STARRS

CALVERT TASK GROUP

MacArthur Society of West Point Graduates

POSITION PAPERS

TO RESTORE PURPOSE, UNITY & TRUST IN THE US MILITARY

VETERANS ORGANIZATIONS WORKING TOGETHER TO RESTORE PURPOSE, UNITY & TRUST IN THE US MILITARY

STARRS

Stand Together Against Racism and Radicalism in the Services (STARRS) is concerned about the divisive racist and radical CRT/DEI ideology infiltrating the military and service academies and seeks to expose, stand up against, and eliminate it in order to keep our country safe.

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To preserve, defend, and advocate for West Point's history, purpose, and principles of Duty, Honor, Country.

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Support and defend the Constitution of the United States, the Navy and Marine Corps and the U.S. Naval Academy

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Let's Fix It: ACTION ITEMS

Supports all lines of effort ■ Restore purpose, unity, trust

☑ Eradicate CRT/DEI in the military
☑ Approve appropriate remedies for those harmed by the vaccine mandate

IMPORTANT NOTE:
Since these positions papers were published, President Trump's Executive Orders have addressed many of the recommendations proposed in the papers. However, it is vital that Congress now codify these recommendations via legislation.

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POSITION PAPER

A Domestic Threat: Diversity, Equity, and Inclusion

PROBLEM: America is in a Cultural War (*see "America's Cultural Revolution: How the Radical Left Conquered Everything by Christopher Rufo*), and we are losing as evidenced by wide-spread student riots supporting a terrorist organization—Hamas—raising its flag on U.S. soil.

It is not a shooting war; but it's more deadly as it targets the heart and soul of our Nation—our traditional values, Constitution, Rights, and Citizens.

Masked by the innocent sounding words of Diversity, Equity, and Inclusion (DEI), Critical Race Theory (CRT), or "wokeism," this culture war aims to sow chaos and division by establishing oppressed and oppressor groups according to race, gender, sexual orientation and more.

Its premises are *ipso facto* an attack on merit, making it particularly damaging for our military—which relies on unity and excellence.

FACTS:

- The Culture War is firmly rooted in Marxism, hence the emphasis on "oppressors" and "oppressed."
- The Left defines "oppressors" as being white, especially white males. The "identity" group classes being defined as "oppressed" justify special privileges for them as compensation.
- Special privileges involve lowering standards for admission to academies; "goals" for senior level promotions, selection for high level military education and key assignments; lower physical training requirements; etc. This creates animosity, distrust, and morale problems within the ranks. Lower standards result in lower performance, which then degrades combat readiness.
- By its nature and purpose, DEI, CRT, and wokeness "divide" service members into identity groups, eroding the unity, cohesiveness, and trust so critical to an effective military operating in life and death situations.
- If a beer, shoe, department store, or coffee business goes woke, you can choose a non-woke business for your needs. But when your military goes woke, there is no choice. Our Nation is in great peril as wokeness greatly degrades warfighting readiness.
- Military DEI advocates advanced debunked McKinsey study evidence of DEI benefits. See Diversity Was Supposed to Make Us Rich. Not So Much.
- On the contrary, there is evidence that DEI has adverse effects.
  - See Professor Haskell heavily cited research: Not as advertised: What the research concludes about DEI and his companion article: What DEI research concludes about diversity training: it is divisive, counter-productive, and unnecessary.
  - See also a recent Rutgers study: Instructing Animosity: How DEI Pedagogy Produces the Hostile Attribution Bias

DISCUSSION:

STARRS, The MacArthur Society, and the Calvert Task Group are dedicated to causing our military to refocus on warfighting readiness and its mission —to deter, fight and win our Nation's wars. Nothing else matters. HOW is this done? By eradicating all aspects of DEI, CRT, and Wokeness from our military.

RECOMMENDATIONS:

- Eradicate CRT/DEI personnel and programs;
- End funding for all CRT/DEI programs within DoD; and
- Hold accountable those who advance discrimination instead of assimilation.

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POSITION PAPER

The Defense Advisory Committee on Diversity and Inclusion (DACODAI)

PROBLEM:

DACODAI (now DAC-DI) is an advisory body to promote discrimination to achieve equity.

FACTS:

- DACODAI's lineage: The Congressional Black Caucus, without debate, chartered the Military Leadership Diversity Commission (MLDC) in the FY 2009 National Defense Authorization Act (NDAA), chaired by General (USAF, Retired) Lester Lyles. See https://www.af.mil/About-Us/Biographies/Display/Article/106412/general-lester-l-lyles/

- In its March 2011 final report, the MLDC concluded (see https://diversity.defense.gov/Portals/51/Documents/Special%20Feature/MLDC_Final_Report.pdf):

  > "Diversity management calls for creating a culture of inclusion . . . Creating this culture will involve changing the way in which people relate to one another within a single unit, within a particular military branch, and throughout the DoD.
  >
  > In particular, although good diversity management rests on a foundation of fair treatment, ***it is not about treating everyone the same***.
  >
  > This can be a difficult concept to grasp, especially for leaders who grew up with the EO-inspired mandate to be both color and gender blind.
  >
  > Blindness to difference, however, can lead to a culture of assimilation in which differences are suppressed rather than leveraged."

NOTE: The above quote explicitly argues FOR discrimination and AGAINST assimilation. Assimilation is critical to forming a united, cohesive unit. The importance of assimilation is explicit in our national motto: E Pluribus Unum. Assimilation should be the goal in the military because it is what works because it is unifying. There is nothing wrong with "assimilation" and no evidence or even stated rationale to support the claims that "assimilation" is bad and "leveraging differences" is good. Differences based on race cannot be leveraged.

- Having successfully instantiated DEI within the Department of Defense (DoD), the President issued Executive Order 12583 in August 2011, establishing diversity and inclusion staff/programs throughout the federal government.

  NOTE: The word instantiate means "to represent an abstraction by a concrete instance. The abstraction in this case is the notion of systemic racism advanced by Critical Race Theory. The Diversity, Equity, and Inclusion (DEI) praxis is the concrete instance that presumably remedies systemic racism.

- To further institutionalize DEI within the DoD, the Secretary of Defense established the DACODAI on September 14, 2021, again chaired by General Lyles. See https://www.defense.gov/News/Releases/Release/Article/3169272/dod-announces-new-defense-advisory-committee-on-diversity-and-inclusion/

- *General Lyles:* "This year marks a historic event as the first committee to provide the Secretary of Defense with advice and recommendations to improve racial/ethnic diversity, inclusion, and equal opportunity as a force multiplier in the military. I look forward to working with my fellow committee members to help the Defense Department so that our national security is strengthened by the full participation of a diverse and inclusive environment [*sic*] with service members of every background."

- The real charter of DACODAI is to "TRANSFORM" the U.S. military, in its own words akin to the transformation achieved by the Goldwater-Nichols Act of 1986. The intent is explicitly made known on p. vii of the March 2011 MLDC final report: "This report recommends aggressive integration of D&I into Military Department culture to build upon decades of progress and transform DoD for today's Service members and for generations to come."

- DACODAI strives to advance more women and minorities into all ranks—not just flag officer ranks as our paper suggests. Moreover, it wants the officer corps writ large to mirror the gender and racial representation in the enlisted ranks—where, for example, black men comprise 16.94%, of active-duty personnel and black women 28.92%. Since the most recent military statistics are from 2019, these percentages are likely much higher now. In 2022, 14.4% of the US population—47.9 million people—identified as black. Interestingly, this is a 32% increase from 2000, when 36.2 million Americans identified as black. So DACODAI doesn't want the officer ranks to represent society, but rather, the much higher percentage of the enlisted ranks.

- DACODAI (DAC-DI) deliberately discriminates based on the false premise that black enlisted might refuse orders from white officers and "proportionate representation" is, therefore "a strategic imperative."

DISCUSSION:

This deliberate effort to transform military culture is based on the false premise of systemic racism necessitating accommodation instead of assimilation of differences. Yet, DACODAI efforts demean assimilation in favor of discrimination and subcultural differences. None of this works toward unity, cohesiveness, and *esprit de corps* critical to military readiness.

RECOMMENDATIONS:

- Eliminate CRT/DEI personnel and programs in DOD.

- End funding for DACODAI; and

- Hold accountable those who advance discrimination instead of assimilation.

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POSITION PAPER

Service Academy Admissions Reform Amendments

PROBLEM: United States Military Academy, United States Naval Academy, and United States Air Force Academy ("SAs") admissions practices are prescribed by statutes that are outdated (contain language no longer followed) and lack language needed to require (a) practices that would assure admission of best-qualified candidates and (b) transparency. The SAs covertly exploit these statutory gaps to facilitate use of identity preferences in admissions decisions and to admit excessive numbers of marginally qualified recruited athletes, adversely impacting quality.

PROBLEMATIC PRACTICES AND CONSEQUENCES INCLUDE:

- Artificially lowered minimum qualification scores to disguise marginally/poorly qualified candidates as "qualified"
- Abuse of "Additional Appointee" statutes, contrary to stated congressional intent
- Significantly lowered admissions standards for "preferenced" candidates
- Rejection of many, significantly better qualified, white and Asian candidates
- Lower performance and graduation rates, and higher attrition, for preferenced groups
- Denial of equal opportunity for rejected, better qualified candidates/moral hazard

SOLUTION:

Amend certain provisions of 10 USC 7442, 8454, 9442 and 10 USC 7443, 8456 and 9443 via FY '26 NDAA, building on reforms in FY '24 NDAA, to:.

