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## Definition Matters

The Supreme Court punted. Its April 22 decision was widely reported as a ban on affirmative action in college admissions. But the court refused to rule whether affirmative action is constitutional or not. Instead, the court turned the issue over to public opinion.

As Justice Anthony Kennedy put it in the controlling opinion, "This case is not about how the debate about racial preferences should be resolved. It's about who may resolve it." In other words, don't ask the court. Ask the people.

What Michigan voters—more precisely, 58% of them—said when they passed Proposition 2 in 2006 was that state institutions "shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity or national origin" in education, public employment or government contracting. The court ruled that banning preferential treatment is constitutional—if that's what the people want.

What if the voters and their elected representatives raise no objection to affirmative action? That's O.K., too. In previous cases, the court has allowed the use of race-conscious admissions standards as long as they pass "strict scrutiny." Meaning, only if the institution can demonstrate that alternative approaches to diversity don't work.

In his concurring opinion, Justice Stephen

Breyer argued that the Constitution permits but does not require states to use race-conscious standards. The people have the right to decide not to. Which is what the voters of Michigan did.

Has the American public handed down its ruling on affirmative action? Actually, it has. What Americans have been saying for years is, outreach is fine. Preferential treatment is not.

People distinguish between two versions of affirmative action. Outreach involves measures to help disadvantaged groups catch up to the prevailing standards of competition. Preferential treatment means suspending those standards and admitting or hiring members of disadvantaged groups who do not meet the same standards.

It is fine, the public says, to compensate for past discrimination by means of special training programs, head start efforts, targeted financial aid, talent search programs, community development funds and the like. Help disadvantaged groups compete, whites say. But do not predetermine the results of the competition: no quotas, no preferences for one race over another, no dual standards whereby whites and minorities are judged differently.

A Gallup poll press release in July 2013 was headlined, "In U.S., Most Reject Considering Race in College Admissions." Sounds like thumbs down for affirmative action. The question asked

***There is a real policy difference between outreach and preferential treatment.***

whether college applicants should be admitted solely on the basis of merit, “even if that results in few minority students being admitted,” or should applicants’ racial and ethnic backgrounds be considered to help promote diversity, “even if that means admitting some minority students who otherwise would not be admitted.” Answer: stick to merit, 67% to 28%.

Now here’s the headline of a Pew Research Center press release in April 2014: “Public Strongly Backs Affirmative Action Programs on Campus.” Huh? The Pew question asked, “Do you think affirmative action programs designed to increase the number of black and minority students on college campuses are a good thing or a bad thing?” By better than two to one (63% to 30%), the Pew respondents said affirmative action is a good thing.

“Affirmative action,” left otherwise undefined, is widely supported because most people believe it means outreach: helping disadvantaged groups compete. Even in the 2013 Gallup poll, nearly 60% of the public approved of “affirmative action programs for racial minorities.”

The debate is over what people think “affirmative action” really means. In a CNN poll, what you thought affirmative action meant determined how you felt about it. Those who favored affirmative action believed, by better than 2 to 1, that it meant outreach to women and minorities. But almost 85% of those who opposed affirmative action believed it meant preferential treatment. Most Americans continue to support affirmative action because they believe it means outreach. Critics have the challenge of convincing people it doesn’t mean what they think it means.

In 1997, a year after California voters passed a proposition banning “preferential treatment” in admissions and hiring, the city of Houston considered a similar measure. Houston voters, like California voters, would be asked whether the city “shall not discriminate against or grant preferential treatment to any individual or group on the basis of race, sex, ethnicity or national

origin.” A poll of Houston voters showed almost 70% in favor of such a measure.

But Houston’s popular mayor at the time, Bob Lanier, believed the measure would be a step backward for his city—and one that would be bad for business. Lanier persuaded the city council to change the wording of the proposition. The new version asked voters whether the city should “end the use of affirmative action for women and minorities” in city employment and contracting.

