



THE U.S. SUPREME COURT DECISION THAT FINISHED OFF AFFIRMATIVE ACTION: NEPC EXPERTS WEIGH IN



The U.S. Supreme Court on Thursday sounded a [final death knell](#) for affirmative action in college admissions. Although not unexpected, the decision was a blow to proponents of what efforts remained for selective institutions to address a lack of diversity in their student bodies.

Justice Sotomayor's dissent cited the scholarship of NEPC Fellows [Gary Orfield](#), [Erica Frankenberg](#) (see <https://escholarship.org/uc/item/23j1b9nv>), [Bruce Baker](#), and [Preston Green](#) (see <https://www.shankerinstitute.org/segfunding>).

The UCLA Civil Rights Project, which Orfield co-directs with NEPC Fellow [Patricia Gándara](#), issued a [statement](#) that included the following: "Today's ruling on affirmative action makes the Supreme Court's majority the nation's college admissions office and sharply reduces opportunities for students of color in the institutions that train America's leaders."

And Frankenberg, in her capacity as director of the Center for Education and Civil Rights, issued a [statement](#) that stressed the continuing availability (and importance) of policies that tackle racial isolation in K-12 schools.

NEPC Fellow [Bob Kim](#), who directs the Education Law Center, similarly [tweeted](#),

Today's opinion has no direct impact on preK-12 schools. PreK-12 schools may

continue to pursue diversity strategies deemed permissible after the Supreme Court's *Parents Involved* case in 2007. (And many preK-12 schools still aren't utilizing all the tools SCOTUS says they can.)

Others focused on the Court's reasoning. "This current Supreme Court is very much a political decision-making body that starts with the political decision it wants to make and works backwards to come up with legal justification for it," NEPC director Kevin Welner of the University of Colorado Boulder [told the *Colorado Sun*](#).

Of the affirmative action decision, he added: "The majority opinion is disingenuous and really problematic in its ahistorical treatment of the role race and racism has played in America."

[Writing in *Forbes*](#), NEPC Fellow [Shaun Harper](#) of the University of Southern California made several predictions of the way in which last week's affirmative action decision will ultimately impact students and schools:

- Given that 10 states (California, Arizona, Florida, Idaho, Michigan, Nebraska, New Hampshire, Oklahoma, Texas, and Washington) have banned affirmative action since the late 1990s (bans in Washington and Texas were subsequently overturned), Black student enrollment at majority-White colleges with competitive admissions policies has already declined. Harper predicts it will decline further.
- Enrollment at historically Black colleges and universities will increase as students seek out "psychologically safer, culturally affirming educational alternatives."
- Institutions with profitable sports teams will "miraculously find admissible Black athletes." In a 2018 report, Harper found that Black men comprised 2.4 percent of undergraduates at universities participating in the five most profitable sports conferences even as they made up 55 percent of those schools' football teams and 56 percent of their basketball teams.
- Administrators will overreact to the Court's decision by eliminating race-related programs that remain legal (e.g., African American Studies programs, culture centers for Asian-American students).
- Postsecondary faculties and administrative departments will grow less diverse even as nearly half the employees in lower-paying jobs at colleges and universities (e.g. food service staff, custodians) continue to be people of color.
- Students and employees of color will increasingly face racism, microaggressions, and isolation on campus, leading a decline in their retention.
- White college graduates of selective universities will enter the workforce unprepared for the reality that, in an increasingly diverse nation, professionals need to be prepared to interact with colleagues, clients, and patients of multiple races: "They won't know how to lead racially and ethnically diverse teams. Many will unintentionally say and do racist things to co-workers of color because they interacted with so few people

like them in prior residential and educational contexts,” Harper notes.

In fact, for that very reason, the Supreme Court decision explicitly exempted the nation’s military academies from its decision to otherwise bar race during the admissions process.

As Fellow [Prudence Carter](#) of Brown University [tweeted](#):

I am tripping over the fact that the majority opinion allows for race-conscious decisions in military academies. So, underrepresented minorities can have the ‘opportunity’ to fight and die for this nation but not create economic, scientific, health, cultural & other endeavors.

Interested in learning more about affirmative action? Here are some resources on the subject from NEPC and its fellows:

[*Brief of Amici Curiae Deborah Cohen and 67 Other Professors in Support of Respondents*](#)

[*Brief of 1,241 Social Scientists and Scholars on College Access, Asian American Studies, and Race as Amici Curiae in Support of Respondent*](#)

[*U.S. Supreme Court Decision Sounds Death Knell for Race-Conscious College Admissions Policies: A Q&A With Gary Orfield*](#)

[*Affirmative Action on Trial. Again.*](#)

[*The Walls around Opportunity: The Failure of Colorblind Policy for Higher Education*](#)

[*Living with Moral Disagreement: The Enduring Controversy about Affirmative Action*](#)

NEPC Resources on Legal Issues

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