LAW SCHOOLS AND LAWYERS ARE SOLDIERS IN THE WAR FOR DEMOCRACY: THE SAME DIVERSITY ADMISSIONS STANDARDS THAT MILITARY ACADEMIES USE

LARRY J. PITTMAN†

In *Students for Fair Admissions v. Harvard College* ("*Harvard College*"),[1] the Court created a new "sufficiently measurable" standard that colleges and universities must satisfy if they want to use race-conscious measures during their admissions processes.[2] However, in footnote 4 of the opinion, the Court stated that its decision did not apply to military academies.[3] Therefore, the "sufficiently measurable" standard does not apply to military academies' admissions processes. Instead, they can continue to use *Grutter v. Bollinger*'s[4] "race as a 'plus' factor" standard.[5]

Presently, at least two federal courts have denied preliminary injunctions against military academies' use of race during their admissions processes.[6] In part, the courts held that, at the preliminary injunction stage, the plaintiffs did not establish that the military academies could not satisfy the strict scrutiny standard that the Fifth Amendment's equal protection principle requires.[7]

This Article analyzes these courts' opinions and makes several observations about the appropriate strict scrutiny standards that different entities must establish to justify their use of race-conscious measures. It concludes that *Grutter*'s race-as-a-plus factor standard, and not the "sufficiently measurable" standard, should apply to law schools' use of race-conscious measures during their admissions processes.

---

† Professor of Law and Leonard F. Melvin, Jr. Lecturer in Law, University of Mississippi School of Law. BBA, 1983, University of Mississippi. JD, 1986, University of Mississippi School of Law. LLM, 1992, Harvard Law School.

1. 600 U.S. 181 (2023).
2. *Id.* at 214.
3. *Id.* at 213 n.4.
4. 539 U.S. 306 (2003).
5. *Id.* at 335.
6. Students for Fair Admissions v. U.S. Naval Acad., 707 F. Supp. 3d 486, 486 (D. Md. 2023); *see also* Students for Fair Admissions v. U.S. Mil. Acad. at W. Point, 709 F. Supp. 3d 118, 119 (S.D.N.Y. 2024).
7. *U.S. Naval Acad.*, 707 F. Supp. 3d at 486; *U.S. Mil. Acad. at W. Point*, 709 F. Supp. 3d at 119.

In Part I, the Article discusses West Point's and the United States Naval Academy's use of race during their admissions processes; it concludes that *Grutter*'s race-as-a plus factor standard should be used and not *Harvard College*'s "sufficiently measurable" standard. In Part II, the Article asserts that courts should allow law schools to use the same *Grutter* standard during their admissions processes because of law schools' special role in developing lawyers who will be the primary protectors of this country's democracy from domestic enemies, just like military soldiers are the primary protectors of democracy from foreign enemies. In Part III, the Article also discusses how law schools should do a better job teaching law students to be "servant leaders" and that these schools should be more focused on teaching a course specifically dedicated to democracy.

I. MILITARY ACADEMIES' ADMISSIONS STANDARDS

A. Admissions Standards at the Naval Academy

In *Students for Fair Admissions v. The United States Naval Academy* ("*USNA*"),[8] the Plaintiff, seeking a preliminary injunction, relied on *Harvard College* and asserted that "the Naval Academy's race-conscious admissions practice violates the Fifth Amendment's equal protection principles."[9] The court held that *Harvard College*'s footnote 4 exempts military academies from the Court's decision in that case, asserting that the academies have "'potentially distinct interest[s]'" that might allow them to satisfy the strict scrutiny standard.[10]

USNA contended that its use of race met the "compelling governmental interest" because it has "a compelling national security interest in a diverse officer corps, as the military's senior leadership has

8. *U.S. Naval Acad.*, 707 F. Supp. 3d at 486.

9. *Id.*; The court's analysis involved a discussion of the federal standard for granting a preliminary injunction. *See id.* at 491.

10. The court stated:

> While the Court declined to overturn its 2003 decision in *Grutter v. Bollinger*, 539 U.S. 306, 123 S. Ct. 2325, 156 L.Ed.2d 304 (2003), which held that consideration of an applicant's race as one factor in admissions did not violate the Constitution, the Court determined the schools' programs fell "short of satisfying the burden" that their programs be "'sufficiently measurable to permit judicial review' under the rubric of strict scrutiny." 600 U.S. at 214, 143 S. Ct. 2141 (citation omitted). The majority opinion authored by Chief Justice John Roberts declared, "'[c]lassifying and assigning' students based on their race 'requires more than . . . an amorphous end to justify it.'" *Id.* (citation omitted).

Id. at 491–92. It appears that the court applied *Grutter*, and not *Harvard College*'s "sufficiently measurable" standard. *See id.*

Id. at 491 (citing *Students for Fair Admissions, Inc.*, 600 U.S. at 213 n.4); Therefore, instead of applying *Harvard College*'s "sufficiently measurable" standard, the court applied *Grutter* which allows educational institutions to use race as a plus factor when making admissions decisions. *Id.* at 491–92.

determined that a diverse officer corps is critical to cohesion and lethality, to recruitment, to retention, and to the military's legitimacy in the eyes of the nation and the world."[11]

The court rejected the plaintiff's argument that these reasons could not establish a compelling interest,[12] and it held that the plaintiff had not shown that it "is likely to succeed on the merits" that USNA's use of race was a violation of equal protection.[13] The court also acknowledged a tradition of deferring to "the military regarding its personnel decisions."[14]

Similarly, the court determined that the plaintiff did not prove that USNA's use of race was not "narrowly tailored."[15] But, the court's analysis is more nuanced because it attempts to blend *Grutter*'s race-as-a-plus factor analysis with *Harvard College*'s "sufficiently measurable" standard.[16] First, the court relied on *Grutter* and *Regents of the University of California v. Bakke*[17] to establish that "a university may consider race or ethnicity only as a plus in a particular applicant's file, without insulating the individual from comparison with all other candidates for the available seats."[18]

Second, the court addressed some of the factors that the *Harvard College* Court found important. These factors included whether: (1) the use of race caused "a negative"; (2) the "racial categories are 'incoherent'"; (3) there is an end point to the use of race; and (4) the "racial-neutral" admissions standard had been sufficiently considered.[19]

In evaluating the first factor, the court noted that, unlike in *Harvard College*, USNA asserted that no candidate was admitted or denied admission because of their race.[20] Instead, "a candidate's racial or ethnic background may provide context to ensure a fulsome evaluation of his or her application but candidates may not be admitted (or denied) *because of* their race or ethnicity."[21] The court held

11. *U.S. Naval Acad.*, 707 F. Supp. 3d at 503.

12. Given that the court denied the motion for a preliminary injunction, additional factual development was needed before a final decision on the merits. And the court asserted that footnote 4 "suggests that compelling government interests may justify affirmative action at military academies." *Id.*

13. The court applied the strict scrutiny "compelling governmental interest" and the "narrowly tailored" tests. *Id.* at 503–07.

14. *Id.* at 504.

15. *Id.* at 506, 508.

16. This blending of *Grutter* and *Harvard College* tests was possible because *Harvard College* did not clearly define whether it overruled prior precedents on the use of race. *See* Larry J. Pittman, *The Supreme Court's Erroneous Equal Protection Clause Analysis: Societal Discrimination, The Harvard College Decision as the New Plessy v. Ferguson-Lite, and the Thirteenth Amendment*, 57 CREIGHTON L. REV. 189, 235 (2023) (discussing *Harvard College*'s ambiguity regarding the overruling of *Grutter*).

17. 438 U.S. 265 (1978).

18. *U.S. Naval Acad.*, 707 F. Supp. 3d at 506.

19. *Id.*

20. *Id.* at 507.

21. *Id.* Because the court was resolving a motion for preliminary injunction, the court accepted USNA's contention as being sufficient to prevent the challenger from establishing

that it was not persuaded, at the motion for preliminary injunction stage, that USNA's use of race was "inherently negative."[22]

Addressing the second factor, the court made a distinction between the use of race in an educational institution's admissions process and in USNA's admissions process: "An entirely different interest is before this court, namely one of national security rather than educational benefits, and this distinction undermines SFFA's argument at this stage."[23] The court held that it could not conclude that USNA's use of race promoted impermissible stereotyping because USNA asserted that it "does not consider race or ethnicity on a belief that diverse students always express stereotypically characteristic viewpoints on an issue."[24] And the court accepted USNA's assertion that its "application process centers on a candidate's individualized experiences."[25]

---

that USNA used race as a negative. Unfortunately, the court hands appeared to be tied by the *Harvard College* decision in that the court apparently considered itself bound by that Court's ruling that race cannot be used to cause a negative decision for White applicants. However, to the extent that the court acknowledged the continued validity of *Grutter*—in that it cited *Grutter* and *Bakke* that race can still be used as a plus factor during the admissions process, the court would have been at least justified in discussing the *Harvard College* Court's misapplication of *Grutter*—which does allow the use of race to cause a negative impact on White students and some other students. *See* Pittman, *supra* note 16, at 235 (asserting that *Grutter* acknowledges that there can be negative impacts on White students when race is used as a plus factor). The *USNA* court's adherence to the *Harvard College* Court's assertion that race can never be used to work a negative is indication that some lower courts may not be ready to disagree or confront the Court's decision in *Harvard College* on this issue.

22. *U.S. Naval Acad.*, 707 F. Supp. 3d at 507.

23. *Id.* Although accepting that USNA had a legitimate purpose for using the racial categories that it used, this Article asserts that some educational institutions should be treated like the military when considering whether the use of race during the admissions process is permissible and the racial categories are coherent. *See infra* note 78–170 and accompanying text.

24. *Id.* at 507. Instead of accepting this version of negative stereotyping—that all African Americans and other people of color think alike—the court could have adopted *Grutter*'s definition of negative stereotyping which places the emphasis on the negative stereotypes that White students and some other students of color hold against African-American students and some minority students. In other words, *Grutter*, in part, allowed the use of race as a plus factor because it might create a critical mass of minority students so that White students and some other students would not believe that all African-American and some other minority students think alike or hold the same opinions. *See Grutter*, 539 U.S. at 308. Therefore, *Harvard College* and the *USNA* court have flipped the switch by looking at negative stereotyping from the standpoint of the beliefs of African-American students and other students of color—thereby making the proponents of the use of race as a plus factor the villain or target than making White students or other minority students who hold negative stereotypes the villain or target person.

25. *U.S. Naval Acad.*, 707 F. Supp. 3d at 507. Although lower federal courts are bound to follow *Harvard College* and other Supreme Court precedent, these lower courts should not be blindly following the Supreme Court when its precedents, conclusions, and reasonings are patently wrong. At the very least, lower courts should look at negative stereotyping from White students—and that the use of race as a plus factors breaks down that stereotyping—and hold that, at a minimum, the two types of stereotyping might cancel each other out and therefore negative stereotyping should not be considered an outcome determinant factor when considering the benefit of using race-conscious measures during higher education institutions' and the military's admissions processes.

For its analysis of the third factor—the end date of using race—the Court simply stated that "this court is unpersuaded that *Harvard* [*College*] applies automatically and without thought to the Naval Academy given the 'potentially distinct interest that [it] may present.'"[26] The court then rejected the fourth factor because the plaintiff did not establish that USNA had not sufficiently considered nonracial alternatives.[27]

Therefore, the court concluded that the plaintiff had not met its preliminary injunction burden because it did not establish that it would likely prevail on the merits of establishing that USNA did not have a compelling governmental interest in using race-conscious measures in a narrowly tailored manner.[28]

Lastly, the court noted that, given the seriousness of the subject matter of the litigation, especially in light of *Harvard College*, the public interest was best served by a complete development of the factual record in the case, and not by granting a preliminary injunction at the beginning of plaintiff's lawsuit against USNA.[29]

Subsequently, the court, after a nine-day bench trial with substantial lay and expert testimony on the merits, upheld USNA's use of race during its admissions process, holding that:

> The Naval Academy's race-conscious admissions policies are narrowly tailored to further a compelling governmental

---

26. *Id.* (quoting *President and Fellows of Harv. Coll.*, 600 U.S. at 213 n.4). It appears that the *USNA* court may be skeptical that a 25-year-end date from *Bakke* is always applicable to every institution's use of race during the admissions process. *See id.* The court seems to have focused on whether the continued use of race is necessary given how it italicized the portion of *Grutter* and *Harvard College* that referenced the end date, as follows: "'We expect that 25 years from now, *the use of racial preferences will no longer be necessary to further the interest approved today.*' Twenty years later, no end is in sight . . . ." *Id.* (citation omitted). *See generally* Pittman, *supra* note 16, at 239–43 (explaining an argument against a specific end date for the use of race).

