

THE AFFIRMATIVE ACTION BATTLEFIELD: MILITARY SERVICE ACADEMIES AND MINORITY COMMUNITIES AFTER *SFFA V. HARVARD*

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“The court is saying diversity shouldn’t matter, EXCEPT when deciding who can fight and die for our country – reinforcing the notion that these communities can sacrifice for America but not be full participants in every other way....”¹

INTRODUCTION

The fabric of American society is interwoven with the enduring principle that all citizens, irrespective of their birth or naturalization status, are entitled to the equal protection of the laws—a promise enshrined in the Fourteenth Amendment of the Constitution.² This bedrock principle asserts that no single religious, ethnic, racial, or working group should wield an advantage over another.³ The pursuit of this equality has often been contentious and complex, particularly within the realm of higher education and, by extension, the military service academies that are pivotal in shaping our nation’s defense leadership.⁴ Legal scholars and multiple courts have concluded that programs designed to address government-imposed disadvantages on certain

¹ Alia Wong & John Fritze, *Supreme Court Affirmative Action Ruling Exempts Military Academies. But for How Long?*, USA TODAY (July 13, 2023, 3:46 PM), <https://www.usatoday.com/story/news/education/2023/07/13/supreme-court-affirmative-action-military-academies/70409096007/> [<https://perma.cc/N4NU-DPZM>] (presenting a reaction to the policy change by Representative Jason Crow, a Democratic Representative from Colorado and “a former Army Ranger”).

² See U.S. CONST. amend. XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Id.

³ See *id.*

⁴ See Maurice C. Daniels & Cameron V. Patterson, *(Re)Considering Race in the Desegregation of Higher Education*, 46 GA. L. REV. 521, 537 (2012) (noting that civil rights officials strategically targeted graduate and professional schools in their legal challenges to segregation because these institutions offered the strongest chance for success). Unlike lower-level schools, where segregationists could claim black schools were “equal” despite being underfunded and dilapidated, there were virtually no comparable opportunities for black students at the graduate and professional level. *Id.* at 537-38. Additionally, the financial burden of creating separate but equal graduate and professional schools of the same caliber as white institutions made segregation in these contexts economically unsustainable. *Id.*

groups are not unconstitutional, as they serve the fundamental purpose of the Fourteenth Amendment—eliminating oppression.⁵

The historical tapestry of the United States is marred by a legacy of racial inequities, stemming from the abhorrent institution of slavery, to the systemic discrimination of Jim Crow laws, and the pervasive effects of mass incarceration.⁶ Within this context, affirmative action emerged as a legal and moral response to the question of how to rectify the long-standing disparities inflicted upon minority groups by these societal constructs.⁷ The Supreme Court of the United States, as the final interpreter of the Constitution, has played a central role in this narrative, at times affirming the necessity of considering diversity as a governmental purpose that aligns with the Equal Protection Clause.⁸ In landmark decisions such as *Brown v. Board of Education* (1954) or *Grutter v. Bollinger* (2003), whether it be by integrating southern schools or addressing the barrier to education that minorities face, the Court has determined that there is a constitutionally protective right in ensuring that the barriers put in place to effectively bar “certain citizens” are forced to face these inequities and redress the harm it has caused.⁹

⁵ In this article, I refer to the line of cases that has been historically used to determine the constitutionality of raced-based admissions. *Fisher v. Univ. of Tex. (Fisher I)*, 570 U.S. 297, 297 (2013); *Fisher v. Univ. of Tex. at Austin (Fisher II)*, 579 U.S. 365, 376 (2016); *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 320 (1978).

⁶ Daniels & Patterson, *supra* note 4, at 525.

⁷ *Id.* at 532 (arguing that the original framing of affirmative action sought to address the racial disparities in America that were exacerbated by a number of social economic factors to include unequal access to economic and educational resources).

⁸ See cases cited *supra* note 5.

⁹ *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493 (1954) (arguing that segregating public schools solely on the basis of race despite having equal physical facilities and other “tangible” factors deprives children of the minority group of educational opportunities); *Grutter*, 539 U.S. at 307 (finding that “[N]arrowly tailored use of race in admission decisions to further a compelling interest in obtaining the educational benefit that flow from a diverse student body is not prohibited by the Equal Protection Clause . . .”).

The hard-fought gains of the civil rights movement, codified in landmark Supreme Court decisions, now face a persistent and deeply rooted threat.¹⁰ Even more alarming, this threat is intrinsic. In June 2023, the Supreme Court, in a 6-2 decision sharply divided along ideological lines, chose to seemingly disregard the principle of *stare decisis*.¹¹ In *Students for Fair Admissions, Inc. v. President of Harvard College* (2023), the Court ruled that race-based affirmative action programs in college admissions violate the Equal Protection Clause of the Fourteenth Amendment.¹² This decision seemingly overturned decades of precedent, including *Grutter v. Bollinger* and *Regents of the University of California v. Bakke* (1978), which allowed affirmative action under narrowly tailored conditions where race played a limited role.¹³

While the Court in *SFFA* did not outright overturn its strict scrutiny standard, it made it nearly impossible to pursue race-conscious admissions without violating its ruling under the current framework.¹⁴ In *SFFA*, the Court held general “societal discrimination” is not a compelling government interest, even though previous case law suggested otherwise.¹⁵ Justice Sotomayor

¹⁰ See cases cited *supra* note 5.

¹¹ See *stare decisis*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/stare_decisis [<https://perma.cc/QN8X-YTZM>] (last visited Jan. 24, 2025) (“*Stare decisis* is the doctrine that courts will adhere to precedent in making their decisions. *Stare decisis* means ‘to stand by things decided’ in Latin.”); see also *ArtIII.S1.7.2.1 Historical Background on Stare Decisis Doctrine*, CONGRESS.GOV: CONST. ANNOTATED, (last visited Jan. 24, 2025) https://constitution.congress.gov/browse/essay/artIII-S1-7-2-1/ALDE_00001187 [<https://perma.cc/YHP8-6EKR>] (explaining in footnote 1 that “[t]he full Latin phrase is *stare decisis et non quieta movere*—stand by the thing decided and do not disturb the calm”).

¹² See *Student for Fair Admissions, Inc v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 213 (2023) [hereinafter *SFFA*] (holding that the programs of both Harvard and North Carolina at Chapel Hill did not fall within the confines of narrow restrictions’ and therefore does not meet the standard of strict scrutiny).

¹³ *Grutter*, 539 U.S. at 310; *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 414-21 (1978) (emphasizing the continuity of using race when considering admission but distinguishing that “racial quotas” are unconstitutional).

¹⁴ See *SFFA*, 600 U.S. at 230 (submitting that its decision is consistent with current jurisprudence, stating that “[w]e have never permitted admissions programs to work in that way, and we will not do so today,” despite creating new requirements to meet strict scrutiny).

¹⁵ *Id.* at 209 (quoting *Bakke*, 438 U.S. at 307) (“[R]emedying . . . the effects of ‘societal discrimination’ was... insufficient because it was “an amorphous concept of injury that may be ageless in its reach into the past.”); but see *Bakke*, 438 U.S. at 306 n.43.

stated in her dissent that the Court is, “‘content for now to disguise’ its ruling as an application of ‘established law and move on.’ . . . ‘Grutter is, for all intents and purposes, overruled.’”¹⁶ Even more perplexing is the Court’s apparent carve-out for military academies, exempting them from the decision.¹⁷ Is the education of the nation’s military officers somehow “unique” or “special?”¹⁸ Or is the Court signaling to minority communities that diversity matters only when determining who can “fight and die for [their] country[?]”¹⁹ Are the means of defense?

