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Rejecting Critical Race Theory in State K–12 Laws

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KEY TAKEAWAYS

Critical race theory's philosophical convictions include the belief that America's representative system and rule of law should be dismantled.

State lawmakers should consider specifically tailored protections for students and teachers who wish to dissent from critical race theory's racist orthodoxy.

CRT-based instructional content should be replaced with robust civics and history instruction on America's founding ideals of liberty and equality under the law.

Lawmakers in more than a dozen states have adopted proposals that reject the teaching of critical race theory in K–12 schools. Some of this state legislation appropriately prohibits government and school officials from compelling teachers and students to affirm or profess adherence to critical race theory's central ideas. The theory's philosophical convictions condemn federal and state civil rights laws in favor of racial preferences and include the belief that America's representative system and rule of law should be dismantled.[1]

The First Amendment to the U.S. Constitution prevents Americans from being compelled to speak—a vital provision that protects our expressive rights and prevents public actors from exerting undue control over citizens. Policymakers and school officials may not force educators and students to defend critical race theory's racist perspective either as a condition of course completion or, for teachers, as part of their

employment responsibilities. Critical race theory's applications violate civil rights laws, including the Civil Rights Act of 1964, which is the pillar of civil rights legislation in the federal code.

Some of the new state laws on critical race theory and discrimination lack prohibitions of compelled speech and/or contain language that courts consider vague and ill-defined. In New Hampshire, for example, a federal judge ruled that the new state law's descriptions of critical race theory and the restrictions that the state law placed on teachers' expression were unconstitutionally vague.[2] Still other laws block school officials from including certain ideas or content in classroom instruction—provisions that threaten robust debates in academia.[3] As the New Hampshire case demonstrates, such language may be overturned in court; it is therefore essential that policymakers be specific when drafting legislation. Lawmakers must describe their intent to prevent *racially discriminatory actions* and *compelled speech* while promoting the pursuit of truth in classrooms.

Before turning our attention to the state laws, however, this report will review what has made these state laws necessary.

Critical Race Theory

Much has been written in recent years both by critical race theorists to explain their theory and by those who reject the theory in favor of colorblindness and meritocracy.[4] For example, Kimberlé Crenshaw and her fellow editors have described the theory's origins in *Critical Race Theory: The Key Writings that Formed the Movement*:

> Organized by a collection of new-Marxist intellectuals, former New Left activists, ex-counter-culturalists, and other varieties of oppositionists in law schools, the Conference on Critical Legal Studies established itself as a network of openly leftist law teachers, students, and practitioners committed to expositing and challenging the ways American law served to legitimize an oppressive social order.[5]

Critical legal theorists revised their theory to feature race and racism at its center. In the late 1970s, critical legal studies "became the organizing hub for a huge burst of left legal scholarly production.... Critical race theory emerged in the interstices of this political and institutional dynamic."[6] In one of his primary speeches outlining critical race theory, former Harvard Law Professor Derrick Bell quotes fellow theorist John Calmore: "[C]ertain people of color have deliberately chosen race-conscious orientations and objectives to resolve conflicts of interpretation in acting on the commitment

to social justice and antisubordination."[7] To theorists, then, the racial perspective is the only perspective that we—academics, policymakers, voters, everyone—are to use to understand ideas and events.

Bell later claims that critical race theory seeks a more "egalitarian" world, but the theorists have no reservations about calling for violence against ideas with which they disagree. "It seems fair to say," according to Bell, "that most critical race theorists are committed to a program of scholarly resistance, and most hope scholarly resistance will lay the groundwork for wide-scale resistance."[8] Richard Delgado has called on Americans to use the ideas of Franz Fanon, whose concept of "decolonization" calls for violence, and radical protestors use "decolonization" to justify violent riots.[9]

Critical race theorists based their ideas on critical legal theory, adding a racial focus to critical legal theorists' ideas on legal "oppression." The editors of *Critical Race Theory: The Key Writings that Formed the Movement* wrote that theorists have "a desire not merely to understand the vexed bond between law and racial power but to change it," drawing attention to critical race theory's call to action.[10] Critical race theory is an effort at "human liberation" from capitalism and constitutional, representative political systems: "To use a phrase from the existentialist tradition, there is 'no exit'—no scholarly perch outside the social dynamics of racial power from which merely to observe and analyze."[11]

These statements, representative of critical race theory's principal ideas, indicate clearly that critical race theory is not merely a field of academic study: It is a way of life. Given the commitment of critical race theorists to extending Marx's vision of a world dominated by power structures, it should come as no surprise to policymakers, taxpayers, educators, and families that these theorists want their ideas to be *applied*, reflecting the inscription on Marx's tombstone that "philosophers have only interpreted the world, in various ways; the point is to change it."