27. *U.S. Naval Acad.*, 707 F. Supp. 3d at 507–08. The court stated:

> Lastly, considering SFFA's argument that the Naval Academy has not sufficiently considered race-neutral alternatives, the Naval Academy submits that it has considered several race-neutral alternatives, yet none have been effective to date. Such alternatives include: targeted recruiting efforts to increase Naval Academy applications from Fleet Sailors and Marines; hosting a Summer Seminar and a Science, Technology, Engineering, and Mathematics Camp for rising ninth-to-eleventh graders; marketing to specific underrepresented demographics through enrollment management companies; consideration of socio-economic status during the application process; prioritizing first-generation college candidates; adjusting admission metrics and consideration of standardized tests; and increased outreach to low-density congressional districts and encouraging Members of Congress to increase the number of nominations and to sponsor informational Academy Days. This Court is unpersuaded by SFFA's assertion that no "serious, good faith consideration" appears anywhere in the record.

See Grutter, 539 U.S. at 339.

28. *See U.S. Naval Acad.*, 707 F. Supp. 3d at 486, 508.

29. *See id.* at 509.

> interest in national security. Defendants have proven that the Naval Academy's limited use of race in admissions has increased the racial diversity of the Navy and Marine Corps, which has enhanced national security by improving the Navy and Marine Corps' unit cohesion and lethality, recruitment and retention, and domestic and international legitimacy. The Court addresses each prong of the strict scrutiny analysis in turn.[30]

First, in concluding that USNA had shown a compelling interest, the court painstakingly reviewed the long history of substantial racial discrimination that existed in the Navy and other branches of the military and included that history as a part of its finding of facts.[31] The court subsequently, in a very detailed manner, explained why a diverse student body at USNA was "vital to national security," in part, because:

> The MLDC [the Military Leadership Diversity Commission] concluded that the Armed Forces must "develop a demographically diverse leadership that reflects the public it serves and the forces it leads," underscoring the importance of "[d]evelop[ing] future leaders who represent the face of America and are able to effectively lead a diverse workforce," because it would "inspire future servicemembers," "engender trust among the population," and foster trust and confidence "between the enlisted corps and its leaders." (*Id.*) In its Diversity and Inclusion Strategic Plan for 2012 to 2017, DoD reenforced the MLDC's conclusion: "Diversity is a strategic imperative, critical to mission readiness and accomplishment, and a leadership requirement." (DX137.)[32]

Regarding USNA's assertion that, through the admissions of a diverse student body, it seeks to create "unit cohesion" in the Navy, the court credited and accepted testimony that:

> Increased diversity of the officer corps helps . . . from an operational perspective by improving unit cohesion and trust[,] . . . [which] is critical to the ability for a unit to carry out its mission. By increasing unit cohesion and trust, that increases communication, it increases a better understanding of mission requirements, and it increases trust in the officers that lead that particular unit.[33]

30. Students for Fair Admissions v. The United States Naval Acad., 758 F. Supp. 3d 423, 503 (D. Md. Dec. 6, 2024).

31. *Id.* at 436–41.

32. *Id.* at 441.

33. *Id.* at 443.

The court also credited testimony that "racial prejudice . . . still exist[s] in the military," noting "the military is a microcosm of society; so it would be ridiculous for me to try and say that there are no racists in the military," and, as such, the court observed that "[s]uch forces threaten unit cohesion . . . ."[34] Additionally, the court accepted USNA proof that having a diverse officer corps of active soldiers is necessary to recruit a diverse group of enlisted soldiers.[35] And that a diverse military and officer corps "demonstrate[] the fact that the military is representative of a nation with diverse values and democratic values and that . . . [the] military will carry out the missions of the people that we serve," which increase the legitimacy of the military in this country and in foreign countries.[36] The court recognized that, in order to have a diverse officer corps in the Navy, it was necessary to have a diverse student body in the Naval Academy because the latter serves as a pipeline to the former.[37]

Mostly, the court concluded that USNA's proof established that it has a "compelling national security interest" in using race-conscious measures to enroll a diverse student body in the Naval Academy and in the enlistment of a diverse group of soldiers and officer corps to lead those soldiers.[38] And that USNA's limited use of race-conscious measures during its admission process[39] is narrowly tailored to the accomplishment of that compelling national security interest.[40]

In a later section below, this Article will return to a discussion and critique of the court's final opinion affirming UNSA's use of race-conscious admissions standards.[41] But, first it will discuss West Point's admissions standards.

---

34. *Id.* at 444 (internal citation omitted).
35. *Id.* at 444–45.
36. *Id.* at 445.
37. *Id.* at 445, 448.
38. *Id.* at 503–10.
39. *Id.* The court explained USNA's of racial-conscious measures:

> Based on their credible testimony and other evidence, and for the reasons detailed below, the Court finds that the Naval Academy's admissions policies mandate that, in practice, race is only taken into consideration in limited circumstances: (1) when offering letters of assurance; (2) when deciding between two candidates with very close whole person multiple scores for nominations using the "competitive" method, service-connected nominations, and in some circumstances the "principal competitive alternate" method; (3) when extending Superintendent nominations, though Defendants insist that race and ethnicity have not played a factor in a Superintendent nomination since at least 2009; and (4) when extending offers to additional appointees. In each of those circumstances, race is nondeterminative and taken into consideration only as one of many factors in order to assess the candidate's potential as a midshipman and eventual officer in the Navy or Marine Corps.

Id. at 449.

40. *Id.* at 461–62. But unfortunately, despite the court finding the Navy's use of race-conscious measures to enroll a diverse student body, the Department of Defense has decided to stop using race-conscious measures and have otherwise tried to purge diversity, equity, and inclusion programs from the military. *See Pentagon DEI Purge*, *infra* note 89 (discussing the Department of Defense's attempt to whitewash the military).

41. *See infra* notes 46–108.

B. Admissions Standards at West Point, the Army Academy

In *Students for Fair Admissions v. United States Military Academy at West Point*,[42] the federal district court considered a preliminary injunction by the plaintiff asserting that West Point's use of race during its admissions process was a violation of "the Fifth Amendment equal protection principles."[43] The court found that the plaintiff did not satisfy its burden to clearly show, by a preponderance of the facts, that it would "likely win on the merits" that West Point's use of race was not narrowly tailored to satisfy a compelling interest.[44] The court emphasized West Point's specific arguments in support of a compelling interest in using race.[45] And it concluded that, at worst, the parties' allegations showed that there was a factual dispute as to

---

42. *U.S. Mil. Acad. at W. Point*, 709 F. Supp. 3d at 118.

43. *Id.* at 132.

44. *Id.* at 133–34. The court stated:

> Plaintiff alleged in its Complaint, and moved for a preliminary injunction on the basis, that "West Point asserts compelling interests in [1] facilitating organizational cohesion, [2] forming culturally aware leaders, [3] ensuring societal "legitimacy" (circularly defined by the Academy), and [4] safeguarding the public trust." It contends that each of the foregoing has been, in sum and substance, rejected by the Supreme Court's decision in Harvard. While, of course, there is nothing wrong with compiling information needed to make good faith allegations in a complaint, each of the four purported interests, when compared to those asserted by Defendants, were imprecise and clearly not what West Point alleged.
>
> At oral argument Plaintiff reiterated its position that it was not unusual for it to bring this motion without full information and noted that Defendants, in opposition to this motion, indicated what they contend are their compelling interests. West Point's brief contends that "[t]he Army has concluded that diversity in the officer corps is vital to national security because it (1) fosters cohesion and lethality; (2) aids in recruitment of top talent; (3) increases retention; and (4) bolsters the Army's legitimacy in the eyes of the nation and the world."

Id. at 133–34.

45. *Id.* at 134. The court asserted:

> Defendants also submitted six declarations with their opposition to this motion. Acting Under Secretary of Defense for Personnel and Readiness for the Department of Defense, Ashish S. Vazirani, posits that a racially diverse officer corps (1) is critical to mission readiness and efficacy (Vazirani Decl. ¶ 12); (2) provides a broader range of thoughts and innovative solutions (*id.* ¶ 19); (3) helps military recruitment and retention which is vital to national security interests (*id.* ¶¶ 22, 25); (4) helps maintain the public trust and its belief that the military serves all of the nation and its population (*id.* ¶ 26); and (5) protects the U.S. militaries' legitimacy among international partners (*id.* ¶ 28). Colonel Deborah J. McDonald, the former Director of Admissions at West Point, states that diversity at West Point (1) helps cadets lead a multicultural force and fight alongside diverse partners and allies; (2) is essential for military cohesion; (3) is critical to maintaining diversity in the officer corps; and (4) is necessary to attract top talent." (McDonald Decl. ¶¶ 101- 104).

Id.

whether West Point could satisfy the compelling interest and the narrowly tailored use tests.[46]

C. The Courts Should Allow the Military Academies' Use of Race-Conscious Measures

This section of the Article gives some observations and critiques of the court's above-discussed, final opinion in the *USNA* case and in the *West Point* case, including commenting on the court's application and analysis of some of the tests that the Supreme Court established in *Harvard College*, its most recent opinion on the use of race-conscious admissions standards.

First, it should be noted that creating and maintaining a diverse military will require an ongoing effort to enroll diverse military lawyers and soldiers on a yearly basis.[47] Military services, like working in the civilian sectors, are a dynamic situation where soldiers and workers are constantly rotating in and out of the various military forces—making constant recruitment of new soldiers necessary.[48] Therefore, it will be a long time into the future before there will be no need to seek diversity in the recruitment and training of officers and general soldiers.[49] The only time when such might occur is when this country becomes free of racism, economic disparities, racial disparities, and when it achieves the aspiration of equality that the Fourteenth Amendment and the Fifth Amendment envision.

As this Article shows below, the military academies' use of race-conscious measures satisfies both *Grutter*'s race-as-a-plus factor test and *Harvard College*'s "sufficiently measurable" standard.

D. Grutter's Race-As-A-Plus Factor Is the Appropriate Test

Harvard College's footnote 4 requires further analysis. The footnote implies that *Harvard College*'s "sufficiently measurable" standard does not apply to military academies because of the statements that the Court made in the textual language before the footnote and in the footnote's language. That textual language states:

> But we have permitted race-based admissions only within the confines of narrow restriction. University programs

46. *Id.*

47. The district court in *USNA* recognized the continuing nature of USNA's efforts to recruit and maintain a diverse military and officer corps. *U.S. Naval Acad.*, 758 F. Supp. 3d at 506–09.

48. Similarly, universities and law schools constantly need to enroll a new crop of students on a yearly basis. *See generally* Dexter Filkins, *The U.S. Military's Recruiting Crisis*, THE NEW YORKER (Feb. 3, 2025), https://www.newyorker.com/magazine/2025/02/10/the-us-militarys-recruiting-crisis.

49. Scott Seckel, *Diversity in the Military and Why It Matters*, ASU NEWS (Feb. 17, 2022), https://news.asu.edu/20220217-solutions-diversity-military-and-why-it-matters.

> must comply with strict scrutiny, they may never use race as a serotype (sic) or negative, and—at some point—they must end. Respondents' admissions systems—however well intentioned and implemented in good faith—fail each of these criteria. They must therefore be invalidated under the Equal Protection Clause of the Fourteenth Amendment.[50]

And the footnote, itself, provides:

> 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 also does not address the issue, in light of the potentially distinct interests that military academies may present.[51]

As with other parts of the *Harvard College* opinion, the textual language and footnote 4 are ambiguous. And frankly, like any other document (or contract), the language should be construed against the drafter—in this case, against the Supreme Court.[52] That construction means that, instead of *Harvard College*'s "sufficiently measurable" standard, *Grutter*'s race-as-a-plus factor standard applies to the academies' use of race-conscious measures. That means that the academies can use race-as-a-plus factor and that, as Justice O'Connor stated in *Grutter*'s majority opinion, the use of race-as-a-plus factor can be outcome determinant in close cases, especially for those at the bottom of the admitting class.[53]

Therefore, this Article disagrees with the court's attempt, in the USNA case, to reconcile its decision with the Court's decision in *Harvard College* that race-conscious measures must not have a negative impact on White students who are seeking admissions to colleges and universities.[54] Instead of the *USNA* court creating a nuanced and speculative analysis to show that USNA's admissions process did not have a negative impact on White students,[55] the court should have acknowledged and applied *Grutter*'s rule that race-conscious measures are not unconstitutional just because they may have a negative impact on some White students, especially those at the bottom of the admissions class of students.[56]

---

50. *President and Fellows of Harv. Coll.*, 600 U.S. at 213.
51. *Id.* at n. 4.
52. Michelle E. Boardman, *Contra Proferentem: The Allure of Ambiguous Boilerplate*, 104 MICH. L. REV. 1105, 1108 (2006).
53. *Grutter*, 539 U.S. at 339.
54. *U.S. Naval Acad.*, 758 F.3d at 519–521.
55. *Id.*
56. *Grutter*, 539 U.S. at 339.

