



EDUCATION AND THE KAVANAUGH CONFIRMATION HEARINGS



As the Senate confirmation hearings for U.S. Supreme Court nominee Brett M. Kavanaugh heated up last week, the raucous process largely focused on issues of partisanship, debates about executive power, and discussions of the landmark abortion case *Roe v. Wade*.

But what about Judge Kavanaugh's record on education? As a Justice, Kavanaugh would have a long-lasting and dramatic impact on a host of issues related to K-12 and higher education.

Here are some National Education Policy Center resources concerning several education issues likely to come before the Court in the upcoming years:

Prayer in Schools: Judge Kavanaugh does not appear to support a strict wall between church and state. In a friend-of-the-court brief, he supported an evangelical Christian youth group that had been barred by a school district from meeting on campus after school hours. In *Good News Club v. Milford Central School*, the U.S. Supreme Court decided in favor of the club. Kavanaugh co-authored another friend-of-the-court brief supporting student-delivered invocations at football games. In *Santa Fe Independent School District v. Doe*, the U.S. Supreme Court disagreed with that position, concluding that such invocations violated the establishment clause, which prohibits the government from favoring one religion over another or over non-religion. At his confirmation hearing in 2006 for his nomination to the U.S. Court of Appeals for the District of Columbia Circuit, Kavanaugh said he would follow the precedent of the *Santa Fe* case. NEPC Fellow Catherine Lugg places that precedent in context in an article in the peer-refereed journal *Educational Policy*, with an overview and the Protestant Right's involvement in public schooling and in the confirmation process of Supreme Court nominees.

Race in educational settings: In a previous NEPC newsletter, we touched upon Judge Kavanaugh's position on affirmative action, an issue that has arisen during the Senate hear-

ings. The issue is especially relevant now, as a [high-profile lawsuit](#) alleges that Harvard's admissions policies discriminate against applicants labeled as Asians in an effort to admit more under-represented minorities, such as Native Americans, African Americans, and Latinx. The case could have far-reaching effects, especially if it makes its way to the Supreme Court. Kavanaugh, whose [prior work](#) indicates that he would oppose race-conscious admissions policies, would replace Justice Anthony Kennedy, the [swing vote](#) on previous cases related to race and schools. Kavanaugh [did say](#) during his hearing that *Brown v. Board of Education* was "the greatest moment in Supreme Court history." But he is likely to characterize that achievement as a victory for "race blind" policies, rather than policies designed to address racial inequities. Click [here](#) to read that newsletter, which includes NEPC resources on understanding the affirmative action debate as it relates to education.

School choice: Judge Kavanaugh's record indicates that he would support school choice options such as the use of publicly funded vouchers at private and religious schools. He [has been](#) the co-chair of the School Choice Practice Group of the Federalist Society, an organization of conservative attorneys who advocate for these types of choice policies. He has also said that he worked on school choice litigation in Florida for a reduced fee. NEPC and its fellows have authored numerous resources related to school choice, including material on [charter schools](#), [private schools](#), and [vouchers](#). Especially relevant is a [recent NEPC policy brief](#) that drew upon lessons learned from Chile's universal privatization and voucher system, explaining a research base that describes Chile's failure to meet its original objectives while suffering from unintended consequences.

School safety: As an appellate judge, Kavanaugh [authored a dissent](#), [arguing](#) that bans on semiautomatic weapons and handgun registration requirements were unconstitutional. "Of course the violence in schools is something we all detest, and want to do something about," [Kavanaugh said](#) during his hearing. "And there are lots of efforts I know underway to make schools safer. I know at my girls' school they do a lot things now that are different from just a few years ago, in terms of trying to harden the school and make it safer for everyone." Measures to "harden" schools have included installing cameras, hiring more school police officers, arming teachers, and installing steel doors. An [NEPC policy brief](#) concluded that such measures often miss the mark, as the places and manners of implementation often end up stigmatizing and penalizing students of color. The brief instead recommended such policies as integrating community-based policing with school restorative justice and redirecting funds spent on school police officers to programs that aim to improve student engagement and social connectivity.

NEPC Resources on Legal Issues

The National Education Policy Center (NEPC), housed at the University of Colorado Boulder School of Education, produces and disseminates high-quality, peer-reviewed research to inform education policy discussions. Visit us at: <http://nepc.colorado.edu>