Out of this commitment to resistance and protest, ostensibly against discrimination, came the violent riots of 2020 that harmed many Americans and threatened many more, destroying property and vandalizing landmarks in the name of Black Lives Matter (BLM), a movement based on critical race theory. So, too, can we find a litany of books explaining how to carry out critical race theory's goals, including *White Fragility*,[12] *The End of Policing*,[13] and *In Defense of Looting*, which argues that ethnic minorities should be allowed to commit crime based on claims of systemic racism.[14] Again, being "highly suspicious of [a] liberal mainstay, namely, rights," critical race theorists make the destruction of other people's property an appropriate form of protest.[15]

Because of their commitment to changing the world along Marxist lines, it is no surprise that critical race theorists did not intend that their Marxist philosophy would merely compete with other worldviews. Rather, they want their view—that racism is the determining factor behind decisions and policies in social and political life—to stand alone as the singular perspective used to understand the world. These theorists want to censor other ideas by labeling those who disagree with critical race theory as "racists."[16] In fact, if you are not a member of an ethnic minority group, theorists would often forbid you from speaking about the needs of that minority group. "From the viewpoint of a minority member," according to Delgado in his review of writings on race, "the assertions and arguments made by nonminority authors were sometimes so naïve as to seem incomprehensible—hardly worthy of serious consideration."[17] Delgado says white authors who write on civil rights should "redirect their efforts and...encourage their colleagues to do so as well."[18]

State lawmakers have responded to the illiberality and closed-mindedness of critical race theorists by adopting laws specifying that no educator or student should be compelled to affirm or profess any particular idea or ideas, especially ideas that violate the Civil Rights Act of 1964 as concepts found in critical race theory do. Such a provision correctly identifies an action that causes harm and that a court can adjudicate. Unfortunately, some state lawmakers have adopted more ambiguous provisions concerning what beliefs or ideas would be racist if applied in a classroom or anywhere else. These concepts are difficult to identify with the required legal clarity.

This *Legal Memorandum* will review the teachers union lawsuit in New Hampshire that resulted in the overturning of the state's law against teaching critical race theory in K–12 classrooms and will explain the law's strengths and weaknesses. Then we will review 13 other state laws that reject or prohibit critical race theory and evaluate which laws would be vulnerable to similar arguments absent key adjustments. Finally, we ysll explain what changes are necessary to protect students and teachers from the racism caused by the application of critical race theory.

This analysis can help lawmakers as they draft proposals that reinforce the Civil Rights Act of 1964 and prohibit racial discrimination in K–12 schools. We will identify provisions that, after consideration of the ruling in New Hampshire, may be subject to judicial revocation along with provisions that describe ideas not found in critical race theory.

New Hampshire Ruling

In 2021, New Hampshire lawmakers adopted House Bill 2, an omnibus budget bill that included provisions rejecting instruction in K–12 schools based on critical race theory.[19] The language rejecting critical race theory is crucial. The law stated:

> I. No pupil in any public school in this state shall be taught, instructed, inculcated or compelled to express belief in, or support for, any one or more of the following:
>
> (a) That one's age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion or national origin is inherently superior to people of another age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin;
>
> (b) That an individual, by virtue of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
>
> (c) That an individual should be discriminated against or receive adverse treatment solely or partly because of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin; or
>
> (d) That people of one age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin cannot and should not attempt to treat others without regard to age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin.[20]

The law also stated that "[n]othing in this section shall be construed to prohibit discussing, as part of a larger course of academic instruction, the historical existence of ideas and subjects identified in this section."[21]

