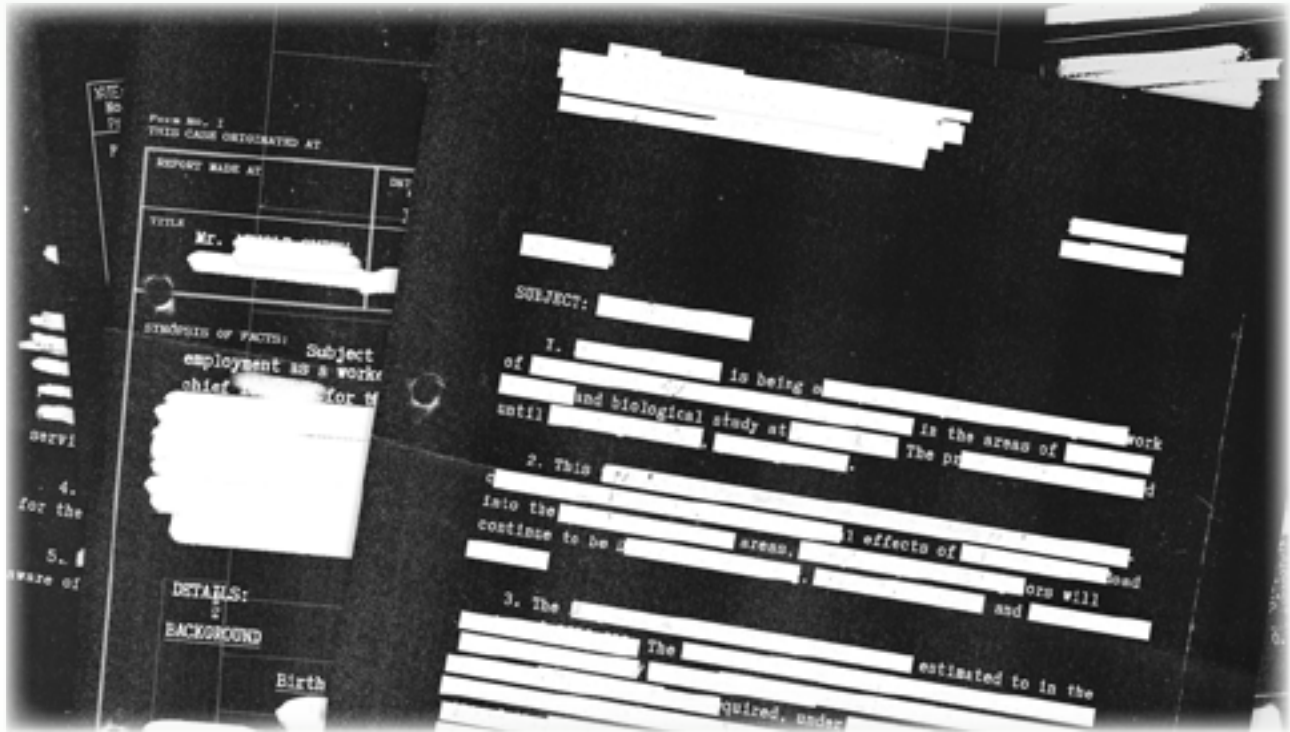


# How Discriminatory Censorship Laws Imperil Public Education



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November 2023

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## I. Executive Summary

Summer 2020 ignited global protests for racial justice. Across the United States, resounding calls to reckon with racism sparked renewed commitments to more inclusive classrooms and curricula. Yet before that summer had even ended, this turn toward racial inclusion provoked a backlash campaign that has proven far more impactful and resilient.

Central to this campaign are “discriminatory censorship laws”—a term we use for certain official acts that regulate classroom conversations about racism, gender identity, and other targeted topics. The specific language, prohibitions, and penalties contained in these acts vary. But all discriminatory censorship laws further two aims of this backlash campaign: to demean inclusionary practices and to deny students access to critical knowledge, inquiry, and thinking. As of November 2023, at least 21 states and 145 school districts or other local government entities had enacted at least one discriminatory censorship law governing K-12 schools—covering roughly half the nation’s 50 million public schoolchildren.

This brief synthesizes existing research on discriminatory censorship laws that regulate K-12 schools. Because the discriminatory censorship laws we analyze are a recent phenomenon, there remains limited research on their scope and impact. Existing research nevertheless reveals that these laws pose two pressing threats to public education: *hostile learning environments* and *miseducation*.

First, hostile learning environments. Discriminatory censorship laws expose students and educators to a heightened threat of race- and sex-based harassment, as well as formal sanctions, economic distress, and social ostracization. This threat is most acute for students and educators of color, LGBTQ+ people, and educators who express commitments to equality

and inclusion.

Second, miseducation. Discriminatory censorship laws foster a climate of fear and anxiety among educators. This dynamic effectively coerces educators to shun critical inquiry and thought on targeted topics and more generally. The result is a curriculum that replaces comprehensive, culturally attentive content (to the extent it existed) with whitewashed and heteronormative narratives of American history and culture.

The speed with which discriminatory censorship laws blanketed the country masks a key finding: These laws, and the deeper assault on public education and multiracial democracy they advance, lack broad public support. Even so, the past three years suggest that popular opinion is insufficient to protect teachers and students from this coordinated campaign of discriminatory censorship. This is particularly true in GOP-controlled states where public officials have passed censorship laws while also demonizing teachers and demeaning inclusionary (“woke”) practices. Policymakers—among other stakeholders—can counter discriminatory censorship by developing an equally coordinated and committed response that safeguards the promise of public education and empowers educators and institutions to pursue inclusive classrooms and curricula.

The alternative is a country with two public school systems—akin to a new “segregation.” Students and educators in “open” states and districts can generally expect classrooms committed to critical thinking and inclusion. Students and educators in “censored” states or districts, by contrast, must navigate climates of miseducation and exclusion.

Our analysis reveals the need to adopt laws, policies, and practices that promote inclusive, safe learning environments that encourage critical thinking and respect the dignity of all school community members. We recommend that Congress, the U.S. Department of Education, state legislatures, state and local school officials, and civil rights, civil liberties, and education advocacy groups take the following specific actions:

Congress:

- Hold hearings on discriminatory censorship laws and their impact on students, teachers, and public education writ large.

U.S. Department of Education:

- Provide legal guidance for educators and intervene to protect the civil rights of students and educators in “censored” states and districts.
- Create a streamlined mechanism for students and educators to file complaints with the U.S. Department of Education’s Office for Civil Rights when discriminatory censorship laws create hostile environments or otherwise violate federal civil rights.

State Legislators:

- Enact legislation that requires or affirmatively permits anti-racist, inclusive, and culturally sensitive pedagogy and curriculum (for example MA H588, “An Act teaching

anti-racism in Massachusetts schools” and MA S288, “An Act to Promote Racially Inclusive Curriculum in Schools”).

- Enact laws modeled after the American Library Association’s Library Bill of Rights, such as IL HB2789, which prohibit the removal of material because of partisan or doctrinal disapproval and the banning of specific books or resources.

State Departments of Education and Local School Officials:

- Develop and disseminate clear guidance that identifies, with precision, what any governing discriminatory censorship law prohibits and what it permits.
- Review existing guidance or issue new guidance that reinforces that federal law creates an affirmative obligation for schools to provide an inclusive, safe education free from race-based and sex-based harassment—protections that extend to LGBTQ+ students and educators.

Civil Rights, Civil Liberties, and Education Advocacy Groups:

- Create a national hotline to provide educators with immediate, up-to-date legal information and guidance.
- Establish a legal defense fund to cover targeted educators’ legal expenses and lost compensation and benefits pending disciplinary proceedings.
- Create a network of pro bono legal and public relations services for targeted educators.
- Develop new litigation strategies that (a) invoke discriminatory censorship laws to defend equality-oriented educators and pedagogy; and (b) assert state constitutional rights, statutes, or regulations to challenge discriminatory censorship laws.
- Prepare and disseminate curricular materials that enable educators to teach targeted topics without violating discriminatory censorship laws yet still provide a comprehensive and truthful account of the subject.



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## II. Introduction

This brief analyzes the spread and impact of state and local “discriminatory censorship laws”—a term we employ for certain official acts that regulate classroom instruction on racism, gender identity, and other targeted topics.<sup>1</sup> Other terms often applied to this body of law include “backlash bills,”<sup>2</sup> “anti-literacy laws,”<sup>3</sup> “anti-CRT laws,”<sup>4</sup> and “educational gag orders.”<sup>5</sup> We have adopted “discriminatory censorship laws” because we believe the term best captures two distinct ends these laws further: (1) to discredit anti-racist and equality-oriented principles and practices and (b) to prevent classroom conversations about racism, sexism, gender identity, and other targeted topics (collectively, “targeted topics”).

An example from Cobb County, Georgia, illustrates how discriminatory censorship laws can compromise learning, undermine inclusion, and erode trust. The school board voted 4-3, along party lines, to fire a teacher for reading her fifth-grade class a children’s book that explored gender roles and identity.<sup>6</sup> The teacher had purchased the book, which was nominated for an award, at her school’s district-approved Scholastic Book Fair.<sup>7</sup> Her students had also voted for her to read it.<sup>8</sup> It remains unclear whether the teacher actually violated district policy or a Georgia law passed the prior year. According to her attorney,

To fire a teacher under a law that no two people could agree on is wrong. Ms. Rinderle, like other Georgia educators, does not know where the lines are drawn when it comes to sensitive, controversial, or divisive concepts. After two days of trial, we still do not know.<sup>9</sup>

Another discriminatory censorship law, often termed “Don’t Say Gay,” put 562 Florida high

schools in a bind.<sup>10</sup> If the schools offered AP Psychology, a staple for 30 years, they risked violating Florida’s new law—which, with limited exception, prohibits “instruction” “on sexual orientation or gender identity.”<sup>11</sup> But if teachers did not “teach all of the content in the course,” the College Board stated, students would not receive AP credit; the College Board claimed that the Florida Department of Education had effectively banned the course. State officials had originally asked the College Board to remove that section, and when the College Board refused, state officials told districts they could not teach that section. That message prompted many districts to drop the course altogether. Although the state eventually reversed its position, the damage was done; many districts left AP Psychology out of the year’s curriculum. The offending content: AP Psychology “asks students to ‘describe how sex and gender influence socialization and other aspects of development.’”<sup>12</sup>

Paralleling the AP Psychology controversy, Florida officials invoked a separate discriminatory censorship law to reject a pilot AP African American Studies course.<sup>13</sup> Those officials characterized the course as “woke indoctrination” and claimed that it “is inexplicably contrary to Florida law and significantly lacks educational value.”<sup>14</sup> The allegedly offending material: topics on “Intersectionality and Activism,” “Black Queer Studies,” “Movement for Black Lives,” “Black Feminism and Literary Thought,” and “The Reparations Movement.”<sup>15</sup>

In the same period, Florida officials adopted social studies standards that suggested enslaved people benefitted from slavery<sup>16</sup> and approved PragerU’s self-described right-wing “indoctrination” videos for classroom use.<sup>17</sup> PragerU embraces the indoctrination label. Its website advertises the organization as being in the ‘mind-changing’ business”<sup>18</sup> and its CEO affirmed

*Today's assault on inclusive classrooms and curricula constitutes a concerted effort to thwart the anti-racist aspirations that animated 2020's global uprising for racial justice.*

her belief that “we should indoctrinate kids.”<sup>19</sup> As one example, an approved PragerU video distorts the murder of George Floyd (who it characterizes as “resist[ing] arrest”) as involving “false claims of racial targeting” that sparked “fiery protests” and spread “anger and violence.”<sup>20</sup> PragerU advertises the video as follows: “Teach middle and high school kids how the Black Lives Matter (BLM) movement and anti-police sentiment affected crime, families, and small business in American cities.”<sup>21</sup>