Additionally, under *Grutter*'s race-as-a-plus factor standard, it is clear that the military academies' use of race will survive a strict scrutiny analysis.[57]

The bottom line of applying *Grutter*'s standard is that (1) courts give deference to higher education institutions' decisions to use race-as-a-plus factor and to their selections of the relevant educational goals; (2) institutions' use of race-as-a-plus factor allows "negative admissions decisions" in that some White students and other students of color might not obtain admissions; (3) courts give deference to institutions' decisions on the end-point date of race-conscious measures; and (4) courts evaluate the prohibition against creating a "negative stereotype" from the standpoint of White students' and other students' negative images or opinions of Black students and other students of color—with such negative opinions stemming from White people's and other people's implicit bias or racism against people of color.[58]

---

57. In *Harvard College*, the Court held in footnote 4 that the "sufficiently measurable" standard does not apply to the military academy. 600 U.S. at 213 n.4. Construing this holding in a manner against the Court would be consistent with the perspectives of certain members of the Court, especially former Justice Antonin Scalia, who complained that Congress should do a better job in drafting federal statutes to clearly state the interpretation and the Congressional intent of the statutes. *See generally* Brenden Cline, *Scalia's Swan Song: The Late Justice's "Irreconcilability Canon" Resolves the Clean Air Act's Section 111(d) Drafting Error and Promotes Good Lawmaking*, GEO. ENV'T. L. REV. (May 19, 2016), https://gielr.wordpress.com/2016/05/19/scalias-swan-song.

58. *See Grutter*, 539 U.S. at 322–44. *Grutter*'s prohibition against using race to create a negative stereotype has nothing to do with colleges' or universities' believing that all Black students or other students of color have the same opinions on a particular matter. For example, Justice O'Connor stated:

> *The Law School does not premise its need for critical mass on "any belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue*." Brief for Respondent Bollinger et al. 30. To the contrary, diminishing the force of such stereotype is both a crucial part of the Law School's mission, and one that it cannot accomplish with only token numbers of minority students.

Id. at 333 (emphasis added).

A better interpretation of *Grutter*'s discussion of stereotypes is that the prohibition against admissions based on stereotypes is not directed at any university's or law school's alleged opinions that all Black students or other students of color have the same opinions or viewpoints. Instead, the use of race-conscious admissions standards to create a more diverse student body is for the purpose of admitting a critical mass of diverse students so that they can, through their various interactions with White students and other students, break down those White students and other students' negative stereotypes against Black students and other students of color. *Id.* Such negative stereotypes might be some White students' and other students' beliefs that all Black students and other students of color have the same beliefs, actions, skills, intelligence, or other alleged negative characteristics such that all of them should be treated the same, including that they all are not intelligent, cannot speak well, are lazy, or are otherwise not worthy of attending a particular college, university, or of having a certain job or other positions in life as White people are allowed to have without any questioning of their own suitability for such benefits and positions. *Cf.* Larry J. Pittman, *Mandatory Arbitration: Due Process and Other Constitutional Concerns*, 39 CAP. U. L. REV. 853, 862–864 (discussing racial stereotypes against Black people and perhaps other people of color).

Under a *Grutter* analysis, as stated above and in the opinion itself, the military academies' use of race-conscious measures clearly satisfies a strict scrutiny standard. For example, in *West Point*, the court articulated the nature of West Point's rationale for using race-conscious measures in its admissions process:

> West Point's brief contends that "[t]he Army has concluded that diversity in the officer corps is vital to national security because it (1) fosters cohesion and lethality; (2) aids in recruitment of top talent; (3) increases retention; and (4) bolsters the Army's legitimacy in the eyes of the nation and the world." (Def. Br. at 30).
>
> Defendants also submitted six declarations with their opposition to this motion. Acting Under Secretary of Defense for Personnel and Readiness for the Department of Defense, Ashish S. Vazirani, posits that a racially diverse officer corps (1) is critical to mission readiness and efficacy (Vazirani Decl. ¶ 12); (2) provides a broader range of thoughts and innovative solutions (*id.* ¶ 19); (3) helps military recruitment and retention which is vital to national security interests (*id.* ¶¶ 22, 25); (4) helps maintain the public trust and its belief that the military serves all of the nation and its population (*id.* ¶ 26); and (5) protects the U.S. militaries' legitimacy among international partners (*id.* ¶ 28). Colonel Deborah J. McDonald, the former Director of Admissions at West Point, states that diversity at West Point (1) helps cadets lead a multicultural force and fight alongside diverse partners and allies; (2) is essential for military cohesion; (3) is critical to maintaining diversity in the officer corps; and (4) is necessary to attract top talent. (McDonald Decl. ¶¶ 101-104).[59]

If the military academies can establish at trial the four assertions in the first paragraph of the immediately-above block quote, and the six assertions in the second paragraph of the same block quote, then the court in the West Point lawsuit, and in the USNA lawsuit, where the Naval Academy makes similar assertions,[60] should have no problem finding that a strict scrutiny analysis under *Grutter* is established. That is, the above-referenced assertions satisfy the compelling governmental interest and narrowly tailored requirements analysis, especially if there are no race-neutral alternatives that would achieve the type of diversity of military officers that the military believes is necessary for its missions. And the court, in its final opinion in the *USNA* case, essentially reached this same conclusion.[61]

---

59. *U.S. Mil. Acad. at W. Point*, 709 F. Supp. 3d at 134.

60. *U.S. Naval Acad.*, 707 F. Supp. 3d at 504–05.

61. *U.S. Naval Acad.*, 758 F. Supp. 3d at 490–91 (citing *Grutter*); *Id.* at 492–94. (citing *Harvard College*). Arguably, the court's *USNA* opinion is an attempt by the court to blend *Grutter*'s race-as-a-plus factor test with *Harvard College*'s "sufficiently measurable test." *Id.*

E. The Military Academies' Assertions Also Should Establish Harvard College's Sufficiently Measurable Standard

If *Harvard College*'s sufficiently measurable standard does apply, it would be more difficult for a court to allow the military academies' use of race during their admissions processes. The sufficiently measurable standard would require that the academies satisfy these factors: (1) the use of race does not cause "a negative"; (2) the "racial categories are not 'incoherent'"; (3) there is an end point to the use of race; and (4) "racial-neutral" admissions standards have been sufficiently considered.[62]

For West Point's—and other military academies'—admissions processes, the most challenging of these factors is that the use of race does not cause a "negative" impact, which mostly means that a White applicant is not denied admissions because of the use of a race-conscious measure to admit a Black student or other students of color.[63] One could make an argument that, because the number of slots in West Point's entering classes is not unlimited, almost any consideration of race in its admissions processes—to be successful in increasing the diversity of its classes, and eventually the number of officers in the military—will, for some admitted soldiers of color, be outcome determinant. And, therefore, the use of race will probably have a negative effect on White applicants in that some of them will be denied admission because of the use of race.[64]

However, consistent with the normal deference to the military regarding its personnel decisions, the court should give special consideration to USNA's assertion that it uses race in the admissions process only to identify the Black students or other students of color for whom they will give a more robust review of their applications—arguably to make certain that the academies have not overlooked something in these students' files that would warrant or help them obtain admission.[65] However, if a military academy were to use race in a more direct way to deny admissions to some White students or other students at the bottom of the class, such an admissions policy would not necessarily be violative of *Grutter* and the Fourteenth Amendment, as argued above.[66] And, as argued above, the courts should give deference to West Point's, and other military academies',

62. *Harvard College*, 600 U.S. at 181, 214–17 (discussing the sufficiently measurable standard).

63. *See Harvard College*, 600 U.S. at 213.

64. One could argue that even if West Point uses race only to give a Black student's or other minority student's file a more robust analysis but then makes the admissions decision on racial-neutral criteria, the robust analysis, that is based on the consideration of race, becomes outcome determinant and works a negative if the applicant who gets the more robust analysis is finally admitted to the academies.

65. *See U.S. Naval Acad.*, 707 F. Supp. 3d at 496–99.

66. *See supra* note 58–61.

use of race-conscious measures that are consistent with *Grutter*'s race-as-a-plus factor standard.[67]

Another factor that would make it more difficult to satisfy a sufficiently measurable standard is *Harvard College*'s requirement that there must be an "end point" to the use of race-conscious measures.[68] However, despite such a broad statement, any end point requirement should be aspirational because racism and the need for race-conscious measures will continue indefinitely into the future.[69] And, therefore, the court, in its opinion in the USNA case, should have recognized this indefiniteness and acknowledged that there does not have be an end point to the use of race-conscious measures in military academies' admissions processes, if the racial and other conditions that created the need to use race in the first place are still in existence and still preventing the admissions of a sufficiently racially diverse admissions class. To do otherwise will lead to the same type

67. *See generally U.S. Mil. Acad. at W. Point*, 709 F. Supp. 3d at 127–29.

68. *President and Fellows of Harv. Coll.*, 600 U.S. at 212–13.

69. Pittman, *supra* note 16, at 239–43. Furthermore, it is doubtful that there will ever be a realistic end point to the use of race-conscious measures to create a more diverse group of military officers. This is true for several reasons. First, race and racism will mostly always be a part of the fabric of the country. Today, this country is probably more divisive than it has been in recent years. This is, in part, shown by the fact that, not since the Civil War, has this country been in serious danger of losing its democracy, as shown by the attack on the U.S. Capital on January 6, 2020 and the subsequent effort by some to undermine the media and other political institutions in pursuit of efforts to install a more autocratic system of government in this country. *Cf.* Edward Lempinen, *Racial Resentment Fueled Jan. 6 Rebellion and Opposition to House Probe, Scholars Find*, U.C. BERKELEY (May 30, 2024), https://www.universityofcalifornia.edu/news/racial-resentment-fueled-jan-6-rebellion-and-opposition-house-probe-scholars-find (discussing the connection between racism and the January 6, 2020, insurrection). At least a part of this challenge to democracy is based on racism in that a large part of the White population in this country do not want to live in a country where they are in the minority and, therefore, in a situation where they are not in control of running the government and otherwise dictating the social, economic, and political lives of people of color. *Id.* As a matter of fact, many of these White people are expecting and, perhaps, hoping that there will be a race war so that they can win and create their own country where they, as White people, will be able to continue to be in control over their country.

This slouching of the country towards an autocratic system is pervasive, and the military cannot escape its influences. For example, at least five persons affiliated with the U.S. military were involved in the January 6, 2020, insurrection to invade our Capital and overthrow our democracy. *See* Steve Beynon and Konstantin Toropin, *What Happened to Members of the Military Accused of Storming the Capitol on January 6?*, MILITARY.COM (Nov. 5, 2021), https://www.military.com/daily-news/2021/11/05/what-happened-members-of-military-accused-of-storming-capitol-january-6.html. Military leaders, both civilian and professional commanders, had substantial concerns—about soldiers' and other military personnels' involvement in extremist activities—that they instituted a "stand down" in the military so that the military could provide instructions to soldiers about their obligations not to be involved in extremist actions against their own country—as required by their oath to defend the U.S. Constitution. *See* Jim Garamone, *Austin Orders Military Stand Down to Address Challenge of Extremism in the Ranks*, DOD NEWS (Feb. 3, 2021), https://www.defense.gov/News/News-Stories/Article/Article/2492530/austin-orders-military-stand-down-to-address-challenge-of-extremism-in-the-ranks (discussing military stand down regarding insurrection). Although the military does not believe that its ranks of soldiers are composed of a substantial number of soldiers who are extremist, it cannot be certain of that conclusion. *Id.*

of ambiguous and speculative analysis that the *USNA* court used to justify its conclusion that USNA's admissions processes did not establish an indefinite use of a race-conscious admissions process.[70]

In the final analysis, courts, using their own subjective wisdom, have no legitimate means of determining an end point other than imposing some arbitrary date as the Supreme Court attempted to do in *Harvard College*.[71] Instead, courts should acknowledge the historical permanence of racism (and concomitant disparities in wealth, health, and educational opportunities) and hold that the military academies (and law schools, too) should be able to use *Grutter*'s race-as-a-plus factor admissions standards as long as racism and its relevant disparities limit educational opportunities in this country.[72] Therefore, the courts, in giving deference to the military, should accept West Point's and other military academies' use of race-conscious measures during their admissions processes, for as long as necessary to create more diverse student bodies when such diverse student bodies are necessary to satisfy a compelling military interest (and a compelling law school interest as this Article will argue below).[73]

---

70. *U.S. Naval Acad.*, 758 F. Supp. 3d at 521–23. The ambiguity of the court's conclusions that USNA's use of race-conscious measures is not indefinite is shown by this quote from the case:

> For at least the last fifteen years, DoD has determined that a diverse officer corps mitigates risk, and the officer corps should "represent the country it defends" and the servicemembers it leads. Therefore, the Naval Academy's race-conscious admissions will terminate when the incoming classes of midshipmen enable Defendants to develop a Navy and Marine officer corps that better represents racial and ethnic diversity among enlisted servicemembers and the American population.