It worked. One day after the Supreme Court upheld the California measure, Houston voters defeated the ban on affirmative action by 55% to 45%—precisely the reverse of the margin by which a similar ban had passed in California a year earlier.

Justice Sonia Sotomayor had the distinction between outreach and preferential treatment in mind when she wrote in her fiery dissenting opinion that she was not going to use the term “affirmative action” because she felt it implied “preferential treatment.” Instead, she defended what she called “race-sensitive admissions policies.”

The difference in wording is not just two different ways of saying the same thing. There is a real policy difference between outreach and preferential treatment. The public gets that. And the Supreme Court seems willing to go along. ■



## Red and Blue America March On

The figure reported in the new edition of “Vital Statistics on Congress” is shocking: in 2012, fewer than 6% of congressional districts split their votes for President and Congress. Seventeen districts voted for Barack Obama for President and a Republican Representative. Mitt Romney carried nine districts that voted for a Democrat for Congress. That’s the lowest rate of ticket-splitting in nearly 100 years.

Ticket-splitting has declined steadily since 1972, when 44% of districts split their votes. By 1996, it was down to 25%. It dipped below 20% in 2000, 2004 and 2008. 2012 is the first time ticket-splitting has fallen to single digits since 1920.

Red America and Blue America are moving apart. A student once asked me, “Is this the most divided we have ever been as a country?” I pointed out that we did once have a civil war. Some three quarters of a million Americans died. But the country is now more divided than it has been since that terrible tragedy 150 years ago.

## Reverse Landslides

Every landslide carries with it the seeds of its own defeat.

2008, the year of the financial crisis, saw a Democratic landslide. Not only did the country elect President Obama in 2008 but Democrats also gained eight Senate seats. Those seats are up for re-election this year.

Seven states that voted for Mitt Romney in 2012 have Democratic Senate seats up this year. Only one Obama state has a Republican Senate seat up (Maine). Conditions in 2014 are far less favorable for Democrats than they were in 2008, when those senators were last elected. It’s going to be tough for Democrats to hold most of those seats. If they lose six, Democrats lose their majority in the Senate.

Now here’s some good news for Democrats. Things are looking much better for them in elections for governor this year. That’s because almost all the governorships up in 2014 were last elected in 2010—a Republican landslide year when Republicans gained six governors.











No fewer than nine Obama states have Republican governors up this year. Only one Romney state has a Democratic governor up this year (Arkansas). It’s going to be tough for Republicans to hold on to most of those governorships.

So expect big Republican gains in Senate races this year and big Democratic gains in governors’ races. Pundits will speculate on what the voters are trying to say. What they are trying to say is, you can’t hold on to a landslide. Like the one Democrats enjoyed in 2008 and the one Republicans enjoyed in 2010.

### 2012 Romney States with Democratic Senate Seats Up

AK		Begich
AR		Pryor
LA		Landrieu
MT		Walsh
NC		Hagan
SD		Johnson
WV		Rockefeller
ME		Collins