A U.S. District Court Judge in New Hampshire struck down all of these provisions. In his view, each of them was unconstitutionally vague because they "do not…define any of the terms that must be understood to determine what is prohibited."[22]

- The first prohibition—against describing anyone as "inherently superior"—was unconstitutionally vague, the judge concluded, because "it is unclear what is prohibited beyond literally espousing that, for example, white people are superior to black people."[23]

- The second prohibition—against describing someone as "inherently racist, sexist, or oppressive"—was vague because it was unclear whether it prohibited teaching that people have "implicit bias."[24]

- The third prohibition—against teaching that an individual should be discriminated against because of his or her race, sex, and so on—was vague because it was unclear whether this would forbid arguing for certain kinds of legal affirmative action programs.[25]

- The fourth prohibition—against teaching that people should not treat others without regard to their characteristics—was vague because it employed "the dreaded triple negative form" and did not clearly identify things that were not already prohibited by the first three.[26]

The judge's decision is not beyond criticism. He was probably wrong to strike down the first prohibition because it clearly prohibits teaching things like "white people are superior to black people," and a clause is not made unclear because it might conceivably include other things in addition to what it clearly forbids. The judge gives no examples of other things that might be prohibited. As for the third prohibition, the laws and cases upholding certain forms of affirmative action seem to fit within the law's carve-out for teaching historical examples and ideas. But regardless of whether the judge was right, the case serves as a warning and a guide to legislators who want to accomplish similar ends and avoid adverse judicial decisions.

What follows is an overview of similar laws in the states and advice on how they can avoid the fate of New Hampshire's laws.

State Laws

Arkansas. Arkansas' SB 627, adopted in 2021, includes a "divisive concept" list similar to New Hampshire's H.B. 2.[27] SB 627, however, also includes provisions that define "race or sex scapegoating" and "race or sex stereotyping" as discriminatory behavior that would be prohibited under the law. Specifically, lawmakers define "race or sex stereotyping" as "ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs

to a race or sex, or to an individual because of his or her race or sex" and "race or sex scapegoating" as "assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex."

In both New Hampshire's law and Arkansas' law, public officials are prohibited from sanctioning individuals if they refuse to believe the list of "divisive concepts." Both laws also prohibit training programs that include the list of "divisive concepts." The law's prohibition against teaching "divisive concepts" would be vulnerable to a vagueness challenge according to the New Hampshire ruling. However, the definition of prohibited actions under the definitions of stereotyping and scapegoating should be defensible because of the direct referent to an activity and not just to espousing an idea.

In 2023, Governor Sarah Huckabee Sanders also issued an executive order specifying that state agencies, including the Arkansas Department of Education, should review their "regulations, policies, materials, and communications" and remove "teaching that would indoctrinate students with ideologies, such as CRT, that conflict with equal protection under the law."[28] If such materials are found, state officials are to remove or rescind these materials or policies.

The executive order also says that public school personnel may not compel other individuals to affirm or profess ideas that violate the Civil Rights Act of 1964. This prohibition is more defensible under the New Hampshire court's reasoning because the prohibition identifies specific actions that are disallowed.

Florida. Florida's H.B. 7 prohibits public officials from compelling individuals to believe a list of divisive concepts like the list included in New Hampshire's H.B. 2.[29] The legislation also says that the prohibitions do not restrict the discussion of the items on the list of divisive concepts in classrooms. This text defining prohibited actions is stronger than the provisions just blocking speech or ideas as described above.

The bill says that "it shall constitute discrimination" to "compel" students or school employees to "believe" the list of divisive concepts. Again, the prohibition of compelled speech is crucial language that identifies racist *behavior*, not just the teaching of certain concepts. The legislation also includes a list of subjects that shall be taught in schools, including the Holocaust of Jewish peoples during World War II and the institution of slavery as practiced in the U.S. in the 19th century. While the provisions concerning K-12 schools remain in place, federal courts have blocked state officials from applying the law to private corporations and higher education institutions.[30]

Georgia. During the 2021–2022 legislative session, Georgia lawmakers adopted H.B. 1084.[31] Here again, state lawmakers provide a list of "divisive concepts," including the idea that "one race is inherently superior to another race." The law then defines "espousing personal political beliefs" as the act of "intentionally encouraging or attempting to persuade or indoctrinate a student, school community member, or other school personnel to agree with or advocate for such individual's personal beliefs concerning divisive concepts."