Id. at 522 (internal citations omitted). The court concluded that "[t]his goal, as expressed by DoD and the Naval Academy, meets the requirement that the government's use of race be time-bound." *Id.*

However, the court's acceptance of USNA's end point for the use of race-conscious measures based on the notion that "the Naval Academy's race-conscious admissions will terminate when the incoming classes of midshipmen enable Defendants to develop a Navy and Marine officer corps that better represents racial and ethnic diversity among enlisted servicemembers and the American population," is really an open-ended end point. *Id.* And it is essentially an indefinite end point, as it should be because, consistent with this Article's argument that the use of race-conscious measures should be allowed to exist as long as the racial and other conditions, that caused the lack of diversity in the Navy's and in other military academies' student bodies, exist.

71. *Harvard College*, 600 U.S. at 213.

72. *See also* Pittman, *supra* note 16, at 239–243 (2023) (discussing that race-conscious measures should not have an end point until the conditions that created their usage no longer exist).

73. West Point does not clearly state the time period during which it will use race-conscious measures in its admissions process. *See generally U.S. Mil. Acad. at W. Point*, 709 F. Supp. 3d at 128–29. This is probably because the court gave less emphasis to an end point and appears to use a *Grutter*'s race-as-a-plus factor standard, which is less focused on an end point to the use of race-conscious measures than a *Harvard College* sufficiently measurable standard. *See generally Harvard College*, 600 U.S. at 230.

That West Point and other military academies should be given deference in determining an end point to their use of race is especially warranted because this country is presently in a very divisive period where racism and a belief in autocracy are posing a substantial and real threat to the continuation of this country's democracy.[74]

In other words, before the achievement of a realistic end point for academies' use of race during their admissions processes, this country may suffer a substantial erosion of its democracy—which will make it even harder for the military academies to enroll diverse classes of students for the purpose of achieving a more diverse group of officers.

Furthermore, courts, and the military academies, should acknowledge that the academies' ability to enroll a more diverse class of students is impacted by evidence of present-day racism in the military.[75] That is so because, despite the military's efforts to teach and otherwise create a more diverse, equitable, and inclusive military, there is substantial racism and other types of discrimination in the military.[76] This discrimination includes the use of racial slurs and the assignment of various unpleasant tasks to Black soldiers and perhaps to other soldiers of color.[77] Much of this discrimination demeans these soldiers and causes substantial frustration and mental distress.[78] One account of the inhumane treatment of a Black soldier is:

> As a young airman, Nick Shands didn't initially think much of it when he received a request to report to the medical treatment facility on Mountain Home Air Force Base. But when he arrived, he thought it was strange that he saw only a handful of superiors and a large dumpster. His task: Climb in and sift through the garbage for documents containing personally identifiable information.

---

74. *See* Christopher Sebastian Parker & Christopher C. Towler, *Race and Authoritarianism in American Politics*, 22 ANN. REV. OF POL. SCI. 503, 505, 515–16 (2019).

75. *U.S. Naval Acad.*, 758 F. Supp. 3d at 444. Regarding current racism in the military, the court in the *USNA* case, quoted and accepted the following testimony from a military leader:

> On cross-examination, Brig. Gen. Walker acknowledged that "racial prejudice . . . still exist[s] in the military," noting "the military is a microcosm of society; so it would be ridiculous for me to try and say that there are no racists in the military." (ECF No. 139 at 169:21–25.) Such forces threaten unit cohesion, and the military has made the perhaps obvious judgment that diversity in the officer corps can help mitigate and counter, if not prevent, these corrosive and real internal threats.

Id.

76. Kat Stafford et al., *Deep-Rooted Racism, Discrimination Permeate US Military*, ASSOCIATED PRESS (May 27, 2021, 8:03 PM), https://apnews.com/article/us-military-racism-discrimination-4e840e0acc7ef07fd635a312d9375413 (discussing current racism in the military).

77. *Id.*

78. *Id.*

> Shands, one of the few Black airmen on the Idaho base, was stunned by the order but clambered over the side for what turned out to be a nearly all-day task, as his superiors watched him search fruitlessly.
>
> He said it was just one incident among several on the nearly all-white base where he felt singled out, including being told repeatedly that he wasn't "built" for the military.
>
> "If it was for the purpose of to embarrass and to mentally break you, I guess that's what they tried to do," he said.
>
> Shands said targeted racism and discrimination continued after he left Idaho and served on different bases, leading him to depart the military in 2018. He believes a tough road lies ahead for the Defense Department and Congress, which provides oversight, to address structural racism in the military and prevent other servicemembers from suffering as he did.[79]

Current acts of racial discrimination in the military do not occur in a vacuum. They are just a current manifestation of a history of substantial racism in this country and in the military.[80]

This current and historical racism in the military establish that the military can satisfy the strict scrutiny standard under the Fifth Amendment's equal protection principle. Simply put, the eradication of racism in the military is a compelling military interest, and West Point's and other military academies' use of race-conscious admissions standards is necessary to eradicate some of that racism.[81] This is shown, in part, by the evidence that West Point offered in opposition to the plaintiff's motion for a preliminary injunction in *West Point*.[82]

F. West Point's Evidence in Opposition to Preliminary Injunction

West Point offered substantial statements of the brutal history of racism in the military forces.[83] One declaration shows the long and

---

79. *Id.*

80. *Id.*; *see also supra* note 75 and accompanying text.

81. *See supra* notes 75 and 76 and accompanying text. The court in the *USNA* case made the following statement regarding testimony that racism still exists in the military: "Such forces threaten unit cohesion, and the military has made the perhaps *obvious judgment* that diversity in the officer corps can help mitigate and counter, if not prevent, these corrosive and real internal threats." *U.S. Naval Acad.*, 758 F. Supp. 3d at 444 (emphasis added).

82. *See* Declaration of Beth Bailey, PhD at 1–2, Students for Fair Admissions v. U.S. Mil. Acad. at W. Point, 709 F. Supp. 3d 118 (S.D.N.Y 2024) (No. 7:23-cv-08262-PMH); Declaration of Jeannette Haynie at 1–2, Students for Fair Admissions v. U.S. Mil. Acad. at W. Point, 709 F. Supp. 3d 118 (S.D.N.Y 2024) (No. 7:23-cv-08262-PMH).

83. Declaration of Beth Bailey, PhD, at 4–5, *U.S. Mil. Acad. at W. Point*, 709 F. Supp. 3d 118.

pervasive history of racism against Black soldiers throughout the history of the military and during all major wars, including World War I, World War II, the Korean War, and the Vietnam War.[84] This history of racism and violence occurred both on military bases in the United States and in foreign countries.[85] The violence included the killing of White soldiers, Black soldiers, White civilians who resided near military bases in the United States, and foreign citizens who resided near military bases in foreign countries.[86] Historically, that racism and related violence have caused some military leaders to believe that the military was fighting two wars—one in foreign countries against foreign enemies and one on its own military bases between White and Black soldiers.[87] The court in the *USNA* case referenced this same type of racist military history in its finding of facts by dedicating approximately five-pages of exhaustive discussion of historical racism in the military—incident-by-incident.[88]

Although in the last couple of decades there does not appear to have been much racial violence amongst White soldiers and soldiers of color,[89] there is still substantial racial discrimination in the military.[90] Given the current pervasive racial divisions amongst American citizens and the current threats to democracy, it is reasonable to believe that racial violence might soon exist in various cities throughout this country, especially because some White extremist groups are praying for a race war.[91] Any such racial violence will flow into the military and manifest, again, in racial violence on military bases. Such violence in the military will have a substantial effect on the military's ability to carry out its various missions throughout the world—including its ability to enroll diverse classes of students in the military academies.[92] To mitigate this effect, the academies will

84. *Id.* at 6–7, 9, 12–13.

85. *Id.* at 18.

86. *Id.* at 8.

87. *See generally id.*

88. *U.S. Naval Acad.*, 758 F. Supp. 3d at 436–41.

89. *Id.* at 33–34 (noting that the instances of racial violence discussed have not occurred during the past decades). But, racial strife may soon return to the military because the current president and his secretary of defense are trying to erase the diversity, equity, and inclusion programs that have been instrumental in reducing much of the overt racism in the military. *Cf. Pentagon DEI Purge Includes War Heroes, Historic Military Event Among Others*: *AP*, CBS NEWS (Mar. 7, 2025), https://www.cbsnews.com/news/pentagon-dei-purge-targets-war-heroes-historic-military-events (discussing the Department of Defense's ant-DEI efforts in the military).

90. *See supra* note 76 and *supra* notes 76–83 and accompanying text.

91. *See* Aaron Morrison, *Analysis: A Race War Evident Long Before the Capitol Siege*, ASSOCIATED PRESS (Feb. 5, 2021), https://apnews.com/article/donald-trump-us-news-race-and-ethnicity-conspiracy-theories-philanthropy-f8f793b94b0dd7e8ec62957dcbeb53d8 (discussing the current race war in this country).

92. *See generally* Kat Stafford & James Laporta, *Military Still Grappling with Racism and Extremism, Investigation Finds*, PBS (Dec. 29, 2021), https://www.pbs.org/newshour/nation/military-still-grappling-with-racism-and-extremism-investigation-finds (discussing the problem with racism and extremism in the military).

have to continue their use of race-conscious measures to enroll diverse students so that the military forces will have a diverse group of officers—to legitimize the military in the eyes of its diverse general soldiers, the diverse foreign countries with whom it partners in various military alliances, and in the eyes of the American public.[93]

Therefore, even under a stricter, *Harvard College* sufficiently measurable standard, courts should find that West Point's and the other military academies' asserted reasons for their limited use of race-conscious measures satisfy a strict scrutiny analysis.[94] This is especially true given that West Point and other military academies have asserted that "race-neutral" measures have not been successful in enrolling sufficiently diverse entering classes of future officers.[95] And the academies have expert testimony to substantiate their contentions.[96]

The courts currently wrestling with this issue will, no doubt, scrutinize the facts surrounding the issue. But these courts should also note that—given the vast number of different career paths open to those who would be eligible for admission to military academies—the military faces competition with civilian employers who are also seeking to employ the best and brightest.[97] This competition applies to both soldiers of color and White soldiers.[98] It is reasonable to believe that "racial-neutral" admissions standards will not enroll sufficiently diverse classes in military academies, just as they have not done so at major colleges, universities, and law schools.[99] And, given the historical deference that courts have given the military regarding its various functions, any doubts regarding the impact of race-neutral standards should be construed in favor of West Point and the other military academies.[100]

---

93. *See* Stafford et al., *supra* note 76.

94. *President and Fellows of Harv. Coll.*, 600 U.S. at 213 (again, the biggest hurdles would be *Harvard College*'s statement that the use of race cannot create a negative and that there should be an end point to the use of race).

95. *See* Stafford et al., *supra* note 76.

96. Declaration of Colonel Deborah J. McDonald at 31–34, Students for Fair Admissions, Inc. v. U.S. Mil. Acad. at W. Point, 709 F. Supp. 3d 118 (S.D.N.Y. 2024) (No. 7:23-cv-08262-PMH); *see also U.S. Naval Acad.*, 758 F. Supp. 3d at 524–26 (discussing that the Navy's use of racial-neutral measures has not alleviated the need for racial-conscious measures).

97. *On Army Active, Guard, Reserve, and Civilian Personnel Programs, Before the H. Subcomm. on Mil. Pers.*, 118th Cong. 3 (2023) (statement of Douglas F. Stitt, Lieutenant General, United States Army) (addressing the military's competition with civilian employers for talented recruits).

98. *See id.*

99. *See* Denise-Marie Ordway, *Race-Neutral Alternatives to Affirmative Action in College Admissions: The Research*, THE JOURNALIST'S RES. (June 29, 2023), https://journalistsresource.org/education/race-neutral-alternatives-affirmative-action-college-diversity (concluding that race-neutral standards have not been successful in recruiting Black students and Native American students in some of the schools that do not use affirmative action).