In Part I, I begin with a more in-depth analysis of the decision in *Harvard*.²⁰ The decision in *Harvard* is an impactful one.²¹ The ramification of the decision and how it may be applied in the future will have a truly tarrying effect, not only for the minority communities, but also for the military and the nation as a whole.²² I look at how the outcome and interpretation of *Harvard* could lead to the further division of minority communities²³ as well as increase the wealth gap. I also analyze how, despite the military academies exception and the messaging to minority communities, the *Harvard* decision will affect the diversity of the nation’s military.²⁴ Finally, we discuss how this decision also puts in jeopardy our very

Racial classifications in admissions conceivably could serve a fifth purpose, one which petitioner does not articulate: fair appraisal of each individual’s academic promise in the light of some cultural bias in grading or testing procedures. To the extent that race and ethnic background were considered only to the extent of curing established inaccuracies in predicting academic performance, it might be argued that there is no ‘preference’ at all.

Id.

¹⁶ *Id.* at 341-42.

¹⁷ *See id.* at 355-56.

¹⁸ *See id.* at 213 n.4 (noting that the Court’s decision does not address race-conscious admissions policies at military academies due to their “potentially distinct interests that military academies may present”); *see also* Weiss v. United States, 510 U.S. 163, 174 (1994) (holding that military judges did not require separate appointments or fixed terms under the Appointments Clause and Due Process Clause due to the military’s status as a “specialized society separate from civilian society”).

¹⁹ Wong & Fritze, *supra* note 1.

²⁰ *SFFA*, 600 U.S. 181, 213 (2023).

²¹ *Id.*

²² *Id.*

²³ *Id.*; Wong & Fritze, *supra* note 1.

²⁴ *See SFFA*, 600 U.S. at 213 n.4.

understanding of law as this decision directly challenges the legitimacy of *stare decisis*.

In Part II, I discuss the history of the race-conscious admission in the context of both higher education in general and as it applies to the military academies. I examine the case law, opinions of scholars, and military professionals that have shaped our framework for race conscious admissions and its application.²⁵ I also discuss the validity of *Harvard* with respect to our traditional understanding of race conscious admissions. Further I unearth the opinions of legal scholars and military professionals who have determined diversity to be the importance of in their respective communities.

In Part III, , I examine the broader implications of this decision on both the military and minority communities. I will discuss how, despite the Court's acknowledgment of the importance of diversity and race-conscious admissions in our military, this decision may still have profoundly negative consequences for the effectiveness and cohesion of our armed forces. I analyze how the outcome of this case could inevitably impact the military's diversity, compromising its operational readiness and overall force effectiveness.

In Part IV, I argue that diversity is crucial not only in the military but also in other sectors, especially if national security is truly a priority. This discussion includes exploring the symbolic and legal message this decision sends to minority communities and its potential repercussions. I address the convergence theory, which suggests that the needs of minority communities are only prioritized when they align with the interests of the majority. I end this section by exploring alternative strategies that institutions can adopt to address the challenges of fostering diversity in higher education, ensuring that the promise of equal opportunity is upheld despite the restrictions imposed by this ruling.

As courts and institutions alike navigate the aftershocks of this landmark decision, it is imperative that we engage in a meticulous examination of its ramifications both the so impacts and those on our military. We must critically evaluate how the Court's ruling resonates within the halls of academia, the barracks of our service academies, and the broader minority communities. This

²⁵ See *Brown*, 347 U.S. at 493; see cases cited *supra* note 5.

examination is not merely academic—it is a quest to understand and ultimately uphold the constitutional promise of equal protection under the law, while simultaneously appreciating the invaluable contribution of a diverse society to the strength and fabric of our nation.

I. THE DECISION: *SFFA* V. *HARVARD*

On June 29, 2023, the Supreme Court issued a landmark decision in *Students for Fair Admissions v. President and Fellows of Harvard College* (*SFFA*), fundamentally reshaping affirmative action in the United States.²⁶ The ruling struck down race-based admissions policies at Harvard University and the University of North Carolina, marking a pivotal shift in how institutions address diversity.²⁷ While the decision seemingly upheld the principle of strict scrutiny for race-conscious policies, it concluded that the programs at these universities failed to meet the constitutional bar of narrow tailoring.²⁸ This effectively rendered most race-based admissions programs untenable under the Equal Protection Clause of the Fourteenth Amendment.²⁹

Chief Justice John Roberts, writing for the majority, framed the ruling around the idea of a “colorblind Constitution,” asserting that any use of race in decision-making conflicts with the principles of equality.³⁰ The Court essentially overturned precedents such as *Grutter v. Bollinger* (2003) and its earlier cases, which had allowed limited consideration of race in admissions to achieve diversity.³¹ Moving forward, institutions must adopt race-neutral alternatives, such as emphasizing socioeconomic status, geographic diversity, or personal adversity.³²

²⁶ See generally *SFFA*, 600 U.S. 181 (2023).

²⁷ *Id.* at 231.

²⁸ *Id.* at 230.

²⁹ See *id.* at 368 (Sotomayor, J., dissenting); see also David Hinojosa & Chavis Jones, *Overturning SFFA v. Harvard*, 26 THE SCHOLAR: ST. MARY’S L. REV. ON RACE & SOC. JUST. 256, 258 (2024) (arguing that “the Court affirmed its strict scrutiny framework but substantially revised it to make it nearly impractical for universities to pursue race-conscious admissions.”).

³⁰ *SFFA*, 600 U.S. at 210 (describing a minority view in *Bakke* that “the Constitution itself required a colorblind standard on the part of the government”). See also *Regents of Univ. of Cal. v. Bakke*, 428 U.S. 265, 416 (1978) (Stevens, J., concurring in part).

³¹ See, e.g., *SFFA*, 600 U.S. at 287 (Thomas, J., concurring).

³² *Id.* at 230-31.

Yet, the ruling left many questions unanswered, particularly about its consistency.³³ One of the most contentious aspects of the decision was a potential exemption for military academies.³⁴ While the Court applied its stringent interpretation of the Equal Protection Clause to civilian institutions, it suggested that military academies might warrant a different approach.³⁵ The majority acknowledged the unique role of military academies in cultivating a diverse officer corps essential for national defense.³⁶ Diversity, in this context, was deemed a critical factor in maintaining cohesion and operational effectiveness in the armed forces.³⁷

Interestingly, by including a carve out for military academies, the Court created a double standard. If diversity is vital for leadership in national defense, why is it not equally critical in shaping civilian leaders?³⁸ This carve-out seemed to suggest that the contributions of minority communities are valued primarily in their capacity to serve the military, while their broader roles in civilian society are less important.³⁹ There must be a reason why the military exemption does not violate its “colorblind Constitution.” How does this exception withstand scrutiny?

³³ *Id.* at 342 (Sotomayor, J., dissenting); see Vinay Harpalani, *Robert Rules of (Dis)Order: Doctrinal Doublespeak on Affirmative Action and Stare Decisis*, 77 SMU L. REV. 61, 66-67 (2024) (highlighting the tension between the Court’s professed commitment to *stare decisis* and its deviation from established jurisprudence).

³⁴ *Id.* at 213 n.4.

³⁵ *Id.* (“This opinion . . . does not address the issue [of whether the Court’s decision about race-based admission], in light of the potentially distinct interests that military academies may present”).

³⁶ *Id.* at 355 (Sotomayor, J., dissenting) (“[T]he Court exempts military academies from its ruling in light of “the potentially distinct interests” they may present.”).

³⁷ See, e.g., Brief of Admiral Charles S. Abbot et al. as Amici Curiae Supporting Respondents at 2, *SFFA*, 600 U.S. 181 (2023) (Nos. 20-1199 & 21-707) (“[U]nits that are diverse across all levels are more cohesive, collaborative, and effective.”).