The foregoing examples are neither isolated nor surprising. They reflect predictable and representative consequences of a well-funded and highly coordinated campaign to morally discredit and legally prohibit “diversity- and inequality-related discussion, learning, and student support in educational settings.”<sup>22</sup> One UC-based research team has dubbed this project the “conflict campaign,” a term that situates discriminatory censorship laws within a broader effort to “inflam[e] Americans to battle public schools and one another.”<sup>23</sup>

Whatever the label, today’s assault on inclusive classrooms and curricula constitutes a concerted effort to thwart the anti-racist aspirations that animated 2020’s global uprising for racial justice. Across the nation, that turn toward anti-racism “sparked increasing K-12 efforts to discuss and explore issues of race and racism in U.S. society.”<sup>24</sup> Many districts coupled anti-racist commitments with plans to hire new “equity directors” to support student-centered programming and professional development.<sup>25</sup>



Yet before that summer had ended, conservative activist Christopher Rufo set in motion the subsequent surge of discriminatory censorship laws.<sup>26</sup> Appearing on Tucker Carlson’s primetime Fox News show, Rufo targeted “critical race theory” (CRT)—mischaracterizing the academic framework as an “existential threat” “weaponized” against “core American values.”<sup>27</sup> He called on President Trump “to immediately issue an executive order to abolish critical race theory training from the federal government.”<sup>28</sup> Soon thereafter, the Trump Administration contacted Rufo and collaborated on what became the first discriminatory censorship law: Executive Order 13950, titled “[On] Combatting Race and Sex Stereotyping.”<sup>29</sup> Among other requirements, the Trump Executive Order prohibited federal agencies and contractors from “teach[ing], instruct[ing], or train[ing]” employees to “believe any of” nine so-called “divisive concepts.”<sup>30</sup>

Out of context, many of the enumerated “divisive concepts” hardly appear objectionable. For example, the Trump Executive Order prohibits instruction that: “(1) one race or sex is inherently superior to another race or sex;” that “(3) an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously”; that “(6) an individual’s moral character is necessarily determined by his or her race or sex; and that “(8) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex.”<sup>31</sup>

But in the context of Rufo’s broadside and Trump’s escalating anti-CRT and anti-anti-racist rhetoric,<sup>32</sup> the Trump Executive Order and related administrative guidance marked an unmistakable (and publicly understood) attack on CRT and anti-racism writ large.<sup>33</sup> Reflecting this public understanding, Stanford University responded to the Trump Executive Order with internal guidance that seemed to prohibit any content about “structural or systemic racism,” “reparations,” or “implicit bias resulting in systemic discrimination.”<sup>34</sup> Public backlash led Stanford to pull the document and apologize for overreacting. Still, self-censorship at one of our nation’s most elite and well-resourced institutions revealed the Trump Executive Order’s power to stifle (and institutions’ willingness to halt) even modest anti-racist efforts.

The Trump Executive Order was short-lived. In January 2021, President Biden rescinded it as one of his first official acts.<sup>35</sup> And by March 2021, Rufo conceded that his anti-CRT rhetoric was a communications strategy to discredit anti-racism (not a substantive critique of CRT itself)—or what one journalist, quoting a series of Rufo tweets, described as “a form of political marketing.”<sup>36</sup>

In an interview with *The Washington Post*, Rufo later described his approach as “obvious,” elaborating that “[i]f you want to see public policy outcomes you have to run a public persuasion campaign.”<sup>37</sup>

Neither Biden’s rescission nor Rufo’s concessions halted the reactionary and anti-anti-racist agenda that inspired the Trump Executive Order. Before Biden took office, Trump allies had already formed a “network of think tanks and donor groups committed to” advancing his administration’s agenda.<sup>38</sup> To further this effort, allies repurposed the Trump Executive Order for model legislation and anti-CRT talking points.<sup>39</sup>



Three years later, state and local officials have enacted over 200 discriminatory censorship laws that regulate K-12 classrooms—many of which trace directly to the Trump Executive Order. The specific language, prohibitions, and penalties in these acts vary. But all further two related goals: to demean inclusionary practices, and to deny students access to critical knowledge, thinking, and inquiry about racism, gender identity, and other targeted topics.<sup>40</sup> This campaign of discriminatory censorship has been incredibly effective—in part, we believe, because the public and media have internalized an *over*-reading of these laws that incorrectly assumes all discriminatory censorship laws prohibit all instruction on targeted topics.<sup>41</sup>

Similar bills have been proposed in Congress. But none have become law since Democrats gained control of the White House in 2021. This brief accordingly focuses on state and local discriminatory censorship laws that regulate K-12 institutions.

The remaining discussion proceeds as follows: First, we review existing research on the scope and spread of discriminatory censorship laws.<sup>42</sup> Second, we identify recent developments that reveal potent sites of resistance to such laws. Third, we highlight two pressing threats that discriminatory censorship laws present: hostile learning environments and miseducation. Fourth, we offer concrete recommendations to mitigate their negative effects of existing discriminatory censorship laws and prevent the passage of new discriminatory censorship laws.

### **III. Literature Review: Overview of Discriminatory Censorship Laws**

Since January 2021, federal, state, and local government officials have introduced nearly 800 discriminatory censorship laws—over 500 of which target K-12 schools.<sup>43</sup> Of this 500, over 370 regulate classroom teaching and over 380 regulate curricular materials.<sup>44</sup>

As of September 2023, public officials at the state and local level had enacted or adopted over 200 discriminatory censorship laws that target K-12 schools.<sup>45</sup> These laws directly affect over one million educators and “over 22 million public school children, almost half of the country’s 50.8 million public school students.”<sup>46</sup> In Part V, we detail the severe and negative impact these laws have exacted on educators, students, and public education writ large.<sup>47</sup> But before turning to impact, we provide an overview of discriminatory censorship laws’ spread and scope.

Discriminatory censorship laws share common elements but also differ in certain respects. To help organize and analyze this broad set of law and policy, researchers often highlight the following three features: (1) source of law, (2) conduct prohibited, and (3) enforcement mechanism.

#### **Source of Law**

*Source of law* refers to the entity that adopts the relevant discriminatory censorship law. In absolute numbers, the large majority of existing discriminatory censorship laws have been

adopted at the local level by school districts or school boards.

Launched in 2021, UCLA School of Law’s CRT Forward Tracking Project (CRT Forward) offers the most comprehensive archive of local discriminatory censorship laws.<sup>48</sup> These local laws generally fall into one of three categories: district policies, resolutions, or statements.<sup>49</sup> Unlike state-level discriminatory censorship laws, which fall exclusively in GOP-controlled states,<sup>50</sup> numerous local discriminatory censorship laws have been introduced and adopted in blue and purple states.<sup>51</sup>

CRT Forward identifies roughly 210 local discriminatory censorship laws targeting K-12 schools that have been introduced since January 2021.<sup>52</sup> Of that total, nearly 170 have been adopted. CRT Forward further reports that local entities have introduced over 35 such laws in the current calendar year.<sup>53</sup> Given the challenge tracking school district and school board policies, this estimate likely understates the total number of local discriminatory censorship laws—and, by extension, the total number of impacted students and educators.

One example of a local discriminatory censorship law is Board Policy 6142.4, adopted by the Ramona Unified School District (San Diego, CA) and titled “Civic Education – U.S. History/ Government.”<sup>54</sup> The policy mandates that “course outlines and instructional materials . . . shall not impart” any of the “divisive concepts” contained in the Trump Executive Order.<sup>55</sup> Like other local laws, Board Policy 6142.4 only regulates schools in the district.

In absolute numbers, far fewer discriminatory censorship laws have been passed by state officials. Albeit smaller in number, state laws have a far larger impact because they regulate all covered schools in the state.<sup>56</sup> One example is New Hampshire’s HB2.<sup>57</sup> Among other provisions, the law mandates that no public school student “shall be taught, instructed, inculcated or compelled to express belief in, or support for” four banned concepts—each of which traces to the “divisive concepts” contained the Trump Executive Order.<sup>58</sup>

The free speech advocacy organization PEN America (PEN) has played a leading role tracking state-level discriminatory censorship laws.<sup>59</sup> According to PEN, legislators in 45 states have introduced over 280 such bills targeting K-12 schools since January 2021.<sup>60</sup> Over 90 of these bills were introduced in 2023 alone.<sup>61</sup> As of November 2023, a total of 32 state-level discriminatory censorship laws regulating K-12 schools have been enacted in 21 states, nearly all of which have GOP-controlled legislative and executive branches.<sup>62</sup>

## **Conduct Prohibited**

Conduct prohibited refers to a discriminatory censorship law’s substantive requirements. As noted, many discriminatory censorship laws list “divisive concepts” modeled after the Trump Executive Order. Yet even across laws that name identical “divisive concepts,” the specific requirements related to those concepts vary. To highlight and disentangle these distinctions, PEN has split discriminatory censorship bills into three basic categories.

Before outlining these categories, one important note: Existing research exposes an acute disjuncture between public perception of discriminatory censorship laws and what these laws, per their text, actually prohibit.<sup>63</sup> The public often presumes that these laws ban any

and all instruction on targeted topics like racism, sexual orientation, and gender identity.<sup>64</sup> This understanding makes sense. The proponents of discriminatory censorship often rehearse vitriolic rhetoric about “critical race theory,” “WOKE indoctrination,” and “student discomfort” to justify these laws<sup>65</sup>; discriminatory censorship laws buttress broader backlash to the summer of 2020<sup>66</sup>; media framing and analysis often overstates the scope of discriminatory censorship laws<sup>67</sup>; and public officials have invoked these laws to target educators and institutions who simply say “Black Lives Matter.”<sup>68</sup> But as detailed below, the actual text of many discriminatory censorship laws creates far less severe restrictions—and some arguably condone, if not require, equality-oriented and racially inclusive pedagogy and curriculum.<sup>69</sup>

The first category includes discriminatory censorship laws that **prohibit** teachers from **promoting** specific ideas or concepts.<sup>70</sup> PEN identifies Florida’s HB7 as an example. That law prohibits covered entities and individuals from “subject[ing] any student [to] instruction that espouses, promotes, advances, [or] inculcates . . . such student . . . to believe” certain concepts about race, color, national origin, or sex.<sup>71</sup>

Notably, HB7—known as the “Stop WOKE Act”—**permits instruction** on targeted topics (so long as the educator does not “espouse[ ],” promote[ ], advance[ ], [or] inculcate[ ]” students “to believe” the enumerated divisive concepts). Moreover, many of the enumerated concepts—if taken seriously—should *invite* curriculum that engages CRT frameworks like structural racism and intersectionality. To illustrate, HB7 prohibits educators from espousing the viewpoint that: “Members of one race, color, sex, or national origin national origin are morally superior to members of another race, color, sex, or national origin.”<sup>72</sup> Among other implications, this language suggests that Florida educators have the right, if not obligation, to affirm the moral dignity of Black trans youth and condemn inherently racist ideologies like “great replacement theory.”<sup>73</sup> Consider, as well, discriminatory censorship laws that prohibit race stereotyping or ascribing character traits or values to a race.<sup>74</sup> Contrary to prohibiting CRT, this mandate “invites explanations that tether disparate outcomes to structural forces” like systemic racism—not alleged group-based pathologies.<sup>75</sup>

The second category includes discriminatory censorship laws that **prohibit** educators from **including** specific ideas or concepts in their curriculum.<sup>76</sup> PEN identifies Mississippi’s HB 437 as an example. The bill would have prohibited public K-12 schools from including any “divisive concept as part of a course of instruction or in a curriculum or instructional material.”<sup>77</sup> A subset of these laws prohibits instruction of specific texts (e.g., the 1619 Project) or academic concepts (e.g., “critical race theory” or “structural racism”).<sup>78</sup> Because this subset outlaws specific content, the laws may appear to avoid vagueness concerns. But given how porous disciplines and concepts like CRT are, these laws effectively enable officials to target teachers for any conversation about race—whether or not it actually includes the forbidden concept.