100. Importantly, the court in the *USNA* case, in its finding that USNA's racial-conscious admissions standard met the strict scrutiny standard, and therefore were not unconstitutional, gave great deference to military leaders' opinions that racial-conscious admissions standards were necessary to the accomplishment of the military's various missions. *See U.S.*

It is doubtful that courts and juries—who do not have more expertise in the recruitment and enrollment of students—are in a better position to determine which admissions standards are best for enrolling the type of diverse classes that the academies reasonably seek to satisfy their various military missions.[101]

Therefore, it should be clear that military academies' use of race-conscious measures to assist them in making admissions decisions satisfies the compelling governmental interest standards under both *Grutter* and *Harvard College*.[102] And the academies' use of race, which is done in a limited manner, is sufficiently narrowly tailored, especially given that race-neutral alternatives have not been, and are not going to be, effective in achieving more diverse classes at the military academies.[103]

Furthermore, a good argument can be made that the military academies' use of race during their admissions processes would be consistent with the Fifth Amendment's equal protection principle. After all, there is a line of Supreme Court precedent allowing institutions to use race-conscious measures to remedy their own past acts of intentional racial discrimination.[104] It is clear that the U.S. military has a history of its own intentional racial discrimination against Black soldiers.[105] And that, despite its most recent efforts (dating back to the 1970s) to give diversity, equity, and inclusion training to its soldiers, there is still a fair amount of racial discrimination in the military.[106]

Even though the racial composition of soldiers in the different military branches has increased with more Black soldiers and other soldiers of color serving in the various military branches, the number of these soldiers who are officers is disproportionally less than the number serving in non-officer capacities.[107] To the extent that this disparity is related to the military's past or present acts of intentional racial discrimination, the military and its academies could probably

Naval Acad., 758 F. Supp. 3d at 495–503. That discussion comprises approximately eight pages of the court's opinion. *Id.*

101. This is probably the reason why courts give deference to the military.

102. Although as argued above, the *Grutter* standard for using race as a plus factor should be the controlling standard and not *Harvard College*'s sufficient measurable standard—which is the reasonable inference from footnote 4 of that opinion. *See President and Fellows of Harv. Coll.*, 600 U.S. at 213 n.4 (2023).

103. *See* McDonald, *supra* note 96, at 35, 37.

104. *See generally* Pittman, *supra* note 16, at 197–98.

105. *See* Stafford et al., *supra* note 76.

106. *See id.*

107. Christopher S. Chivvis & Sahil Lauji, *Diversity in the High Brass*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Sep. 6, 2022), https://carnegieendowment.org/research/2022/09/diversity-in-the-high-brass?lang=en (discussing disproportionate percentage of Black officers).

satisfy a remedial-measures justification for using race during their admissions processes.[108]

II. LAW SCHOOL ADMISSIONS STANDARDS SHOULD BE TREATED LIKE MILITARY ACADEMIES' ADMISSIONS GIVEN THE ROLE OF LAWYERS IN PRESERVING DOMESTIC DEMOCRACY

The central focus of this Article is that courts should apply the same strict scrutiny standard—for the military academies' use of race-conscious measures—to law schools' use of race-conscious measures. The premise is that, whereas the military and its academies must be prepared for success in foreign wars, lawyers and the legal profession must be prepared for domestic wars, including protecting this country's democracy and democratic principles. Presently, this domestic war against democracy is the most threatening war facing this country.[109]

Internally, lawyers are the paramount protectors of this country's constitutional and democratic systems—and not the military, which is primarily responsible for protecting the country from foreign enemies and external threats.[110] When a U.S. citizen believes that the federal government, a state government, or a private citizen has violated the Constitution, a federal or state statute, or privately held rights, that citizen does not call the U.S. military to come to their defense. They will either suffer the alleged infraction or seek a lawyer's help to obtain a remedy through various dispute resolution processes.

This seeking of a lawyer's help applies to matters small and large, including will and trust disputes, property disputes, breaches of

108. It might be understandable to the military and its academies to not want to use race as a remedial measure, especially to not allege that it is guilty of current intentional discrimination against soldiers of color. However, despite that high ranking military commanders and officers might not be personally committing current acts of intentional racial discrimination against minority soldiers, respondeat superior and other vicarious liability theories should be explored as a means of holding the military responsible for lower-level officers' intentional racial discrimination against people of color soldiers, including the racial slurs, racial mistreatment of soldiers, and other racial acts against minority soldiers.

109. *See* Stephen M. Walt, *American Is Its Own Worst Enemy*, FOREIGN POLICY MAGAZINE (Feb. 12, 2025), https://foreignpolicy.com/2025/02/12/trump-democracy-america-own-worst-enemy (discussing that America's internal policies and the lack of properly functioning checks and balances are a major threat to this country's system of government). This commentator states: "Which puts me once again in the awkward position of hoping things get bad sooner rather than later, before the damage to American democracy, the U.S. economy, and the knowledge-producing institutions that fueled its past success is beyond repair." *Id.*

110. As a matter of fact, there is a federal law that prevents the U.S. military from participating in general law enforcement in the United States. 18 U.S.C. § 1385 (1956); *see also* Joseph Nunn, *The Posse Comitatus Act Explained*, BRENNAN CENTER FOR JUST. (Oct. 14, 2021), https://www.brennancenter.org/our-work/research-reports/posse-comitatus-act-explained (discussing the prohibitions of the uses of the military to enforce laws).

contracts, negligence claims, and more complex claims involving federal anti-discrimination laws and other statutory rights.[111] An orderly resolution of these legal challenges, on a day-to-day basis, is arguably more impactful for U.S. citizens and our democratic systems than the U.S. military.[112] Without lawyers and organized systems to resolve legal disputes, there is a possibility (or probability) that the average citizen, or group of citizens, will take the "law into their own hands" and enforce their version of "vigilante justice."[113] Preventing such resorts to domestic lawlessness and anarchy is normally the role of lawyers, judges, and our judicial systems—and not the function of the military.

For citizens who are caught up in these everyday legal dramas—involving the possibility of substantial loss of resources or personal freedom—lawyers and the legal system are most important to them—and not the military with its jet pilots, cruise missiles, and soldiers in military fatigues. These small and large legal conflicts play themselves out in thousands and thousands of daily, domestic legal battles and wars.[114]

Because lawyers are so important to our way of life—and because this country is composed of a diversity of people, with many different backgrounds, cultures, biases, fears, and attitudes about race and the privileges thereof—it is necessary that there be a diversity of lawyers and judges to provide needed legal services in dispute resolution systems that have the respect and legitimacy of the people whom they serve.[115] To ensure that respect and legitimacy, law schools should seek to enroll a diverse group of students who will one day be a diverse group of lawyers. And courts should give the same deference to law schools' use of race-conscious measures

111. For just one state's statistics on the types of lawsuits filed, *see* JUD. COUNCIL OF CAL., 2023 COURT STAT. REPORT: STATEWIDE CASELOAD TRENDS (2023), https://www.courts.ca.gov/documents/2023-Court-Statistics-Report.pdf (discussing California litigation statistics).

112. The number of times that the military-related forces have been used for domestic law enforcement is probably less than ten times, compared to thousands of lawsuits that citizens file each year. *See generally* Blake Stilwell, *6 Times the Mil Was Used for Riot Control in the US*, MILITARY.COM (Mar. 19, 2023), https://www.military.com/military-life/6-times-military-was-used-suppress-civilian-uprisings-us.html (discussing use of the military for law enforcement in the United States).

113. It should be noted this type of "vigilante justice" was prevalent in some parts of this country early in its history. *See* Jim Jones, *The serious and growing danger of vigilantism*, THE HILL (Nov. 29, 2021), https://thehill.com/opinion/criminal-justice/583282-the-serious-and-growing-danger-of-vigilantism (discussing past acts of vigilante justice in this country).

114. *See Federal Judicial Caseload Statistics 2023*, U.S. CT. (2023), https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2023; *see also Court Statistics Project releases trial court caseload trends*, CT. STAT. PROJECT (Mar. 6, 2024), https://www.ncsc.org/newsroom/at-the-center/2024/court-statistics-project-releases-trial-court-caseload-trends.

115. *See generally* David L. Douglass et al., SIGNPOST IN THE ROAD: THE LAWYER'S ETHICAL OBLIGATION TO PROMOTE DIVERSITY IN THE LEGAL PROFESSION, INST. FOR INCLUSION IN THE LEGAL PROFESSION 52 (2020), https://www.theiilp.com/resources/Documents/IILP _2019 _FINAL_web.pdf.

that courts give to military academies' use of race-conscious measures. Some of the justifications that military academies use to support their use of race-conscious measures are just as salient for law schools' use of race-conscious measures—to ensure that there is a diversity of lawyers to protect democracy inside of this country.[116]

A. The Same Important Justifications

The participation of lawyers and many law schools in racial discrimination was (and perhaps is) just as persuasive as the military's and its academies' participation in racial discrimination.

Racial discrimination and its harmful effects have been present in this country from the beginning—and it is a primary reason why there is a lack of diversity in both the military and in the legal profession.[117] Racism, premised on skin color, in this country dates back at least to the colonial period.[118] And lawyers have played a major part in the continuation of that racism during various periods in the history of this country.[119] The following sections discuss the different periods in this country when there were no Black lawyers or other lawyers of color participating in decisions that maintained racial discrimination or otherwise denied social, economic, and political power to Black people and other people of color. The theory is that some of this discrimination might not have occurred if there had been more Black lawyers and other lawyers of color who were involved in making these decisions.

---

116. *See U.S. Mil. Acad. at W. Point*, 709 F. Supp. 3d. at 13.

117. Sybil Dunlop and Jenny Gassman-Pines, *Why the Legal Profession is the Nation's Least Diverse (And How to Fix It)*, 47 MITCHELL HAMLINE L. REV. 129, 132 (2021) (asserting "a multitude of factors, including systemic racism and sexism, unconscious bias, and law firm structures, contribute to this problem."). The American Bar Association has been complicit in that racial discrimination given that, since its beginning in 1878, it did not accept Black lawyers as members until 1943. *See* Ronald Adrine, *A History of the Black Legal Experience and the Organized Bar in Greater Cleveland*, CLEV. METRO. BAR ASS'N (May 16, 2023), https://www.clemetrobar.org/?pg=CMBABlog&blAction=showEntry&blogEntry=91499#:~.
One commentator states:

> The American Bar Association was formed in 1878, but didn't admit its first Black member, William Henry Lewis until 1911. Black lawyers were generally excluded from its membership and not deemed eligible to join until 1943. Most local bar associations across the country represented only the interests of white lawyers. They excluded African American and other minority group lawyers until near the middle of the 20th century.

Id.

118. David R. Roediger, *Historical Foundations of Race*, NAT'L MUSEUM OF AFR. AM. HIST. AND CULTURE, https://nmaahc.si.edu/learn/talking-about-race/topics/historical-foundations-race (last visited Mar. 15, 2025) (discussing racism and slavery).

119. George Brown, *Legal Profession Has Failed to Remedy the Racial and Ethnic Disparities They Caused*, STAN. L. SCH. (Feb. 7, 2023), https://law.stanford.edu/2023/02/07/legal-profession-has-failed-to-remedy-the-racial-and-ethnic-disparities-they-caused.

i. Colonial Period

White people, during colonial times, created systemic racism against Black people to justify the change from an indentured-servant labor system to a slave-based labor system premised on skin color.[120] Slave Codes and social customs enforced slavery as a legally sanctioned and brutal suppression of the lives and the rights of Black people.[121]

Even after the end of slavery in 1865, a racially-segregated system of laws—enforced by White lawyers and White-controlled judicial systems—existed until at least the Civil Rights Movement of the 1960s—when Congress enacted various types of civil rights laws to protect Black people's voting rights, employment rights, and public accommodation rights.[122]

It is significant that, from the colonial period to the 1960s, there were no Black people or Black lawyers at the table to decide whether the creation of racism and slavery was appropriate or otherwise morally acceptable; nor did any Black people or any Black lawyers have a role in such decisions.[123] One would think that, if there had been Black people and Black lawyers (with real political and economic power) involved in the above-referenced decisions, perhaps the colonists would not have created a system of slavery based on the skin color of Black people. And, therefore, this country might have been able to avoid the degradation of approximately two hundred and forty-six years of slavery with its harmful past and present-day effects.[124] This absence of participation by a diversity of people and lawyers, from the colonial period until the 1960s, provides a lesson that should inform our current ideas about the benefit of diversity as this country endures the current political war that different factions are waging about the continuation of this country's democracy.[125]

Not only was there no participation by a diversity of races and ethnicities of people and lawyers during the colonial period, but there

120. Roediger, *supra* note 118.

121. *Laws that Bound*, NAT'L PARK SERV., https://www.nps.gov/ethnography/aah/aaheritage/histContextsE.htm#:~:text=The%20bodies%20of%20law%20that,of%20a%20free%20African%20population (last visited Mar. 15, 2025) (discussing slave codes and similar laws).

122. *The Rise of Jim Crow*, *1877-1900*, N.Y. HIST. SOC'Y MUSEUM & LIBR., https://blackcitizenship.nyhistory.org/the-rise-of-jim-crow (last visited Mar. 15, 2025) (discussing the Jim Crow Era).

123. *See generally* Robert J. Cottrol & Raymond T. Diamond, *In the Matter of Color: Race and the American Legal Process: The Colonial Period*, 56 TUL. L. REV. 1107, 1107 (1982) (reviewing a book about the colonial period and creation of slavery).

124. Different colonies had different laws and customs that led to different levels of racism against Black people during the colonial period, with the more restrictive laws based on the population of Black people in a colony and on the need for slave labor to support an agriculture economy. *See* NAT'L PARK SERV., *supra* note 121.