- Update statutes, codifying existing, good practices, defining how merit is determined, eliminating ambiguity/unnecessary variability/uncertainty in admissions practices
- reduce use of "Additional Appointee" statutes to align with Congressional "top off" intent
- increase exclusively merit-based admissions, using academies' own scoring metrics (modified slightly) to evaluate applicants' overall character, intellect and fitness
- increase quality of entering/graduating classes, reduce attrition (increase taxpayer ROI)
- prohibit racial preferences, thereby restoring racial neutrality and equal opportunity
- require transparency - facilitate congressional oversight of academies' admissions practices and results, assuring permanent curtailment of use of artificially low minimum standards and abuse of Additional Appointee statutes

Amendments would not:

- change how Members nominate candidates or SAs' targeted recruiting of minorities
- prevent the academies from considering a candidate's background
- end racial/ethnic diversity or admission of recruited athletes
- diminish opportunities for women
- conflict with the SFFA v. Harvard/UNC decision

ACTION:

Proposed legislation will be prepared and presented to various Members for inclusion in their respective FY 2026 base bills. Detailed discussion of above located at at this end of this booklet.

POSITION PAPER

Merit in the Military – Requirement of Equal Opportunity, Racial Neutrality and Exclusive Use of Merit in Military Personnel Actions

PROBLEM: DoD's use of racial classifications and preferences in various military personnel actions became pervasive during the Biden administration. Their practices are well-concealed under the guise of "Inclusion." DoD's Instruction prohibiting them (by requiring that "service members are evaluated only on individual merit, fitness, capability and performance") is either ignored or loosely interpreted to permit consideration of race.

- **Service Academies.** USMA has employed various practices that apply different admissions standards to fulfill class composition goals, some of which are race-based. Those practices result in admission of marginally qualified African American and Hispanic applicants and rejection of large numbers of significantly better qualified candidates as measured by the academy's own metrics. Evidence exists indicating that USAFA and USNA engage in similar practices for similar reasons. Apart from the moral hazard that attends use of these practices, multiple data sources indicate that the predictable result - lower performance (academic and military) and lower graduation rates for the "preferenced" candidates - is the result.
- **USAF UPT and other DoD school program** selections have been influenced by identity characteristics, sometimes ignoring regulations that were issued precisely to prevent discrimination.
- **Command selection.** Command selection programs (e.g., the Army's Battalion Command Selection Program (BCAP) have quietly used racial preferences in the name of "Diversity and Inclusion."
- **Promotion boards**. Based on multiple reports of use of race in DoD promotion boards for many years prior to the Biden administration, it is likely that such practices have continued.

ADVERSE IMPACT:

These and other uses of racial preferences are divisive, weaken morale, undermine unit cohesion, lower leader quality, erode trust, and reduce combat effectiveness.

SOLUTION:

The urgently needed solution is an express legislative ban on the consideration of race in military personnel actions. Consideration of race is statutorily prohibited in federal civilian personnel actions. However there is no statutory prohibition for race-based discrimination in military personnel actions, and DOD Instructions and other Directives have proven inadequate to deter such misconduct. Efforts at such legislation failed in FY '24 and FY '25 NDAAs.

ACTION:

Proposed legislation expressly prohibiting consideration of race in all military personnel actions will be presented to various Members for inclusion in FY 2026 NDAA base bills. For more detailed information, see detailed discussion in Appendix.

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POSITION PAPER

Duty, Honor, Country Commission

PROBLEM:

In recent years, a series of events, scandals, and reports, including Congressional testimony, indicate that there are serious institutional and integrity failures at the Service Academies.

FACTS:

- The Academies argued in court to continue race-based admissions. Race-based admissions are contrary to the essential democratic meritocracy of individual talent and drive which serve the Armed Forces and nation best.
- The Academies maintain offices, hold conferences, promote, and inculcate the teachings of Diversity, Equity, and Inclusion (DEI). DEI is based on the contradictory and false premises of Cultural Marxism. DEI posits a fixed intersectionality of oppressed and oppressor classes as well as the permanent victimhood of group identities. Every DEI assumption is a falsehood. Yet, a minor in Diversity Studies is offered.
- The Academies foster the concepts of Critical Race Theory (CRT) in instruction, public observances, and cadet and midshipman affinity groups. Like DEI, CRT has no standing in rigorous scholarship. It starts with the false 19th century social construct of "race" and resurrects illegitimate conclusions about human beings based upon more false assumptions such as fixed group identities. DEI and CRT promote division and conflict among our heterogeneous servicemembers when unity, E Pluribus Unum, is our strength.
- The Academies have obfuscated, delayed, or denied access to their findings on cheating scandals, sexual assaults, other honor cases, drug use, and Freedom of Information Act inquiries.
- The retention of Academies' graduates in service after 15 years is the lowest of all the commissioning sources. This is a sign of the erosion of the very purpose of service academies to create the core cadre of future senior officers for the Armed Services.
- The Academies dismissal of cadets and midshipmen for refusing the Covid inoculation raises questions of institutional judgment. The Academies refused religious exceptions in violation of law according to federal courts.
- Special privileges for athletes, questionable selective admissions, and the role of intercollegiate athletics indicate a two-tiered system for athletes and all others.
- The United States Military Academy at West Point graduated an avowed Communist. A former Superintendent at West Point, after he retired from the Army, resigned from his civilian job for plagiarism. Something is wrong when such character flaws by graduates of these institutions run from a new Second Lieutenant to a former Superintendent.
- Among other controversies, the large cheating scandal at West Point in 1976 shocked the Nation. The Secretary of the Army established a blue-ribbon panel to investigate the issues involved. Retired Colonel and astronaut Frank Borman headed the Special Commission on the United States Military Academy. It became known as the Borman Commission. The Borman Commission discovered is-

sues within the command culture at West Point which prompted significant changes.

- The situation at the Service Academies may be more dire today than in 1976. The Service Academies may appear to be functioning adequately as commissioning programs. However, as the cheating scandal at West Point in 1976 exposed the insidious rot of cheating by cadets, so too may be the cancer of Cultural Marxism, by any name or disguise, metastasizing in the officer corps from the Service Academies.
- Academies are functioning as uniformed liberal arts colleges with mandatory ROTC programs, rather than as the Borman Commission said, *"A unique institution where young men and women, in a spartan military environment, learn the academic and military skills necessary to be a professional soldier."*

DISCUSSION:

- The long train of reported failings, subject matter and concepts taught, and patent falsehoods in testimony to Congress indicate the need to investigate all three Service Academies. A Presidential Commission, like the Borman Commission for West Point, is required. Institutional changes are required to meet the needs of their respective Services and the Nation for the rest of the 21st Century and beyond.
- The DHCC will report on what needs to be retained as is, restored, reformed, and improved for the Academies.
- This Special Commission must lead to the restoration of the Service Academies to their fundamental purpose, status, and trust.
- Formerly, West Point's motto, "Duty, Honor, Country" fully expressed the purpose of a Service Academy. As General of the Armies Douglas MacArthur said, *"Yours is the profession of arms, the will to win, the sure knowledge that in war there is no substitute for victory; that if you lose, the nation will be destroyed; that the very obsession of your public service must be: Duty, Honor, Country."*

RECOMMENDATION:

Members of the Senate and House Armed Services Committees

- Provide encouragement, support, and oversight of Service Academy reform via the DHCC;
- Hold accountable those who advanced discrimination in violation of the law and those who abused Constitutional rights in association with experimental vaccines; and
- Support DHCC recommendations for necessary changes to the US Code to reform the Academies.

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POSITION PAPER

Ineffectiveness and Interference by Executive Branch (President/DoD) With Structure, Operations and Oversight Functions of Congressionally Created West Point, Naval Academy and Air Force Academy Boards of Visitors ("BoVs")

PROBLEM: The academy BoVs do not provide effective, meaningful oversight over the academies, but serve instead to give the erroneous appearance they are doing so. In addition, during the Biden Administration the President and DoD undermined the effectiveness of the BoVs by interfering with their statutorily mandated structure, operations and oversight functions by (1) "suspending" the BoVs; (2) firing all appointees of former President Trump and replacing them with appointees of President Biden—not for cause, but solely because the Trump appointees allegedly were not "aligned with the President's values [and] with the values of this administration," and "stood idly by" while President Trump led an "insurrection" against the Capitol; and (3) authorizing the creation of "subcommittees" to the BoVs populated by non-members of the BoVs, thereby "packing" the BoVs. President Biden and his agents have worked to reshape, dilute, and circumvent the BoVs to advance a far left political agenda.

FACTS:

- The Academy BoVs are oversight advisory boards created by Congressional statutes to investigate, oversee and make recommendations regarding the academies to the House Armed Service Committee, the Senate Armed Services Committee, and the President. 10 U.S.C. § 7455, § 8468, § 9455.

- The administration and management of the BoVs is governed by the Federal Advisory Committees Act ("FACA"), 5 U.S.C. § 1004, set out in App. 43a–44a, and its implementing regulations, 41 C.F.R. Part 102-3 (2023). FACA's implementing regulations require that the BoVs "must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed," 41 C.F.R § 102-3.30(c), and that the Secretary of Defense "[d]evelop procedures to assure that the advice or recommendations of [BoVs] will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the [BoVs'] independent judgment. Id., § 102-3.105(g). Moreover, DoDI 5105.04, Para 4.6, sets forth as DoD policy "Committee membership, as a whole, shall be balanced in terms of points of view and the functions to be performed." *Id.*

- Ten members of the BoVs are appointed by Congress; five are appointed by the President. 10 U.S.C. § 7455(a)(1-5); § 8468(a)(1-5); § 9455(a)(1-5). Each Presidential appointee has a three-year term. 10 U.S.C. § 7455(b); § 8468(b); § 9455(b). The terms are staggered so that each year the President may appoint persons to succeed the members whose terms expire. 10 U.S.C. § 7455(b); § 8468(b); § 9455(b)(1).

