence Agency (CIA), have similar rationales for diversity as a compelling interest. In 2021, the CIA launched a campaign to increase diversity in the ranks to remedy discrepancies in the racial composition of the Agency.[69] If the effectiveness of the military suffered at the hands of racial tension, circumstances would be comparably grave if such issues arose at the CIA. Furthermore, all national security organizations famously target the nation's most selective institutions for recruitment. For nearly a century, Yale, Harvard, and Princeton served as feeder schools for the CIA,[70] further adding to the confusion as to why the Court would treat such schools differently in comparison to military academies with respect to their interest in diversity.

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[65] Abbot, et al., supra note 62; Brief of Lt. Gen. Julius W. Becton, Jr., et al., as Amici Curiae in Support of Respondents, Grutter v. Bollinger, 539 U.S. 306 (2003) (No. 02-241).

[66] Leach, supra note 5.

[67] Abbot, et al., supra note 62, at 4.

[68] Id. at 8.

[69] Deb Reichman, CIA's New Recruitment Website Aims to Diversify Spy Agency, AP News (Jan. 4, 2021, 6:40 PM), https://apnews.com/article/technology-business-race-and-ethnicity-intelligence-agencies-demographics-e22ea4d22d4564608d7972be95e570b9.

[70] Ivy Coach, Does the CIA Recruit From Ivy League Schools?, https://www.ivycoach.com/the-ivy-coach-blog/ivy-league/does-cia-recruit-from-ivy-league/#:~:text=College%20campuses%20have%20historically%20served,Ivy%20League%20for%20these%20reasons (last visited Dec. 8, 2024).

Some state and local entities fit this model too. At a local level, police and prison guards serve their communities by maintaining order and deterring violence.[71] While one might not think of their role as consequential in its impact on national security, police and prison guards must overcome the same hierarchical challenges as military officers in protecting their communities domestically. When respect for authority is jaded by racial tension, the risk of societal disarray increases.[72] Several courts have acknowledged the need for such types of benign classifications in careers that parallel the military. In *Reynolds v. City of Chicago*, Judge Posner elucidated this point, holding that the promotion of a Hispanic police officer to make the Chicago police force more effective was a permissible use of racial classifications.[73]

Conversely, in *Grutter*, some non-public safety professions also offered similar occupational need arguments in favor of their compelling interest in diversity. The Court specifically noted professions in business as examples of occupational areas where diversity is like that of the military.[74] Sourcing from an amicus brief filed on behalf of sixty-five American businesses, the *Grutter* Court acknowledged that the skills needed to lead in a globalized world are only achievable through exposure to diversity.[75] The *Grutter* Court made no distinction between military and business, finding that both military leadership and business leadership contribute to the Nation's security and competitiveness on a global scale.[76] Certainly, barriers to effectiveness in a business profession are of less consequence to personal safety in comparison to military service; however, both businesses and the military are critical in the societal landscape, and both have an interest in maintaining diversity.

Counter positions in favor of the *SFFA* distinction might suggest that the global consequences of an ineffective military are uniquely grave in comparison to other professions trying to assert diversity as a compelling interest. However, the logic used to identify the importance of diversity in the military is applicable across a span of professions. For example, if it is a national security risk to have a racial imbalance in the military's officer corps, why is it not a national health risk to have doctors who are less racially diverse than the patients they care for? Studies suggest that patients generally receive better treatment and diagnoses when care is provided by more

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[71] Leach, supra note 5, at 1124.
[72] Id. at 1125.
[73] See Reynolds v. City of Chicago, 296 F.3d 524, 526 (7th Cir. 2002).
[74] Grutter v. Bollinger, 539 U.S. 306, 330 (2003).
[75] Id. at 308.
[76] Id. at 330-331.

diverse medical teams.[77] Domestic professions in medicine and policing are as integral to social order as the maintenance of national defense. Without the effective internal administration of public health and police departments, external defense from the military becomes null. The military's amici in *Grutter* and *SFFA* demonstrate the importance of diversity to the military's mission without limiting how compelling it may be for other similarly situated professions.