125. David Leonhardt, '*A Crisis Coming': The Twin Threats to American Democracy*, N.Y. TIMES (June 21, 2023), https://www.nytimes.com/2022/09/17/us/american-democracy-threats.html (discussing some of the current threats to democracy in the U.S.).

was an inadequacy of participation by a diversity of such persons during the abolition movement.

ii. Abolition Movement

The abolition movement is a history of different groups, such as the American Anti-Slavery Society, that advocated, in various forms, for the eradication of slavery.[126] Some groups sought an immediate end to slavery, while others protested for a gradual end.[127] The members of substantially all of the major abolitionist groups and their leaders were White people who were motivated by religious and other objections to slavery.[128] These abolitionists played a role in many of the bans of slavery in the North before the Civil War.[129]

There were some Black members and leaders in the abolition movement, especially towards the end of the movement.[130] But, because of general racial discrimination against Black people in both Northern and Southern states, these Black abolitionists' protest activities were frequently limited to the Black community.[131] Even when White people accepted more Black people into the abolition movement, the Black abolitionists frequently did not have equal status with White abolitionists, primarily because many, if not most, White abolitionists believed in the inherent inferiority of Black people and tried to limit their active participation in the movement.[132]

---

126. When considering the successes and challenges of the abolition movement, it is significant that the diversity of the movement's leaders, their opinions, and their approaches were important to the debate over, and the eventual outlawing, of slavery in many of the colonies and states before the Civil War.

127. *See The Battle for Abolition*, PBS, https://www.pbs.org/wgbh/americanexperience/features/lincolns-abolition (last visited Mar. 15, 2025) (discussing division between immediate and gradual abolition).

128. *See generally Five Abolitionists*, PBS, https://www.pbs.org/wgbh/americanexperience/features/abolitionists-films-principal-characters (demonstrating the different backgrounds of famous abolitionists) (last visited Mar. 15, 2025).

129. *See id.*

130. Rather, at least by the early nineteenth century, there were many Black people, who had obtained their freedom from slavery, who were involved in the abolition movement's protest against slavery. *See generally The African American Odyssey: A Quest for Full Citizenship*, LIBRARY OF CONGRESS, https://www.loc.gov/exhibits/african-american-odyssey/abolition.html (discussing the participation of Black and White Abolitionists).

131. *See* Lauren Anderson, *Abolitionists, 1780-1865*, HARVARD LIBRARY, https://curiosity.lib.harvard.edu/slavery-abolition-emancipation-and-freedom/feature/abolitionists-1780-1865 (last visited Apr. 17, 2025) (discussing the role that Black newspaper and Black authors played in abolition movement). At least not until Frederick Douglass and a few other well-known Black leaders gained enough notoriety and influence to take their protests to a wider community. *See generally* Linton Weeks, *How Black Abolitionists Changed A Nation*, NPR (Feb. 26, 2016), https://www.npr.org/sections/npr-history-dept/2015/02/26/388993874/how-black-abolitionists-changed-a-nation (discussing the contributions of Black leaders during the abolitionist movement).

132. *See generally* LINDA HIRSHMAN, THE COLOR OF ABOLITION: HOW A PRINTER, A PROPHET, AND CONTESSA MOVED A NATION (2023) (discussing some of the racism that existed in the Garrison wing of the abolition movement and its impact on Frederick Douglass); *see also* David W. Blight, *On racism in the abolitionist movement*, PBS, https://www.pbs.org/wgbh

This racism within the abolition movement also affected White lawyers who participated in the movement as leaders and as lawyers representing Black clients, including those who were runaway slaves.[133] But, the number of these White-lawyer abolitionists pales in comparison to the majority of White lawyers who were complicit in enforcing the laws that slave masters, and other supporters of slavery, used to continue slavery and the suppression of Black people.[134]

Because states prevented Black people from obtaining licenses to practice law, there was not a very substantial growth in the number of Black lawyers until approximately the 1970s.[135] The few that did exist before that time often advocated against slavery and the Fugitive Slave Act that some slave masters used to re-enslave runaway slaves.[136]

If there had been more of these early Black lawyers during the abolition movement, with the full rights and privileges that the legal bar gave White lawyers, there would have been more advocacy against slavery, the re-enslavement of runaway slaves, and against other types of racial discrimination against Black people.[137] This same conclusion applies to the Civil War and Reconstruction period.

/aia/part4/4i2978.html (last visited Mar. 15, 2025) (discussing racism in the abolition movement); *A Great Inheritance: Prejudice, Racism, and Black Women in Anti-Slavery Societies*, NAT'L PARK SERV., https://www.nps.gov/articles/000/a-great-inheritance-prejudice-racism-and-black-women-in-anti-slavery-societies.htm (last visited Mar. 15, 2025) (discussing general racism in the abolition movement and racism against women); JOHN STAUFFER, IN THE SHADOW OF A DREAM: WHITE ABOLITIONISTS AND RACE, YALE UNIV. 6 (Nov. 7-8, 2003), https://glc.yale.edu/sites/default/files/files/events/race/Stauffer.pdf (discussing black inferiority theories against Black abolitionists).

133. *See* Daniel Farbman, *Resistance Lawyering*, 107 CAL. L. REV. 1877, 1880 (2019) (discussing the role that some white lawyers played in representing Black people against criminal charges and against the enforcement of the Fugitive Slave Act that slave master used to regain possession of runner-away slaves).

134. *See How the Legal System Continues to Treat Once-Enslaved People as Property*, MSU TODAY (June 14, 2023), https://msutoday.msu.edu/news/2023/how-the-legal-system-continues-to-treat-once-enslaved-people-as-property (discussing the participation of lawyers in slavery). One perhaps surprising fact is that Francis Scott Key, the author of our national anthem, was a lawyer who was a slave owner and opposed the abolition movement. *See* Bennett Parten, *Francis Scott Key: One of the Anti-Slavery Movement's Great Villains* (Sep. 29, 2021, 8:22 AM), https://theconversation.com/francis-scott-key-one-of-the-anti-slavery-movements-great-villains-165297.

135. *See generally* Dr. Todd Steven Burroughs, *The Current State of Black Lawyers, In and Out of the Civil Rights Arena*, MINORITY CORP. COUNS. ASS'N (Feb. 2007), https://mcca.com/mcca-article/current-state-of-black-lawyers/ (discussing the growth of Black lawyers).

136. *See generally Robert Morris: Civil Rights Lawyer & Antislavery*, BOS. COLL. L. SCH., https://www.bc.edu/bc-web/schools/law/sites/students/library/special-collections/robert-morris.html (last visited Mar. 15, 2025) (discussing Morris's law practice during the abolition movement).

137. *See generally* Michael Coard, *Lawyer Robert Morris Fought — Sometimes Physically — to Free the Enslaved*, PA. CAP.-STAR (Feb. 16, 2022, 6:30 AM), https://penncapital-star.com/commentary/lawyer-robert-morris-fought-sometimes-physically-to-free-the-enslaved-michael-coard/ (discussing Robert Morris's fight for justice during the abolition movement); *Robert Morris*, NAT'L PARK SERV., https://www.nps.gov/people/robertmorris (last visited Mar. 15, 2025) (discussing Robert Morris's role in the abolitionist movement); *Black Legal Trailblazer: Early Black Lawyers Were Civil Rights Forefathers*, THE VOICE (Feb. 22,

iii. The Civil War and Reconstruction

Abraham Lincoln was the president during the Civil War. He was a lawyer, and most of the members of his cabinet were White lawyers.[138] William Henry Seward, Lincoln's Secretary of State and one of the most influential members of the cabinet, helped Lincoln choose the appropriate time to announce the Emancipation Proclamation—which freed slaves in the states rebelling against the Union.[139] Secretary of War Ewin M. Stanton supported emancipation, as did the Attorney General Edward Bates and Secretary of the Treasury Salmon P. Chase. But the Postmaster General, Montgomery Blair, opposed emancipation because he thought that it would cause Lincoln to lose reelection.[140]

Obviously, there were no Black lawyers or other lawyers of color involved in either Lincoln's cabinet or his decision-making process, including decisions regarding the appropriate time of emancipation. Had there been Black lawyers involved in the process, some of them might have advocated that Lincoln's emancipation of slaves be broader to also include slaves in the Union's controlled territories and in all states throughout the country.[141] And Black lawyers might have provided the type of legal representation that would have led to faster progress in obtaining voting rights and citizenship for Black people in the South.[142]

In addition, participation by a diversity of lawyers was needed during the Reconstruction Period after the Civil War—in at least two

---

2021), https://www.communityvoiceks.com/2021/02/22/black-legal-trailblazers-early-black-lawyers-were-civil-right-forefathers (discussing early Black lawyers and their role in fight for the freedom of Black people).

138. *See* Sigurd Anderson, *Lawyers in the Civil War*, 48 AM. BAR ASS'N J. 457, 457, 459 (1962) (discussing lawyers during the war between the states).

139. *William H. Seward*, NAT'L Park SERV., https://www.nps.gov/people/william-h-seward (last visited Feb. 26, 2025) (discussing Seward's persuasion to have Lincoln wait until a major war victory to give the Emancipation Proclamation so that the public would not view emancipation as an act of desperation to obtain freed Black soldiers).

140. *Abraham Lincoln and Emancipation*, LIBR. OF CONG., https://www.loc.gov/collections/abraham-lincoln-papers/articles-and-essays/abraham-lincoln-and-emancipation (last visited Mar. 3, 2025). The white lawyers in Lincoln's cabinet were patriotic, and this country should honor them—especially for their ant-slavery views and participation in Lincoln's cabinet to save the Union. However, it should be noted that the first draft of the proclamation provided that freed Black people could voluntarily colonize themselves to another country, but the final version did not mention colonization and accepted freed Black men into the Union Army. *See generally* Joseph R. Fornieri and David Tucker, *Preliminary and Final Emancipation Proclamations*, TEACHING AMERICAN HISTORY, https://teachingamericanhistory.org/document/preliminary-and-final-emancipation-proclamations (discussing the different drafts of the proclamation).

141. *See generally* ANDERSON, *supra* note 138, at 457 (noting that White lawyers were heavily involved in Lincoln's cabinet).

142. *Cf.* James W. White, *Meet the Black Men Who Changed Lincoln's Mind About Equal Rights*, SMITHSONIAN MAGAZINE (Jan. 2022), https://www.smithsonianmag.com /history/men-changed-changing-lincolns-mind-180979230 (discussing some of the positive impact that some lay Black men had during their meetings with Lincoln).

respects. First, there were no diverse lawyers involved in the decision to remove federal troops from the South, as a compromise to the Hayes-Tilden dispute.[143] The removal of the troops left newly freed Black people at the mercy of White people in the South who were determined to regain social, economic, and political control of the South.[144] After the troops left, White people "took back" control of the state governments and enacted Black Codes and other laws that virtually re-enslaved Black people.[145]

Second, there were no Black lawyers who were the judges involved in interpreting the newly enacted Thirteenth, Fourteenth, and Fifteenth Amendments. Instead, only White judges were involved in these decisions, which basically interpreted the Amendments in such a way that they did not provide much protection to Black people and allowed states to subject Black people to unequal protection of the laws through a very conservative interpretation of the Amendments.[146]

Additionally, there were no diverse judges involved in resolving the *Civil Rights Cases*,[147] which held that the Civil Rights Act of 1875, as applied, was unconstitutional because neither the Fourteenth Amendment nor the Thirteenth Amendment provided a right to the types of public accommodations at issue in the cases.[148]

Similarly, there were no Black judges involved in the *Plessy v. Ferguson*[149] decision that created the "separate but equal" doctrine, which basically codified segregation and unequal treatment for almost a hundred years after the end of slavery.[150]

It seems only reasonable that a more diverse legal profession—with Black and other people of color as lawyers—would have offered an alternative interpretation for the Fourteenth Amendment and the Thirteenth Amendment—and would not have created the separate but equal doctrine or any other interpretation of the Constitution that would have led to more than a century of racial segregation and racial discrimination until approximately the Civil Rights Movement of the 1960s.

---

143. *See generally* Shella Blackford, *Disputed Election of 1876: The Death Knell of the Republican Dream*, UNIV. OF VA. MILLER CTR., https://millercenter.org/the-presidency/educational-resources/disputed-election-1876 (last visited Mar. 3, 2025) (discussing the harm that occurred in the South after federal troops were removed).

144. *Id.*

145. *Id.*

146. *See generally* Phillip S. Paludan, *Law and the Failure of Reconstruction: The Case of Thomas Cooley*, 33 J. OF THE HIST. OF IDEAS 597, 599 (1972) (discussing a conservative interpretation of the privileges and immunity clause and the commodity clause of the Fourteenth Amendment of the U.S. Constitution).