1 https://www.nytimes.com/2021/09/08/us/politics/trump-appointees-military-academy-boards.html
2 https://www.dailymail.co.uk/news/article-9973659/Jen-Psaki-insists-Joe-Biden-right-kick-Trump-picks-military-academy-advisory-boards.htm

- On or about February 2, 2021, the Secretary of Defense illegally suspended the BoVs. No purported suspension of a BoV had occurred previously. Those suspensions were challenged in a lawsuit filed on July 15, 2021, in which a Fourth Amended Complaint was filed on April 7, 2022.

- On September 8, 2021, President Biden unilaterally fired all the presidential appointees on the BoVs who had been appointed to three-year terms by President Trump, and to replace them with new appointees who purportedly shared President Biden's values.

  No President had terminated a Presidential BoVs appointee previously before expiration of the appointee's three-year term. None of the three statutes governing a BoVs appointee provides for termination of a Presidential appointee by a sitting or successor President.

- On September 17, 2021, the Secretary of Defense issued three memoranda purporting to reinstate from suspension the BoVs, and authorizing the creation of "subcommittees" to the BoVs staffed with appointees "separate and distinct" from the lawfully appointed members of the BoVs.

  None of the governing BoVs statutes provides for the creation of BoVs subcommittees; nor do they authorize the Secretary of Defense or his Deputy to staff such subcommittees with appointees selected at their sole discretion or who are not members of the respective BoVs.

  Indeed, no such subcommittee had ever been authorized or staffed at the directive of any previous Secretary, because DoD had previously determined that any such subcommittees were not lawfully authorized, as the Secretary of Defense acknowledged in his three above referenced memoranda.

  Moreover, DoD 5105.04, Para 5.6.2, expressly states that "no DoD-Supported Committee establish[] Subcommittees unless specifically authorized by statute, executive order, or the Committee's Charter." *Id.*

- The suspension of the BoVs, the firing and replacement of President Trump's appointees and the authorized "packing" of the BoVs with non-appointees interfered with the BoVs' abilities to oversee and advise regarding the service academies, on matters including but not limited to

  1. alleged "systemic racism" and the role of Critical Race Theory (CRT) at the academy;

  2. the resolution of unprecedentedly large cheating scandals at the academies;

  3. the implementation of policies governing the surveillance, detection and purging of "radical extremists" from the academies;

  4. the handling of sexual assaults at the academies;

  5. the response to and further prevention of an unprecedently large number of cadet or midshipman suicides at one or more academies; and

  6. the implementation of pre- and post-COVID-19 protocols, including the suspension of cadets' and midshipmens' attendance at church and synagogue services, and discrimination against/punishment of cadets and midshipmen who chose not to receive a COVID vaccine.

  Countless decisions concerning these vitally-important issues were made without any input, advice or recommendations to them from any BoV member.

- On July 15, 2021, a lawsuit (Case No. 21-cv-1893, Dkt. Nos. 45 and 46) was filed with the United States District Court for the District of Columbia challenging the suspension of the BoVs. Amended complaints added parties and challenges to the termination of the BoV members appointed by President Trump and the allowance of BoV subcommittees populated by non-members of the BoVs. On March 21, 2023, the District Court dismissed the case in

3 See text accompanying footnotes 1 & 2 *supra*.
4 Memorandum for the Secretary of the Air Force, September 17, 2021, from Department of Defense; Memorandum for the Secretary of the Army, Septembrer17, 2021, from Department of Defense; and Memorandum for the Secretary of the Navy, September 17, 2021, from Department of Defense.
5 Id.

part for lack of subject-matter jurisdiction and in part for failure to state a claim, 662 F. Supp 3d 12. An appeal was filed with the United States Court of Appeals for the District of Columbia Circuit on September 8, 2023. The D.C. Circuit affirmed in part and vacated in part on June 7, 2024. A Petition for a Writ of Certiorari was filed with the United States Supreme Court on September 5, 2024, and denied.

- Amendments to the BoVs statutes to exclude Presidential appointments to the BoVs in the future, leaving only Congressional appointments to the BoVs, were introduced and passed by the House of Representative in NDAA legislation.

DISCUSSION:

- Courts have refused to stop or remedy the Executive Branch's interferences with the BoVs stated above.
- The effectiveness of the BoVs needs to be greatly improved. The BoVs need to be independent, politically balanced, and free from conflicts of interest, control and undue influence by the academies and military regarding which the BoVs provide oversight.
- Only new legislation excluding the Executive Branch from making appointments to the BoVs and/or establishing new requirements/procedures for the BoVs will prevent interference with the BoVs by the President and DoD in the future and improve the effectiveness of the BoVs. By excluding Presidential appointees in the future, the ability of the President and DoD to interfere with the BoVs oversight functions/capabilities by suspending their operations, firing their appointees or "packing" the BoVs by appointing non-members of the BoVs to "subcommittees" would be eliminated.

RECOMMENDATIONS:

- The POTUS should fire the Biden appointees who replaced Trump appointees and replace them with the same or similar Trump appointees that Biden fired, pending legislation to restructure BoV member composition.
- Independent, politically balanced oversight scrutiny of the academies by the BOVSs should be greatly improved.
- New legislation should be considered to permanently accomplish the above, including avoiding future Executive Branch interference with the BoVs by excluding Presidential appointments to the BoVs, requiring the Executive Branch to cooperate fully with BoVs scrutiny of the academies and requiring courts to protect, with injunctions if necessary, the BoVs from Executive Branch interference. The academy BoVs should be separate and independent of the Executive Branch, to enable Congress to fulfill its Constitutionally mandated role to make rules regulating the military, free of undue Executive Branch obstruction/interference.
- What works and does not work, and what should be changed, about the BoVs need to be examined and changes made to improve the effectiveness of the BoVs.

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POSITION PAPER

Lack of Transparency and Accountability within the Department of Defense

PROBLEM:

Elements of the Department of Defense avoid transparency and accountability by stonewalling Freedom of Information Act (FOIA) requests.

FACTS:

- Since July 2020, Stand Together Against Racism and Radicalism in the Services, Inc. (STARRS) has filed **53 FOIA requests** (to include five appeals)—primarily focused on Critical Race Theory (CRT); Diversity, Equity, and Inclusion (DEI); and COVID vaccine issues.
- As of November 21, 2024, 27 remain open, only one received a satisfactory response within 20 business days, others were closed without notification.
- Judicial Watch filed two lawsuits on behalf of STARRS.
- The first one, filed September 23, 2022, was for an October 12, 2020 FOIA request that asked for a copy of an assessment of systemic racism directed by the USAF Academy Superintendent, Lt Gen Jay Silveria, with a report due to him no later than September 18, 2020. See STARRS v. DOD Air Force Academy complaint 02894.
- Two documents were released on March 1, 2023:
  - U.S. Air Force Academy Internal Racial Disparity Review Final Report- 21 September 2020
  - STARRS v DOD prod 2 02894
  - For a centralized link with multiple documents, see Records Show Air Force Academy Focus on Anti-American Critical Race Theory Training of Cadets.
- The two documents totaled 167 pages, of which 52 entire pages were redacted with other redactions throughout the remainder of the documents. All pages were labeled For Official Use Only (FOUO) for the purpose of shielding it from the public.
- Two major observations: (1) there was no evidence of racism, let alone systemic racism (i.e., the supposed predicate for nearly all of the CRT and DEI praxis), in the released documents; (2) during the period this report was kept from the public, 90 cadets were trained as diversity and inclusion officers and NCOs—two per unit (40 squadrons, four groups, and one wing), wearing purple ropes over their left shoulder, reporting via a separate chain of command to the Academy's Chief Diversity Officer.
- The second lawsuit, filed September 23, 2024, was for a November 1, 2021, FOIA request that asked for records associated with USAF Academy's diversity and inclusion plans. See Judicial Watch Sues Department of Defense for Records on U.S. Air Force Academy's Diversity, Equity, and Inclusion Plans.

DISCUSSION:

Organizations within the DoD are not responsive in accordance with legal FOIA requirements. Most of the cases involve CRT/DEI and COVID vaccination issues. The lack of transparency and accountability strongly suggests actions are taking place that are not Constitutionally or morally defendable and are almost certainly advancing versus eradicating discrimination.

RECOMMENDATIONS:

- Encourage Congressional hearings about ideological indoctrination and the lack of transparency and accountability with principals within the Office of the Secretary of Defense, the professional military education universities/colleges/schools (officer and enlisted), the Service Academies, and other commissioning programs such as ROTC and Officer Candidate Schools;
- Hold accountable those who advance discrimination in violation of the law and those who abused Constitutional rights in association with experimental vaccines; and
- Consider strengthening the importance of timely transparency and accountability under the FOIA statute.

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POSITION PAPER

Department of Defense Transgender Policy

PROBLEM: Potential recruits and officer candidates need to meet the physical and mental standards required to fight our nation's wars. Unit readiness, unity, and deployability are essential to effective mission accomplishment. An individual with gender dysphoria and seeking medical treatment for transitioning to a different sex does not meet these criteria and is an unnecessary financial burden. For a more detailed analysis see https://starrs.us/wp-content/uploads/2023/08/STARRS-Position-Paper-on-DoD-Transgender-Policies.pdf.