The third category includes discriminatory censorship laws that **prohibit** educators from **compelling** students to “adopt, affirm, or espouse a specific idea.”<sup>79</sup> PEN cites Idaho’s HB377 as an example. This law mandates that no public university or school shall “direct or otherwise compel students to personally affirm, adopt, or adhere to” specific prohibited concepts.<sup>80</sup>

This third category is legally redundant, in part, because caselaw already proscribes compulsion and indoctrination.<sup>81</sup> But as Rufo’s admissions highlight, discriminatory censorship laws and related rhetoric about “WOKE indoctrination” and “parental rights” were designed to discredit anti-racist values and practices—not to fill legal gaps.<sup>82</sup> Scholars have further observed that many proponents of discriminatory censorship marshaled “parents’ rights” talking points to justify laws that reallocate educational authority to a specific subset of parents.<sup>83</sup>

## **Enforcement Mechanism**

Discriminatory censorship laws vary in terms of their enforcement mechanism. On one end of the spectrum, some laws lack any specified enforcement mechanism.<sup>84</sup> Among laws that do prescribe penalties or enforcement, common options include a private right of action (thereby giving an individual a right to sue), loss of state funding for institutions, and professional discipline for educators—with penalties ranging from temporary suspension to termination and loss of professional license (all of which can entail temporary or permanent loss of compensation and benefits).<sup>85</sup>

PEN America observes that since 2022, discriminatory censorship laws have become increasingly punitive.<sup>86</sup> This includes bills that propose multiple punishments for the same alleged violation. As one extreme example, Kentucky’s HB18 would have included financial penalties of up to \$100,000 per alleged violation.<sup>87</sup> Multiple states have also supplemented censorship laws with surveillance measures that, for example, require educators to proactively post material and “affirmatively require school districts to allow parents to surveil curriculum” and teachers.<sup>88</sup>

## **IV. Recent Developments**

A UC-based research team has located discriminatory censorship laws within a highly coordinated and well-funded “conflict campaign.”<sup>89</sup> The research team adopted this specific term to center how discriminatory censorship laws—and related policies, legislation, and rhetoric—further a “nationally fueled, state- and locally enacted effort to restrict and punish race- and diversity-related talk, learning, and student support.”<sup>90</sup> As they detail (and activists like Rufo acknowledge), this conflict campaign entails “a strategic, purposeful effort to anger people about public schooling overall, via a coordinated attack first on a caricatured catchall vision of ‘Critical Race Theory’ in K-12 public schools—motivated in part to gain political power.”<sup>91</sup>

Little suggests that the network of think tanks, donors, and public officials spearheading this conflict campaign will slow. If anything, recent developments signal a resolve to leverage success over the past three years (as measured by the spread of discriminatory censorship laws) to further demonize inclusive policies and practices and destabilize and defund public education.<sup>92</sup> In Part V, we detail the threats discriminatory censorship laws pose to educators, students, and public education writ large. Before doing so, we outline sites of resistance to this “conflict campaign”—or what we term “backlash to the backlash.”

## Backlash to the Backlash

Evidence increasingly suggests that most Americans support neither discriminatory censorship laws nor the pro-censorship and exclusionary values they advance.<sup>93</sup> As one example, widespread disdain for censorship and support for schools has translated at the ballot box in school board elections.<sup>94</sup> Albeit underreported by the media, voters in multiple states have rejected candidates who ran on “anti-CRT” and “anti-anti-racism” platforms.<sup>95</sup> This occurred in places ranging from New Hampshire to Illinois to Wisconsin.<sup>96</sup> Across these states, candidates campaigning on pro-school and pro-student values bested challengers who deployed Rufo-like talking points that highlighted the “threat” posed by Critical Race Theory and transgender students.<sup>97</sup> This trend continued in school board elections held across the country on November 7, 2023.<sup>98</sup>

These results were not universal; “anti-CRT” candidates prevailed in other contests—which appears most common in school districts experiencing a notable increase of residents of color.<sup>99</sup> Still, the prediction that GOP candidates would ride a “red wave” on the back of “parents’ rights” and “anti-CRT” rhetoric has not materialized. One explanation is that voters now recognize that “anti-CRT” candidates are neither pro-school nor pro-student, but rather support efforts to defund and dismantle public education as we know it.<sup>100</sup> Education journalist Jennifer Berkshire and education historian Jack Schneider have tracked this trend and argue that voters want candidates who champion public schools and emphasize the need to keep *all* students safe.<sup>101</sup>

The foregoing highlights a disconnect between the spread (high) and popularity (low) of discriminatory censorship laws.<sup>102</sup> Recent electoral outcomes, particularly among school board candidates, suggest that a winning political strategy includes a message that centers the value of public schools and every student therein.<sup>103</sup>

Evidence also suggests that membership organizations are beginning to organize and strategize around these issues. One example involves the National Education Association (NEA), the nation’s largest teachers’ union. During a July 2023 gathering in Florida, NEA delegates passed a measure to address “the prevalence of discrimination and violence targeted” at the LGBTQ+ community.<sup>104</sup> This measure includes efforts to mobilize against legislative attacks, provide professional development on LGBTQ+ issues, and strengthen contract protections for LGBTQ+ educators.<sup>105</sup> NEA President Becky Pringle explained that the NEA convened in Orlando because Florida is “ground zero for shameful, racist, homophobic, misogynistic, xenophobic rhetoric and dangerous actions”<sup>106</sup>—a reference to Florida’s ongoing campaign of discriminatory censorship.<sup>107</sup>

Multiple Democratic-controlled states have also countered discriminatory censorship by proposing laws that affirmatively protect students’ right to learn and teachers’ right to teach. One example is Illinois’ HB2789, which directs the state librarian to “adopt the American Library Association’s Library Bill of Rights that indicates materials should not be proscribed or removed because of partisan or doctrinal disapproval . . . and prohibit the practice of banning specific books or resources.”<sup>108</sup> Illinois also recently passed HB0376, which mandates that public elementary and high schools include a unit of instruction “studying the events of Asian American history, including the history of Asian Americans in Illinois and the Mid-

west, as well as contributions of Asian Americans toward advancing civil rights from the 19th century onward.”<sup>109</sup> Massachusetts legislators have proposed similar bills that would promote racially inclusive curriculum in schools.<sup>110</sup>

## Legal Challenges

One might have expected a wave of litigation that challenges discriminatory censorship laws and highlights how these laws demean equality-oriented values, privilege the psychological comfort and perspectives of White students and parents, and chill classroom conversations about racism and other targeted topics. Yet to date, only a handful of such lawsuits have been filed. Among other theories, legal experts have surmised that “[t]he paucity and slow pace of legal challenges reflect the broad power states have to shape curriculums . . . and the lack of favorable precedent in a relatively unexplored territory of law.”<sup>111</sup> During the same period, litigants have also filed numerous lawsuits that *support* discriminatory censorship laws and seek to ban anti-racist policies or practices. Indeed, pro-censorship lawsuits outnumber anti-censorship lawsuits.

With few exceptions, every pro- and anti-censorship lawsuit: (i) has been filed in federal court, (ii) asserts free speech and/or equal protection and due process claims, and (iii) remains in trial court or on appeal from a pretrial decision.<sup>112</sup> Few courts have rendered a final decision on the merits.

To capture this body of litigation, we highlight four high-profile and representative challenges; two filed by plaintiffs who favor discriminatory censorship and two that challenge discriminatory censorship:

### ***Local 8027, AFT-N.H., AFL-CIO v. Edelblut (D.N.H.) (Anti-Censorship Plaintiffs)***

A challenge to New Hampshire’s discriminatory censorship law. In a preliminary ruling, the court concluded that the plaintiffs’ allegations, if proven, could establish that the law violates teachers’ First Amendment rights to speak as citizens on matters of public concern and violates the Fourteenth Amendment’s due process clause by failing to give teachers fair notice of what they can and cannot teach.<sup>113</sup> The court, however, dismissed a separate free speech claim on the basis that the First Amendment does not protect teachers’ curricular-related speech. The remaining claims will be decided pre-trial through cross-summary judgment motions on the merits. The hearing on those motions is set for January 16, 2024.

### ***Henderson v. School District of Springfield R-12 (W.D. Mo.) (Pro-Censorship Plaintiffs)***

A challenge to a school district’s professional development training program, which covered themes of “equity” and “anti-racism.” The court ruled on a pre-trial motion that the teacher-challengers lack legal standing to maintain their free speech claims and, even if they could establish standing, the school district did not violate the teachers’ rights by requiring them to attend these trainings.<sup>114</sup> At the time of this writing, the case is pending on appeal



in the Eight Circuit.

***M.A. v. Florida State Board of Education (N.D. Fla.) (Anti-LGBTQ+ Discrimination Plaintiffs)***

A challenge to Florida’s “Don’t Say Gay” law, prohibiting instruction on LGBTQ issues in grades K–3. Plaintiffs contend that the law violates the First Amendment, Fourteenth Amendment equal protection and due process clauses, and Title IX, which prohibits sex discrimination in federally funded education programs and activities. The federal district court dismissed the complaint twice, concluding that the plaintiffs lacked standing.<sup>115</sup> At the time of this writing, the case is pending on appeal in the Eleventh Circuit.

***Foote v. Town of Ludlow (D. Mass.) (Pro-LGBTQ+ Discrimination Plaintiffs)***

A challenge to school district policies or practices relating to conversations about gender identity, use of alternative names and pronouns, and withholding from parents information on children’s expressed preferences regarding their names and pronouns. The court dismissed the complaint, finding parents’ allegations legally insufficient to support substantive due process violations for denying them the right to direct the education and upbringing of their children, the right to make medical and mental health decisions, and the right to family integrity. The court noted that dismissal would be warranted in the alternative based on the school district’s qualified immunity defense.<sup>116</sup> At the time of this writing, the case is pending on appeal in the First Circuit.

The four preceding cases are representative of other lawsuits that challenge discriminatory censorship<sup>117</sup> and those that advocate for discriminatory censorship<sup>118</sup> (as well as lawsuits challenging LGBTQ+ discrimination<sup>119</sup> and supporting LGBTQ+ discrimination).<sup>120</sup> Albeit beyond the scope of this policy brief, we note that litigants have also brought several lawsuits challenging book bans<sup>121</sup> and defending book bans.<sup>122</sup>

Even if anti-censorship lawsuits prevail, little suggests that existing litigation will swiftly and decisively remedy the harm discriminatory censorship laws have already caused.<sup>123</sup> This is not to argue against litigation. Rather, it is to suggest that stakeholders might consider alternative legal and non-legal strategies.