Similar to the Arkansas legislation, Georgia's H.B. 1084 defines racial scapegoating and racial stereotyping. Georgia's legislation also say that "[e]ach local board of education, local school superintendent, and the governing body of each charter school shall ensure that curricula and training programs encourage employees and students to practice tolerance and mutual respect and to refrain from judging others based on race." This language resembles New Hampshire's H.B. 2 and might be vulnerable to a vagueness challenge because of its "triple negative form." While the definitions of "racial scapegoating and racial stereotyping" resemble Arkansas' law, Georgia's provisions on "encouraging employees and students to practice tolerance and mutual respect" could be challenged because it might be unclear what, exactly, is prohibited.

Idaho. In 2021, Idaho lawmakers adopted House Bill No. 377, which lists "tenets" that are "often found in critical race theory."[32] In provisions that resemble Heritage Foundation model legislation, this law prohibits any K–12 or postsecondary educator from directing or otherwise compelling students to "personally affirm, adopt, or adhere" to a list of ideas similar to the divisive concepts found in other state laws described in this *Legal Memorandum*.[33] The bill also blocks the use of taxpayer spending for "any purpose prohibited" in the list of divisive concepts. These are specific provisions regarding actions that, according to the ruling in New Hampshire, courts should more readily describe as actions and not just as the espousing of ideas.

Iowa. Here again, state lawmakers adopted a law in 2021 that includes the divisive concept list along with definitions of race or sex scapegoating or stereotyping.[34] The law specifically reinforces the Civil Rights Act of 1964, providing that government offices "shall prohibit [their] employees from discriminating against other employees by color, race, ethnicity, sex, gender, or any other characteristic protected under the federal Civil Rights Act of 1964" or state law. The law also says that colleges and universities may "continue training that fosters a workplace and learning environment that is respectful of all employees and students." Iowa's law, Idaho's law,

and The Heritage Foundation's model legislation prohibiting compelled speech contain many of the same characteristics that should withstand judicial scrutiny.

Montana. In 2021, Montana Attorney General Austin Knudsen issued a binding opinion rejecting the application of critical race theory that should serve as a model for state legislators who are trying to protect individuals from the theory's racist applications. "In many instances," Knudsen wrote, "the use of 'Critical Race Theory' and 'antiracism' programming discriminates on the basis of race, color, or national origin in violation of the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, Article II, Section 4 of the Montana Constitution, and the Montana Human Rights Act."[35]

Knudsen reviewed the Fourteenth Amendment to the U.S. Constitution and U.S. Supreme Court precedent in civil rights cases. He then explained the implications of Title VI of the Civil Rights Act of 1964 along with Montana civil rights laws.

Then Knudsen used critical race theorists' writings to define the theory and explain its applications. "Antiracism therefore assigns immutable negative characteristics to individuals solely based upon their race or ethnicity," he wrote. "And it manages to frame any philosophical disagreement or objection to this assignment as—you guessed it—racism."[36] He continued:

> The driving force behind CRT and antiracism is the complete and total acceptance of a specific worldview—one that encompasses very specific notions about history, philosophy, sociology, and public policy. Being a so-called "antiracist" requires individuals to accept these premises and advocate for specific policy proposals. Individuals who do not comply cannot truly be "antiracist," and are, therefore, considered racist.
>
> By its own terms, antiracism excludes individuals who merely advocate for the neutral legal principles of the Constitution, or who deny or question the extent to which white supremacy continues to shape our institutions. To that end, no one can be antiracist who does not act to eliminate the vestiges of white supremacy, i.e., embrace the specific public policy proposals of CRT and antiracism…[37]

Knudsen concluded by observing that:

> Trainings, exercises, or assignments which force students or employees to admit, accept, affirm, or support controversial concepts such as privilege, culpability, identity, or status, constitute compelled speech…. It is obvious that

> CRT and antiracism programming take strident positions on some of the most controversial political, societal, and philosophical issues of our time. Compelling students, trainees, or anyone else to mouth support for those same positions not only assaults individual dignity, it undermines the search for truth, our institutions, and our democratic system.[38]

For these reasons, Knudsen explained, critical race theory, its applications, and its resultant compulsory behavior violate civil rights laws and must be prohibited.