FACTS:

- Current DoD policy, DoDI 1300.28, states that transgender service members (SM) are allowed to receive gender dysphoria "treatments" as determined necessary by a physician. This includes psychological evaluation and counseling and "transition" hormones and surgeries, paid for by the taxpayers.
- There is a long list of medical, psychological, physiological and intelligence factors that disqualify people from serving based on their ability to execute the mission, including age, weight, height, physical disability, medical conditions (asthma, heart conditions, epilepsy, color blindness, some dental conditions, hearing damage, history of food allergies, etc.), depression, bipolar disorder, anxiety disorder, drug additions, criminal history, inability to pass the physical fitness test, lack of a high school diploma or equivalent, inability to achieve the minimum score on recruitment exams, etc.
- There is a shortage of reliable scientific data on the long-term effects of "gender-affirming" treatments, but science indicates they have a low success rate and result in the need for long-term care and significant negative impacts on the ability of the service member to effectively execute mission requirements. See cited references in the STARRS position paper: https://starrs.us/positon-paper-dod-transgender-policies/.
- DoD policy ignores religious freedom and medical ethics and makes no allowance for those with strong religious and moral objections to aspects of transgenderism.
- There is a significant negative impact on readiness due to individual duty limitations during and after "gender affirmation treatments" and the diversion of funds from other priorities.
- The new policy ignores historical DoD data, an in-depth analysis conducted by Secretary of Defense James Mattis, and a panel of experts in 2017-2018 that led to the policy implemented by President Trump. It was not a "ban" as widely reported—it was based on readiness considerations. See 5 Things to Know About DOD's New Policy on Military Service by Transgender Persons and Persons With Gender Dysphoria > U.S. Department of Defense > Defense Department News
- DoDI 1300.28 and 6400.11 restrict research into and the release of data related to transgender policies without the approval of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), thus hiding the information from the rest of the government and the public, and preventing oversight and re-evaluation based on analysis of actual impacts over time.
    - ***Note:*** The above regulations do not override disclosure requirements under the FOIA law.

- The Trans agenda is an integral part of the international Marxist movement and is slowly changing the culture on military bases. Liz Wheeler explains the connection between Marxism and the Trans agenda in an interview with Sebastian Gorka on 4 Aug, 2023. Read more in her book *Hide Your Children, Exposing the Marxists Behind the Attack on America's Kids*.

DISCUSSION:

It is a privilege, not a right, to serve in America's profession of arms. Its mission is to deter, fight and win our nation's wars. As such, its membership is exclusive to those who can meet physical and mental standards. Accommodations beyond this are wasteful and a threat to readiness.

RECOMMENDATIONS:

- Promote provisions in NDAA legislation that DOD policy shall focus on warfighting and mission readiness as it relates to the transgender movement, in particular;
- Prohibit federal funding of the cost of gender transitioning;
- Establish accommodations for those fully deployable Service Members who have completed the transition (e.g., billeting, bathroom) that respects the privacy of nontransitioned members; and
- Execute compassionate early release options (as in typical reduction in force efforts) with honorable discharges for those who choose to separate from military service.

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POSITION PAPER

Remedies for Those Harmed by the DOD Mandatory Covid Vaccination Policy

PROBLEM: On August 23, 2021, the FDA formally licensed the COMIRNATY COVID-19 vaccine. In footnotes in its license, the FDA noted: there were insufficient stocks of COMIRNATY available for distribution; and although the licensed COMIRNATY and Emergency Use Authorized (EUA) Pfizer BioNTech COVID-19 vaccine were "legally distinct," they could be used interchangeably. (If accurate, this raises the obvious question of why the FDA did not license the EUA vaccine.)

The next day, the SECDEF mandated vaccination against COVID for all active duty, Reserve, and Guard personnel, using only "vaccines that receive full licensure from the FDA in accordance with FDA-approved labeling and guidance."

Notwithstanding this "licensed" requirement, DoD components immediately began using the unlicensed EUA to vaccinate military personnel. DoD continued its use of unlicensed EUA vaccine throughout the lifetime of the mandatory COVID vaccination policy, until SECDEF was compelled to rescind his mandate on 10 January 2023 in accordance with Section 525 of the 2023 National Defense Authorization Act.

The use of the unlicensed EUA violated federal law (10 USC 1107a) requiring a military member's informed consent to an EUA absent Presidential order.

In addition, SECDEF's mandate overruled a long-standing DoD policy on acquired immunity by forcing vaccinations on individuals previously infected with COVID: "Those with previous COVID-19 infection are not considered fully vaccinated."

Finally, as determined by multiple federal courts, DoD leadership thereafter categorically denied requests for religious waivers in violation of the Religious Freedom Restoration Act of 1993 ("RFRA"), Pub. L. No. 103-141, 107 Stat. 1488, codified at 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4.

These denials rested in large part on the now-debunked premise that vaccinated individuals could not be infected with or transmit COVID… and thus unvaccinated personnel posed a threat to the force and themselves.

FACTS BEARING ON THE PROBLEM:

- In compliance with the 2023 NDAA, the SECDEF rescinded the mandatory vaccination policy on 10 January 2023.
- On 27 February 2023, USD Cisneros provided the following information to the Chairman of the HASC, Congressman Mike Rogers:
  - Among 2+ million service members, ~69,000 were not vaccinated.
  - ~53,000 sought exemptions, including ~37,000 religious based.
  - Of the 37,000, ~ 19,100 were denied and only 400 were approved, the remainder were still in review.

- ~8,100 service members were separated for failing to comply; 46% (3,726) received honorable discharges and 54% (4,374) received general discharges under honorable conditions. (Note: the Navy uniformly issued honorable discharges; other services predominately issued general discharges.)

DISCUSSION:

- As with the mandatory anthrax vaccination program two decades before, the COVID vaccine program and compliance with it became a loyalty test for service members. The program was never justified by any evidence that COVID significantly affected military readiness or mortality rates. Service members exercising their rights by raising legitimate objections based on religious or legal grounds were administratively punished, separated, or otherwise damaged in their careers by DOD component leadership.
- In assessing the legal basis for this program, it's important to note that notwithstanding thousands of service members refusing orders to take the vaccine, there was not a single instance of a court-martial under Article 92 for failure to obey a lawful order. Why? Because a court-martial would have provided a public forum to contest and reveal the unlawful and unethical manner by which the DoD mandated vaccination … and would have resulted in a legal and well-grounded decision by a military judge.
- In addition to violating DoD policy and the informed consent requirements of 10 USC 1107a, DoD components violated their combined (Army, Navy, Air Force and Coast Guard) regulation requiring individualized assessments of service members exposed to diseases for which vaccinations are required.
- The DoD data underscores there was no intent to grant religious exemptions as just 400 of 37,000 requested (1.08%) were approved. Those 400 were likely near separation or retirement – their exemptions reflect convenience of the service.
- Numerous reports indicate those refusing vaccination and awaiting action on an exemption request were subject to hostile work environments and denied favorable opportunities such as consideration for schooling/training, promotion, transfers, and assignments, etc.
- Service members expect their leaders to take actions in the best interests of the mission and their health and welfare. Over time, it became apparent that the serious threat from COVID did not apply to young and healthy service members. As time passed and the negative consequences of mandatory vaccination presented, the trust and confidence service members had in their military leadership was seriously diminished.
- Those who requested an exemption based on religious, medical, or administrative grounds assumed a difficult conscience-based position. They were viewed at higher levels as being "extreme" because they refused to comply with an unlicensed medical treatment they viewed as illegal, unnecessary, dangerous, and/or against their religious principles.

THERE ARE FOUR GENERAL CATEGORIES OF THOSE HARMED BY THE MANDATORY VACCINATION:

- Those discharged, who validly requested an exemption and want to return to the military. **REMEDIES:**
  - Reinstate rank and count lost time towards retirement for active duty and reserve component members.
  - Provide back pay and allowances; assign them to duty stations of choice.
  - Expunge records at all levels of all adverse personnel actions.
  - Pay all costs associated for moving from their current location to the next duty station.

- Those discharged, who validly requested an exemption and do not want to return to the military. **REMEDIES:**
  - If the discharge was based solely on refusing the vaccination, automatically grant an "honorable" discharge.
  - Correct their DD 214 to state honorably discharged.
- Those who refused the vaccination, who validly requested an exemption but remained in the military when the policy was rescinded. Additionally, include those who refused to take the vaccine and did not request an exemption, if proper authority declares the vaccine order was illegal/invalid. **REMEDIES**:
  - Expunge records at all levels of adverse personnel actions related to their refusal.
  - Correct any unfavorable personnel actions taken due to refusal such as schooling, promotion actions, assignments, awards, etc.
- Those who have or will have medical conditions associated with harm caused by the vaccination. **REMEDIES**:
  - Provide VA disability evaluations.
  - Using the toxic substance criteria, designate the mandatory vaccination as a "presumptive condition" so that it falls under the PACT Act for VA automatic disability care criteria.