Given federal deference to state and local policymaking, litigation could be more effective if it were to “assert the highest legal authority for an affirmative right to democratic education: state constitution education clauses,” together with the state equivalents of free speech, due process, and equal protection clauses.<sup>124</sup> Litigants might also consider how to leverage state statutes or regulations. One recent California challenge, which leverages state constitutional guarantees, offers a model for similar lawsuits.<sup>125</sup>

Another possible strategy is to invoke discriminatory censorship laws themselves to demand more racially inclusive pedagogy and defend educators who discuss racism in the classroom.<sup>126</sup> This counterintuitive approach makes use of the literal text of discriminatory censorship laws that, as noted, often employs facially neutral antidiscrimination mandates that invite racially inclusive pedagogy.<sup>127</sup>

## V. Discussion and Analysis

Academic scholarship, alongside personal accounts from educators and students, confirms that discriminatory censorship laws present pressing threats to students, educators, and public education writ large.<sup>128</sup> We now detail how these laws undermine student learning and create hostile learning environments for students and teachers who belong to, or support, targeted groups.

The negative impacts we outline should not be a surprise. As early as 2020, observers noted that Trump’s Executive Order, a model for subsequent discriminatory censorship laws, was designed to morally discredit anti-racism and legally outlaw anti-racist policies and practices.<sup>129</sup> By Spring 2021, it was clear that anti-Critical Race Theory (CRT) rhetoric had little to do with CRT itself. Most public officials who championed censorship laws knew little about CRT. And Chris Rufo, the activist responsible for the Trump Executive Order, seemed to publicly boast that his anti-CRT rhetoric buttressed a calculated communications campaign to smear anti-racism writ large.<sup>130</sup> In a subsequent address to the right-wing Hillsdale College, Rufo stated his desire to “lay siege”<sup>131</sup> to America’s public institutions—a feat he accomplished when Florida’s Republican governor spearheaded a takeover of New College of Florida, the state’s preeminent liberal arts institution.<sup>132</sup>

Many of the nation’s largest media outlets have nonetheless struggled to plainly describe what remains an open attempt to purge equality-oriented principles, practices, and pedagogy from America’s classrooms.<sup>133</sup> Emerging research from academics and civil liberties organizations have begun to fill that gap. The free speech advocacy organization PEN America (PEN), for example, has been at the forefront tracking and analyzing state-level discriminatory censorship laws. PEN has explained how such laws often employ a veneer of neutrality to, among other ends, advance a project of “compulsory patriotism” that restricts any teaching critical of United States or its founders.<sup>134</sup> PEN has also detailed how discriminatory censorship laws cultivate an atmosphere of fear, uncertainty, and intimidation, all of which predictably leads educators to self-censor.<sup>135</sup> This atmosphere fosters a troubling dynamic whereby teachers, parents, even students, become the thought police by scrutinizing each other’s speech, arresting the development of each other’s beliefs, and interrogating each other’s motives.

Discriminatory censorship laws have also emboldened some parents, students, and community members to target educators and challenge any text or conversation that they feel privileges a non-White or non-heteronormative perspective.<sup>136</sup> One *Washington Post* analysis, for example, determined that “just 11 people” were responsible for over half of attempted book bans in the 2021-2022 school year.<sup>137</sup>

Another illustrative example comes from South Carolina, where high school students complained that Ta-Nehisi Coates’s memoir and a video about structural racism made them “feel uncomfortable” and “ashamed to be Caucasian.”<sup>138</sup> One student wrote that the lesson was “illegal,” adding: “I am pretty sure a teacher talking about systemic racism is illegal in South Carolina.”<sup>139</sup> School officials axed the assignment—apparently based on the conclusion that it violated the state’s discriminatory censorship law.<sup>140</sup>

Contrary to the students' and administrators' assertions, the challenged assignment does not appear to violate South Carolina law. Among other requirements, that law prohibits instruction or material that “serve[s] to *inculcate* any of the following concepts: . . . any individual *should* feel discomfort, guilt, anguish or any other form of psychological distress on account of his race or sex.”<sup>141</sup> Note the italicized terms. It is possible that exposure to material on structural racism made the students feel uncomfortable. But this feeling alone does not violate the law—which prohibits *inculcating* the view that students *should* feel discomfort or guilt because of their race. Legally, that nuance and distinction should matter. But the public and media have internalized rules without nuance. In this instance, that misunderstanding effectively gave White students a veto to cancel material that made them feel uncomfortable (while placing teachers at professional and personal risk for merely introducing a Black author and academic concept).<sup>142</sup>

To date, the federal government and national organizations have offered limited support to educators and students on the front lines.<sup>143</sup> One recent show of support came in September when the U.S. Department of Education announced its new “Book Ban Czar” to “oversee its response to content challenges and take action if its finds that removing materials violated students’ civil rights.”<sup>144</sup> Absent greater intervention, the research we reviewed suggests that discriminatory censorship laws will continue to spread and entrench two public education systems—a new kind of segregation. Students in “open” states and districts will have access to schools permitted to promote inclusionary values and critical thinking about topics like racism and gender identity. Students in “censored” states or districts (already roughly half the nation), in contrast, must navigate regimes that compel exclusionary values and miseducation. To highlight this danger, we now explore two pressing threats posed by discriminatory censorship laws: hostile learning environments and miseducation.

## Hostile Learning Environments

Discriminatory censorship laws, and the rhetoric their proponents employ, create hostile learning environments that expose individuals to increased risk of professional sanction and personal threat. These dangers are most acute for students and educators who belong to, or support, targeted groups (people of color and LGBTQ+ people).

### *Unworkable Conditions for Educators*

Discriminatory censorship laws wreak havoc on educators. Surveys, reports, and personal anecdotes point to one conclusion: Discriminatory censorship laws create near-unworkable conditions for educators.<sup>145</sup> These laws expose educators to professional penalties, financial distress, emotional anguish, verbal and physical threats, and community ostracization.<sup>146</sup>

As discussed, discriminatory censorship laws regulate how educators may teach targeted topics. Even baseless complaints can lead to suspension, termination, and loss of license—all of which jeopardizes an individual’s pay, benefits, and future professional prospects. For educators, one challenge is that these laws often contain vague and overbroad text. This means that (a) educators cannot ascertain what “crosses the line” from lawful to unlawful

conduct and (b) enforcers can arbitrarily target content or teaching they happen to dislike.<sup>147</sup> The South Carolina example, noted above, exemplifies this dynamic.

Even when states respond to requests for guidance, most guidance documents “simply restate existing legislative language or enumerate various ways that violators will be punished” and those that “do venture into actual interpretation do more harm than good.”<sup>148</sup> PEN America suggests that this “vagueness is the point”—part of an intentional effort to cultivate fear and chill equality-oriented curriculum and pedagogy.<sup>149</sup>

Many jurisdictions with discriminatory censorship laws now also subject educators to enhanced surveillance.<sup>150</sup> Examples include “tip lines” to report on teachers, secret recordings, and requirements to post coursework online.<sup>151</sup> CRT Forward reports that 41 discriminatory censorship laws targeting K-12 institutions “affirmatively require school districts to allow parents to surveil curriculum.”<sup>152</sup>

The textual ambiguity in many discriminatory censorship laws, coupled with the threat of formal sanction and officials who openly demonize teachers and inclusionary practices, fosters a climate of fear and intimidation that incentivizes self-censorship.<sup>153</sup> One New Hampshire teacher characterized the dynamic as “psychological warfare,” a gesture to the reality that “[w]ithout clear guardrails about what they can and cannot teach, many educators . . . [will] have to steer clear of difficult topics altogether.”<sup>154</sup> This dynamic predictably adds stress and undermines morale.<sup>155</sup> These challenges are most acute for teachers in GOP-controlled states.<sup>156</sup>

One concrete example involves Karen Lauritzen, Idaho’s 2023 Teacher of the Year.<sup>157</sup> Days after receiving the honor, right-wing outlets targeted Lauritzen, branding her a “left-wing activist” because “she had expressed support for the LGBTQ+ community and Black Lives

*The textual ambiguity in many discriminatory censorship laws, coupled with the threat of formal sanction and officials who openly demonize teachers and inclusionary practices, fosters a climate of fear and intimidation that incentivizes self-censorship.*

Matter on her personal social media accounts.”<sup>158</sup> The harassment prompted Lauritzen to flee the state.<sup>159</sup> This episode highlights both (a) the acute risk educators face and (b) the dire need for external actors like the federal government and national civil rights organizations to intervene on behalf of targeted educators. If a state’s Teacher of the Year is not safe from targeted attacks, it is hard to imagine how any other teacher in the state could feel secure.

Academic research and other individual accounts affirm the foregoing. One 2023 Rand study found that 31% of district leaders “reported verbal or written threats against educators about politically controversial topics since the start of the 2021-22 school year.”<sup>160</sup> The same report found that 51% of district leaders reported that political polarization “was interfering with their ability to educate students as of fall 2022.”<sup>161</sup> This report followed a 2022 survey that yielded similar findings—including that 37% of teachers and 61% of principals “reported being harassed because of their school’s policies on COVID-19 safety measures or for teaching about race, racism, or bias during the first half of the 2021–2022 school year.”<sup>162</sup>

Even for educators yet to face formal sanction or organized attack, the threat is real—and helps to explain increased vacancies in states with harsh discriminatory censorship laws.<sup>163</sup> As one Florida-based teacher put it: “We’re in Hell and nobody is coming.”<sup>164</sup> This statement captures two related concerns. First, discriminatory censorship laws compel equality-oriented educators to avoid targeted topics for their own self-preservation. Second, unless external support arrives (whether it be the federal government or national organizations), this climate of fear will enshrine a public school system that privileges exclusion over inclusion and compels a narrowly defined view of patriotism that is not to be challenged by critical thinking.

### *Race- and Sex-Based Harassment of Students*

Students face an increased threat of race- or sex- based harassment because discriminatory censorship laws stigmatize targeted groups and chill support for those same groups. Such laws effectively greenlight and empower exclusionary rhetoric and attitudes.<sup>165</sup> With respect to LGBTQ+ students specifically, laws that stigmatize LGBTQ+ identity are associated with a decrease in mental health and an increase in attempted suicide.<sup>166</sup> Research further reveals an increase in homophobic and transphobic hostility with high percentages of students reporting harassment, assault, or feeling unsafe in school, in states or localities both with and without discriminatory censorship laws.<sup>167</sup> “Even when [such] a law doesn’t exist, the rhetoric around it creates this environment of hostility, fear, and confusion.”<sup>168</sup>

Dangers faced by equality-oriented educators also disincentivize support for students of color and LGBTQ+ students (including, of course, LGBTQ+ students of color).<sup>169</sup> This threat of backlash regrettably, but understandably, leads educators to withdraw such support—for example, by removing the Black Lives Matter banner hanging in their classroom; ceasing to wear a Rainbow Flag pin; or leaving the district (or profession) altogether.<sup>170</sup> At an institutional level, entire schools (or districts) might retract resources for targeted groups—tools necessary to mitigate the pre-existing threat of race- and sex-based harassment.<sup>171</sup>

It is worth noting that multiple states and districts that have passed discriminatory censorship laws have, in the same time period, been subject to federal investigations for anti-Black or anti-LGBTQ+ harassment.<sup>172</sup>

### **Miseducation**

We employ the term “miseducation” to capture how discriminatory censorship laws tend to (a) reduce classroom content necessary for critical thinking and inquiry; (b) increase classroom content that espouses openly exclusionary ideologies; and thereby (c) sow doubt and distrust among schoolchildren, impeding the cultivation of democratic dispositions and social cohesion necessary for equal citizenship. With a nod to the oft-articulated concern that the COVID-19 pandemic produced unintended “learning loss,” one might say discriminatory censorship laws produce “*manufactured* learning loss.”