B. Potential Unique Applications of Strict Scrutiny in Cases Involving the Military

Even if the Court agrees that diversity at military academies is equally compelling to that of other institutions, there still might be other reasons for the Court's determination that military academies warrant different treatment. The Court treats all racial classifications as inherently suspect because of the significant risk such classifications are motivated by illegitimate purposes.[78] Strict scrutiny is employed to prevent racial classifications that are motivated by impermissible purposes.[79] As the highest form of review, the Court requires that any racial classification, benign or otherwise, be narrowly tailored to achieve a compelling interest.[80] Given that the *Grutter* Court refused to differentiate between military academies and other selective institutions, the current Court may not view diversity as particularly more or less compelling for the military academies. In *Grutter* and *SFFA*, the military argued in favor of diversity as a compelling interest at both military academies and the thousands of universities that host ROTC programs.[81] Given the deference the Court gave such arguments in *Grutter*, it could be that the Court's distinction of military academies in *SFFA* addressed a different aspect of the strict scrutiny analysis aside from the comparability of diversity as a compelling interest. This section seeks to identify such explanations.

First, although unlikely, the Court may believe the military can identify past governmental discrimination at the academies with sufficient particularity. Therefore, remedying the past discrimination via race-conscious diversity initiatives is a sufficient compelling interest. The Court has not

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[77] L.E. Gomez & Patrick Bernet, Diversity improves performance and outcomes, J. Nat'l Med. Assn. Vol. 111, Issue 4, 383 (2019).

[78] Forde-Mazrui, supra note 61, at 2354.

[79] Id.

[80] Id. at 2340.

[81] Abbot, et al., supra note 62.

comprehensively clarified what forms of past discrimination are compelling or not compelling. However, the Court requires the remediation of past "identified" discrimination, rather than just the remediation of past "societal" discrimination.[82] Identified discrimination, as opposed to societal discrimination, requires sufficient particularity when determining the discrimination that requires remediation.[83] Scholars have questioned whether a distinction exists between identified discrimination and societal discrimination, since the Court has been vague in formally defining the terms.[84] In one such case, the Court in *Croson* ultimately held that the city of Richmond's racial quota could not be tied to a particularized injury.[85] However, in doing so, the Court held that the city of Richmond had an interest in remedying identified discrimination if they could show strong evidence of a sufficient showing of discrimination by the local construction company.[86] The Court did not suggest that the city of Richmond had to particularly identify elements to satisfy actual legal liability against the individuals who engaged in the discrimination.[87] This left many wondering: at what point is past societal discrimination sufficiently particularized to qualify as identified discrimination?

Now, apply this rationale to the circumstances surrounding the military's use of race-conscious admissions policies. Given the military academies' history of categorical racial exclusion, in conjunction with the Court's traditional leniency towards the military, it may be the case that the *SFFA* Court views the military's policy as sufficiently particularized. In other words, circumstances and policies particular to the military may be specific enough to warrant the use of past discrimination as a compelling interest. In their *SFFA* amicus brief, the military broadly refers to their historical use of discriminatory policies and practices; however, they do not identify with particularity which specific discriminatory practices were in the process of remediation through affirmative action policies.[88] But, a large analytical leap is not needed to identify such specific practices. For instance, consider the military's longstanding policy requiring Black soldiers to serve in the lowest ranks of combat units, making them disproportionately susceptible to encounters with the enemy.[89] Such a policy might be sufficiently particularized