Oklahoma. In 2021, Oklahoma lawmakers adopted House Bill 1775.[39] The bill offers specific ideas that educators shall and shall not include in the K–12 curriculum—decisions that should be made by the state board of education and local school boards, not the legislature. The provisions specifically stating that there are ideas that educators "shall not require or make part of a course" are forms of censorship. An educator could make certain "divisive concepts" part of a course to teach students the problems with, for example, the belief that "one race or sex is inherently superior to another race or sex." But considering the bill's structure, educators should hesitate to teach concepts in this way for fear of violating the law.

Oklahoma is not the only state with "shall not make part of a course"–style language (see the subsection on Texas), and these provisions are especially problematic both because of the vagueness in the law and because of the censorship that could result.

South Carolina. In 2021, lawmakers adopted a budget proviso that the South Carolina Department of Education will not provide state funding to school districts to "provide instruction in, to teach, instruct, or train any administrator, teacher, staff member, or employee to adopt or believe, or to approve for use, make use of, or carry out standards, curricula, lesson plans, textbooks, instructional materials, or instructional practices that serve to inculcate any of the following concepts" and then included a set of "divisive concepts" similar to those from an executive order that was issued by former President Donald Trump.[40] These provisions contain many of the same concepts that the U.S. District Court in New Hampshire determined were unconstitutionally vague.

South Dakota. In April 2022, Governor Kristi Noem signed an executive order that contained strong, defensible language concerning critical race theory and K–12 schools.[41] The order says that the South Dakota Department of Education shall not "compel" employees, educators, or students to affirm, adopt, or adhere to the common list of divisive concepts. With this language, the governor did not "ban" the ideas, but prohibited public employees from compelling others to believe and act on the discriminatory ideas.

Tennessee. In May 2021, Tennessee lawmakers adopted provisions similar to those found in Oklahoma's statutes that prohibit educators from including "divisive concepts" in a course of instruction.[42] In Tennessee's law, however, the provisions include a section that says these prohibitions are not designed to prevent educators from having "impartial discussion of controversial aspects of history" or discussing the history of different ethnic groups. While the law does not include crucial provisions that prohibit compelled speech, it does allow for classroom content to address the discriminatory nature of critical race theory's central ideas.

Texas. In 2021, Governor Gregg Abbott signed H.B. 3979.[43] Here again, as with Oklahoma's law on "divisive concepts," Texas lawmakers prohibited educators from making "part of a course" the common list of divisive concepts—problematic language that may limit classroom discussion. The law also specifically prohibits educators from requiring students to "understand" the *New York Times Magazine*'s "1619 Project," an editorial series that claimed America's founding ideals were false when they were written.[44] The law states that school officials may not adopt rules that would punish students or teachers for discussing the concepts. This law contains some of the same vague ideas that the court identified in New Hampshire.

Utah. In 2021, lawmakers adopted H.R. 901, a resolution recommending to the Utah State Board of Education that board officials review state curriculum and remove what amounts to an abbreviated list of the divisive concepts commonly found in these state laws about critical race theory.[45] This resolution has few enforcement mechanisms and lacks crucial provisions explaining what critical race theory is, how the theory is applied, and how to prohibit compelled speech.

Virginia. In January 2022, Governor Glenn Youngkin issued an executive order calling on the state secretary of education to remove "divisive concepts" from "guidelines, websites, best practices, and other materials produced by the Department of Education."[46] The order defines divisive concepts in much the same way that other state lawmakers have defined them, but Youngkin's order also says that "'inherently divisive concepts' means advancing any ideas in violation of Title IV and Title VI of the Civil Rights Act of 1964." That addition makes the prohibition more concrete by targeting specific actions rather than vague concepts.

The order also says that executive employees (such as governor's staff and personnel at state agencies) "shall be prohibited from directing or otherwise compelling students to personally affirm, adopt, or adhere to inherently divisive concepts," again defining actions that are not allowed.