147. *See generally* U.S. v. Stanley, 109 U.S. 3 (1883).

148. *See id.* at 25.

149. *See* 163 U.S. 537 (1896).

150. *See id.* at 551–52.

iv. Civil Rights Movement

It was not until the Civil Rights Movement of the 1960s that there were a substantial number of Black lawyers involved in advocating for the equal protection and rights of Black people.[151] Although some White lawyers advocated for Black people's civil rights, the bulk of the lawyers involved in civil rights cases, including *Brown v. Board of Education*,[152] were Black lawyers, especially those who founded and worked for the NAACP Legal Defense Fund ("LDF").[153] These lawyers, and the lawyers who worked for other civil rights organizations, did yeoman work desegregating the public-school systems throughout this country and otherwise fighting for Black people's rights.[154]

Certain civil rights organizations, such as the NAACP, worked simultaneously with the Black civil rights lawyers to protest racial discrimination against Black people in various areas of life in this country, including public accommodations in restaurants, interstate transportation, employment, and in virtually every aspect of life.[155]

The work of the Black civil rights lawyers and the work of the civil rights organizations eventually led to Congress's enactment of the Civil Rights Act of 1964[156] and the Voting Rights Act of 1965—two of the most important laws that still provide for equal protection of, not only Black people, but for all people in some aspect or another.[157]

The success of the civil rights movement eventually led to this country's election of President Barack Obama, a Black lawyer, as the first Black president.[158] And to the election of Kamala Harris, a Black lawyer, as the first female Vice President.[159]

Thankfully, in 2025, there are Black people and other people of color serving as lawyers in private practice, in prosecutors' offices, in private corporations, in various federal and state governmental agencies, in Congress and state legislatures, and as professors at almost

151. *See generally* James R. Ralph, Jr., *Review: Michael Meltsner, The Making of a Civil Rights Lawyer*, 31 VT. L. REV. 907–912 (2007) (discussing the early days of the LDF).

152. *See* 347 U.S. 483 (1954).

153. *See generally* Ralph, *supra* note 151, at 909–11 (discussing the lawyers on staff at LFD).

154. *See id.* at 909, 915.

155. *See* PATRICIA SULLIVAN, LIFT EVERY VOICE: THE NAACP AND THE MAKING OF THE CIVIL RIGHTS MOVEMENT 25, 333–35 (2009).

156. *See generally Landmark Legislature: The Civil Rights Act of 1964*, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/generic/CivilRightsAct1964.htm (last visited Mar. 1, 2025) (discussing the process of passing The Civil Rights Act of 1964).

157. *See generally The Senate Passes the Voting Rights Act*, U.S. SENATE., https://www.senate.gov/artandhistory/history/minute/Senate_Passes_Voting_Rights_Act.html (last visited Mar. 1, 2025) (discussing passage of the Voting Rights Act).

158. *Barack Obama*, THE WHITE HOUSE HIST. ASS'N, https://www.whitehousehistory.org/bios/barack-obama (last visited Mar. 1, 2025).

159. *Kamala Harris Becomes First Female, First Black and First Asian-American VP*, BBC (Jan. 20, 2021), https://www.bbc.com/news/world-us-canada-55738741.

every law school in the country—and on the United States Supreme Court.[160]

It is reasonable to believe that these Black lawyers are making a difference. Not only are they representing private clients who challenge racial discrimination and police brutality, but they are participating in the development of public policy throughout the country.[161]

The success of the Black Lawyers, in their various roles, and civil rights organizations shows what can be done when Black people are allowed to be lawyers, and when people in general advocate and fight for their rights and freedom.

Additionally, it is significant that White people were also involved in the various victories during the Civil Rights Movement because without the approval of a majority of the White Supreme Court Justices, and of other White judges, the *Brown* decision, other favorable Court opinions, and lower court opinions in favor of equality for Black people and for other persons of color would not have occurred. However, there is much work to be done by both White and Black attorneys, as the recent insurrection against our democracy and country shows.

v. The January 6, 2020, Insurrection and Challenge to the 2020 Presidential Election

On January 6, 2020, an angry, violent, and predominately White mob invaded the U.S. Capitol, seeking to stop the official certification of the Electoral College's vote in favor of President Joe Biden.[162] The federal government has prosecuted many members of that mob.[163]

White lawyers representing the loser of the 2020 presidential election, Donald Trump, filed various challenges throughout the country, alleging various types of voter fraud and other irregularities

160. AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 2020 33 (2020), https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf.

161. *See id.* at 44.

162. *See generally* Marshall Cohen & Avery Lotz, *The January 6 Insurrection: Minute-By-Minute*, CNN (July 29, 2022), https://www.cnn.com/2022/07/10/politics/jan-6-us-capitol-riot-timeline/index.html (discussing the insurrection); Michael Ricciardelli, *A Demographic and Legal Profile of January 6 Prosecutions*, SETON HALL UNIV. (July 26, 2023), https://www.shu.edu/news/a-demographic-and-legal-profile-of-january-6-prosecutions.html.

163. Alanna Durkin Richer & Michael Kunzelman, *Hundreds of Convictions, But A Major Mystery Is Still Unresolved 3 Years After the Jan. 6 Capital Riot*, ASSOCIATED PRESS (Jan. 5, 2024, 1:52 PM), https://apnews.com/article/capitol-riot-jan-6-criminal-cases-anniversary-bf436efe760751b1356f937e55bedaa5 (discussing prosecution of insurrectionists). However, it should be noted that President Trump subsequently pardoned the rioters after he won reelection to the presidency. Carrie Johnson, *Trump offers long-promised pardons to some 1,500 January 6 rioters*, NPR (Jan. 20, 2025), https://www.npr.org/2025/01/20/g-s1-36809/trump-pardons-january-6-riot (discussing President Trump's pardons).

regarding the election.[164] However, federal judges and state judges, in over sixty different lawsuits, rejected such allegations—thereby validating President Joe Biden's win in the 2020 election.[165]

Most of the judges in the above-referenced lawsuits were White judges, of different political persuasions—without whom the integrity of the 2020 presidential election would not have stood and this country's democracy would have been less secure.[166]

It is also very significant that most of the prosecuting lawyers, who have sought to bring a former President of the United States to justice, have been Black lawyers.[167]

In sum, this section of the Article makes a case that Black lawyers have played a large part in maintaining equality and democracy in this country. When they were not present in the beginning of this country—from the colonial period to until the Civil Rights Movement of the 1960s, this country did not fully protect Black people's constitutional rights.[168] Rampant racial discrimination existed throughout the country, especially in the South where some White people enforced segregation laws that prevented Black people from fully exercising their voting rights, employment rights, and public accommodation rights.[169] But starting in the 1960s, Black lawyers, with the assistance of some White lawyers and White judges, were able to achieve a better enforcement of the Constitution and federal laws that led to better protection of Black people and other citizens' rights.[170]

And this struggle for a more perfect society will continue, and the participation of all types of lawyers—including Black lawyers, Hispanic lawyers, Asian-American lawyers, and other people of color lawyers will be needed to ensure that all persons' constitutional rights will be enforced.

III. THE SERVANT LEADER: A CONNECTION BETWEEN

164. *Results of Lawsuits Regarding the 2020 Elections*, CAMPAIGN LEGAL CTR., https://campaignlegal.org/results-lawsuits-regarding-2020-elections (last visited Mar. 4, 2025) (discussing results of lawsuits challenging the 2020 elections).

165. *Id.*

166. *See* Rosalind S. Helderman & Elise Viebeck, *'The last wall: How Dozens of Judges Across the Political Spectrum Rejected Trump's Efforts to Overturn the Election*, WASH. POST (Dec. 12, 2020, 7:12 PM), https://www.washingtonpost.com/politics/judges-trump-election-lawsuits/2020/12/12.

167. Politico Staff, *Tracking the Trump Criminal Cases*, POLITICO (Nov. 6, 2024, 3:22 AM), https://www.politico.com/interactives/2023/trump-criminal-investigations-cases-tracker-list (discussing the prosecutions against Donald Trump).

168. *See generally The Civil Rights Act of 1964: A Long Struggle for Freedom*, *Prologue*, LIBR. OF CONG., https://www.loc.gov/exhibits/civil-rights-act (last visited Mar. 4, 2025) (discussing how the civil rights movement did not entirely protect the Constitutional rights of Black people).

169. *Id.*

170. *See* supra notes 152–162. *See, e.g.*, Sarah C. Campbell, *The Role of Lawyers in the Civil Rights Movement in Mississippi*, MISS. HIST. NOW (Feb. 2022), https://mshistorynow.mdah.ms.gov/issue/role-lawyers-civil-rights-movement-mississippi.

LAWYERS AND THE MILITARY

If courts were to apply a *Grutter* analysis to law schools' use of race-conscious measures during the admissions process, law schools would be able to continue their quests to enroll diverse classes of students who will one day be a diverse group of lawyers.[171] For these more diverse classes of students, law schools should provide a more focused opportunity for the students to develop those leadership skills that will enhance the students' ability to provide the types of "servant leadership" that this country's democracy needs.[172]

The premise of this argument is that every law school should sufficiently expose its students to the students' ethical and moral obligations to treat their clients, opposing clients, and other people in their communities, in such a manner that empowers these persons to be

171. This is so because the "sufficiently measurable" standard that the Court established in *Harvard College* is more exacting in that a higher education institution is less likely to establish all of the elements of the test. *See supra* notes 58–59 and *supra* notes 62–63 and accompanying text. For example, Justice Thomas made the following statement in his concurring opinion in *Harvard College*: "The Court's opinion rightly makes clear that *Grutter* is, for all intents and purposes, overruled. And, it sees the universities' admissions policies for what they are: rudderless, race-based preferences designed to ensure a particular racial mix in their entering classes." *Harvard College*, 600 U.S. at 287.

It may be that the most drastic impact from the Court's *Harvard College* decision will be on "elite law schools" like Harvard Law School which experienced an approximately 44% reduction in Black students and an approximately 61% reduction in Hispanic students in its entering class after the *Harvard College* decision. *See* Cheyanne M. Daniels, *Black Enrollment at Harvard Law Lowest Since 1960s After Affirmative Action Ruling*, THE HILL (Dec. 20, 2024), https://thehill.com/homenews/race-politics/5051335-black-student-enrollment-harvard-law-supreme-court-affirmative-action (discussing admissions at Harvard Law School after the *Harvard College* decision).

Perhaps the same number of Black and some other students of colors will attend law schools, after the *Harvard College* decision, in the same numbers that they attended before the decision, but more than one year of data will probably be necessary to analyze the full impact of the *Harvard College* decision. Michael T. Nietzel, *Little Change in Law School Minority Enrollment After Scotus Decision*, FORBES (Dec. 17, 2024), https://www.forbes.com/sites/michaeltnietzel/2024/12/17/little-change-in-law-school-minority-enrollment-after-scotus-decision (discussing the effects of *Harvard College* one year after it became the law). However, what that could mean is that Black and some other students of color will be forced to attend less prestigious law schools, all the way down to the bottom of the law school rankings—which is, in part, shown by the drop in enrollment that Harvard Law School and some other elite schools have experienced after the *Harvard College* decision. *See* Nietzel, *supra* note 171. For a discussion of how the *Harvard College* decision will create a caste system where many Black and some other students of color will be denied admissions at elite law schools and suffer the loss of opportunities that these schools offer, *see* Pittman, *supra* note 16.

For a general discussion of the reduction in the admissions of Black and other students of color to colleges and universities, *see* Chelsea Bailey, *What College Campuses look Like after the End of Affirmative Action*, CNN (Sep. 14, 2024), https://www.cnn.com/2024/09/14/us/diversity-post-affirmative-action-unc-harvard/index.html (discussing impact of enrollment of students of color).

172. Alan Kleven, *Servant Leadership for Lawyers*, L. PRAC. TODAY (Jan. 5, 2023), https://www.lawpracticetoday.org/article/servant-leadership-for-lawyers (discussing servant leadership principles and how such principles can benefit lawyers).

better citizens, better leaders in all aspects of their lives, and better protectors of our democracy.

To further show the similarity between the military and the legal profession, this Article posits that law schools should start teaching leadership skills using a "servant leadership" approach like the military uses to train military officers and other soldiers.[173] Several observations are relevant to this contention.