³⁸ Stevan Molinar, *Our Armed Forces’ Strength Depends on Diversity*, DEFENSE 360: REPRESENT (Apr. 2022), https://defense360.csis.org/wp-content/uploads/2022/04/Molinar_RepresentFinal.pdf [<https://perma.cc/B8A7-AJGG>] (discussing how studies show that “diverse teams are smarter . . .” and are an asset to the military).

³⁹ *SFFA*, 600 U.S. at 411 (Jackson, J., dissenting).

SFFA's ripple effects extend far beyond higher education.⁴⁰ Universities are currently scrambling to adapt to the new legal landscape by implementing race-neutral strategies to maintain diverse student bodies.⁴¹ These include considering socioeconomic status, overcoming adversity, and other proxies for race.⁴² However, these measures may lack the precision and effectiveness of race-conscious policies, potentially leading to declines in campus diversity.⁴³

Furthermore, the rationale of *SFFA* raises concerns about its impact on other areas, such as employment, government contracting, and nonprofit initiatives.⁴⁴ Many organizations that have relied on race-conscious policies to promote equity and inclusion now face legal uncertainty.⁴⁵

⁴⁰ See, e.g., Hinojosa & Jones, *supra* note 29, at 273-77 (providing examples of "extremist groups" using the decision in *Harvard* to attack equal protection jurisprudence across several areas of law).

⁴¹ See Jonathan P. Feingold, *Affirmative Action after SFFA*, 48 J.C. & U.L. 239, 248 (2023) (warning that the Courts abandonment of its own precedents and principles would force them to severely curtail the availability of nearly any effort to promote racial diversity, racial inclusion, or other equality-oriented ends); see Lincoln Caplan, *The Supreme Court Affirmative Action Ruling: An Analysis*, HARV. MAG. (Jun. 30, 2023), <https://www.harvardmagazine.com/2023/06/harvard-affirmative-action-analysis> [<https://perma.cc/8CRE-AAF3>] (asserting that the Supreme Court's decision will lead to significant shifts in admissions practices at institutions like Harvard and UNC, while also encouraging broader reflection on the concepts of equality and inequality in America); see also Logan Johnson, *How the Supreme Court's Ruling on Affirmative Action is Impacting Race-Conscious Scholarships*, ACCESSLEX INST. (Oct. 30, 2024), <https://www.accesslex.org/news-tools-and-resources/how-supreme-courts-ruling-affirmative-action-impacting-race-conscious> [<https://perma.cc/4332-A6CZ>] (warning of potential dismantling of race-conscious scholarship programs in the wake of the Supreme Court's ban on affirmative action in college admissions).

⁴² Hoang Pham et al., *Students for Fair Admissions v. Harvard FAQ: Navigating the Evolving Implications of the Court's Ruling*, STAN. CTR. FOR RACIAL JUST. (Dec. 12, 2023), <https://law.stanford.edu/2023/12/12/students-for-fair-admissions-v-harvard-faq-navigating-the-evolving-implications-of-the-courts-ruling/> [<https://perma.cc/P3W4-X924>] ("Some colleges have already made changes to their essay prompts reflecting the Court's opinion. Brown University, for example, requires applicants to submit an essay reflecting "on where they came from" and sharing "how an aspect of your growing up has inspired or challenged you.").

⁴³ See Caplan, *supra* note 41 ("[N]o workable race-neutral admissions practices could . . . promote . . . diversity-related educational objectives while also maintaining the standards of excellence that Harvard seeks in its student body through its whole-person, race-conscious admissions program.").

⁴⁴ See, e.g., Hinojosa & Jones, *supra* note 29, at 259-60.

⁴⁵ See Caplan, *supra* note 41.

The Supreme Court's ruling represents a seismic shift in affirmative action jurisprudence.⁴⁶ While it imposes new constraints on how institutions can address racial inequality, the military exemption underscores inconsistencies in its application.⁴⁷ As the nation grapples with this decision's implications, it remains to be seen whether the principles of diversity and inclusion will endure in this new era of judicial interpretation. What is clear, however, is that the debate over race and equality in America is far from settled.

II. THE HISTORY OF RACE-CONSCIOUS ADMISSIONS

Equality and freedom are ideals that America has championed, and through legal scaffolding supporting affirmative action policies in the United States has been meticulously constructed over decades through landmark Supreme Court decisions.⁴⁸ These rulings reflect the nation's evolving understanding of the Fourteenth Amendment's Equal Protection Clause and its application to race-conscious admissions policies.⁴⁹ Despite this fact racial equality and free participation in democracy by all citizens appear to be highly contested principles.⁵⁰ The decision in *SFFA* is just the most recent and successful attack on those principles.⁵¹ The Court in that case have even compared race-conscious admission to Jim Crow Segregation.⁵²

⁴⁶ *Id.*

⁴⁷ *SFFA*, 600 U.S. at 213 n.4.

⁴⁸ See generally cases cited *supra* note 5.

⁴⁹ *Id.*

⁵⁰ See Daniels & Patterson, *supra* note 4, at 524-25.

⁵¹ See generally *SFFA*, 600 U.S. 181 (2023).

⁵² *Id.* at 251 (Thomas, J., concurring) (arguing that the current interpretation of affirmative action laws are "hallmarks of the race-conscious Jim Crow era.").

A. Higher Education

The legal journey of race-conscious admissions in higher education is a tale of America's evolving understanding of equality, deeply intertwined with its struggle to confront systemic racism.⁵³ From the harsh realities of *Plessy v. Ferguson* to the recent landmark decision in *Students for Fair Admissions v. Harvard*, the Supreme Court has both shaped and been shaped by the nation's efforts to address racial inequities.⁵⁴

The story begins with *Plessy v. Ferguson* in 1896, a decision that upheld the constitutionality of racial segregation under the infamous "separate but equal" doctrine.⁵⁵ This ruling legitimized a system of profound racial discrimination, embedding inequalities that would endure for generations.⁵⁶ Jim Crow laws flourished, mandating segregation in schools, public spaces, and transportation, creating barriers that denied African Americans equal opportunities.⁵⁷ For more than half a century, *Plessy* stood as a grim symbol of institutionalized racism, laying a foundation that would later necessitate policies aimed at rectifying these injustices.⁵⁸

Nearly sixty years later, the Court took a dramatic turn in *Brown v. Board of Education* (1954).⁵⁹ The justices recognized that segregation in public education was inherently unequal, a violation of the Equal Protection Clause of the Fourteenth Amendment.⁶⁰ In a powerful repudiation of *Plessy*, the Court declared that education was a cornerstone of democracy, emphasizing the harm segregation

⁵³ See cases cited *supra* note 5.

⁵⁴ See generally *Plessy v. Ferguson*, 163 U.S. 537 (1896), *overruled by* *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

⁵⁵ See *Plessy*, 163 U.S. at 552 (stating that a state can have discriminating statutes so long as that statute requires "separate but equal accommodations for white and colored persons").

⁵⁶ *Id.* at 550-52.

⁵⁷ See generally William James Hull Hoffer, *Plessy v. Ferguson: The Effects of Lawyering on a Challenge to Jim Crow*, 39 J. SUP. CT. HIST. 1 (2014); see John P. Roche, *Plessy v. Ferguson: Requiescat in Pace?*, 103 UNIV. PENN. L. REV. 44 at n.2 (1954) ("Even the strong dissent of Harlan . . . emphasized that political equality under the Constitution was not equivalent to social equality or racial integration.").

⁵⁸ See Roche, *supra* note 57.

⁵⁹ *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493-95 (1954).