The reduction of classroom content is straightforward. Discriminatory censorship laws reg-



ulate whether and how teachers can discuss targeted topics like racism and gender identity. Some laws expressly ban instruction on specific topics (e.g., the 1619 Project) or concepts (e.g., “critical race theory” or “structural racism”). Yet as noted, many censorship laws are not so direct, but rather prohibit educators from “endorsing” or “compelling” students to agree with a list of “divisive concepts.” Irrespective of this nuance, the public and media have internalized and publicized the often-inaccurate view that discriminatory censorship laws ban any discussion of targeted topics and protect the emotional well-being of White students.<sup>173</sup>

*Manufactured learning loss harms everyone, but students from targeted groups suffer the most.*

When coupled with the threat of professional sanction and public scrutiny, discriminatory censorship laws incentivize individual educators and entire districts (or state authorities) to avoid or prohibit texts, assignments, and subjects that engage targeted topics—even if instruction would be lawful.<sup>174</sup> Well-publicized examples

abound. Beyond those noted above, other examples include self-reports from Texas teachers who have avoided targeted topics<sup>175</sup>; a Tennessee teacher who stopped assigning the book *Just Mercy*<sup>176</sup>; and school officials in Oklahoma who instructed teachers “to avoid books by authors of color and women authors.”<sup>177</sup>

The predictable result is less learning, less critical inquiry, and less critical thinking—all within a curriculum that deprives students an opportunity to explore complex topics that continue to shape life and conflict in the United States.<sup>178</sup> Students also lose access to race-conscious pedagogies empirically shown to enhance engagement and learning (for all students) and close achievement gaps.<sup>179</sup> In this sense, manufactured learning loss harms everyone, but students from targeted groups suffer the most.<sup>180</sup> They are not only denied a comprehensive curriculum, but are also subject to demeaning rhetoric from public officials and deprived the tools necessary to critically examine the many forces that entrench their group’s historical and ongoing subordination.<sup>181</sup>

The climate of fear noted above further impedes educators’ ability to build trust and rapport with and among students—a key to fostering academic achievement, socialization, and mutual respect. Without access to “the full stories and histories of varied groups,” students lack an opportunity to “build capacities for respectful evidence-based dialogue and to develop commitments to robust civil liberties and recognition of the dignity of fellow citizens.”<sup>182</sup> These dynamics are likely to exacerbate the “civil opportunity gap between affluent White students, and their low-income and minority peers . . . leaving those who most need empowerment the least opportunity to feel valued as citizens, learn important civic knowledge, and develop key values, skills, and dispositions related to citizenship.”<sup>183</sup>

Miseducation also entails **worse** learning. Multiple public officials have invoked discriminatory censorship laws as a pretext to replace pre-existing curriculum with material that promotes colorblind, heteronormative, pro-Christian Nationalist perspectives.<sup>184</sup> Prominent examples include Florida and Arkansas, both of which formally approved content from Hillsdale College (a private Christian college) and PragerU—both of which espouse openly right-wing ideologies hostile to anti-racism and the LGBTQ+ community.<sup>185</sup>



This effort is not limited to GOP-controlled states. A district outside of Philadelphia, for example, recently “imposed a new social studies curriculum that will require teachers to incorporate lessons from the 1776 Curriculum, a controversial K-12 course of study developed by Hillsdale College.”<sup>186</sup> James Grossman, the executive director of the American Historical Association, has described Hillsdale in the following terms: “What they’ve done is they’ve simply left stuff out in an attempt to shape a vision of patriotism. What they also are trying to do is replace an approach to teaching that teaches students how to think with an approach that teaches the students what to think.”<sup>187</sup>

## **VI. Recommendations**

Our analysis demonstrates the need to adopt laws, policies, and school practices that promote inclusive, safe school environments that encourage critical thinking and respect the dignity of all school community members. We recommend that Congress, the U.S. Department of Education, state legislatures, state and local school officials, and civil rights, civil liberties, and education advocacy groups take the following specific actions:

Congress:

- Hold hearings on discriminatory censorship laws and their impact on students, teachers, and public education writ large.

U.S. Department of Education:

- Provide legal guidance for educators and intervene to protect the civil rights of students and educators in “censored” states and districts.
- Create a streamlined mechanism for students and educators to file complaints with the U.S. Department of Education’s Office for Civil Rights when discriminatory censorship laws create hostile environments or otherwise violate federal civil rights.

State Legislators:

- Enact legislation that requires or affirmatively permits anti-racist, inclusive, and culturally sensitive pedagogy and curriculum (for example MA H588, “An Act teaching anti-racism in Massachusetts schools” and MA S288, “An Act to Promote Racially Inclusive Curriculum in Schools”).
- Enact laws modeled after the American Library Association’s Library Bill of Rights, such as IL HB2789, which prohibit the removal of material because of partisan or doctrinal disapproval and the banning of specific books or resources.

State Departments of Education and Local School Officials:

- Develop and disseminate clear guidance that identifies, with precision, what any governing discriminatory censorship law prohibits and what it permits.
- Review existing guidance or issue new guidance that reinforces that federal law cre-

ates an affirmative obligation for schools to provide an inclusive, safe education free from race-based and sex-based harassment—protections that extend to LGBTQ+ students and educators.

Civil Rights, Civil Liberties, and Education Advocacy Groups:

- Create a national hotline to provide educators with immediate up-to-date legal information and guidance.
- Establish a legal defense fund to cover targeted educators' legal expenses and lost compensation and benefits pending disciplinary proceedings.
- Create a network of pro bono legal and public relations services for targeted educators.
- Develop new litigation strategies that (a) invoke discriminatory censorship laws to defend equality-oriented educators and pedagogy; and (b) assert state constitutional rights, statutes, or regulations to challenge discriminatory censorship laws.
- Prepare and disseminate curricular materials that enable educators to teach targeted topics without violating discriminatory censorship laws yet still provide a comprehensive and truthful account of the subject.

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- 1 For brevity, we use the term “laws” to encompass various formal government actions that state and local public officials have taken to regulate classroom conversations about racism, gender identity, and other targeted topics. Such actions include, but are not limited to, statutes passed by legislative bodies, resolutions, agency policies, and executive actions. So-called “divisive concept” laws comprise a significant subset of all discriminatory censorship laws.  
  
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- 29 Metzger, B. & Lahut, J. (2021, December 8). Trump issued an Executive Order on Critical Race Theory after seeing a segment about it on Tucker Carlson's show: Book. *Business Insider*, Retrieved September 9, 2023, from <https://www.businessinsider.in/politics/world/news/trump-issued-an-executive-order-on-critical-race-theory-after-seeing-a-segment-about-it-on-tucker-carlsons-show-book/articleshow/88152058.cms>
- 30 Executive Office of the President. (2020, September 28). Combating race and sex stereotyping. *Federal Register*, 85, 60683. Retrieved October 22, 2023, from <https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping>
- 31 Executive Office of the President. (2020, September 28). Combating race and sex stereotyping. *Federal Register*, 85, 60683. Retrieved October 22, 2023, from <https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping>
- 32 Harris, C. (2020). What is Critical Race Theory and why is Trump afraid of it? *The Nation*. Retrieved November 07, 2023, from <https://www.thenation.com/article/politics/trump-critical-race-theory/>
- 33 CRT Forward's report notes that six days after Trump signed the Executive Order, the Office of Management and Budget released a memo directing the heads of federal agencies to investigate any trainings that included specific terms, of which "critical race theory" was one and observes that the Trump Executive Order "sparked widespread concern about the legality of antiracism efforts."

Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on Critical Race Theory. *CRT Forward*, UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

Schwartz, M. (2020, September 5). Trump tells agencies to end trainings on "White Privilege" and "Critical Race Theory." *NPR*. Retrieved October 23, 2023, from <https://www.npr.org/2020/09/05/910053496/trump-tells-agencies-to-end-trainings-on-white-privilege-and-critical-race-theor>

Vought, R. (2020, September 4). Training in the federal government. Memorandum for heads of executive departments and agencies. Washington, DC: Executive Office of the President, Office of Management and Budget. Retrieved October 23, 2023, from <https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-34.pdf>

- 34 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on Critical Race Theory. *CRT Forward*, UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)
- 35 Executive Office of the President. (2021, January 25). Advancing racial equity and support for underserved communities through the federal government. *The Federal Register*, 86, 7009. Retrieved October 22, 2023, from <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>
- 36 “We have successfully frozen their brand—‘critical race theory’—into the public conversation and are steadily driving up negative perceptions. We will eventually turn it toxic, as we put all of the various cultural insanities under that brand category,” he wrote. “The goal is to have the public read something crazy in the newspaper and immediately think ‘critical race theory.’ We have decodified the term and will recodify it to annex the entire range of cultural constructions that are unpopular with Americans.”
- Beauchamp, Z. (2023, September 10). Chris Rufo’s dangerous fictions. *Vox*. Retrieved October 22, 2023, from <https://www.vox.com/23811277/christopher-rufo-culture-wars-ron-desantis-florida-critical-race-theory-anti-awokeness>
- 37 Meckler, L. & Dawsey, J. (2021, June 21). Republicans, spurred by an unlikely figure, see political promise in targeting critical race theory. *The Washington Post*. Retrieved November 7, 2023 from <https://www.washingtonpost.com/education/2021/06/19/critical-race-theory-rufo-republicans/>
- 38 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on Critical Race Theory. *CRT Forward*, UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)
- “The language in EO 13950, in combination with subsequent public statements and an Office of Management and Budget Memo (M-20-34) released alongside EO 13950, launched an assault on teaching about systemic racism, CRT, diversity, inclusion, antiracism and antisexism.”
- Pollock, M., Kendall, R., Reece, E., Issa, A.-R., & Brady, E.H. (2023). Supported, silenced, subdued, or speaking up? K12 educators’ experiences dealing with the conflict campaign, 2021-2022 (p. 5). *Journal of Leadership, Equity, and Research*, 9(2), 2. Retrieved October 22, 2023, from <https://journals.sfu.ca/cvj/index.php/cvj/article/view/253/385>
- “These efforts are part of a nationally networked effort to restrict diversity- and inequality-related discussion, learning, and student support in educational settings—while inflaming Americans to battle public schools and one another.”
- Deshpande, P., Blatte, S., Margalit, Y., Olea Lezama, C., Schaffner, B., Shivakumar, A., & Wingens, D. (2023, August). Critical race theory and asymmetric mobilization, *Political Behavior* (tracking mentions of “critical race theory” by right-wing media and members of the GOP). Retrieved November 6, 2023, from <https://link.springer.com/article/10.1007/s11109-023-09889-4>
- 39 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory. *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)
- Pollock, M., Kendall, R., Reece, E., Issa, A.-R., & Brady, E.H. (2023). Supported, silenced, subdued, or speaking up? K12 educators’ experiences dealing with the conflict campaign, 2021-2022 (p. 5). *Journal of Leadership, Equity, and Research*, 9(2), 2. Retrieved October 22, 2023, from <https://journals.sfu.ca/cvj/index.php/cvj/article/view/253/385>.
- Deshpande, P., Blatte, S., Margalit, Y., Olea Lezama, C., Schaffner, B., Shivakumar, A., & Wingens, D. (2023, August). Critical race theory and asymmetric mobilization. *Political Behavior* (tracking mentions of “critical



race theory” by right-wing media and members of the GOP). Retrieved November 6, 2023, from <https://link.springer.com/article/10.1007/s11109-023-09889-4>

- 40 For example, Utah HB427 “prohibits public K-12 schools from providing to students any instruction or curricular materials such as books or other media that is not ‘consistent’ with certain ‘principles of individual freedom’ related to race, color, ethnicity, national origin, religion, disability, sex, or sexual orientation. Public schools are also prohibited from attempting to persuade any student or school employee to adopt ‘a point of view that is inconsistent’ with these principles.” Utah House Bill 427, Individual Freedom in Public Education Act (2023).