RECOMMENDATIONS:

- On behalf of the previous administration, President Trump issue a finding that the mandatory COVID vaccination policy as put into effect violated 10 USC 1107a and the RFRA. He also directs the Secretaries of the DoD and DHS to issue an apology to all service and coast guard members negatively impacted by the unlawful mandatory COVID. In his finding, President Trump might add he was against making vaccination mandatory and he is acting to remedy the situation.
- Following the previously issued "don't ask don't tell" policy discharge model: On day one, President Trump issue an executive order to upgrade the discharges for all those discharged due solely for refusing to take the vaccination based on religious, medical, or administrative grounds to "honorable"; change the respective DD 214s to reflect an honorable discharge; and expunge any other negative personnel action from their official records. In addition, the receipt of GI bill benefits requires an honorable discharge per 38 USC 3311. Thus, if personnel discharged with less than an honorable discharge subsequently paid for education benefits which would have been covered under the GI Bill, President Trump should direct a process to reimburse those out-of-pocket costs.
- President Trump direct the VA to provide disability evaluations for COVID vaccination-related injuries and provide appropriate disability coverage on a case-by-case basis.
- President Trump request Congress to amend the PACT Act to include COVID vaccination injuries as a "presumptive condition" falling under the Act opening the door for automatic VA coverage.
- Pursue any other appropriate remedies found in the four general categories of harm.

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POSITION PAPER

National Defense Reform

PROBLEM: The geopolitical and domestic situation has drastically changed since the Goldwater/Nichols Act (GNA) was enacted in 1986. The Soviet Union collapsed and the Warsaw Pact dissolved; China has emerged as our greatest peer competitor; global terrorism sponsored by Iran is causing conflicts and global unrest; NATO is weak; our military is weak; a Space Force has been formed; homeland security is threatened by open borders; etc. The 1998 U.S. Commission on National Security/21st Century addressed many emerging threats but like the GNA, the current and emerging domestic and foreign threats have largely outpaced the study.

FACTS BEARING ON THE PROBLEM:

- The 2024 report from the bipartisan congressional "Commission on National Security Policy" said: *"The United States confronts the most serious and the most challenging threats since the end of World War II. The United States could in short order be drawn into a war across multiple theaters with peer and near-peer adversaries, and it could lose."*
- In its comprehensive annual report "Index of U.S. Military Strength" the Heritage Foundation rated the overall strength of our military as "***weak***".
- We have the smallest active-duty military since before WWII.
- We've experienced the greatest recruiting crisis since the all-volunteer military began in 1973.
- The interest on the national debt exceeds the entire DOD budget.
- The Dept of Homeland Security (DHS) was formed and yet we have open borders with 10-20 million illegal aliens in our country, rising crime, ~100k fentanyl deaths per year, child and sex trafficking, and cartels controlling access across our southern border.

DISCUSSION:

- Since enactment of the GNA, the size of pentagon staffs have grown with duplicate organizational structure among the OSD, the service secretaries, and the uniformed services causing sluggish responses; a bureaucratic focus on processes; and continuous changes in the programming and budgeting cycles.
- The Department of Government Efficiency (DOGE) will be a key mechanism to address the inefficiencies inside the pentagon and the DOD at large.
- There are too many political social agendas driving policies at the pentagon, such as DEI, at the expense of a warfighting focus and readiness.
- The number of SES's, generals, and admirals in the pentagon has expanded since the GNA of 1986; DOD civilian control of the military has concurrently grown to the point where it must be asked, "how much DOD civilian control of the military and inside the pentagon is enough and how much is too much"?
- The acquisition system remains sluggish, costly, and inefficient.
- Robots, hypersonic missiles, and the rapid expansion of AI applications will have an ever increasing

impact on warfighting strategy, tactics, techniques, and procedures requiring more robust interfaces among joint forces and the rapid application of new technology on the battlefield.

- Cyber operations are an ever increasing threat to our national security.
- Our defense industrial base, both organic and commercial, has been allowed to deteriorate causing major vulnerabilities in the capability to not only replenish expended materiel in a timely manner but also surge production during a conflict. Additionally, many components critical to our weapons and systems come from foreign sources to include China, our principle adversary.
- 20+ years fighting the GWOT with a force too small to meet national security requirements resulted in: multiple rotations of troops into the combat zone; the inability to adequately train for joint operations against a peer competitor; degradation of the readiness condition of major items and depletion of munitions and other materiel. The force structure size of our military was inadequate to meet the GWOT requirements and is certainly too small to meet a major contingency operation with a peer competitor.
- Increased DOD funding is essential to meet the requirement of the 21st century; increasing from the current 3% to ~5% of the GDP is needed along with eliminating the current wasteful spending and lack of accountability evidenced by DOD failing its annual audit for seven consecutive years.
- Considering the national and domestic security threats, should the U.S. Coast Guard with its law enforcement and national defense missions remain under the DHS or are there more effective alternatives?
- Projecting timely combat power requires a ready fleet of strategic transportation assets. Heavy ground combat forces must be moved by ships to overseas operations making our strategic sealift assets an essential national security capability. This capability has eroded under the Dept of Transportation and serious consideration must be given to moving management of our strategic sealift capability and the U.S. Merchant Marine Academy to the DOD.
- Combat readiness includes having a medical battlefield casualty treatment and evacuation system that is responsive, rapidly deployable and capable of supporting a MRC. Additionally, it must provide responsive care during peacetime to all eligible patients. The entire defense healthcare system requires a thorough review as the Defense Health Agency has become overly centralized and apparently focused on peacetime operations.

RECOMMENDATIONS:

- The POTUS through executive order, commission a blue ribbon panel in-depth study to identify what changes are needed to the GNA and the U.S. Commission on National Security/21st Century to address the facts and points raised in this paper and others not addressed.
- The results of such a comprehensive study be provided to Congress for their consideration regarding an updated GNA and any legislative changes needed to implement recommendations coming from the National Security/21st Century study.

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APPENDIX

FY '26 NDAA Academy Admissions Reform

GENERAL

This paper discusses the need and general plan for revision to the six statutes that govern admissions procedures for the United States Military Academy, United States Naval Academy, and United States Air Force Academy ("Service Academies" or "SAs"), 10 USC 7442, 8454, 9442 and 10 USC 7443, 8456 and 9443.

PROBLEM

Current statutes are outdated (contain language no longer followed) and lack language needed to require (a) practices that would ensure admission of best-qualified candidates and (b) transparency. The SAs covertly exploit these statutory gaps to facilitate their use of identity preferences in admissions decisions and to admit excessive numbers of marginally qualified recruited athletes, adversely impacting quality of substantial parts of each entering class. Multiple data sources1 reveal:

- **artificially lowered minimum qualification scores** to disguise marginally/poorly qualified candidates as being "qualified" (and, worse, that these artificially low minimums are frequently waived)
- **abuse of "Additional Appointee" statutes** (no merit rank order required), contrary to congressional intent that they serve as "top off" statutes
- **abuse of subjective component** of candidate composite score
- **significantly lowered admissions standards** for marginally qualified, "preferenced" (because of race, ethnicity and recruited athlete status) candidates
- **rejection of many, *significantly better qualified,*** white and Asian candidates
- **lower performance and graduation rates, and higher attrition,** by groups who were "preferenced" at admission
- **denial of equal opportunity**[2] for rejected, better qualified candidates, i.e., moral hazard
- **decline in number of white, male applicants** relative to other demographics
- **unnecessarily lowered quality of significant portion of each entering class.**

1 a. Preferences in the Service Academies, Lerner, R & Nagai, A, Ctr. For Equal Opp. (Oct. 16, 2006), pp. 8, 11.

b. Analysis of Effect of Quantitative and Qualitative Admissions Factors in Determining Student Performance at USNA, Phillips, Barton L. Naval Postgraduate School 2004, pp. 1, 2, 24, 25, 28, 32, 71, 72.

c. Declaration of COL Deborah McDonald, fmr Dir. of Admissions, USMA filed Nov. 22, 2023 in SFFA v. USMA, et al, (U.S. Dist. Ct., So. Dist. NY), Exhibits A&B.

d. Report of Special Inspection – Assessment of Race or Ethnicity Based Treatment of Cadets at USMA, Oct. 2020, USMA Inspector General, pp. 38, 40, 42, 49.

e. GAO Report to Congressional Committees – Military Service Academies GAO-22-105130, July 2022, pp. 21-23; 70-75.

f. Carved from Granite – West Point Since 1902, Lance Betros (BG, USA ret.), fmr Professor USMA, fmr Provost, Army War College, Texas A&M University Press, 2012, pp. 301-316.

g. Still Soldiers and Scholars? An Analysis of Army Officer Testing, Dec. 2017. Coumbe, A.T., Condly, S.J., Skimmyhorn, W. L., Strategic Studies Institute and U.S. Army War College Press, pp. xix, 8, 9, 353.

h. Examining Diversity in Developmental Trajectories of Cadets' Performance and Character at USMA, (2021). Schaefer, H.S. et al. Journal of Character Education, Vol. 17, No. 1, p. 73.

i. On Diversity as Strength, usmadata (June 10, 2018), https://usmadata.com/2018/06/10/on-diversity-as-strength/.

j. U.S. Service Academy Admissions, Selecting for Success at the Military Academy/West Point and as an Officer. RAND Corporation 2015, pp. x, xi.

2 DoD Instruction 1350.02, Sept. 4, 2020, Change 1 effective Dec. 20, 2022. Military Equal Opportunity Program; para 1.2(a)(1) ("DoD, through the DoD MEO Program, will: (1) Ensure that Service members are … afforded equal opportunity in an environment free from prohibited discrimination on the basis of race, color, national origin …."); paras 2.8(a)(3) ("Establish MEO prevention and response programs for their Components that ensure … Service members are evaluated only on individual merit, fitness, capability and performance.") and (c) ("Implement and ensure compliance with this issuance within their respective Military Services, including the Military Service Academies.") (emphasis added).