⁶⁰ *Id.* at 495 (finding that "separate educational facilities are inherently unequal").

inflicted on children and society at large.⁶¹ *Brown* not only dismantled legalized segregation in schools but also established the strict scrutiny standard, which required policies involving race to serve a compelling governmental interest and be narrowly tailored.⁶²

This commitment to equality reverberated into the realm of higher education, paving the way for race-conscious admissions policies.⁶³ Institutions began to recognize diversity as an essential element of education, not only for its societal benefits but also for fostering cross-cultural understanding and preparing students for a complex, interconnected world.⁶⁴ These policies sought to address the systemic inequities rooted in America's history of racial discrimination, aligning with the principles articulated in *Brown*.⁶⁵

⁶¹ *Id.* at 493.

[E]ducation is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Id.

⁶² *Id.* at 493-95 (arguing that the practice of separate-but equal violated the equal protection clause of the 14th amendment).

⁶³ See cases cited *supra* note 5.

⁶⁴ *The Constitutionality of Race-Conscious Admissions Programs in Public Elementary and Secondary Schools*, 112 HARV. L. REV. 940 (1999).

Although much of the rhetoric of integration has focused on its benefits for black students, the benefits are perhaps even greater for white students, who are able to learn about and interact with students of different cultures at an early age. The diversity rationale recognizes that learning is not limited to textbooks. Rather, all students benefit from the presence of students of a variety of ethnic and racial backgrounds.

Id.

⁶⁵ *Id.* at 941.

In 1978, the Supreme Court's decision in *Regents of the University of California v. Bakke* further refined the legal framework for affirmative action.⁶⁶ The Court ruled that race could be considered as one factor in admissions to achieve the compelling interest of diversity, provided such policies met the strict scrutiny standard.⁶⁷ Quotas were struck down, but the door was left open for narrowly tailored approaches that promoted diversity without infringing on individual rights.⁶⁸ This landmark case laid the foundation for evaluating all subsequent race-conscious admissions policies.

The principles established in *Bakke* were reaffirmed and expanded in *Grutter v. Bollinger* (2003).⁶⁹ The Court, in a 5-4 decision, upheld the University of Michigan Law School's admissions policy, emphasizing that diversity in education serves a compelling interest.⁷⁰ Justice Sandra Day O'Connor highlighted that diversity prepares students for a "diverse workforce", fosters the exchange of ideas, and contributes to a more inclusive society.⁷¹ The ruling underscored the importance of individual evaluation in admissions and rejected rigid quotas, ensuring a nuanced approach to affirmative action.⁷²

Two decades later, the *Fisher* cases tested these principles further. In *Fisher I* (2013), the Court remanded the case, demanding stricter scrutiny of the University of Texas at Austin's race-conscious admissions policy.⁷³ By the time *Fisher II* was decided in 2016, the Court upheld the policy, reaffirming that race-conscious measures, when carefully crafted, could meet the strict scrutiny standard.⁷⁴ These rulings reinforced the idea that diversity was a legitimate aim of higher education but required constant reevaluation to ensure compliance with constitutional standards.⁷⁵

⁶⁶ See generally *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

⁶⁷ *Id.* at 314 (asserting that diversity is a compelling interest in university admission).

⁶⁸ *Id.* at 318.

⁶⁹ See generally *id.*; see *Grutter v. Bollinger*, 539 U.S. 306 (2003).

⁷⁰ *Bollinger*, 539 U.S. at 342-44.

⁷¹ *Id.* at 330.

⁷² *Id.* at 334.

⁷³ See *Fisher I*, 570 U.S. 297, 299 (2013).

⁷⁴ See *Fisher II*, 579 U.S. 365, 387-89 (2016).

⁷⁵ See *id.*

B. Military Academies

The military has historically relied on affirmative action to address challenges of underrepresentation and inequality within its ranks.⁷⁶ Beginning in the 1970s, amid racial unrest and declining morale during the Vietnam War era, the Department of Defense implemented policies to increase diversity in officer corps and combat units.⁷⁷ These included race-conscious admissions policies at military academies and ROTC programs, alongside measures like setting integration goals, monitoring progress, and ensuring minority representation on promotion boards.⁷⁸

The rationale for these measures is rooted in the principle of military effectiveness.⁷⁹ A diverse officer corps is considered essential for fostering unit cohesion, improving decision-making, and reflecting the demographic composition of the nation it defends.⁸⁰ As highlighted in amicus briefs submitted in landmark cases like *Grutter v. Bollinger* and *Fisher v. University of Texas*, the military has consistently argued that diversity is a “mission-critical” objective.⁸¹ This perspective has been persuasive to courts, even as affirmative action policies in civilian contexts face growing resistance.⁸²

Affirmative action in these institutions is not merely about social justice but about ensuring the armed forces remain effective, adaptable, and representative in a rapidly changing world.⁸³ As the fate of affirmative action hangs in the balance, the military’s

⁷⁶ See Brief of Admiral Charles S. Abbot et al., *supra* note 37, at 15.

⁷⁷ *Id.* at 6.

⁷⁸ *Id.*; But see Brief of Veterans for Fairness and Merit as Amicus Curiae Supporting Petitioner at 5, 15-17, 21, *SFFA*, 600 U.S. 181 (2023) [hereinafter *VFM Brief*] (arguing that “efforts to diversify military leadership will cause inefficiencies, enable incompetency, and harm morale”).

⁷⁹ *Rostker v. Goldberg*, 453 U.S. 57 (1981) (holding that Congress acted within its constitutional authority when it authorized registration of men, and not women, under Military Selective Service Act).

⁸⁰ KRISTY N. KAMARCK, CONG. RSCH. SERV., R44321, DIVERSITY, INCLUSION, AND EQUAL OPPORTUNITY IN THE ARMED SERVICES: BACKGROUND AND ISSUES FOR CONGRESS (last updated June 5, 2019), <https://www.congress.gov/crs-product/R44321> [<https://perma.cc/Q898-YSLR>].

⁸¹ See Brief of Admiral Charles S. Abbot et al., *supra* note 37, at 30.

⁸² See *id.* at 3.

⁸³ *Id.* at 2.

experience offers crucial insights into the enduring value of diversity and the challenges of achieving it.⁸⁴

In *Grutter v. Bollinger* (2003), the Supreme Court upheld the University of Michigan Law School's race-conscious admissions policy, heavily relying on arguments presented by military leaders.⁸⁵ They emphasized that affirmative action had enabled the integration of the armed forces, which significantly enhanced its operational readiness.⁸⁶ The Court agreed, recognizing diversity as a compelling state interest in higher education, which extended to institutions like military academies.⁸⁷

However, subsequent cases like *SFFA* have narrowed the scope of permissible affirmative action policies.⁸⁸ While the Court ruled against race-conscious admissions in civilian higher education, it left a notable carve-out for military academies.⁸⁹ This exemption acknowledges the military's unique need for diversity to maintain effectiveness in fulfilling its national security mission.⁹⁰ Critics argue that this carve-out raises questions about the broader societal value of diversity, suggesting it is deemed essential only in contexts like national defense.⁹¹ The *SFFA* majority reasoned that the military serves a distinct purpose, which implies the only national interests recognized by *SFFA* are the military ones.⁹²

ROTC programs, especially those hosted at Historically Black Colleges and Universities, have played a pivotal role in increasing minority representation among commissioned officers.⁹³ By embedding race-conscious measures in recruitment and scholarship allocations, these programs have created pathways for minority students to access leadership opportunities in the armed forces.⁹⁴ These efforts have been vital in ensuring the military

⁸⁴ *Id.* at 1-3.

⁸⁵ *See Grutter v. Bollinger*, 539 U.S. 306, 330-31 (2003).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *SFFA*, 600 U.S. 181, 342 (2023) (Sotomayor, J., dissenting).

⁸⁹ *Id.* at 213 n.4 (The rationale for the military carve-out was the distinct interest of national security).

⁹⁰ *Id.*

⁹¹ *Id.* at 355 (Sotomayor, J., dissenting) (“[N]ational security interests are also implicated at civilian universities...”).