Policy Recommendations

State laws prohibiting racial discrimination through educators' application of critical race theory should:

- **Prohibit the application of critical race theory's discriminatory solutions.** State laws should reinforce state and federal civil rights laws by prohibiting racial discrimination across public programs, including public school activities, postsecondary admissions, and teacher and faculty hiring processes. Furthermore, lawmakers should prohibit students and teachers from being compelled to defend, affirm, or profess ideas in support of critical race theory as a condition of enrollment, course completion, hiring, retention, or promotion, and state attorneys general should enforce existing anti-discrimination law more zealously against both public and private actors who, aligned with critical race theory, discriminate based on ascriptive qualities.

- **Specify the racially discriminatory activity that is prohibited by the law.** State policymakers should describe the actions that critical race theorists deem appropriate—but that are in fact racist—to fulfill their discriminatory aims. For example, critical race theorists have advocated for racial preferences in college admissions, which the U.S. Supreme Court ruled unconstitutional in 2023, while others condone segregated activities in public settings (for example, mandatory affinity groups), violating *Brown v. Board of Education* and civil rights laws.[47]

- **Prohibit compelled speech.** A law is on much stronger legal ground when it protects someone from being forced to say something than it is when it prohibits them from saying something. Therefore, laws that protect teachers and students from being forced to affirm or defend the ideas and policies of critical race theorists (especially those that violate state and federal civil rights laws, including the U.S. Civil Rights Act of 1964) are more likely to withstand review. Coupling these laws with robust school choice programs would force critical race theory advocates to compete against, for example, classical school programs and give parents enduring control of their children's education.

- **Direct state school boards to adopt academic standards that replace critical race theory with rigorous civics and history content.** State education officials routinely update K–12 standards

for academic subjects, often on four-year cycles. State department of education and state school board personnel should adopt standards for civics and history instruction that discuss the institution of slavery in 19th century America, the failure of Reconstruction efforts after the Civil War, and the Jim Crow era while also establishing the significance of the end of systemic racism both legally and culturally through the federal civil rights acts adopted in the 1960s and the civil rights movement of the same decade leading into the 1970s.[48]

- **Empower parents to choose how and where their children learn.** Lawmakers should give parents choices for their children's education in addition to the public schools to which students are assigned based on their zip code. Parents should be able to remove their children from schools if they feel that those schools are discriminating against their children, teaching ideas that do not match their family values or otherwise not meeting their children's academic needs.

Conclusion

Lawmakers have wisely moved against critical race theory and the policy prescriptions that flow from it. They are right to do so and are correct to focus their efforts on reinforcing state and federal civil rights laws and quality instruction. But bans on teaching these ideas will face significant legal challenges. Even when such prohibitions are well tailored, courts are likely to strike down the bans as plaintiffs keep bringing litigation until they find a sympathetic judge. Conversely, laws that ban discrimination and protect teachers' and students' free speech are all but unassailable.

State lawmakers should consider or reinvigorate existing non-discrimination laws, and state law enforcement should employ those laws vigorously against discrimination inspired by critical race theory. State lawmakers should consider protections for students and teachers who wish to dissent from critical race theory's racist orthodoxy, and lawmakers and state school boards should replace instructional content based on critical race theory with robust civics and history instruction that includes instruction on America's founding ideals of liberty and equality under the law.