First, there is a rich history of the role that lawyers have played in the military. From early legal training in England in the Inns of Courts, the analytical, oratory, and other legal skills that lawyers possessed were beneficial to the military because these skills made lawyers uniquely qualified to assume leadership roles in the early militias and later in the more modern military.[174] In return, the legal community and society in general reaped the benefits of the knowledge that lawyers gained from their military service.[175] That knowledge included the skills and experiences that lawyers obtained from working with soldiers from other professions such as physicians, merchants, farmers, bankers, and other trades.[176] This interaction with different professions increased lawyers' practical knowledge and made them better able to relate to their clients and other members of their community—after they returned home from military service.[177]

This symbiotic relationship between lawyers and the military—wherein lawyers actively participated in the military as fighting soldiers and obtained leadership skills—lasted until approximately after the end of the Civil War when it became more obvious that this

---

173. asy5095, *The Leadership Driven Culture: Servant Leadership in the United States Army*, PA. ST. UNIV.: LEADERSHIP PSYCH. 485 BLOG (Apr. 4, 2022), https://sites.psu.edu/leadership/2022/04/04/the-leadership-driven-culture-servant-leadership-in-the-united-states-army (discussing servant leadership management skills in the army); Lida Citroen, *What is 'Servant Leadership'?*, MILITARY.COM (Oct. 23, 2017), https://www.military.com/hiring- veterans/resources/understanding-military-servant-leadership-for-civilian-employers.html; Lawrence Price, *Servant Leadership Culture & What the Military Taught Me About Personal Sacrifice*, LINKEDIN (Nov. 9, 2022), https://www.linkedin.com/pulse/servant-leadership-culture-what-military-taught-me-price-ph-d (describing lesson learned from the military teaching of servant leadership). For a review of the literature regarding the positive benefit of a servant leadership style, *see* Alice Canavesi & Eliana Minelli, *Servant Leadership: A Systematic Literature Review and Network Analysis*, NAT'L LIBR. MED. (Sep. 28, 2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8476984.

174. *See* Bernard J. Hibbitts, *Martial Lawyers: Lawyering and War-Waging in History*, 13 SEATTLE J. FOR SOC. JUST. 405, 448 (2014), (discussing the role of lawyers in the military throughout the history of this country). Military service was beneficial to the lawyers because it gave them income and wealth through wages (when some lawyers did not have sufficient clients or legal work to make sufficient income) and through the accumulation of substantial acres of land as payment for their military service. Many lawyers also became famous based on their military service. *Id.* at 417.

175. *Id.* at 450.

176. *Id.* at 451.

177. It is reasonable to believe that soldiers from other professions developed similar knowledge and skills that allowed them to be better in their professions and better in relating to others in their communities. *Cf. id.*

country needed a military composed of professional soldiers and professional military leaders.[178] Today, most lawyers participate in the military by serving in the JAG Corps and in similar legal departments in other military branches.[179] Such lawyers have greatly valued the leadership skills that they gained through their military service—including the leadership skills they gained by working with other lawyers and soldiers from different backgrounds and professions.[180]

These skills, in part, include such intangibles as "realness, caring, and authenticity."[181] They also include humility and selflessness.[182] They are the types of leadership skills that a successful leader needs to obtain others' trust—with that trust being indispensable to the willingness of others to follow the would-be leader.[183] Just as lawyers who serve in military legal departments need to develop these skills, so do law students and lawyers who work in the civilian legal profession.

The Revised American Bar Association ("ABA") Accreditation Standards Rule 303(b)(3) is relevant to this issue.[184] This standard requires that law schools develop instruction or training on "professional identity" to teach law students core skills and obligations that they will need as practicing attorneys.[185] The National Association for Law Placement ("NALP") has defined these core competencies as (1) a "care orientation to others," (2) "continuous professional development," (3) "well-being practices," and (4) "client-centered relational skills, problem-solving, and good judgment."[186] These are skills that

178. Lawyers no longer need military service to supplement the income from their legal practices and have other outlets to dissipate aggression. *Id.* at 405, 451.

179. *See generally* Adam, *How many JAG Lawyers are There?*, UNIF. CODE OF MIL. JUST., https://ucmj.us/how-many-jag-lawyers-are-there/#:~:text=Army%3A%20The%20Army%20JAG%20Corps,environmental%20law%2C%20and%20maritime%20law (last visited Feb. 26, 2025) (discussing the number of lawyers in the military and important role they play); *see also* Michael A. Newton, *Modern Military Necessity: The Role & Relevance of Military Lawyers*, 12 ROGER WILLIAMS UNIV. L. REV. 877, 880 (2007) (discussing the importance of lawyers to the military).

180. Paula Davis, *Leadership Lessons from An Air Force JAG*, STRESS & RESILIENCE INST., https://stressandresilience.com/leadership-lessons-from-an-air-force-jag/ (last visited Mar. 15, 2025) (discussing lessons a lawyer learns from JAG experience).

181. *Id.* The way that this relates to law school admissions is that these skills are normally honed by being in a diverse environment, and law students, who will be future lawyers, will be better members of the military if they join the JAG Corps and better lawyers in any career or position in which they serve. *Id.*

182. Paula Davis, *Leadership Lessons from A Former Armor & Cavalry Officer*, STRESS & RESILIENCE INST., https://stressandresilience.com/leadership-lessons-from-a-former-armor-cavalry-officer (last visited Mar. 15, 2025) (discussing one soldier's leadership experience in the military).

183. *Id.*

184. STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCH. CH. 3 STD. 303(B)(3) (AM. BAR ASS'N 2024-25) (discussing the professional identity requirement).

185. *Id.*

186. Neil W. Hamilton & Louis D. Bilionis, *Revised ABA Standards 303(b) and (c) and the Formation of a Lawyer's Professional Identity, Part 1: Understanding the New Requirements*, NAT'L ASS'N FOR L. PLACEMENT (May 2022), https://www.nalp.org/revised-aba-standards-part-1 (discussing the requirements of Standards 303 (b) and (c)). Law schools will have to

are very similar to the core skills that the military teaches its officers and general soldiers.[187]

Standard 303(b)(3) is a good start to developing the types of skills that will give law students, as future lawyers, the training that they will need to be "servant leaders" who will be primarily motivated to serve their clients and larger communities.

One should consider these professional identity core skills as being a complement to lawyers' ethical obligations to give advice to their clients regarding the "moral, economic, social and political factors that may be relevant to the client's situation."[188] They are also complementary to the Preamble to the Model Rules that, "[a]s a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession."[189]

Although the law student's and lawyer's ethical obligation to promote and advance "justice" is open to debate and is not fully defined, this Article asserts that these ethical obligations should include a responsibility to promote, advance, and protect this country's democracy.[190] Because, without the preservation of our democracy, there will be no "just" legal system or quality of justice for law students and lawyers to advance.

---

develop courses and/or programs to teach the core skills of professional identity. At some point, there will probably be a list of best practices to provide guidance of the specifics of professional identity courses.

187. ARMY CORE LEADER COMPETENCIES, U.S. ARMY: ARMY RSRV. OFFICER'S TRAIN'G CORPS 54, 55-6 (2009) (discussing the Army leadership core skills); s*ee also* Patrick Mullane, *How the Military Prepared Me to Lead*, HARV. BUS. SCH. ONLINE (Nov. 10, 2021), https://online.hbs.edu/blog/post/military-leadership-lessons (discussing leaderships skills learned in the military); Office of the Staff Judge Advocate, *Core Competencies, Key Leader Attributes, and Toxic Leadership*, FORT BENNING: MANEUVER CTR. OF EXCELLENCE (July 2019), https://www.moore.army.mil/mcoe/sja/content/pdf/Leader%20Attributes.pdf (discussing Army leadership).

188. MODEL RULES OF PRO. CONDUCT r. 2.1 (AM. BAR ASS'N 2025); MODEL RULES OF PRO. CONDUCT r. 2.1 cmt. (AM. BAR ASS'N 2025), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_2_1_advisor/ (discussing lawyer's duty to discuss the morality and other implications of the client's situation); *see* U.S. ARMY, *supra* note 187.

189. MODEL RULES OF PRO. CONDUCT: PMBL. & SCOPE ¶ 6 (AM. BAR ASS'N 2025), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope; *see also* STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCH. CH. 3 STD. 303(B)(3) (AM. BAR ASS'N 2024-25).

190. ABA Model Rule of Professional Conduct, Preamble (6). Paragraph (6) of the preamble provides:

> As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because *legal institutions in a constitutional democracy* depend on popular participation and support to maintain their authority. (emphasis added).

MODEL RULES pmbl. ¶ 6.

Because the entire legal system in this country, and lawyers' ethical obligations under the Model Rules of Professional Conduct, is based on this country being a democratic society—with a legal system based on established rules of law under the U.S. Constitution and state constitutions—the logical conclusion is that law students and lawyers have an ethical obligation to promote and advance democracy and the rule of law in this country.[191] As a matter of fact, the oaths that lawyers in all fifty states take, to be admitted to the Bar, commit them to supporting the U.S. Constitution and the relevant state constitutions.[192] It seems only logical that law schools should be teaching law students about democracy and their obligations to support and advance our democratic way of life.[193]

Given the current threat to this country's democracy—which is the most substantial threat since the Civil War—law schools should be more focused on teaching law students about democracy and their obligations regarding it. In addition to the normal law school courses, including courses on constitutional law, there should be a required law school course about democracy.

But just teaching law students about democracy is not enough because a part of that democracy, under at least the U.S. Constitution, is a commitment to equal protection of laws under the Thirteenth, Fourteenth, Fifteenth, and Fifth Amendments.[194] Because different U.S. citizens have different backgrounds, cultures, beliefs, implicit biases, and ideas about the meaning of "life, liberty and the pursuit of happiness,"[195] there cannot be a meaningful discussion or teaching of democracy without a study of the roles that a diverse people have played and are playing in that democracy.

Further, despite America being a democratic country, that democracy will work for all races, ethnicities, and genders only when leaders take the interests of all its diverse citizens into consideration when making public policy and other laws that affect this country. Sadly, during much of the history of this country, the leaders (especially governmental leaders) have not protected the interests of all citizens, including Black people, women of all races, persons in the

191. *Id.*

192. Margaret Robb, *Oath of Admission for All 50 States*, IND. CT. APP. (2024), https://cdn.ymaws.com/www.inbar.org/resource/resmgr/litigation/Oaths.pdf.

193. Julianne Hill, *Over 100 Deans Commit to Training Lawyers to Sustain Constitutional Democracy, Rule of Law*, A.B.A. J. (June 18, 2024, 1:18 PM), https://www.abajournal.com/web/article/100-deans-commit-to-training-lawyers-to-sustain-constitutional-democracy-rule-of-law#:~:text=Image%20from%20Shutterstock)-,More%20than%20100%20deans%20of%20U.S.%20law%20schools%20signed%20an,public%20education%20and%20clinical%20work (discussing some law school's dean's commitment to train lawyers about their duty to support democracy).

194. U.S. CONST. amend. V, amend. XIII § 1, amend. XIV § 1, amend. XV § 1.

195. THE DECLARATION OF INDEPENDENCE pmbl. (U.S. 1776).

LGBTQ+ community, and other disfavored persons.[196] And frankly, it would be difficult to even know and understand the interests and needs of diverse groups of citizens—or take action to protect their interests—if these persons do not have a seat at the table when the leaders are making public policy decisions regarding issues affecting such persons' interests.

This same principle—that a diverse citizenry needs a diverse group of persons to represent them—applies to the need that the legal profession be composed of a sufficiently diverse body of lawyers—which can only occur if law schools are composed of a sufficiently diverse group of law students. The need for a diverse group of lawyers is, in part, shown by the fact that approximately 130 or more lawsuits have been filed against the present Executive Branch of the U.S. Government, challenging various types of alleged violations of the law.[197]

And as argued above, law schools should provide instructions on "servant leadership" skills so that these diverse student bodies of law students will develop the core skills that they need to both represent clients and promote judicial systems based on our democratic form of government.

IV. CONCLUSION

This country's experiment with democracy is under attack by those who appear to have given up on democracy for a more autocratic form of government. Hopefully, citizens will fight this war on democracy at the ballot box and in the courts pursuant to acceptable, non-violent rules of law, and not in the streets with different versions of "vigilante justice." If that is the case, then law schools and lawyers will be soldiers in the peaceful resolution of the various issues, lawsuits, and governmental functions that this country will encounter. And, therefore, law schools should be allowed to use *Grutter*'s race-as-a plus factor standard during their admissions processes to enroll more diverse classes of students whom they will teach courses on democracy. Under *Grutter*, law schools, just like the military academies, should be given deference in the use of race-conscious admissions standards so that they will be better able to fulfill their compelling interest in protecting our domestic democracy by the enrollment of a diverse group of law students just like the military academies are given deference in the use of race-conscious measures to be better able to fulfill their compelling interest in national security by enrolling a diverse study bodies.

196. Danyell Solomon, Connor Maxwell, and Abril Castro, *Systematic Inequality and American Democracy*, CTR. FOR AM. PROGRESS (Aug. 7, 2019), https://www.americanprogress.org/article/systematic-inequality-american-democracy (discussing various aspects of discrimination against different groups in this country).

197. *Tracking the Lawsuits Against Donald Trump Executive Actions*, AP (Apr. 7, 2025), https://apnews.com/projects/trump-executive-order-lawsuit-tracker (tracking various lawsuits).