⁹² *See id.*

⁹³ *See* Brief of Admiral Charles S. Abbot et al., *supra* note 37, at 2, 16.

⁹⁴ *See id.* at 15-16.

remains an institution reflective of the nation's diverse population.⁹⁵

As affirmative action faces mounting legal and political challenges, the military's reliance on race-conscious policies stands as a critical test case for their continued viability.⁹⁶ The military's institutional prestige and its unique constitutional deference provide a buffer against the complete dismantling of such policies.⁹⁷ However, maintaining and expanding diversity in the armed forces will require sustained advocacy and innovative approaches to navigating the evolving legal landscape.⁹⁸

Challenges to the military's apparent exemption have already emerged. The same organization behind *SFFA v. Harvard* case has also challenged the constitutionality of race-conscious admissions at the United State Military Academy West Point (West Point) in the Southern District of New York.⁹⁹ SFFA argued West Point policies were unconstitutional and unnecessary for an institution whose core mission depends on soldiers following orders irrespective of race.¹⁰⁰ West Point defended its admissions policy by emphasizing the need for a diverse officer corps that aligns with the racial diversity of enlisted ranks.¹⁰¹ The court declined to grant an injunction against West Point's policies, stating that the record was underdeveloped and clarifying that the denial should not be

⁹⁵ See *id.*

⁹⁶ See *id.* at 18 (asserting that with the implementation of limited race-conscious admissions policies approved by this Court in *Grutter*, minority representation at service academies has progressed toward better reflecting the diverse demographics of the nation).

⁹⁷ See generally *id.*

⁹⁸ See, e.g., Michael X. Garrett, *Military Diversity: A Key American Strategic Asset*, MIL. REV. 14, (May-June 2021) (last visited Apr. 21, 2025) <https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/May-June-2021/Garrett-Military-Diversity/> [https://perma.cc/PD9P-84C5] (proclaiming that diversity is a strategic asset that deserves the Army's attention and protection).

⁹⁹ See, *Students for Fair Admissions v. U.S. Mil. Acad. at W. Point*, 709 F. Supp. 3d 118 (S.D.N.Y. 2024) [hereinafter *West Point*].

¹⁰⁰ See *id.* at 123 ("Plaintiff presses a single claim for relief alleging that West Point's admissions policy violates the Fifth Amendment. Specifically, Plaintiff alleges that West Point's reliance on racial classifications in the admissions process fails to satisfy the strict scrutiny test as considered and applied in [*SFFA*].").

¹⁰¹ *Id.* at 128, 134.

interpreted as a judgment on the merits of the constitutional question.¹⁰²

The West Point decision showed how *SFFA* has effectively opened the floodgates for challenges even to the “distinct interests” of the military.¹⁰³ This legal battle highlighted the delicate balance between military imperatives, constitutional principles, and societal expectations.¹⁰⁴ It underscores how precarious the legal standing of affirmative action has become, even in institutions where diversity is demonstrably critical.¹⁰⁵ The military’s experience illustrates that diversity is not merely a social ideal but a practical necessity for institutions tasked with safeguarding democracy.¹⁰⁶ Whether this understanding can preserve affirmative action in broader contexts remains uncertain. Military academies and ROTC programs continue to serve as laboratories for integration, and their successes or failures will significantly shape the future of affirmative action in American society.¹⁰⁷

III. IMPACT

As stated before, *SFFA* is an important decision.¹⁰⁸ After analyzing the decision and revisiting the history of how we arrived at *SFFA*, we can now properly explore the impact *SFFA* will have on not only the military academies but on society and the military as a whole.¹⁰⁹ As discussed, the precedent established by decades of jurisprudence has been essentially overturned.¹¹⁰ However, *SFFA* included a narrow exception for race-conscious admissions policies in military academies, recognizing their unique role in national security.¹¹¹ This section examines the potential effects of this decision on the military’s ability to maintain effective leadership

¹⁰² *Id.* at 138.

¹⁰³ *SFFA*, 600 U.S. at 213 n.4.

¹⁰⁴ *See generally id.*

¹⁰⁵ *See West Point*, 709 F. Supp. 3d at 124, 128.

¹⁰⁶ *Id.*

¹⁰⁷ *See id.*

¹⁰⁸ *See generally SFFA*, 600 U.S. 181 (2023).

¹⁰⁹ *See generally id.*

¹¹⁰ *See generally* Kimberly West-Faulcon, *Affirmative Action after SFFA v. Harvard: The Other Defenses*, 74 SYRACUSE L. REV. 1101 (2024).

¹¹¹ *SFFA*, 600 U.S. at 213 n.4.

and cohesion while addressing broader societal expectations and constitutional principles.

A. Military

The Supreme Court's decision in *SFFA* seemingly insulated the military from the impact of the reversal on race-conscious admissions.¹¹² Because the Court effectively barred race-conscious admissions policies at civilian institutions, while carving out a notable exception for military academies has not gone unnoticed.¹¹³ The dual approach creates profound implications for the military as a whole, raising questions about the role of diversity within the armed forces.¹¹⁴

The military's reliance on a diverse officer corps is rooted in decades of experience demonstrating that diversity enhances operational effectiveness, cohesion, and legitimacy.¹¹⁵ For instance, units with diverse leadership have historically exhibited greater resilience, adaptability, and innovation on the battlefield.¹¹⁶ Moreover, racial diversity among officers fosters trust and collaboration within heterogeneous enlisted ranks, a critical factor in ensuring mission success.¹¹⁷

The Department of Defense (DoD) has repeatedly emphasized that diversity is not merely aspirational but a necessity for readiness and effectiveness.¹¹⁸ As the DoD's 2020 report on diversity and inclusion states, "Diversity and inclusivity in the ranks are fundamental necessities to our readiness and mission success" Such policies align with historical lessons learned during the Vietnam War, where the lack of minority representation in leadership exacerbated internal discord, undermined cohesion, and resulted in increased amount of violence.¹¹⁹ Black officers increase morale and provide role models for enlisted servicemembers.

¹¹² *Id.*

¹¹³ *See generally West Point*, 709 F. Supp. 3d 118 (S.D.N.Y. 2024).

¹¹⁴ *Id.*

¹¹⁵ *See* Brief of Admiral Charles S. Abbot et al., *supra* note 37, at 1-3.

¹¹⁶ *Id.* at 8-10.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 1-3.

¹¹⁹ Robert Knowles, *The Intertwined Fates of Affirmative Action and the Military*, 45 LOY. U. CHI. L.J. 1027, 1033 (2014) (stating that James Render, the Assistant Secretary of defense for Equal Opportunity "reported to President Nixon that year that "acute

Military academies like West Point and civilian institutions with Reserve Officers' Training Corps (ROTC) programs play a pivotal role in shaping the officer corps.¹²⁰ These institutions rely on race-conscious admissions policies to ensure a pipeline of leaders who reflect the nation's demographics and can effectively engage with diverse enlisted personnel.¹²¹ For example, West Point's Class of 2025 achieved a 40% minority representation, underscoring the importance of inclusive admissions practices.¹²² Similarly, ROTC programs, which commission 75% of active-duty officers, rely on holistic admissions to attract and retain underrepresented minorities.¹²³ Eliminating race-conscious admissions would threaten to significantly reduce the diversity of these critical officer pipelines.¹²⁴

Critics of the military's use of race-conscious admissions argue that such policies undermine merit and cohesion.¹²⁵ However, these assertions often rely on simplistic definitions of merit that fail to account for the multifaceted qualities required for effective leadership.¹²⁶ The military's holistic admissions processes, which evaluate candidates' academic, physical, and leadership potential, are essential to identifying well-rounded officers capable of leading diverse teams.¹²⁷

frustration' and 'volatile anger'" among black servicemembers were driven in large part by lack of equal opportunity and local commanders' failure to address the problem. Others recalling the incidents identified a complete breakdown in understanding between minority enlisted servicemembers and the white officers who led them.).