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Endnotes

1. "Unlike traditional civil rights discourse, which stresses incrementalism and step-by-step progress, critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law." Richard Delgado & Jean Stefancic, Critical Race Theory: An Introduction 3 (2001). "Marx's dazzling analysis of capitalism and his conviction that the laws of historical materialism would bring on the revolution of the proletariat as inevitably as the sun rises are still riveting to contemporary theorists." Angela Harris, *Compassion and Critique*, 1 Col. J. of Race & Law 326, 333 (2021), https://blogs.law.columbia.edu/abolition1313/files/2020/08/Angela-Harris-Compassion-and-Critique-1.pdf.
2. Loc. 8027 v. Edelblut, No. 21-CV-1077-PB, 2024 WL 2722254 at *12 (D.N.H. May 28, 2024) ("[The law] fail[s] to provide teachers with much-needed clarity as to how [they] apply to the very topics that they were meant to address.").
3. *See*, *e.g.*, 2021 Oklahoma Legislature, HB 1775, http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENR/hB/HB1775%20ENR.PDF.
4. *See*, *e.g.*, Mike Gonzalez, BLM: The Making of a New Marxist Revolution (2021); Jonathan Butcher, Splintered: Critical Race Theory and the Progressive War on Truth (2022); Douglas Murray, The Madness of Crowds: Gender, Race and Identity (2019); GianCarlo Canaparo, *Permissions to Hate: Antiracism and Plessy*, 27 Tex. Rev. L. & Pol. 97 (2022).
5. Kimberlé Crenshaw et al., Critical Race Theory: The Key Writings that Formed the Movement xvii (1995).
6. *Id.* at xix.
7. Derrick A. Bell, *Who's Afraid of Critical Race Theory?*, 1995 Un. of Ill. L. Rev. 893, 901.
8. *Id.* at 900.
9. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, in Crenshaw et al., Critical Race Theory: The Key Writings that Formed the Movement 47.
10. Crenshaw et al., Critical Race Theory: The Key Writings that Formed the Movement xiii.
11. *Id.*
12. Robin DiAngelo, White Fragility: Why It's So Hard for White People to Talk About Racism (2018).
13. Alex S. Vitale, The End of Policing (2017).
14. Vicky Osterweil, In Defense of Looting: A Riotous History of Uncivil Action (2020); Corrine Shutack, *106 Things White People Can Do for Racial Justice*, Medium, Aug. 13, 2017, https://medium.com/equality-includes-you/what-white-people-can-do-for-racial-justice-f2d18b0e0234.
15. Richard Delgado & Jean Stefancic, Critical Race Theory: An Introduction 23 (3rd ed., 2017).
16. "'Racist' and 'antiracist' are like peelable name tags that are placed and replaced based on what someone is doing or not doing, supporting or expressing in each moment." Ibram X. Kendi, How to Be an Antiracist 22 (2019).
17. Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, in Crenshaw et al. Critical Race Theory: The Key Writings that Formed the Movement 49.
18. *Id.* at 53.
19. Loc. 8027 Loc. 8027 v. Edelblut.
20. 2021 New Hampshire General Court, HB 2 Final Version, https://gencourt.state.nh.us/bill_status/legacy/bs2016/billText.aspx?sy=2021&id=1080&txtFormat=html.
21. *Id*. Other provisions in the law apply the prohibition of "divisive concepts" to other government employees, but the focus of these prohibitions is K–12 schools.
22. Local 8027, 2024 WL 2722254 at *8.
23. *Id*. at *9, n. 7 (internal quotations omitted).
24. *Id*. at *9–10.
25. *Id*. at *10.
26. *Id*. at *11.
27. State of Arkansas 93rd General Assembly, Senate Bill 627, https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FBills%2F2021R%2FPublic%2FSB627.pdf.
28. Arkansas Governor Sarah Huckabee Sanders, Executive Order 23-05, Jan. 10, 2023, https://governor.arkansas.gov/executive_orders/executive-order-to-prohibit-indoctrination-and-critical-race-theory-in-schools/.
29. 2022 Florida Legislature, H.B. 7, https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h0007er.docx&DocumentType=Bill&BillNumber=0007&Session=2022.

30. Rose Horowitch, "Florida's 'Stop WOKE' Law to Remain Blocked in Colleges, Appeals Court Rules," NBC News, March 17, 2023, https://www.nbcnews.com/politics/politics-news/floridas-stop-woke-law-remain-blocked-colleges-appeals-court-rules-rcna75455, and Sydney Bishop, Denise Royal and Carlos Suarez, "Judge Permanently Blocks Part of Florida's 'Stop WOKE Act'," CNN.com, July 29, 2024, https://www.cnn.com/2024/07/29/us/florida-ron-desantis-stop-woke-act-part-overturned/index.html.
31. Georgia General Assembly, 2021–2022 Regular Session, HB 1087, https://www.legis.ga.gov/legislation/61477.
32. Legislature of the State of Idaho, 2021 First Regular Session, House Bill No. 377, https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2021/legislation/H0377.pdf.
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