Arkansas SB294 forbids public K=12 schools, as well as their contractors and guest speakers, from intentionally or unintentionally promoting “Critical Race Theory.” The law also prohibits any school communications or materials that compel individuals to adopt or affirm certain concepts related to color, creed, race, ethnicity, sex, age, marital status, familial status, disability status, religion, or national origin. Schools may not provide classroom instruction related to sexual orientation or gender identity to students in grades K–4. Arkansas SB294 An Act To Create The Learns Act; To Amend Various Provisions Of The Arkansas Code As They Relate To Early Childhood Through Grade Twelve Education In The State Of Arkansas; And To Declare An Emergency (2023).

- 41 One example includes Scholastic’s explanation for why its segregates certain books in the *Share Every Story, Celebrate Every Voice* collection.

“There have been a number of misconceptions that we want to clarify about how we have created a path to host Scholastic Book Fairs, even as schools and educators in the U.S. navigate restrictions imposed on them by state legislation and local policy. . . There is now enacted or pending legislation in more than 30 U.S. states prohibiting certain kinds of books from being in schools—mostly LGBTQIA+ titles and books that engage with the presence of racism in our country. Because Scholastic Book Fairs are invited into schools, where books can be purchased by kids on their own, these laws create an almost impossible dilemma: back away from these titles or risk making teachers, librarians, and volunteers vulnerable to being fired, sued, or prosecuted.” Scholastic (2023). *A message from Scholastic on U.S. book bans*. Retrieved November 6, 2023, from <http://mediaroom.scholastic.com/press-release/message-scholastic-book-fairs>

Contrary to Scholastic’s contention, we are unaware of any law in the country that “prohibit[s]” “LGBTQIA+ titles and books that engage with the presence of racism in our country” “from being in schools.” This is a gross over-reading of even the most aggressive and broad discriminatory censorship law. We also note that following public backlash, Scholastic discontinued its *Share Every Story, Celebrate Every Voice* collection.

Legum, J. (2023, October 16) *Scholastic’s “bigot button.”* Popular Information. Retrieved on November 6, 2023, from [https://popular.info/p/scholastics-bigot-button?utm\\_campaign=post&utm\\_medium=web](https://popular.info/p/scholastics-bigot-button?utm_campaign=post&utm_medium=web)

“But the most expansive of these, Florida’s “Don’t Say Gay” law, applies only to instructional materials, not library books. This is not an argument advanced by critics of the law. Attorneys representing Florida in litigation state the law ‘does not even arguably restrict library books.’”

Jensen, K. (2023, Oct. 25). *Scholastic says they’ll walk back their separate diversity collection for book fairs.* *literary activist*. Retrieved November 9, 2023, from <https://literaryactivism.substack.com/p/scholastic-says-theyll-walk-back>

- 42 For two annotated bibliographies with recent academic scholarship exploring the spread and impact of censorship laws book bans, see Waters, M. & Unsicker-Durham S. (2023). The Hydra nature of book banning and censorship. *Study and Scrutiny: Research in Young Adult Literature*, 6(1).
- 43 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on Critical Race Theory. *CRT Forward*, UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

These laws share parallels with a 2010 Arizona statute that GOP officials passed to target Mexican American studies program in Tucson public schools.

Friedman, J. & Tager, J. *Educational gag orders*. PEN America. Retrieved November 7, 2023, from <https://pen.org/report/educational-gag-orders/>

“In 2010, Arizona legislators enacted HB 2281, which banned schools from teaching classes that ‘promote resentment toward a race or class of people; are designed primarily for pupils of a particular ethnic group; advocate ethnic solidarity instead of the treatment of pupils as individuals’; or advocate ‘the overthrow of the United States government.’ . . . the record of how HB 2281 had been both drafted and applied was replete with racist language and procedural irregularities. For example, the superintendent who enforced the law wrote blog posts that said things like: ‘MAS [Mexican-American Studies] = KKK in a different color’ and ‘The Mexican-American Studies classes use the exact same technique that Hitler used in his rise to power.’

Acosta, C. & Mir, A. (2012, Summer). Empowering young people to be critical thinkers: The Mexican American studies program in Tucson (pp. 15-26). *Voices in Urban Education*, 34. Retrieved November 14, 2023, from <https://www.annenberginstitute.org/sites/default/files/VUE34.pdf>

Modan, N., Han, J.Y., & Lucas, S. (2022, November 15). Star-spangled bans: Trump’s call to preserve U.S. History energized a movement to erase it. *K-12 Dive*. Retrieved September 9, 2023, from <https://www.k12dive.com/news/star-spangled-bans-trump-call-to-preserve-us-history-energized-movement-to-erase/635856/>

- 44 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory (p. 4). *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Exec-Summary.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Exec-Summary.pdf)

State legislators introduced roughly 55% of that total, whereas local officials (including school board members) introduced 30% of that total.

- 45 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory. *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

National Center for Education Statistics. (2022). *Public and private elementary and secondary teachers, enrollment, pupil/teacher ratios, and new teacher hires: Selected years, fall 1955 through fall 2031*. Washington, DC: U.S. Department of Education. Retrieved October 22, 2023, from [https://nces.ed.gov/programs/digest/d22/tables/dt22\\_208.20.asp](https://nces.ed.gov/programs/digest/d22/tables/dt22_208.20.asp)

- 46 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory. *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

“While it is difficult to guess the total number of educators affected by these laws and policies, a conservative estimate would put the number at approximately 1.3 million public school teachers and 100,000 public college and university faculty.”

Young, J., Friedman, J., & Meehan, K (2023, November 9) *America’s censored classrooms 2023*. PEN America. Retrieved November 9, 2023, from <https://pen.org/report/americas-censored-classrooms-2023/>

National Center for Education Statistics. (2022). *Public and private elementary and secondary teachers, enrollment, pupil/teacher ratios, and new teacher hires: Selected years, fall 1955 through fall 2031*. Washington, DC: U.S. Department of Education. Retrieved October 22, 2023, from [https://nces.ed.gov/programs/digest/d22/tables/dt22\\_208.20.asp](https://nces.ed.gov/programs/digest/d22/tables/dt22_208.20.asp)

- 47 Although this brief is primarily focused on K-12 institutions as the entity targeted, a growing number of

discriminatory censorship laws are targeting higher education. See Friedman J., Sachs, J., Young, J., & LaFrance, S. (2023, Feb. 16). *Educational censorship continues: The 2023 legislative sessions so far*. Retrieved on November 6, 2023, from <https://pen.org/educational-censorship-continues-in-2023/>

“Among the most notable educational censorship trends over the past two years has been the expansion of restrictions on higher education. Restrictions of this type are particularly concerning because of the principle of academic freedom that applies to teachers in colleges and universities. In 2022, 39% of all proposed educational gag orders restricted higher education, up from 30% in 2021. In 2023, higher education continues to be a target, with 20 bills of this nature already introduced in 13 states. This represents 20% of bills introduced this year, but 34% of bills outside of the newly-prevalent “Don’t Say Gay” clones – a percentage roughly consistent with previous years.”

- 48 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory. *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

CRT Forward has gone beyond federal and state level action by “also including local government measures and non-legislative actions such as regulations, executive directives, and attorney general opinions” designed to deny students access to critical knowledge about racism and related topics.

- 49 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory. *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

- 50 Kentucky and North Carolina have Democrat Governors that vetoed their state’s respective discriminatory censorship law. In both cases, the state’s GOP super-majority legislature overrode the Governor’s veto.

PEN America. (2023, Nov. 1). *Index of educational gag orders*. Retrieved November 20, 2023, from <https://airtable.com/appg59iDuPhlLPPFp/shrtwubfBUo2tuHyO/tbl9Z5eGPNQmNqxXd/viwCwqVetJibJU2gQ?blocks=hide>

- 51 “Only five blue-state legislators’ anti-‘CRT’ measures were adopted by year’s-end 2022. Almost the entire sum of blue-state measures are on the local level. In contrast, of the 104 adopted measures at the state level, 85 percent (88 of 104)—are in red states. And those enactments are widespread: 24 of the 25 red states enacted at least one anti-‘CRT’ measure at the state level. Only Wyoming, among red states, has not enacted state-level anti-‘CRT’ measures.”

Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory (p. 20). *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

- 52 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory (p. 20). *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

- 53 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory (p. 20). *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

- 54 Bd. Policy 6142.3, Ramona Unified Sch. Dist. (adopted Aug. 12, 2021), [<https://perma.cc/6K7Q-WNZG>].

- 55 Bd. Policy 6142.3, Ramona Unified Sch. Dist. (adopted Aug. 12, 2021), [<https://perma.cc/6K7Q-WNZG>].

- 56 In addition to the local and state discriminatory censorship laws noted in the body text, a small subset of such laws are the result of state-level executive actions (either from governors or state agencies) or city or county government.

- 57 N.H. REV. STAT. ANN. § 354–A:29 (Westlaw through Ch. 18 of 2022 Reg. Sess.).
- 58 N.H. REV. STAT. ANN. § 354–A:29 (Westlaw through Ch. 18 of 2022 Reg. Sess.).
- 59 PEN America has employed the term “educational gag order” to characterize what we term “discriminatory censorship laws.” Young, J.C. & Friedman, J. (2022, August 17). *America’s censored classrooms*. PEN America, Retrieved September 9, 2023, from <https://pen.org/report/americas-censored-classrooms/> (employing “educational gag orders” to refer to “legislative restrictions on discussions of race, gender, American history, and LGBTQ+ identities in K-12 classrooms and on college campuses” . . . “a sweeping crusade for content- and viewpoint-based state censorship” . . . “a more general assault on discussions of systemic inequality” to “shut down important conversations in the classroom.”). We do not dispute PEN’s assessment. We nonetheless employ the term “discriminatory censorship” to foreground that these bills operate not only to chill disfavored speech, but also to stigmatize disfavored groups.

- 60 Young, J., Friedman, J., & Meehan, K (2023, November 9). *America’s censored classrooms 2023*. PEN America. Retrieved November 9, 2023, from <https://pen.org/report/americas-censored-classrooms-2023/> (This total includes three discriminatory censorship laws enacted outside of the legislative process—either through agency policy or executive orders.)

This latest PEN America report was published just prior to the publication of this NEPC policy brief. We were therefore unable to incorporate all of this new report’s findings and updated assessment of laws, policies, and proposed legislation. The new report remains, nevertheless, consistent with the observations and analysis of the research contained in this brief.