¹²⁰ See *id.* at 1033-35.

¹²¹ *Id.* at 1034.

¹²² *Class of 2025 to Enter West Point*, WESTPOINT.EDU (June 17, 2021), <https://www.westpoint.edu/news/press-releases/class-of-2025-enter-west-point> [<https://perma.cc/84JS-SBYV>].

¹²³ KRISTY N. KAMARCK, CONG. RES. SERV., IF11235, DEFENSE PRIMER: SENIOR RESERVE OFFICERS' TRAINING CORPS (last updated Oct. 3, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF11235> [<https://perma.cc/3XKX-XCUA>].

¹²⁴ See generally Knowles, *supra* note 119.

¹²⁵ *VFM Brief*, *supra* note 78, at 15, 17-18.

¹²⁶ See Brief of Admiral Charles S. Abbot et al., *supra* note 37, at 6, 27 (arguing that "the [*VFM Brief*] rests its arguments on anecdotes, unpublished studies, studies that do not directly support its assertions, opinion pieces, anonymous signatories, and the supposed expertise of individuals who are not signatories at all.").

¹²⁷ See *id.* at 26-28.

B. Minority Communities

The Supreme Court's decision in *SFFA* introduces profound implications for minority communities, touching on historical, social, and strategic aspects of diversity and racial justice.¹²⁸ While the military was granted an exception, this conditional recognition of diversity raises critical questions about the broader societal message and its effects on minority groups.¹²⁹

Justice Ketanji Brown Jackson's dissent in *SFFA v. Harvard* draws attention to the long-standing systemic barriers that have historically disadvantaged Black Americans.¹³⁰ She highlights the enduring effects of slavery, Reconstruction-era setbacks, and discriminatory policies, including those of the Home Owners' Loan Corporation (HOLC) and the Federal Housing Administration (FHA), which excluded Black Americans from homeownership opportunities, exacerbating the racial wealth gap.¹³¹ These policies, Jackson argues, necessitate corrective measures like race-conscious admissions to address entrenched disparities and create equitable opportunities for all racial groups.¹³² Disregarding race in admissions, ignores these systemic inequalities and undermines the pursuit of genuine racial equality.¹³³

Jackson's dissent critiques the 'majority's' approach, particularly its implication that racial diversity in higher education is only valuable insofar as it serves military readiness rather than broader societal equity.¹³⁴ Jackson poignantly states that the Court has reached the conclusion "that racial diversity in higher education is only worth potentially preserving insofar as it might be needed to prepare Black Americans and other underrepresented minorities for success in the bunker, not the boardroom"¹³⁵

¹²⁸ See generally *SFFA*, 600 U.S. 181 (2023).

¹²⁹ *Id.* at 384 (Sotomayor, J., dissenting).

¹³⁰ *Id.* at 384-94 (Jackson, J., dissenting).

¹³¹ See *id.*

¹³² *Id.*

¹³³ See *id.* at 407 (asserting that while the Courts speak about the racial equality promised in *Brown* and the past indiscretions, "the race-linked gaps that the law (aided by this Court) previously founded and fostered—which indisputably define our present reality—are strangely absent and do not seem to matter.").

¹³⁴ *Id.* at 411 (Jackson, J., dissenting).

¹³⁵ *Id.*

Derrick Bell's *Interest Convergence Theory* offers a critical lens through which to view this decision.¹³⁶ Bell posits that racial progress often occurs only when it aligns with the interests of the majority.¹³⁷

The military's reliance on diversity as a strategic necessity exemplifies this theory.¹³⁸ While diversity in the military is recognized as vital for operational cohesion and national security, the broader societal acknowledgment of diversity's importance appears conditional, highlighting a troubling divergence in values. The military has consistently emphasized the value of diversity in fostering cohesion, enhancing cognitive capabilities, and building effective teams.¹³⁹ Reports indicate that while minorities comprise 31% of active-duty personnel, they remain underrepresented in leadership roles, with significant barriers in recruitment, retention, and career advancement.¹⁴⁰ Initiatives like the Navy's Inclusion and Diversity Program and the 21st Century Sailor Campaign aim

¹³⁶ Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 518 (1980).

Prof. Derrick Bell suggests that no conflict of interest actually existed; for a brief period, the interests of the races converged to make the *Brown* decision inevitable. More recent Supreme Court decisions, however, suggest to Professor Bell a growing divergence of interests that makes integration less feasible. He suggests the interest of blacks in quality education might now be better served by concentration on improving the quality of existing schools, whether desegregated or all-black.

Id.

¹³⁷ *Id.* at 523. The principle of "interest convergence," derived from judicial decisions in racial cases before and after *Brown v. Board of Education*, posits that advancements in racial equality for Black Americans are only achieved when they align with the interests of white Americans. *Id.* It further contends that the Fourteenth Amendment, by itself, does not provide sufficient authority for courts to implement remedies that effectively achieve racial equality if those remedies jeopardize the societal privileges of middle and upper-class whites. *Id.* Essentially, it highlights the conditional and self-serving nature of judicial progress on racial issues, suggesting that true equality is often sacrificed when it conflicts with the dominant group's status or interests. *Id.*

¹³⁸ *See id.*

¹³⁹ *See* Brief of Admiral Charles S. Abbot et al., *supra* note 37.

¹⁴⁰ *Department of Defense 2022 Demographic Profile*, U.S. NAVAL INST. NEWS (Nov. 29, 2023, 11:03 AM), <https://news.usni.org/2023/11/29/departments-of-defense-2022-demographic-profile> [<https://perma.cc/42NT-WGSM>]; *see also* U.S. DEPT OF DEF., *2020 Demographics Profile of the Military Community* (2021), (last visited Apr. 21, 2025), <https://download.militaryonesource.mil/12038/MOS/Reports/2020-demographics-report.pdf> [<https://perma.cc/666J-KPHS>].

to address these gaps, but systemic issues persist, reflecting the broader societal challenges of achieving racial equity

The *SFFA* decision sends a symbolic message to minority communities that their success and representation are only prioritized when aligned with one selected national interest—military readiness.¹⁴¹ This selective valuation risks perpetuating a narrative that diversity is a conditional rather than inherent societal good.¹⁴² The Court's exception for the military underscores the strategic importance of diversity but fails to extend this principle to higher education more broadly, reinforcing inequities in access to opportunity. Addressing these disparities requires a comprehensive approach that goes beyond symbolic gestures.

C. *Stare Decisis*

The Supreme Court's decision in *SFFA* represents a significant departure from long-standing precedent on affirmative action, raising concerns about the Court's adherence to the principle of stare decisis.¹⁴³ Stare decisis, the doctrine that courts should follow established precedent to promote stability and predictability in the law, has historically played a critical role in maintaining public trust in judicial decisions.¹⁴⁴ Even though this cases does not overturn the decades of precedent outright, the *SFFA* decision undermines its foundational principles.¹⁴⁵

¹⁴¹ See Bell, *supra* note 136.

¹⁴² See *id.*

¹⁴³ *SFFA*, 600 U.S. 181, 342 (2023) (Sotomayor, J., dissenting) (“[T]he Court does not even attempt to make the extraordinary showing required by *stare decisis*.”).

¹⁴⁴ See *stare decisis*, *supra* note 11.

¹⁴⁵ *SFFA*, 600 U.S. 181, 342 (2023) (Sotomayor, J., dissenting) (arguing that despite the Court not overturning the precedent, “the Court simply moves the goalposts, upsetting settled expectations and throwing admissions programs nationwide into turmoil.”); see also *id.* at 287 (Thomas, J., concurring) (“*Grutter* is, for all intents and purposes, overruled”).

