

## California Law School Deans Urge the Court to Apply New Bar Exam Cut Score Retroactively



The California Supreme Court's recent decision to lower its notoriously high bar exam's cut score is great news for recent law grads anticipating the upcoming online test. But, is that fair to all those test-takers who would have passed the state's exam if they've had the benefit of the rebuilt scoring scheme score?

Recent law graduates and a law school deans urge California to apply the newly lowered passing rate retroactive, to applicants who sat for the state's February exam.

The high court [announced last week a decision to lower the passing score](#) from 1440 to 1390 permanently. It also ordered the State Bar to prepare an online Oct. 4 exam and to develop a temporary provisional licensure program allowing graduates to practice specified areas of law under the supervision of a licensed lawyer.

In a [letter](#) sent to the court Thursday night, deans from 19 law schools in California asked the state supreme court that the new minimal passing score of 139 extend to graduates who sat for the February 2020 exam.

The deans said there are many graduates who had achieved a score above 139 and below 144 in February, some of whom had done so for the second time.

"These students have, but for the moment in 2020 when they took the exam, achieved a high enough score for admission. Yet these students are being double-penalized, both by the score not applying to the February exam and by the fact that they, and only they, will have achieved that now-passing score and yet must wait several additional months beyond the usual timing of the regularly scheduled exam for a new exam and that exam's results." the deans wrote.

The deans said the graduates who failed the February exam are not only demoralized by the near-miss, but also by the extended period between exams, the uncertainty of how online exam will work and the foreshortened time between the October results and the possibility of having to take the exam yet again in February 2021.

In a separate letter, more than 100 recent law graduates urged the California high court to extend the new passing score to all test takers who sat for the exam between July 2017 - the first time the exam was administered over two days instead of three - and February 2020.

"This was a substantial change in the exams being administered and in theory, all subsequent exams, all things considered, would be on equal footing," the alumni wrote.

The dean's letter also said that the timing of new scores affected people of color in greater proportion.

"In addition, we know that this pandemic is having disproportionate effects on communities of color as well as disparate socioeconomic effects. It is therefore reasonable to believe that a number of those taking the bar exam again in October, including many candidates of color, have been disproportionately impacted by the pandemic and its effects," they wrote.

"The costs for these graduates of having to take the bar yet again in the midst of this exceptionally challenging moment are clear; what genuine benefit to the public is achieved from putting them through that process, given that they received a score of 139 or better just a few months ago?"

The letter was initiated by UC Hastings professor and legal ethics expert Richard Zitrin, who chairs the Bar Association of San Francisco's [minority scholarship program](#).

While Zitrin is nonsignatory to the letter, he proposed the idea with UC Hastings Dean David Faigman, who is one of the 19 deans who signed it.

"As the longtime chair of the Bar Association of San Francisco's [minority scholarship program](#), which provides \$30,000 scholarships for students from underrepresented minorities, I'm deeply concerned by the fundamental unfairness to students of color, including some known to me, who scored over 140 on the February 2020 bar and must now take the exam once again. Any student in this situation faces a double hardship of a 'passing' grade and an extra delay." Zitrin said in a statement published in a UC Hastings statement on the letter.

California's bar exam is considered one of the most difficult in the country, and before the change, it had the second-highest cut score in the nation. Consequently, the state has also one of the lowest pass rates in the country, [with the February 2020 rate shrinking to record low of 26.8%](#). The retroactive change would mean an additional 376 test-takers passed, according to the state bar.

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