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[82] Forde-Mazrui, supra note 61, at 2367.
[83] Id. at 2368.
[84] Id. at 2336.
[85] City of Richmond v. J.A. Croson Co., 488 U.S. 469, 499 (1989).
[86] See id. at 497.
[87] See id.
[88] Abbot, et al., supra note 62, at 5.
[89] Jami L. Bryan, Fighting For Respect: African-American Soldiers in WWI, The Army Historical Foundation, https://armyhistory.org/fighting-for-respect-african-american-soldiers-in-wwi/ (last visited Apr. 14, 2025).

to qualify as identified discrimination. It may be the case that the emotional appeal and specificity of a policy that disparately placed Black soldiers in the line of enemy fire contributes to a classification of such policies as sufficiently particularized. While other universities certainly can identify practices that targeted, excluded, and contributed to the vulnerability of non-White students, the military academies are perhaps able to more directly identify policies that led to inequitable deaths based on race.

More likely, the Court's traditional deference towards the military allows the military to be less particularized when identifying past discrimination. The already-blurred lines between societal and identified discrimination are perhaps even blurrier when considering past discriminatory policies employed by the military. When the military's internal decision-making is at issue, judges have typically offered justifications for deferential treatment.[90] One such justification posits that the inner workings of the military community—its strategic and tactical decisions—are particularly difficult for judges who lack experience in the military to understand.[91] However, employing this argument in favor of less particularization for the military fails to consider the numerous entities whose inner workings are equally difficult for judges to understand. For instance, a public health official with years of experience in doctor-patient relationships presumably has a far greater understanding of the role race plays in the administration of health care compared to a judge. However, based on the *SFFA* distinction, it seems far likelier that the Court would defer to the Army or Navy when evaluating the particularization of their stated past discrimination than that of a top medical school.

Additionally, although not explicitly outlined in any single case, the Court tends to allow less tailored means when it finds the interest to be especially compelling.[92] Whether the Court would apply a similar rationale to an asserted compelling interest in remedying past discrimination for any organization is unclear. Yet, if there were an organization for which the Court would allow less particularity, it is reasonable to suppose, based on past deference, that the military would be that organization.

C. Political Deference to the Executive in the Context of Military Policies

Alternatively, the Court's determination that military academies are distinct with respect to affirmative action may be due to its concern for the

[90] Leach, supra note 5, at 1123.
[91] Id. at 1123–24.
[92] See, e.g., Trump v. Hawaii, 585 U.S. 667, 710 (2018).

separation of powers, rather than a uniform application of constitutional principles. While the military is inherently an apolitical entity, it is an executive department controlled by the President and subject to certain constitutional and congressional limitations.[93] The Court has a history of granting deference, in part, because it questions its capacity to contravene executive authority over national defense.[94] In 2008, the Court's deference to executive control over the military was on display in *Winter v. NRDC*.[95] The case involved a suit filed by the Natural Resources Defense Council seeking to enjoin the Navy's use of sonar during training missions since the sonar could harm marine mammals in violation of the Coastal Zone Management Act of 1972 (CZMA).[96] Of note, after the District Court granted the preliminary injunction against the Navy, President Bush—via his statutory authority to do so—exempted the Navy from the CZMA due to a Presidential determination that the exercises were "essential to national security."[97] In holding that the use of sonar could proceed, Chief Justice Roberts articulated the Court's hesitation to interfere with executive intent, writing that "[n]either the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation."[98] In referencing such deference, Chief Justice Roberts cited *Boumediene v. Bush*, a case holding that prisoners at Guantanamo Bay maintained a right of habeas corpus despite a congressional attempt to limit the right via the Military Commissions Act of 2006.[99] Although the *Boumediene* Court ultimately did not grant deference to the executive branch, the Court attempted to emphasize the importance of political deference in follow-on cases concerning military policies.[100]

However, neither the *Boumediene* Court nor the *Winter* Court specified whether certain types of military policies warranted more executive deference than others.[101] Although the Court stated in *Winter* that "professional military judgments" gave way to executive deference, one must look to the Court's holding in *Gilligan v. Morgan* for specification as to what constitutes a "professional military judgment."[102] In *Gilligan*, the Court held that

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[93] See, e.g., 10 U.S.C. § 111.