- 61 PEN America. (2023, July 3). *Index of educational gag orders*. Retrieved October 22, 2023, from [https://docs.google.com/spreadsheets/d/1Tj5WQVBmB6SQg-zP\\_M8uZsQQGHo9TxmBY73v23zpyro/edit#gid=107383712](https://docs.google.com/spreadsheets/d/1Tj5WQVBmB6SQg-zP_M8uZsQQGHo9TxmBY73v23zpyro/edit#gid=107383712)
- 62 Young, J., Friedman, J., & Meehan, K (2023, November 9) *America’s censored classrooms 2023*. *PEN America*. Retrieved November 9, 2023, from <https://pen.org/report/americas-censored-classrooms-2023/>
- 63 Feingold, J. (2022). Reclaiming equality: How regressive laws can advance progressive ends. *South Carolina Law Review*, 73(1). Retrieved October 22, 2023, from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4094443](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4094443)
- 64 For a description of how the publisher Scholastic over-reads the meaning of discriminatory censorship laws: Legum, J. (2023, October 16). *Scholastic’s “bigot button.”* Popular Information LLC. Retrieved November 6, 2023, from [https://popular.info/p/scholastics-bigot-button?utm\\_campaign=post&utm\\_medium=web](https://popular.info/p/scholastics-bigot-button?utm_campaign=post&utm_medium=web)
- 65 Crampton, L. (2022, January 5). GOP sees ‘Huge Red Wave’ potential by targeting critical race theory. *Politico*. Retrieved November 6, 2023, from <https://perma.cc/2KYQ-VWA4>
- Collins, J. (2022, January 27) SC Lawmakers vow to take time on critical race theory rules, *Charlotte Observer*. Retrieved November 6, 2023, from <https://perma.cc/55TH-AJEJ>
- “Other Republicans like Rep. Melissa Oremus said that if they wanted teachers to share personal opinions, they would invite them to dinner. ‘[F]or us to go into a classroom and tell our children that this happened because of your terrible [W]hite grandfather or great-grandfather, that is just wrong.’”
- 66 Adams, C. (2021, May 18). Experts call ‘Anti-Protest’ bills a backlash to 2020’s racial reckoning. *NBC News*. Retrieved October 22, 2023, from <https://www.nbcnews.com/news/nbcblk/experts-call-anti-protest-bills-backlash-2020-s-racial-reckoning-n1267781>
- 67 Feingold, J. (2022). Reclaiming equality: How regressive laws can advance progressive ends. *South Carolina Law Review*, 73(1). Retrieved October 22, 2023, from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4094443](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4094443).

- 68 Bloch, E. (2021, August 3). Duval County teacher Amy Donofrio terminated, settles lawsuit with school district. *Florida Times-Union*. Retrieved October 23, 2023, from <https://www.jacksonville.com/story/news/education/2021/08/03/duval-schools-agrees-settlement-lawsuit-regarding-teacher-blm-flag/5477872001/>
- 69 Feingold, J. (2021, November 30). What the public doesn't get: Anti-CRT lawmakers are passing pro-CRT laws. *The Conversation*. Retrieved November 9, 2023, from <https://theconversation.com/what-the-public-doesnt-get-anti-crt-lawmakers-are-passing-pro-crt-laws-171356>
- 70 Identifies laws that “prohibit the promotion, endorsement, or inculcation of particular ideas or concepts.”  
Young, J.C. & Friedman, J. (2022, August 17). *America's censored classrooms*. PEN America. Retrieved September 9, 2023, from <https://pen.org/report/americas-censored-classrooms/>
- 71 Florida HB 7 (2022) Individual Freedom, <https://legiscan.com/FL/text/H0007/2022>  
Young, J.C. & Friedman, J. (2022, August 17). *America's censored classrooms*. PEN America. Retrieved September 9, 2023, from <https://pen.org/report/americas-censored-classrooms/>
- 72 Florida HB 7 (2022) Individual Freedom, <https://legiscan.com/FL/text/H0007/2022>
- 73 Feingold, J. (2022, July 19). *Anti-critical race theory laws are actually pro-CRT*. Bloomberg. Retrieved November 9, 2023, from <https://news.bloomberglaw.com/us-law-week/anti-critical-race-theory-laws-are-actually-pro-crt>
- 74 “‘Race or sex stereotyping’ means 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.”  
This prohibition on “race stereotyping” tracks language in the Trump Executive Order. See Exec. Order No. 13,950, 85 Fed. Reg. 60,683 (Sept. 22, 2020). Retrieved November 9, 2023, from <https://www.govinfo.gov/content/pkg/FR-2020-09-28/pdf/2020-21534.pdf>
- 75 See generally Feingold, J. (2022). Reclaiming equality: How regressive laws can advance progressive ends. *South Carolina Law Review*, 73(1). Retrieved October 22, 2023, from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4094443](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4094443)
- 76 “The final type of prohibition found in gag order bills would prohibit educators from “including,” “discussing,” or “making part of a course” certain topics or ideas in the curriculum, regardless of how objective or balanced the discussion is.”  
Young, J.C. & Friedman, J. (2022, August 17). *America's censored classrooms*. PEN America. Retrieved September 9, 2023, from <https://pen.org/report/americas-censored-classrooms/>
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- 78 Young, J.C., Friedman, J. & Sachs, J. (2022, March 30). *Educational gag orders seek to enforce compulsory patriotism*. PEN America. Retrieved September 9, 2023, from <https://pen.org/update-educational-gag-orders-seek-to-enforce-compulsory-patriotism/>
- 79 Young, J.C. & Friedman, J. (2022, August 17). *America's censored classrooms*. PEN America. Retrieved September 9, 2023, from <https://pen.org/report/americas-censored-classrooms/>
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- 81 *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 641-43 (1943).
- 82 Pollock, M., Kendall, R., Reece, E., Issa, A.-R., & Brady, E.H. (2023). Supported, silenced, subdued, or speaking up? K12 educators' experiences dealing with the conflict campaign, 2021-2022. *Journal of*



*Leadership, Equity, and Research*, 9(2), 2. Retrieved October 22, 2023, from <https://journals.sfu.ca/cvj/index.php/cvj/article/view/253/385>.

Beauchamp, Z. (2023, September 10). *Chris Rufo's dangerous fictions*. Vox. Retrieved November 8, 2023, from <https://www.vox.com/23811277/christopher-rufo-culture-wars-ron-desantis-florida-critical-race-theory-anti-wokeness>

- 83 Clark Baldwin explained, “[t]he parents’ rights” framing not only “recreates race contestations, but it changes the terms of the debate from political disagreements about curriculum to foundational struggles over educational control.” In rhetorical and practical dimensions, parents were thus conscripted in the effort, given “parents’ rights anti-CRT guidebooks” and expected to become “teaching and curriculum watchdogs” entitled to “inspect curricula on demand, investigate individual teacher’s lessons plans without that teacher’s permission, and opt students out of lessons parents disagree with.”

Baldwin Clark, L. (2023, May) The critical racialization of parents’ rights (p. 2181). *The Yale Law Journal*, 132(7). Retrieved November 6, 2023, from <https://www.yalelawjournal.org/feature/the-critical-racialization-of-parents-rights>

- 84 See, for example, Kentucky SB1, An Act relating to education and declaring an emergency (2022) (punishment not specified).

- 85 Young, J.C. & Friedman, J. (2022, August 17). *America’s censored classrooms*. PEN America. Retrieved September 9, 2023, from <https://pen.org/report/americas-censored-classrooms/>

“One-third of introduced state legislative measures specify withholding funding as a consequence for violations. Among the 308 introduced state legislative measures, at least one-third (101) propose withholding funding from teachers, schools, and districts for alleged violations (Table 12). In addition, 14% (46) propose a private cause of action by which individual citizens may sue district officials and teachers (among others) for alleged noncompliance.”

Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory (p. 6). *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

- 86 Young, J.C. & Friedman, J. (2022, August 17). *America’s censored classrooms*. PEN America. Retrieved September 9, 2023, from <https://pen.org/report/americas-censored-classrooms/>

- 87 Prohibiting public K-12 schools from offering “any classroom instruction or discussion, formal or informal, or distribut[ing] any printed or digital material, including but not limited to textbooks and instructional materials, that promotes” any of eight enumerated “concepts.”

Kentucky HB 18, An Act relating to prohibited instruction and declaring an emergency, [https://apps.legislature.ky.gov/recorddocuments/bill/22RS/hb18/orig\\_bill.pdf](https://apps.legislature.ky.gov/recorddocuments/bill/22RS/hb18/orig_bill.pdf)

Young, J.C. & Friedman, J. (2022, August 17). *America’s censored classrooms*. PEN America. Retrieved September 9, 2023, from <https://pen.org/report/americas-censored-classrooms/>

- 88 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory (p. 4). *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Exec-Summary.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Exec-Summary.pdf)

- 89 Pollock, M., Kendall, R., Reece, E., Issa, A.-R., & Brady, E.H. (2023). Supported, silenced, subdued, or speaking up? K12 educators’ experiences dealing with the conflict campaign, 2021-2022 (p. 4). *Journal of Leadership, Equity, and Research*, 9(2), 2. Retrieved October 22, 2023, from <https://journals.sfu.ca/cvj/index.php/cvj/article/view/253/385>

- 90 Pollock, M., Kendall, R., Reece, E., Issa, A.-R., & Brady, E.H. (2023). Supported, silenced, subdued, or



speaking up? K12 educators' experiences dealing with the conflict campaign, 2021-2022 (p. 7). *Journal of Leadership, Equity, and Research*, 9(2), 2. Retrieved October 22, 2023, from <https://journals.sfu.ca/cvj/index.php/cvj/article/view/253/385>

- 91 Pollock, M., Kendall, R., Reece, E., Issa, A.-R., & Brady, E.H. (2023). Supported, silenced, subdued, or speaking up? K12 educators' experiences dealing with the conflict campaign, 2021-2022 (p. 7). *Journal of Leadership, Equity, and Research*, 9(2), 2. Retrieved October 22, 2023, from <https://journals.sfu.ca/cvj/index.php/cvj/article/view/253/385>

- 92 Pollock, M., Kendall, R., Reece, E., Issa, A.-R., & Brady, E.H. (2023). Supported, silenced, subdued, or speaking up? K12 educators' experiences dealing with the conflict campaign, 2021-2022 (p. 7). *Journal of Leadership, Equity, and Research*, 9(2), 2. Retrieved October 22, 2023, from <https://journals.sfu.ca/cvj/index.php/cvj/article/view/253/385>

- 93 "Voters in some of the highest-profile school board elections across the U.S. rebuked conservative candidates in local school board elections who want to ban books and restrict classroom conversations on race and gender."

Schultz, B. & Mulvihill, G. (2023, November 8). Liberal and moderate candidates take control of school boards in contentious races across US. *AP*. Retrieved November 9, 2023, from <https://apnews.com/article/school-board-elections-moms-liberty-progressives-1e439de49b0e8498537484fb031f66a6>

"In Central Bucks School District, which is located outside Philadelphia, Pennsylvania, Democratic candidates swept the election and gained majority control of the board. This is a stark contrast to the district's 2021 school board elections, which resulted in a 6-3 conservative majority."

Legum, J. (2023, Nov. 9). UPDATE: School board voters fight back. *Popular Information*. Retrieved November 9, 2023, from [https://popular.info/p/update-school-board-voters-fight?r=jlhpw&utm\\_campaign=post&utm\\_medium=web](https://popular.info/p/update-school-board-voters-fight?r=jlhpw&utm_campaign=post&utm_medium=web)

- 94 Rizzo, E. (2023, November 11). This school board made news for banning books. Voters flipped it to majority Democrat. *NPR*. Retrieved November 20, 2023, from <https://www.npr.org/2023/11/11/1212185489/election-pennsylvania-school-board>

- 95 "As it turns out, GOP candidates running on scorched-earth education platforms have fared quite poorly in school board elections. In places like Georgia, Montana, New Hampshire and New York, voters have rejected culture warriors running for school board, often doing so by wide margins."