1. Abandoning Established Precedent

The United States has recognized the importance of diversity for over 40 years, starting with *Bakke*, where Justice Powell emphasized the importance of using race as a factor to achieve educational diversity.¹⁴⁶ This principle was reaffirmed in *Bollinger* and *Fisher*, where the Court upheld narrowly tailored race-conscious admissions policies.¹⁴⁷ These decisions collectively established a legal framework that allowed institutions to pursue diversity while requiring strict scrutiny to ensure fairness and necessity.¹⁴⁸

SFFA disrupts this continuity by rejecting the diversity rationale as insufficient to justify race-conscious admissions policies.¹⁴⁹ This abrupt shift disregards the reliance interests of educational institutions that have shaped their admissions practices around prior rulings.¹⁵⁰ Moreover, it diminishes the legitimacy of the Court's prior acknowledgment that diversity contributes to educational benefits and societal cohesion.

2. Selective Application of Precedent

The decision also highlights inconsistencies in the Court's approach to *stare decisis*.¹⁵¹ While striking down affirmative action in civilian higher education, the Court carved out an exception for military academies, citing their unique national security interests.¹⁵² This selective application of precedent suggests a willingness to depart from established principles when politically expedient or aligned with specific institutional priorities.¹⁵³ Critics

¹⁴⁶ *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 316 (1978).

¹⁴⁷ *See Fisher II*, 579 U.S. 365, 376 (2016); *see Fisher I*, 570 U.S. 297, 314-15 (2013); *see Grutter v. Bollinger*, 539 U.S. 306, 343-44 (2003).

¹⁴⁸ *See* cases cited *supra* note 5.

¹⁴⁹ *SFFA*, 600 U.S. at 224.

¹⁵⁰ *See id.* 342 (2023) (Sotomayor, J., dissenting).

¹⁵¹ *See id.* (Sotomayor, J., dissenting).

¹⁵² *See id.* (Sotomayor, J., dissenting); *See Harpalani*, *supra* note 33, at 68 (“Overturning precedent may also erode public perception of the Court as an objective, neutral body as opposed to a political entity just like Congress or the Executive.”).

¹⁵³ *See Harpalani*, *supra* note 33, at 63-65, 68 (asserting that the Supreme Court has demonstrated a pattern of overturning established legal precedents on a variety of significant issues, including abortion.) Additionally, the Court has limited or narrowed the scope of earlier decisions, effectively reducing their impact and altering the legal framework in which those precedents operated. *Id.* This trend is characterized as

argue that this carve-out undermines the universality of constitutional principles, creating an uneven application of the law that prioritizes certain interests over others.¹⁵⁴

The Court's reasoning in the military exemption also appears inconsistent with its broader rejection of race-conscious policies.¹⁵⁵ As Justice Jackson highlighted in her dissent, this exception implicitly suggests that diversity is only valued when it aligns with the interests of the majority here, in the context of national security.¹⁵⁶ This perspective reinforces Derrick Bell's "interest convergence" theory, which posits that racial equality is advanced only when it serves the interests of white Americans.¹⁵⁷ By selectively upholding the military's use of affirmative action, the decision signals that diversity is only worth preserving when it benefits the dominant group, further eroding the credibility of *stare decisis*.¹⁵⁸

3. Broader Implications for Legal Stability

The undermining of *stare decisis* in this decision has far-reaching implications for legal stability and societal trust in the judiciary.¹⁵⁹ The Court's abandonment of well-settled precedent introduces uncertainty about the durability of other long-standing legal principles.¹⁶⁰ It raises questions about the extent to which political or ideological shifts within the Court can reshape foundational rights and policies.¹⁶¹

creating disruption and distortion in the judicial landscape, signaling a departure from the principle of *stare decisis* and contributing to legal uncertainty and instability. *Id.*

¹⁵⁴ Maj. Matthew H. Ormsbee, *Anchors Astray: Why the Service Academy Exception is Wrong*, HARV. L. REV. BLOG (Jan. 5, 2025), <https://harvardlawreview.org/blog/2025/01/anchors-astray-why-the-service-academy-exception-is-wrong/> [https://perma.cc/HT88-DUHM].

¹⁵⁵ See *SFFA*, 600 U.S. 181, 355-56 (2023) (Sotomayor, J., dissenting).

¹⁵⁶ See *id.* at 411 (Jackson, J., dissenting).

¹⁵⁷ Bell, *supra* note 136, at 518, 522-23.

¹⁵⁸ See *id.*; *SFFA*, 600 U.S. at 411.

¹⁵⁹ See Harpalani, *supra* note 33, at 68 ("Overturning precedent may also erode public perception of the Court as an objective, neutral body as opposed to a political entity just like Congress or the Executive.").

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

Furthermore, the decision casts doubt on the Court's commitment to fairness and equality.¹⁶² By overturning precedent that sought to address systemic inequities, it risks perpetuating existing disparities and signaling a retreat from the progress made in advancing civil rights.¹⁶³ Justice Jackson's dissent underscores this point, arguing that the decision disregards the historical context of racial discrimination and undermines efforts to create a more equitable society.¹⁶⁴

D. Possible Defenses

Justice Ketanji Brown Jackson's dissent underscores the historical context of racial discrimination, emphasizing that modern inequities are rooted in centuries of systemic exclusion.¹⁶⁵ These disparities manifest in a persistent racial wealth gap, unequal access to quality education, and underrepresentation in professional and leadership roles.¹⁶⁶ These practices have been a blight on society. As a nation built on the ideals of freedom and equality it the responsibility of the legal professional to ensure those ideals are protected.¹⁶⁷

By eliminating affirmative action policies, the Court removes one of the few tools available to counteract these entrenched inequalities.¹⁶⁸ Race-conscious admissions provided a means of addressing the cumulative effects of systemic discrimination, ensuring that historically marginalized groups had access to elite

¹⁶² *Id.*

¹⁶³ *See generally id.*

¹⁶⁴ *See SFFA*, 600 U.S. 181, 410-11 (2023) (Jackson, J., dissenting).

¹⁶⁵ *See id.*

¹⁶⁶ *See id.* at 385.

¹⁶⁷ Tanya Martinez-Gallinucci, *Protecting Diversity, Equity and Inclusion Post-SFFA*, N.Y. CITY BAR BLOG (Sept. 18, 2023), <https://www.nycbar.org/blogs/protecting-diversity-equity-and-inclusion-post-sffa/> [https://perma.cc/6HVV-5UG5] (“[D]iversity, equity, inclusion and belonging (DEIB) are core values of our profession and our society.”); *Lawyers’ Committee Statement One Year Since the U.S. Supreme Court Limited the Use of Race in College Admissions*, LAWS. COMM. CIV. RTS. UNDER L. (June 29, 2024), <https://www.lawyerscommittee.org/lawyers-committee-statement-one-year-since-the-u-s-supreme-court-limited-the-use-of-race-in-college-admissions/> [https://perma.cc/P97F-MFUC].

¹⁶⁸ *See Daniels & Patterson*, *supra* note 4, at 524-25.

educational opportunities.¹⁶⁹ Without these policies, there is a significant risk that racial diversity in higher education will decline, further limiting opportunities for minority students to enter fields where representation matters most, such as law, medicine, and government.¹⁷⁰

1. “Fairness in Admissions” Defense¹⁷¹

The concept of the “fifth purpose” emerges as a supplementary justification for race-conscious policies, addressing systemic inequities embedded in society that continue to disadvantage historically marginalized groups.¹⁷² In *SFFA v. Harvard*, the Court largely focused on the diversity rationale provided by Justice Powell in *Bakke* but failed to fully consider the totality of his opinion on the broader societal benefits that could be considered, including addressing enduring societal inequalities.¹⁷³ Institutions that can provide a solid evidentiary foundation demonstrating that the affirmative action components of their admissions policies function to address and rectify inaccuracies in evaluating an applicant’s admissions-related merit may find robust justification for these practices.¹⁷⁴ As Justice Powell observed in *Bakke*, such measures might not even be considered a “preference” at all, since they aim to correct systemic biases or flaws in grading, testing, or other evaluative metrics that could disadvantage certain groups.¹⁷⁵ In essence, this argument reframes affirmative action not as

¹⁶⁹ *Id.* (arguing that “in the face of unprecedented levels of social inequality, ahistorical colorblind policies amount to socially irresponsible delusions that place theory and procedural questions over more pragmatic human concerns.”).