[94] Lindsay Lyon Rodman, Doing Away with the Military Deference Doctrine: Applying Lessons from Civil-Military Relations Theory to the Supreme Court, 99 N.D. L. Rev. 327, 338 (2024).

[95] See 555 U.S. 7, 26 (2008).

[96] Id. at 16–17.

[97] Rodman, supra note 94, at 341.

[98] Id. at 338.

[99] 553 U.S. 723, 724 (2008).

[100] Id. at 796–97

[101] Id.

[102] 413 U.S. 1, 10 (1973).

the "composition, training, equipping, and control of a military force . . are professional military judgments . . . appropriately vested in branches of the government which are periodically subject to electoral accountability."[103] Therefore, it is likely that military policies warranting deference from the Court are extremely broad. Essentially, the Court is deferential to any executive policy concerning the composition, readiness, or control of the military.[104]

Policies concerning the diversity of the military's officer corps likely, to some extent, receive political deference from the Court since they concern military composition and effectiveness. Although the uniform application of equal protection principles after *SFFA* would suggest that racial classifications are impermissible in any context, including national defense, the Court could be hesitant to interfere with executive branch determinations concerning the make-up and diversity of military leadership. However, the modern politicization of affirmative action is evident. Namely, military Diversity, Equity, and Inclusion (DEI) policies were widely debated throughout the 2024 presidential election cycle.[105] The Court's allowance of such debates despite the historical ineffectiveness caused by racial tumult in the ranks of the military showcases how the Court's stated deference to executive determinations in the military context may take priority over the need for military diversity moving forward.

III. KEEPING THE DOOR SLIGHTLY AJAR: ARGUMENTS TO PRESERVE THE DISTINCTION IN THE FUTURE

This section explores the impact of the Court's decision to exempt military academies from its decision in *SFFA* and its role in future litigation involving the military. Students for Fair Admissions, unsatisfied with the

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[103] Id.

[104] Although this article does not provide an in-depth exploration of the presumptive deference afforded to the military in Administrative Procedure Act (APA) cases, it is worth noting that the D.C. Circuit has a pattern of granting significant deference to the military in cases concerning the APA. In 2022, a petition for writ of certiorari asked the Court to formally decide whether the APA grants a presumption of deference in all cases concerning the military. That case involved a suit filed by the estate of an Army Staff Sergeant against the Deputy Secretary of the Army. At issue was the Army's decision to deny a Purple Heart to the Staff Sargeant, despite his suffering from multiple injuries he sustained while fending off a mass shooter who opened fire at a Soldier Readiness Center at Fort Hood, Texas. Ultimately, the Court denied the case; however, its modernity exemplifies the Article III deference to the military at trial and appellate levels that is traditionally embraced by the courts. Petition for Writ of Certiorari, Brown v. Wormuth, 143 S. Ct. 201 (2022) (No. 22-1).

[105] Tara Copp and Lolita C. Baldor, Military Leaders are Rattled by a List of "Woke" Officers that a Group Urges Hegseth to Fire (Dec. 6, 2024, 5:56 P.M.), https://apnews.com/article/hegseth-trump-diversity-pentagon-list-602477b6e80641b53f4f9b640a14f4ce.

distinction, immediately filed separate injunctive suits against the military academies, seeking to effectively shut a door that the Court left slightly ajar.[106] These cases are currently pending before federal appellate courts. As affirmative action practices at the military academies begin to take on enemy fire, the military must shift its tactical strategy. Gone are the days of *Grutter*, where the military attempted to save both affirmative action at their own institutions and at all other institutions that host ROTC programs. Rather, the military must hedge its bets and lean into the distinction carved out in *SFFA*. For example, a federal district court in Maryland recently held that race-conscious admission practices at the Naval Academy could persist based on the *SFFA* distinction.[107] The court held that the Naval Academy is "distinct from a civilian university . . . [since] its mission is to prepare its students to become officers in the Navy and Marine Corps."[108] The strategy is in stark contrast to the military's approach in pre-*SFFA* cases, where they argued that there is no distinction in an attempt to save affirmative action throughout all of higher education. In anticipation of the military's looming battle over race-conscious admissions practices, this section seeks to arm the military with constitutional arguments in favor of affirmative action.