SOLUTION

Modify governing statutes to:

- **reduce use of "Additional Appointee" statutes** to align with Congressional "top off" intent
- **define how merit is determined** and **establish requirements for computation of candidate composite score**
- **increase exclusively merit-based** admissions, using academies' own scoring metrics (slightly modified) to evaluate applicants' overall character, intellect and fitness
- **increase quality** of entering/graduating classes, reduce attrition (increase taxpayer ROI)
- provide **more "best-qualified" leaders** to warfighters, improving battlefield survival and mission success
- restore **racial neutrality** by prohibiting racial preferences
- require **equal opportunity**
- **facilitate congressional oversight** of academies' admissions practices and results, assuring permanent curtailment of using artificially low minimum standards and abuse of Additional Appointee statutes.

Amendments will also:

- update statutes and codify existing, good practices
- eliminate ambiguity/unnecessary variability/uncertainty in admissions practices
- require academies to honor merit selection of congressionally nominated, "unranked" slates (most Members use "unranked" slates) (Congress' nominating role unchanged)

Amendments will be limited in scope/extent. Each academy would retain the ability to tailor admissions practices to meet its specific requirements.

AMENDMENT SPECIFICS

Primary Appointment statutes – 10 USC 7442, 8454, and 9442.

1. Clarify meaning of "order of merit" by adding "as determined by candidate composite score," replacing outdated language.

2. Require selection in certain appointment categories use "order of merit" rank order within each category:

a. Congressional "competitive" (a/k/a "unranked") slates

b. Presidential

c. Service Secretaries – regular enlisted

d. Service Secretaries – reserve enlisted

e. Service Secretaries – ROTC/JROTC "Honor schools"

f. Children of KIA, 100% disabled, and MIAs

3. Qualified Alternates (statutes already require "order of merit" selection):

a. Require all QA slots be used

b. Increase number from 200 to 300 annually (this would in turn decrease the number of Additional Appointee vacancies by 100)

c. Expand eligibility from just congressional/delegate nominees to include all other fully qualified, non-selected nominees from any nominating authority

4. Candidate qualification, evaluation and selection:

a. Codify current practice that qualifications for admission be determined by use of candidate composite score uniformly calculated for each applicant

b. Require that academic component of candidate composite score be weighted at no less than 60% of overall composite score (current USMA practice)

c. Specify that candidate composite score shall include candidate's standardized test score (part of the academic component) weighted at

no less than 45% of the overall composite score (current USMA practice = 46%).

d. Limit weighting of any subjective component of candidate composite score to 10% of the overall composite score.

e. Require candidate composite scores be used to determine order of merit.

f. Prohibit consideration of race and ethnicity in computing candidate composite score, evaluating candidates, or selection for appointment.

5. **Reporting requirements:**

a. Require Service Secretaries to report to House and Senate Armed Services Committees annually, by Oct. 1, regarding the preceding admissions cycle:

1) The established minimum candidate composite and college entrance examination rank ("CEER") scores used in such cycle, and

2) All waivers of such minimum candidate composite score and/or CEER score for each appointee, including each such waived appointee's candidate composite score and CEER score, a brief explanation of the reasons for such waiver, the category of appointment under which each such appointee was appointed (and if congressional, the type of slate that nominated the waived appointee).

b. Require Service Secretaries to report to House and Senate Armed Services Committees annually by Oct. 1, for each of the prior four years' waived appointees, the status of each waived appointee, including

1) Whether still at the Academy

2) Circumstances of any waived appointee's departure

3) Cumulative academic GPA and military GPA

4) Any major conduct or honor violations

5) Any remedial measures undertaken

6) Any other noteworthy information (positive or negative)

Additional Appointee statutes – 10 USC 7443, 8456, and 9443

1. Clarify eligibility for consideration to include all qualified, nominated candidates

2. Incorporate by reference to the primary statutes (10 USC 7442, 8454, and 9442, respectively) the provisions that specify requirements for calculation and use of candidate composite score.

3. Prohibit consideration of race and ethnicity in any component of the candidate composite score, in evaluation of candidates, or in selection for appointment.

4. Require Service Secretaries to report to House and Senate Armed Services Committees annually, by Oct. 1, regarding the preceding admissions cycle:

a. the candidate composite scores and CEER scores of the ten candidates appointed as either Additional Appointees or Superintendent nominees who had the lowest candidate composite scores,

b. the total number of qualified and nominated (by any source), but not selected, candidates, and

c. the candidate composite scores and CEER scores of the ten qualified and nominated candidates having the highest candidate composite scores and who were not selected for appointment.

WHAT THE AMENDMENTS WOULD NOT DO

- **Not change how Members nominate candidates.** Members would retain the option to nominate a principal candidate and ranked alternates, **entirely w**ithin the Member's discretion, and the academy would have to accept the principal nominee if minimum qualification criteria are met (no change). Members could, instead, still use either of the other two statutory nomination slate options (principal/unranked alternates and unranked/competitive), neither of which would be changed.

- Not affect minority outreach recruiting. Targeted "minority outreach" recruiting is happening now at the academies (has been only somewhat successful because of competition from civilian schools), and it would continue, unaffected by this legislation.
- Not send any message that minorities are "unwelcome." To the contrary, the message is
  - (1) "equal opportunity and racial neutrality"
  - (2) within most appointment categories, the best-qualified as determined by the academies' uniformly applied metric will be selected, and
  - (3) within two appointment categories, the academies would retain flexibility to select some candidates not in merit rank order.
- Not prevent the academies from considering a candidate's background, such as hardships that have been overcome, deprivations of opportunities, etc., when evaluating applicants' character/leadership, intellect and fitness. They do so now, with mechanisms to award extra points for such factors. That would continue, except that race and ethnicity could no longer be used as a surrogate marker for such considerations.
- **Not end racial/ethnic diversity or admission of recruited athletes.** Many minorities and recruited athletes gain admission based on merit undiluted by identity preferences. In addition:

  (1) There would still be some out-of-merit-order appointments available for recruited athletes (all races),

  (2) "Prep School" programs would continue to operate for the benefit of marginally qualified candidates (all races), including recruited athletes, leading to appointments (85 in the reserve enlisted category, plus others in regular enlisted (maximum 85), Superintendent (maximum 50) and Additional Appointee categories) for those who successfully complete the prep school programs.

  (3) percentage of recruited athletes in each entering class (currently 20-23%, far exceeding percent of college freshmen admitted on athletic scholarships) would be only somewhat reduced.
- **Not diminish opportunities for women.** Opportunities for well-qualified women would increase, data for one academy show. Well-qualified women applicants who desire to serve have been displaced by lesser qualified, "preferenced" candidates. Increasing the Qualified Alternate appointment category (which is merit-based and for the entire qualified and nominated candidate pool) from 200 to 300 would result in more of those well-qualified women being admitted.
- **Not conflict with the *SFFA v. Harvard*** decision.[3] Footnote 4 in the court's opinion acknowledged that DOD in its amicus brief and at oral argument had claimed the existence of "distinct interests" for the academies that, if proved and shown to be a compelling governmental interest, might justify exemption from constitutional compliance.[4]

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3 In *SFFA v. Harvard/UNC*, 600 U.S. ___ (2023), the court said, regarding the use of racial classifications,

- The "core purpose of the Equal Protection Clause" is "do[ing] away with all governmentally imposed discrimination based on race." (slip op. 14)
- "Eliminating racial discrimination means eliminating all of it." (slip op. 15)
- "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." (slip op. 16)
- "[r]acial discrimination is invidious in all contexts" (slip op. 22)
- "race … may not operate as a stereotype." (slip op. p.27)
- "One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities." (slip op. 29)
- "'[a]t the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class." (slip op. 32)
- Using racial classifications to achieve racial demographic balance must be rejected as illegitimate because otherwise, "'race will always be relevant … the ultimate goal of eliminating race as a criterion will never be achieved.'" (slip op. 32)

4 Footnote 4 reads: "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

- The court also noted that the academies were not parties, and their contentions had not been reviewed by the lower courts.
- It concluded, therefore, that whether DoD's claims of any "potentially distinct interest" has been proved to amount to a compelling governmental interest would not be addressed in its opinion.
- SFFA was thus not a decision on the merits regarding the academies' claimed, compelling governmental interest defense. (Merits rulings in SCOTUS cases are not made in footnotes). Claims to the contrary are misinformed.
- The amendments thus do not conflict with SFFA; to the contrary, their enactment would be wholly consistent with the extensive reasoning that the court articulated in SFFA and would require the academies to operate in compliance with constitutional equal protection, just as all civilian colleges and universities (including those having ROTC programs), now must do.[5]

DISCUSSION

"Blurred … focus on character and intellect". The SAs exist to produce well-educated leaders of character for the armed services. Since their founding, emphasis on "character and intellect" has been paramount, discussed at length (for USMA) in the seminal work ***Carved from Granite***, written by BG Lance Betros USA (ret.), former USMA History Department Head and, after retirement, Academic Provost at the U.S. Army War College.[6]

Meticulously documented, General Betros' work explains the dramatic evolution of West Point's academic, military and physical programs since 1902 "to a high level of excellence" and admissions process reforms' "raising the overall quality of the Corps of Cadets." He then documents that in the years after the 1976 cheating incident, the "positive changes were **compromised … by systemic problems** that grew increasingly worse … most evident in the areas of governance, **admissions and intercollegiate athletics**" (emphasis added).

He writes that these problems "**blurred the Academy's focus on character and intellect as the key developmental goals,**" adding that "**until these problems are remedied, [West Point] will operate below its potential as a leader development institution for the army and nation**" (emphasis added).