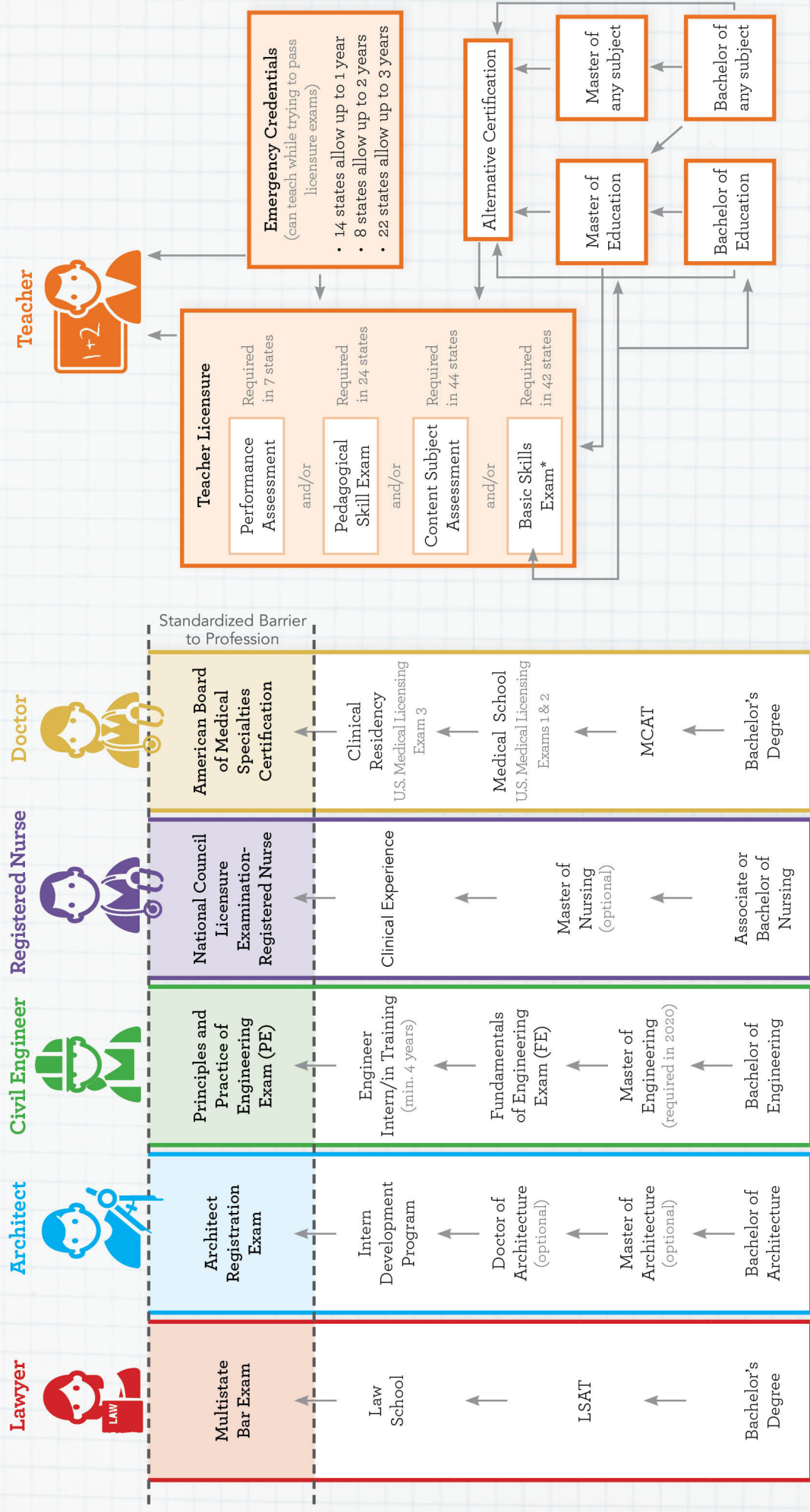
### 2008 Obama States with Republican Governor Seats Up

FL		Scott
IA		Branstad
ME		LePage
MI		Snyder
NM		Martinez
NV		Sandoval
OH		Kasich
PA		Corbett
WI		Walker
AR		Beebe



# One of These Things is Not Like the Others...

Most professions follow a standard path to licensure, where aspiring entrants throughout the country must pass the same rigorous final exam to begin their careers. Why isn't this the case for K-12 teachers? In order to professionalize teaching, we should require a linear path into the profession that enforces a high bar for entry and ensures that those who teach future generations are prepared on day one.



\* 26 states use basic skills tests for admissions to teacher prep programs. 14 states use these tests, which typically test middle school level skills, at the completion of teacher preparation to confer teaching licenses. Another 8 states do not require basic skills testing at all. (NCTQ State Policy Yearbook 2013).

For more, read the Third Way memo "Teaching: The Next Generation," available at: <http://www.thirdway.org/publications/811>.

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