A. The 'Sun Has Not Set' On Race-Conscious Admissions at Military Academies

To survive an Equal Protection challenge under the 14th Amendment, the military must do what other universities could not in *SFFA*: demonstrate that the need for race-conscious admissions still exists in its particular context. In *Grutter*, where the Court held that the sun would one day set on affirmative action, it implied that so long as there is a need for affirmative action, race-conscious policies may persist.[109] The *SFFA* Court, drawing on this sunset provision, determined that Harvard (and the University of North Carolina, in a consolidated case) could not measurably demonstrate their compelling interests with a logical endpoint.[110] It also held that Harvard failed to avoid racial stereotyping in the administration of its affirmative action

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[106] Students for Fair Admissions v. The U.S. Mil. Acad. at W. Point, 709 F. Supp. 3d 118 (S.D.N.Y. 2024); Students for Fair Admissions v. U.S. Naval Acad., No. RDB-23-2699, 2024 WL 4057002, at *2 (D. Md. Dec. 6, 2024).

[107] *Students for Fair Admissions,* 2024 WL 4057002, at *3.

[108] Id.

[109] *Grutter*, 539 U.S. at 346.

[110] Students for Fair Admissions Inc. v. Presidents and Fellows of Harv. Coll., 600 U.S. 181, 230 (2023).

policies.[111] Therefore, the *SFFA* Court arguably suggested that an affirmative action policy administered via a measurable structure—with a logical endpoint—that limits its use of racial stereotyping is permissible. The Court's consideration of such criteria is still amorphous, since no indication was given as to whether the Court considers each component of the criteria independently or collectively.

In defending its race-conscious policies, the military should point to the existing racial discrepancy in the highest ranks of the military's officer corps. At present, Black officers make up roughly nine percent of active-duty officers in the Army and less than seven percent of generals.[112] In its district court case against SFFA, West Point described itself as a "vital pipeline" to senior leadership in the Armed Forces.[113] West Point commissions roughly 1,000 officers in the Army each year, but its graduates comprise thirty-three percent of the generals in the Army and almost fifty percent of the Army's four-star generals.[114] Given the academies' innate ability to generate officers who attain the highest leadership roles in the military, they can argue that their race-conscious admissions policies are measurable and finite. This framing of the academies' affirmative policy as a measure that minimizes the racial disparity among general officers is one uniquely available to the academies and does not implicate other universities that host ROTC programs. If the academies attempted to implicate ROTC's role in the production of generals, the Court would likely deem the policy too broad and immeasurable. This is not to say that generals cannot commission via ROTC, but rather that the military academies are uniquely positioned to produce a considerable amount of the military's highest leadership. Through an argument that centers around reducing the gap between Black and White generals, the academies would appeal to *SFFA*'s requirement for a measurable figure that has an end in sight. Admittedly, the academies may not *want* to make this argument since it implies that their race-conscious policies should come to an end once Black officers are proportionately represented amongst the military's highest leadership. However, given the requirements issued by the Court in *SFFA*, the logical endpoint must be stated. If accepted by the Court, the argument would preserve affirmative action in the military for the time being.

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[111] Id.

[112] Christopher S. Chivvis & Sahil Lauji, Diversity in the High Brass, Carnegie Endowment for International Peace (Sept. 6, 2022), https://carnegieendowment.org/research/2022/09/diversity-in-the-high-brass?lang=en.