Regarding intercollegiate athletics, he explains how admissions standards are lowered for many recruited athletes (who in recent years have comprised 20-23% of each academy's entering class). He then observes **"every shred of evidence indicates that deemphasizing intercollegiate athletics would raise the quality of the Corps of Cadets and keep West Point graduates in the army longer and at higher rank"** (emphasis added).

He continues, "A second problem resided in **the admissions system, which allowed a large number of lower-quality applicants to enter West Point and thus displace more-qualified applicants"** (emphasis added).

Concluding with a plea to future academy leadership, he writes, "**If West Point is to continue its past success, if it is to produce even better officers in the future, there is no surer way than to focus on character and intellect"** (emphasis added).

The problems with SA admissions have gone uncorrected because (in part) BG Betros' admonition regarding the need for renewed emphasis on character and intellect has received, if anything, mostly lip service. But unquestionably, continuation of the quality problems has been facilitated by the admissions statutes having been ignored for decades while the academies have perfected their exploitation of gaps and ambiguities in those statutes. Congress now has an opportunity to update the admissions statutory framework and to *require* renewed emphasis on

opinion also does not address the issue, in light of the potentially distinct interests that military academies may present." *Id.*, slip op. at 22.

5 The termination of using racial classifications at the service academies would, in fact, be *consistent with* the principles and reasoning forcefully enunciated by the Court (see footnote 3, *supra*). Enactment as written would statutorily prohibit DoD's arguably unconstitutional activity and thus moot the constitutional question of whether DoD can prove a "compelling governmental interest" sufficient to warrant exemption from constitutional compliance. The pending lawsuits against USMA and USNA would likely, therefore, be dismissed.

6 *Carved from Granite – West Point Since 1902*, Lance Betros (BG, USA ret.), former Professor USMA, former Provost, Army War College, Texas A&M University Press, 2012, pp. 301-316.

character and intellect for all the academies, increasing use of merit (as measured by candidate composite score) in admissions decisions and, through greater transparency, assuring compliance with that commitment and more effective candidate and public awareness.

Preferences' harmful consequences require remedial action. Race-based preferences in SA admissions are an intolerable moral hazard. They unarguably violate Military Equal Opportunity policy.[7] Unless the dubious and ideologically driven claim that they are a "national security imperative" can be proven as a defense to constitutional compliance (very unlikely), they violate constitutional equal protection.[8] But the hazard is not merely moral, regulatory and legal in nature. It also has real world consequences.

Incremental differences in leader quality in the military can mean the difference between mission success or failure and warfighters' life or death. Ambiguities on the battlefield, where information is incomplete, leaders are under fire, and the tactical situation often requires instantaneous decisions, make sound decision-making in combat among the most difficult leadership challenges anywhere. Leaders with, among other things, high character and intellect are a critical necessity under such circumstances.[9]

Accordingly, **practices that diminish leader quality also violate a trust owed to our warfighters and to the American people**. It is the Nation's moral and professional obligation to provide warfighters with the "best-qualified" leaders available, always, not just some of the time. Diluting leader quality with identity preferences is thus an unacceptable failure with real-world consequences.

DoD disingenuously has claimed that it does not lower standards when using identity preferences under the guise of "Inclusion." Available data regarding service academy admissions (proving the rejection of substantial numbers of candidates with far superior qualifications to facilitate admission of marginally qualified "preferenced" candidates), however, indisputably exposes that ideologically-driven pretense as demonstrably false.

Our warfighters need and deserve the best-qualified leaders. The SAs' mission is to provide them. But, as BG Betros documented, and as recent data confirm, West Point, and very likely USNA and USAFA, are not admitting the best-qualified candidates in too many instances. This legislation would require the academies to correct that shortcoming and to provide transparency to Congress to ensure that those corrections will endure.

The policy questions inherent in whether DoD should be prohibited from using racial preferences are within Congress' Article I, Section 8 powers to regulate the military forces. Congress was expressly delegated such powers and has the right and obligation to exercise them in this context.

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7 See footnote 2, *supra.*

8 See footnotes 3 and 5, *supra*; GEN. Arthur Brown and Gen. Ronald Fogleman, "Racial Preferences At Our Service Academies Are Not Essential To National Security," Mar. 3, 2023, https://thefederalist.com/2023/03/03/no-racial-preferences-in-the-military-dont-improve-national-security/; Gen. Ronald Fogleman and Claude McQuarrie, "No, Affirmative Action In The Military Doesn't Boost National Security, It Erodes It," The Federalist, Oct. 25, 2022, https://thefederalist.com/2022/10/25/no-affirmative-action-in-the-military-doesnt-boost-national-security-it-erodes-it/.

9 Four such leaders are Lt. Gen. Harold G. "Hal" Moore (USA ret., USMA '45, Distinguished Service Cross), Vice Admiral David B. Robinson (USN ret., USNA '63, Navy Cross), Brig. Gen. Robin Olds (USAF ret., USMA '43, Air Force Cross), Colonel Harvey C. Barnum, Jr. (USMC ret., Medal of Honor). These are but a tiny fraction of superior military leaders whose battlefield decisions, in great part due to their character and intellect, are well-documented to have accomplished missions that were in great jeopardy under extraordinarily difficult circumstances and, in the process, saved many American warfighters' lives.

APPENDIX

FY '26 NDAA Merit in the Military – Requirement of Equal Opportunity, Racial Neutrality and Exclusive Use of Merit in Military Personnel Actions

GENERAL

There is an urgent need to enact legislation that would prohibit the use of race and ethnicity in DoD military personnel actions. To be effective, the statute's prohibition must be explicit. The political environment is now conducive to such legislative action. This document explains that need, proposes such legislation and discusses its provisions.

PROPOSED STATUTE

Military Personnel Actions.

(a) **Merit Requirement.** All Department of Defense military personnel actions, including accessions, promotions, assignments, command selection, and military and civil schooling selection and training, shall be based exclusively on individual merit, fitness, capability, and performance.

(b) **Consideration of Race Prohibited.** Consideration of an individual's race, ethnicity, or national origin in all personnel actions is prohibited.

(c) **Tasking of Specific Missions.** This section will not be construed to prohibit tasking for specific, unconventional missions in foreign countries, where the anticipated ground operating environment of indigenous populations may justify consideration of race, ethnicity or national origin when tasking for the mission to optimize mission success.

(1) Taskings using consideration of race, ethnicity or national origin under this subsection will be approved only for specific missions and training for such specific missions.

(2) Such taskings require approval by the combatant commander.

(3) Any such tasking under this subsection will be reported to the House and Senate Armed Services Committees within 60 days. The report will include a description of the mission, the mission's location and duration, the staffing of the mission, the demographic factors warranting the tasking, the number of personnel involved (including their rank, position, and race/ethnicity/national origin), and the rationale for the tasking.

BRIEF COMMENTS

Subsection (a)'s proposed language in part tracks part of DODI 1350.02, para 2.8(a)(3) ("Service members are evaluated only on individual merit, fitness, capability and performance.") Also, it encompasses *all* categories of personnel actions where it is known or believed that racial preferences are occurring.

Subsection (b)'s express prohibition against consideration of race, et al, is necessary because without it the statute would be ineffective. DODI 1350.02, para 2.8(a)(3) currently requires evaluation of service members "only on individual merit, fitness, capability, and performance." That DODI is regularly ignored (discussed below). Absent a statutory, express prohibition against use of race, et al (as in Title VI and VII), it would be argued that words like "merit" and "capability" permit consideration of an individual's attending circumstances, including race, so that use of racial preferences could continue in future administrations. An express, statutory prohibition would eliminate any such interpretation.

Subsection (c)'s exception for specific mission tasking in only certain types of missions anticipates an objection based on certain tactical concerns and provides a narrow exception, with high level command approval and reporting to Congress of each such instance.

DoD's tasking needs for special, ground missions where the indigenous population in the tactical environment may require consideration of race or ethnicity are legitimate and should be accommodated. They do not justify, however, widespread disregard of constitutional equal protection throughout DoD and use of racial preferences in personnel actions generally.

DISCUSSION

Subsection (b)'s express prohibition would add clarity and serve the following goals:

1. Prohibit DoD-wide use of race-based preferences in military personnel actions, which (because they are concealed) is a bigger problem than is realized; racial preferences in DoD civilian personnel actions are already statutorily prohibited.
2. Prohibit use of race-based preferences in service academy admissions, rendering ongoing litigation against DoD, USMA and USNA moot.
3. Codify prohibition of racial discrimination in military using a separate statute, leaving in place existing enforcement mechanisms, not relying on Titles VI and VII.
4. Demonstrate Congressional intent, once and for all rejecting DoD's far-fetched, contrived argument that racial preferences and pursuit of officer-enlisted racial demographic parity are essential to national security and thus a "compelling national interest" sufficiently strong to justify suspension of enforcement of constitutional guarantee of equal protection
5. Eliminate need to litigate DoD argument set forth in item 4 (above), attendant delay, cost and uncertainty of result.
6. End identity-based preferences (that are vaguely disguised as "Inclusion" practices)..
7. Align service academy admissions practices to same Equal Protection requirements that all other U.S colleges and universities must now observe, and that a substantial majority of Americans favor and a plurality of Black Americans support.
8. Help restore military cultural imperatives including undiluted merit, colorblindness and selflessness, improving morale, unit cohesion, and combat effectiveness.
9. Accommodate DoD's need in specific, unconventional mission tasking to consider race, ethnicity and/or national origin when special characteristics are needed due to the anticipated tactical operating environment in some foreign countries. Doing so with a specific and narrowly worded exception accommodates the need and deters abuse.
10. Help restore public confidence in military resulting from alignment with Constitution and elimination of racial preferences (as favored by the public).
11. Help relieve recruiting crisis by restoring military cultural appeal to those who value equal opportunity, "colorblindness," and merit undiluted by racial preferences.
12. Enable stronger congressional oversight of DoD personnel management practices.