¹⁷⁰ See West-Faulcon, *supra* note 110, at 1171 n.282.

¹⁷¹ *Id.* at 1138.

¹⁷² *Id.* (arguing that there is a widely overlooked legal defense, the fifth compelling purpose, that Justice Powell outline in *Bakke* in footnote 43).

¹⁷³ *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 306 n.43 (1978) (arguing that racial classifications in admissions could potentially serve a fifth purpose, if providing a fair evaluation of an individual’s academic potential by accounting for cultural biases present in grading or testing methods. If race and ethnic background were considered solely to correct proven inaccuracies in predicting academic success, it could be argued that such consideration does not constitute a “preference” at all).

¹⁷⁴ West-Faulcon, *supra* note 110, at 1138-39.

¹⁷⁵ *Id.*

preferential treatment but as a mechanism for ensuring fair and accurate appraisals of individual potential.¹⁷⁶

Colleges and universities seeking to defend their affirmative action policies need only revisit the principles outlined in *Bakke* to identify alternative, non-diversity-based justifications.¹⁷⁷ By focusing on the corrective role of affirmative action in addressing documented biases and inaccuracies within traditional evaluation systems, institutions can present a compelling argument grounded in fairness and equity.¹⁷⁸ This approach broadens the scope of permissible defenses, emphasizing that affirmative action can serve as a tool for achieving merit-based assessments that are more precise and inclusive.¹⁷⁹

This broader framework aligns with the historical understanding that diversity is not merely a pedagogical tool but a means of rectifying enduring disparities in educational opportunities and access.¹⁸⁰ The lack of recognition of such justifications by the Court underscores the necessity for institutions to expand their defenses beyond diversity alone, ensuring alignment with the compelling interest test under strict scrutiny.¹⁸¹

2. National Security Defense

Universities may be able to assert a national security defense by showing how its goals are analogous to those of the military by showing how its race-based admissions are essential to ensuring national security.¹⁸² In the fourth footnote of *SFFA*, the Court provided a potential national security defense for race-based admissions.¹⁸³ The footnote highlights the critical role that diversity plays in ensuring a representative and effective military force.¹⁸⁴ The Supreme Court's acknowledgment of this rationale in the military context underscores the significance of diversity not

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *See id.*

¹⁸¹ *Id.*

¹⁸² Brief of Admiral Charles S. Abbot et al., *supra* note 37, at 3, 9-11.

¹⁸³ *See SFFA*, 600 U.S. 181, 213 n.4.

¹⁸⁴ *Id.*

just as a societal good but as a strategic necessity.¹⁸⁵ This defense is particularly salient given the role of diversity in fostering unit cohesion, operational effectiveness, and national security, as documented in various military amicus briefs submitted during the litigation.¹⁸⁶

The Court has for decades recognized the importance of “leadership legitimacy” as a defense for affirmative action.¹⁸⁷ Even in *SFFA*, the military’s leaders argued that the Court should extended the’ carve out colleges and universities that are home to the Reserve Officers’ Training Corps (ROTC), stating that “[h]indering diversity in universities with ROTC programs would adversely affect the pool of recruits entering the military.”¹⁸⁸ Military leaders distinguish the role that diversity plays its success and how the university affirmative action programs are pivotal to those efforts.¹⁸⁹ This is not a new stance from Americas military, as it has provided amicus briefs in support of ever-growing attack on affirmative action.¹⁹⁰

The military’s unique reliance on race-conscious admissions policies to ensure a representative officer corps reflects the alignment of diversity with compelling government interests.¹⁹¹ As argued by former military leaders, a diverse officer corps is essential to maintaining trust and effectiveness within the armed forces and addressing the increasing complexity of global challenges.¹⁹² Furthermore, the diversity imperative extends beyond the military, suggesting that educational institutions, as

¹⁸⁵ Brief of Admiral Charles S. Abbot et al., *supra* note 37, at 3, 9-11.

¹⁸⁶ *Id.* at 22.

¹⁸⁷ See *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003).

¹⁸⁸ Brief of Admiral Charles S. Abbot et al., *supra* note 37, at 22.

¹⁸⁹ *Id.* at 1 (“Diversity in the halls of academia directly affects performance in the theaters of war.”).

¹⁹⁰ See *West-Faulcon*, *supra* note 110, at 1171-72 (mentioning that Kahlenberg has attacked “race affirmative action over the past quarter century”); see also Consolidated 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) (Nos. 02-241 & 02-516); see also Brief of Lt. Gen. Julius W. Becton, Jr. et al., as Amici Curiae in Support of Respondents, *Fisher I*, 570 U.S. 297 (2013) (No. 11-345); see also Brief of Lt. Gen. Julius W. Becton, Jr. et al., as Amici Curiae in Support of Respondents, *Fisher II*, 579 U.S. 365 (2016) (No. 14-981); see also Brief of Admiral Charles S. Abbot et al., *supra* note 37, at 23.

¹⁹¹ Brief of Admiral Charles S. Abbot et al., *supra* note 37, at 1-2, 28.

¹⁹² *Id.* at 2.

pipelines to various sectors, also serve critical national security interests when fostering a more secure nation.¹⁹³

CONCLUSION

In dissecting the legal and societal ramifications of the *Students for Fair Admissions v. Harvard* decision, this paper has explored the complexities and contradictions inherent in balancing the pursuit of equality with the necessity of diversity within our educational and military institutions. As we traverse the complexities laid bare by this legal precedent, it becomes evident that the Supreme Court's nuanced stance, particularly the narrow exemption for military academies, introduces a paradoxical dimension to the ongoing discourse on affirmative action.

This decision, which disrupts longstanding precedent, delivers more than a legal outcome; it communicates a disquieting message to minority communities. Implicit in its contours is the notion that diversity is primarily valued through the lens of military utility, overshadowing its broader societal significance. This casts a shadow over the foundational belief that diversity enriches every facet of American life, extending beyond the battlefield to permeate boardrooms, classrooms, and every corner of society.

As someone who has personally navigated the intersections of being a first-generation college student and a military officer, this perspective is particularly disheartening. The potential ramifications of this decision pose a threat to the hard-fought progress toward inclusivity and equality. It is crucial to acknowledge that the strength of our institutions, whether academic or military, lies in their ability to authentically reflect and embrace the full spectrum of American diversity.

The policy implications of the *Students for Fair Admissions v. Harvard* decision necessitate urgent and deliberate consideration. Lawmakers, educators, and military leaders must collaborate to chart a path forward that upholds the constitutional promise of equal protection under the law while appreciating the invaluable contribution of a diverse society.

¹⁹³ West-Faulcon, *supra* note 110, at 1141-42.

In essence, this decision compels us to reassess the role of race and diversity within our public institutions, urging a reaffirmation of our commitment to a more equitable and inclusive America. It serves as a clarion call for action from those who espouse the principles of liberty and justice, demanding that these ideals are genuinely accessible to all, irrespective of race, ethnicity, or background. As we gaze toward the horizon, let us be guided by the lessons of the past and the promise of a more united and diverse nation. The affirmative action battlefield may have encountered a legal juncture, but the quest for a just and inclusive society continues, fueled by the enduring spirit of equality that forms the bedrock of the American experiment.