[113] Students for Fair Admissions v. U.S. Mil. Acad. at W. Point, 709 F. Supp. 3d 118, 124 (S.D.N.Y. 2024).

[114] Id.

Counterarguments would claim that the elimination of racial stereotyping in affirmative action policies is impossible—a fair assertion, since any racial classification could be perceived as foundationally stereotypical. In particular, Justice Thomas would be suspect of such an argument since it relies on a metric based on race, albeit a narrow one.[115] However, given the amorphous treatment of the criteria in *SFFA*, the military should offer a balancing test, suggesting that the use of racial stereotypes needed to facilitate its policies are, at most, negligible based on how measurable and finite its asserted policy is in nature. Compared to other university affirmative action programs, an argument framed around military generals provides the Court with a targeted job discrepancy that can be tracked numerically. Such an argument is far more measurable, and certainly narrower than anything comparable that might be asserted by a university, such as a discrepancy in CEOs at Fortune 500 Companies. Universities are more limited in their ability to measurably determine that their students will rise to the highest ranks of the professional world. The military, on the other hand, can point to the academies' training as strongly correlating to graduates reaching the highest levels of military leadership. Subsequent litigants would be hard-pressed to present an affirmative action program that is narrower and more measurable than that of the military academies, thus preserving the Court's specific carveout.

B. No Institution Advances National Security Interests Like the Service Academies

The arguments for which the Supreme Court would likely give the most deference relate to the military's role in preserving national security. As the court observed in *Haig v. Agee,* "[i]t is 'obvious and unarguable' that no governmental interest is more compelling than the security of the nation."[116] In cases where national security was asserted as a compelling interest, the means for which the government considered race were notably broad to account for the grave responsibility of protecting the nation. For instance, in *Korematsu v. United States*, the Court held that a military policy requiring Japanese Americans to relocate to internment camps during World War II was narrowly tailored to maintain national security.[117] Although the Court has since repudiated the policies in *Korematsu*,[118] several cases in other

[115] Students for Fair Admissions Inc. v. Presidents and Fellows of Harv. Coll., 600 U.S. 181, 230 (2023) (Thomas, J., dissenting).

[116] Haig v. Agee, 453 U.S. 280, 307 (1981).

[117] 323 U.S. 214, 223–24 (1944).

[118] See Trump v. Hawaii, 585 U.S. 667, 710 (2018).

contexts suggest that national security ends require less narrowly tailored means.[119] In light of these decisions, one might assume that the military could easily demonstrate to the Court that diversity at the academies is a national security imperative.

However, such an argument is not as simple post-*SFFA*, given that the military argued in every affirmative action case to date that both military academies and university-ROTC programs require diversity to preserve national security.[120] In other words, the military has made it clear to the Court in the past that the only sufficient means to achieve national security is through affirmative action policies at *both* the academies and universities that host ROTC programs.[121] Today, such an argument would place the Court in uncharted waters, as it would have to weigh its deference towards national security against its decision to eliminate affirmative action at traditional universities. Statistics suggest that the military could not achieve diversity for the purposes of national security without race-conscious practices at ROTC programs, since such programs generate the majority of military officers.[122] However, due to *SFFA*, any argument put forth today likely must be specific to the military academies.

If the military were to construct an argument that truly achieved diversity for purposes of national security, it might present the Court with a model that allowed for affirmative action at both the academies and in the issuance of ROTC scholarships. Since the academies are tuition-free and provide students with a stipend, all students incur a service obligation upon graduating.[123] In contrast, ROTC students do not incur a service obligation unless they accept a scholarship.[124] Students can participate in ROTC without incurring a service obligation if they choose not to accept a scholarship.[125] ROTC students can choose to apply for scholarships before their arrival on campus or during their time on campus. Therefore, to fully achieve diversity for national security ends, the military could propose a model where race-conscious policies are used in admissions at the academies and by ROTC programs when issuing scholarships. Such a model would not implement race-conscious policies for all students applying to traditional universities,

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[119] See, e.g., id.; Hamdi v. Rumsfeld, 542 U.S. 507 (2004).