Racial preferences now pervasive. DoD's use of racial classifications and preferences has become pervasive. They are well-concealed and undeterred by DODI 1350.02, para 2.8(a)(3), Military Equal Opportunity Program. DoDI 1350.02 unequivocally requires that "service members are evaluated only on individual merit, fitness, capability and performance."

But DoD routinely ignores that regulation, apparently because it does not explicitly "prohibit" consideration

of race and the term "individual merit" is interpreted too broadly. Subsection (a), alone, would codify part of that regulation. DoD has demonstrated, however, that it would evade that requirement by liberally construing "individual merit" unless specifically also commanded by statute not to consider race.

In accessions (and similar to Harvard and UNC), West Point uses "Class Composition Goals" (see file p. 59). These "goals" include percentages for specific racial categories (one for "African Americans" and one for "Hispanics," among others) that are tracked throughout the admissions cycle.

Certain admissions practices (e.g., restricting issuance of Letters of Assurance early in the admissions cycle to certain applicants, including by race) that advantage certain classifications of applicants and disadvantage others are used to help fulfill these goals. Differing application of standards in admissions determinations, including out-of-order-of-merit selection for certain classifications of applicants, including race, also helps fulfill them.

These practices are, at USMA, expressly (in writing) permitted for the stated objective of helping to "balance diversity."

As a result, applicants having higher (sometimes significantly higher) Whole Candidate Scores (per West Point's application scoring system) are rejected to facilitate admitting "preferenced," lower scoring applicants (because of their race) to fulfill racial composition goals for the overall purpose of "balance" in racial diversity.

In contrast to the above facts, DoD described deceptively the academies' relevant admissions practice in the United States' *amicus brief in Harvard/UNC*. The practices were claimed to consist of the consideration of race as just one of "many other qualities" (U.S. br. at 12), when they "employ holistic recruiting and admissions policies that consider race—along with many other factors—in an individualized review of applicants" or use "limited consideration of race in a holistic admissions system ... necessary to achieve the educational and military benefits of diversity." (U.S. br. at 17).

Those representations were demonstrably false and misleading in multiple ways. While the academies do an outstanding job of gathering, and scoring, information that facilitates evaluating the whole person, the holism stops when admissions decisions are made for certain appointment categories. At USMA (and likely USNA and USAFA), widely varying candidate composite score thresholds, by race, have been used for LOA (early admission) eligibility. White and Asian males are severely disadvantaged by those practices. Appointments in two statutory appointment categories totaling over one fifth of each class have been generally reserved for recruited athletes (all races) and certain minorities. White and Asian candidates who are not recruited athletes have been generally excluded from competing for those appointments, resulting in significantly better qualified white and Asian candidates being rejected in large numbers to facilitate admission of marginally and sometimes poorly qualified diversity and recruited athlete candidates.

USAF UPT and other DoD school program selections have been influenced by identity characteristics, sometimes ignoring regulations that were issued precisely to prevent such discrimination.

The Air Force has used race and gender-based classifications in its Rated Diversity Improvement Strategy (RDI) program, wherein it deliberately advanced women and minorities in the Undergraduate Pilot Training pipeline (ahead of white males, who must wait longer for a training slot) in an effort to accelerate the numbers of women and minority pilots. Program managers were told such practices are lawful and they must compose UPT classes considering race and gender, disadvantaging white males.

The Army directed applicants in 2021 to submit Funded Legal Education Program ("FLEP") selection board packets without redacting race and gender information in direct violation of a written directive requiring redaction.

The FLEP board results suggested that such prohibited information influenced the selection process, in violation of AR 600-20, paras, 6-1(a) and 6-2(b); DODI 1350.02, para 2.8(a)(3), and the 2011 Army Chief of Staff's written Equal Opportunity and Discrimination Policy.

The last of those states the Army's EO policy is "based solely on merit" et al … and "right to participate in and benefit from programs for which they are qualified without regard to race, color, gender …." "Soldiers will not be accessed, classified, trained, assigned, promoted or otherwise managed on the basis of race, color, gender, religion, or national origin, except as required by Federal law. *Such discriminatory behaviors and practices undermine teamwork, loyalty and the shared sacrifices of the men and women of America's Army.*" (emphasis added)

Command selection. The Army's heralded Battalion Command Assessment Program (BCAP), a 4 ½ day process by which candidates for battalion command are thoroughly tested and evaluated, according to two, independent reports by persons with knowledge, has used what function as racial quotas, whereby after compilation of scores, higher scoring candidates were passed over when necessary to allow selection of lower scoring candidates by reason of race.

Preferences' harmful consequences. These and similar race-based, personnel practices are divisive, erode morale, and undermine trust. They are antithetical to and weaken the selfless, colorblind warrior culture, undermine unit cohesion and compromise combat effectiveness. violate Equal Opportunity policy and constitutional equal protection.

Were they to be used regarding DoD civilians, they would violate a federal statute (Title VII). But, there is no similar federal statute preventing such practices being used regarding military personnel. A statute to fill that vacuum is urgently needed to end (and prevent in the future) such practices, particularly in light of the harmful consequences to the military, not the least of which is reduced leader quality and resultant compromise of combat effectiveness.

Incremental differences in leader quality in the military can mean the difference between mission success or failure and warfighters' life or death. Accordingly, these practices and others like them also violate a trust owed to our warfighters and to the American people. It is our moral and professional obligation to provide our warfighters the "best-qualified" leaders available, always, not just some of the time. Diluting leader quality with identity preferences, even once, is a moral failure that should be intolerable.

But, at DoD leadership's direction—spurred by ideological commitment to "Diversity and Inclusion"—identity preferences' displacement of merit has become routine,

- disregarding the requirement of constitutional equal protection (and thus violating leadership's oath to "bear true faith and allegiance to the" Constitution),
- denying/concealing preferences' use and blind to the resulting erosion of trust
- ignoring preferences' many deleterious cultural effects
- indifferent to preferences' denial of equal opportunity/basic fairness,
- heedless of preferences' inherent moral hazard, and
- oblivious to preferences' negative secondary consequences (*e.g.,* lowered leader quality and compromised combat effectiveness) for individual warfighters.

DoD's claim. DoD has used preferences in obsessive pursuit of its goal of officer-enlisted racial demographic parity, claiming that the percentages of specified minorities in the officer ranks must approximate those in the enlisted ranks. It also asserts that there must be racial demographic parity between the officer corps and the national population. DoD has used phrases such as "critical officer diversity" and "strategic imperative" to justify its use of racial preferences at the service academies and by colleges having ROTC.

The Air Force explicitly set percentage goals for increasing the numbers of women and minority pilots, claiming such efforts to increase diversity would "result in a more lethal Air Force to retain our competitive advantage."

Notably absent, however, is evidence to support claims (which is DoD's burden to prove) that such balancing is necessary to make our military combat-effective or that increasing diversity in the rated officer (pilot) groups

would make the Air Force more combat effective. These goals, however well-intentioned, are founded on a theory—racial balancing—that the Supreme Court has uniformly rejected as "patently unconstitutional" in every context in which it has been raised.

Finally, DoD disingenuously has claimed that it does not lower standards when using identity preferences under the guise of "Inclusion." Available data regarding service academy admissions, however, indisputably exposes that pretense as demonstrably false.

Remedy infuses constitutional equal protection. *Expressly prohibiting* consideration of race would end this subterfuge once and for all. It would codify for DoD's observance the constitutional mandate of equal protection as meticulously explained by the Supreme Court in *SFFA v. Harvard/UNC*. Equal protection of the law requires that citizen's legal standing in all of society be "colorblind" in recognition of the fundamental principle that no person is of greater or lesser dignity or worth by reason of his or her race, and governments must scrupulously adhere to that principle in how they treat their citizens. The Court said:

- The "core purpose of the Equal Protection Clause" is "do[ing] away with all governmentally imposed discrimination based on race." (slip op. 14)
- "Eliminating racial discrimination means eliminating all of it." (slip op. 15)
- "… Equal Protection … applies 'without regard to any differences of race, of color or of nationality' – it is 'universal in [its] application." (slip op. 15)
- "[T]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. [cit. omitted) If both are not accorded the same protection, then it is not equal." (slip op. 15)
- "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." (slip op. 16)
- "[r]acial discrimination is invidious in all contexts" (slip op. 22)
- "[R]ace may never be used as a 'negative'" (slip op. p. 27)
- "race … may not operate as a stereotype." (slip op. p.27)
- "One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities." (slip op. 29)
- "'[O]utright racial balancing' is 'patently unconstitutional.'" (slip op. 32)
- "'[a[t the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class." (slip op. 32)
- Rejecting the legitimacy of using racial classifications to achieve racial demographic balance, because "'race will always be relevant … the ultimate goal of eliminating race as a criterion will never be achieved.'" (slip op. 32)

The policy questions inherent in whether DoD should be prohibited from using racial preferences are within Congress' Article I, Section 8 powers to regulate the military forces. Congress was expressly delegated such powers and has the right and obligation to exercise them in this context.

DoD must be required to treat all service members equally, regardless of race, to conform to the Constitution and to optimize combat effectiveness. National security requires optimal leader quality, undiluted by preferences. Explicit, statutory prohibition against the consideration of race in military personnel actions is thus a national security—and moral—imperative.

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