[120] Abbot, et al., supra note 62, at 2; Becton, Jr., et al., supra note 65, at 1.

[121] Becton, Jr., et al., supra note 65, at 2.

[122] Off. of the Undersecretary of Def. Pers. & Readiness, U.S. Dep't of Def., Career Progression of Minority and Women Officers 18 (1999).

[123] Tuition and Service Commitment, U.S. Mil. Acad. at W. Point, https://www.westpoint.edu/admissions/tuition-and-service-commitment (last visited Dec 2, 2024).

[124] ROTC Scholarships, U.S. Army, https://www.goarmy.com/careers-and-jobs/find-your-path/army-officers/rotc/scholarships (last visited Dec 2, 2024).

[125] Id.

but only for students who indicate a desire to incur a service obligation through ROTC. The military could argue that such a model accounts for ROTC's role in contributing to the officer corps and is, therefore, the appropriately-tailored means to achieve a national security end.

As expressed in past cases, the military would rather the university consider race holistically when building an admissions class,[126] but such a desire is now impossible due to *SFFA*. Even an argument for allowing the military's consideration of race when issuing ROTC scholarships would be bold. Making such an argument could expose the military academies' piecemeal role in the overall officer corps and lead the Court to conclude that there is no means by which race-conscious practices can be narrowly tailored. The trends signaled by *SFFA* suggest that the Court is not interested in extending affirmative action to traditional universities in any context—however, if there were a narrow vehicle to do so, it might be through ROTC's role in preserving national security. Rather, a safer approach to affirmative action preservation may require the military to argue in favor of the academies' independent role in producing a diverse officer corps while also taking internal measures to enhance the number of officers who commission via the academies.

CONCLUSION

The military has come to the defense of race-conscious admissions at various junctures in the jurisprudential development of affirmative action. The military's own complicated history over racial inclusion informs its position. Affirmative action in the context of the military represents an intersection of law, equity, and the pursuit of military effectiveness. As this article explores, the military academies have long had a role in efforts to integrate within the ranks of the officer's corps, but they are not alone in this effort. The Supreme Court's vague distinction between the role of the service academies and that of other institutions in generating diversity in military leadership is inherently flawed. This article argues that the rationales employed by the military to preserve affirmative action should not be misunderstood to mean that the military is unique. The same arguments in favor of affirmative action in the military could apply to civilian professions similarly involved in sustaining social order, such as intelligence officials, police officers, business leaders, and doctors. The legal landscape surrounding affirmative action in higher education, including the service academies, is

[126] Grutter v. Bollinger, 539 U.S. 306, 330 (2003); Gratz v. Bollinger, 539 U.S. 244 (2003).

subject to constant shifts, with the *SFFA* decision marking a significant juncture. However, the principles underpinning affirmative action—promoting diversity, mitigating racial discrepancy, and preparing future leaders—continue to impact the effectiveness of the military and other professions.

As the Court shifts its attention to the role of affirmative action in the military, a diverse officer corps remains critical to military efficacy. Although the Court erred in distinguishing between the military academies and other institutions in *SFFA*, this article equips the military with constitutional rationales that, at the very least, support the preservation of this narrow distinction moving forward. The role of affirmative action in the military should be understood not only as a tool for ensuring diversity, but also as an essential mechanism for positioning the United States on the world stage. Efforts to protect affirmative action policies at the federal service academies should be pursued with the understanding that diversity is not just a righteous demand, but a strategic necessity in a world defined by rapidly changing cultural complexity.

Moving forward, policymakers and military leaders must continue assessing and adapting affirmative action policies in ways that respect constitutional principles. It is mission-critical to ensure that the military remains truly representative of the nation it defends—ready to lead in a world where diversity and military effectiveness are inextricably linked.