Berkshire, C. & Schneider, J. (2022, July 25). The GOP's school board takeover strategy is falling flat. *The Hill*. Retrieved September 9, 2023, from <https://thehill.com/opinion/campaign/3572821-the-gops-school-board-takeover-strategy-is-falling-flat/>

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Mitchell, M. (2023, November 8). What do school board results say about the future of diversity debates in Cincinnati? *Cincinnati Enquirer*. Retrieved November 8, 2023, from <https://www.cincinnati.com/story/news/education/2023/11/08/ohio-school-board-election-results-whats-next-in-the-culture-wars/7147276600/>

- 96 Berkshire, C. & Schneider, J. (2022, July 25). The GOP's school board takeover strategy is falling flat. *The Hill*. Retrieved September 9, 2023, from <https://thehill.com/opinion/campaign/3572821-the-gops-school-board-takeover-strategy-is-falling-flat/>

Dewitt, E. (2022, March 10). Progressive candidates prevail in school board elections despite passionate campaigns on right. *New Hampshire Bulletin*. Retrieved September 9, 2023, from <https://newhampshirebulletin.com/2022/03/10/progressive-candidates-prevail-in-school-board-elections-despite->

passionate-campaigns-on-right/

Kronaizl, D. (2022, May 31). How COVID, race, and gender affected the April 5 school board races in Missouri, Oklahoma, and Wisconsin. *New Hampshire Bulletin*. Retrieved September 9, 2023, from <https://news.ballotpedia.org/2022/05/31/how-covid-race-and-gender-affected-the-april-5-school-board-races-in-missouri-oklahoma-and-wisconsin/>

- 97 Berkshire, C. & Schneider, J. (2022, July 25). The GOP's school board takeover strategy is falling flat. *The Hill*. Retrieved September 9, 2023, from <https://thehill.com/opinion/campaign/3572821-the-gops-school-board-takeover-strategy-is-falling-flat/>
- 98 Schultz, B. & Mulvihill, G. (2023, November 8). Liberal and moderate candidates take control of school boards in contentious races across US. *AP*. Retrieved November 9, 2023, from <https://apnews.com/article/school-board-elections-moms-liberty-progressives-1e439de49b0e8498537484fb031f66a6>
- 99 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on critical race theory. *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)
- 100 Rizzo, E. (2023, November 11). This school board made news for banning books. Voters flipped it to majority Democrat. *NPR*. Retrieved November 20, 2023, from <https://www.npr.org/2023/11/11/1212185489/election-pennsylvania-school-board>
- 101 “According to the National Education Association, pro-public-education candidates won in many competitive gubernatorial races, including in Arizona, Michigan, Minnesota, Pennsylvania, and Wisconsin, as well as in 71 percent of the school board races the union was tracking throughout the country.”
- Berkshire, J.C. (2023, May 23). How to fight the Right's moral panic over parental rights. *The Nation*. Retrieved September 9, 2023, from <https://www.thenation.com/article/society/how-to-fight-the-rights-moral-panic-over-parental-rights/>
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- 102 “Moreover, those of the general public—parents in particular—are largely supportive of how public schools handle these topics. In fact, according to a 2022 NPR/Ipsos poll, just 19 percent of parents say that the way their local school discusses race and racism is inconsistent with their values, and just 16 percent say the same about how it handles the impact of slavery. Even the ‘war on woke’—arguably the most provocative rhetoric from today's culture wars—is not polling well, with only 24 percent of Republican voters prioritizing it over law-and-order issues, and many GOP presidential candidates dropping the term from their campaign lexicons.”
- Young, J., Friedman, J., & Meehan, K (2023, November 9). *America's censored classrooms 2023*. PEN America. Retrieved November 9, 2023, from <https://pen.org/report/americas-censored-classrooms-2023/>
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- Polikoff, M., Fienberg, M., Silver, D., Garland, M., Saavedra, A, & Rapaport, A. (2023, September). *Who wants to say “Gay”? Public opinion about LGBT issues in the classroom*. EdWorkingPaper: 23-838. Annenberg Institute at Brown University. Retrieved September 9, 2023, from <https://doi.org/10.26300/5orz-tb81>
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in elementary school and assigning LGBT-themed books.

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- 104 Will, M. (2023, July 6). We say gay: Largest teachers’ union pledges to fight Anti-LGBTQ policies. *EducationWeek*. Retrieved September 9, 2023, from <https://www.edweek.org/teaching-learning/we-say-gay-largest-teachers-union-pledges-to-fight-anti-lgbtq-policies/2023/07>
- 105 Will, M. (2023, July 6). We say gay: Largest teachers’ union pledges to fight Anti-LGBTQ policies. *EducationWeek*. Retrieved September 9, 2023, from <https://www.edweek.org/teaching-learning/we-say-gay-largest-teachers-union-pledges-to-fight-anti-lgbtq-policies/2023/07>
- 106 Flannery, M. (2023, July 7). NEA RA 2023: NEA President Becky Pringle calls for action! *neaToday*. Retrieved September 9, 2023, from <https://www.nea.org/nea-today/all-news-articles/nea-ra-2023-nea-president-becky-pringle-calls-action>
- 107 Feingold, J. (2023, January 18). Florida Gov. DeSantis leads the GOP’s national charge against public education that includes lessons on race and sexual orientation. *The Conversation*. Retrieved September 9, 2023, from <https://theconversation.com/florida-gov-desantis-leads-the-gops-national-charge-against-public-education-that-includes-lessons-on-race-and-sexual-orientation-196369>
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Sfondeles, T. (2023, June 12). Ban the ban, not the book? Giannoulis caps return with string of legislative wins, including anti-censorship law. *Chicago Sun-Times*. Retrieved September 9, 2023, from <https://chicago.suntimes.com/2023/6/12/23755948/book-ban-fight-alexi-giannoulis-anti-censorship-law-legislation-lgbtq-library-school>  
Illinois Secretary of State Alexi Giannoulis explained that the bill was meant to be “proactive” in light of rising book bans: “And if you’re going to ban books, you’re not going to get state grants.”
- 109 An Act Concerning Education, H.B. 0376, 102nd General Assembly (Ill. 2022). Retrieved November 8, 2023, from <https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=110&GA=102&DocTypeId=HB&DocNum=0376&GAID=16&LegID=128327&SpecSess=&Session=>
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- 111 Natanson, H. (2023, March 17). Few legal challenges to laws limiting lessons on race, gender. *Washington Post*. Retrieved September 9, 2023, from <https://www.washingtonpost.com/education/2023/03/17/legal->

- 112 For analysis of First Amendment, equal protection, and due process federal law claims against early versions of discriminatory censorship laws, see, e.g.:

Bissell, T. (2023, January) Teaching in the upside down: What anti-critical race theory laws tell us about the First Amendment. *Stanford Law Review*, 75, 205-259. Retrieved November 10, 2023, from <https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/01/Bissell-75-Stan.-L.-Rev.-205.pdf>

Fair, B. (2023) Crying wolf: Neo-patriots, critical race theory, and the constitutional protection of “dangerous” ideas. *UC Davis Social Justice Law Review*, 27, 1

Saul, D. (2023, January) School curricula and silenced speech: A constitutional challenge to critical race theory bans. *Minnesota Law Review*, 107, 1311-1368. Retrieved November 10, 2023, from [https://minnesotalawreview.org/wp-content/uploads/2023/01/06-Saul\\_MLR.pdf](https://minnesotalawreview.org/wp-content/uploads/2023/01/06-Saul_MLR.pdf)

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- 113 Local 8027, AFT-N.H., AFL-CIO v. Edelblut, \_\_\_F.Supp.3d\_\_\_, 2023 WL 171392 (D.N.H. Jan. 12, 2023).
- 114 Henderson v. School District of Springfield R-12, \_\_\_F.Supp.3d\_\_\_, 2023 WL 170594 (W.D. Mo. Jan. 12, 2023).
- 115 M.A. v. Florida State Board of Education, 2023 WL 2631071 (N.D. Fla. Feb. 15, 2023).
- 116 Courts avoid deciding issues they don’t have to address. Because the court already granted dismissal because the complaint’s allegations were legally insufficient, it did not have to decide the alternative basis for dismissal that was asserted (i.e., qualified immunity). Nevertheless, the court went out of its way to note that, if it were necessary to decide that issue, it would find dismissal based on qualified immunity as well.
- Footo v. Town of Ludlow, 2022 WL 18356421 (D. Mass. Dec. 14, 2022)
- 117 See, e.g., Black Emergency Response Team v. O’Connor, 5:21-cv-01022, (W.D. Okla. 2022); Updike v. Jonas, No. 1:22-cv-00374 (S.D. Ohio 2022); Arizona Sch. Bd. Ass’n v. Arizona, 501 P.3d 731 (Ariz. 2022).
- 118 See, e.g., Menders v. Loudoun Cnty. Sch. Bd., 65 F.4th 157, 159 (4th Cir. 2023); B.L. v. Fetherman, No. CV 22-3471, 2023 WL 3004853 (D.N.J. Apr. 18, 2023); Henderson v. Sch. Dist. of Springfield R-12, No. 6:21-CV-03219-MDH, 2023 WL 170594 (W.D. Mo. Jan. 12, 2023); Auslander v. Tredyffrin/Easttown Sch. Dist., 630 F. Supp. 3d 674 (E.D. Pa. 2022); Scarpellino v. Freeman, No. 3:22-cv-01130, (D. Conn. 2022); Parents Choice Tenn. v. Golden, No. 22CV-51642 (Tenn. 2023); Deemar v. Board of Educ. City of Evanston/Stokie, No. 1:21-cv-3466 (N.D. Ill.); Clark v. Democracy Prep Pub. Schs., 2:20-cv-02324-APG-VCF (D. Nev.); R.I. v. Albemarle Cnty Sch. Bd. (Va.); South Carolina Freedom Caucus v. Lexington Cnty. Sch. Dist. One (D. S.C.); MARS Area Sch. Dist. v. Pennsylvania (W.D. Pa.).
- 119 See, e.g., Cousins v. Grady, 6:22-cv-01312-WWB-LHP (M.D. Fla. 2023).
- 120 See, e.g., Tatel v. Mt. Lebanon Sch. Dist., 637 F. Supp. 3d 295 (W.D. Pa. 2022), clarified, 2023 WL 3740822 (W.D. Pa. May 31, 2023); Kaltenbach v. Hilliard City Schools, 2:23-cv-00187, (S.D. Ohio 2023).
- 121 See, e.g., OCR Complaint-Forsyth County Schools (Ga.) (May 2023)
- C.K.-W. by & through T.K. v. Wentzville R-IV Sch. Dist., 619 F. Supp. 3d 906, 909 (E.D. Mo. 2022), appeal

dismissed, No. 22-2885, 2023 WL 2180065 (8th Cir. Jan. 17, 2023).

L.H. v. Indep. Sch. Dist., No. 4:22-CV-00801-RK, 2023 WL 2192234 (W.D. Mo. Feb. 23, 2023); PEN American Center v. Escambia Cnty Sch. Dist., 3:23-cv-10385-TKW-ZCB (N.D. Fla. 2023).

Missouri Ass'n of Sch. Librarians v. Baker (Mo. 2023).

Florida Education Ass'n v. Florida (Div. Admin. Hearings, March 2023)

OCR Complaint-Keller Independent School District (Tex.) (August 2022).

Fayetteville Pub. Libr. v. Crawford Cnty., Arkansas, No. 5:23-CV-05086, 2023 WL 4845636, at \*1 (W.D. Ark. July 29, 2023).

122 In re: A Court of Mist and Fury and In re: Gender Queer, a Memoir, No. CL22-1985 (Va.).

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Notes that “federal court precedent favoring local control of schools and federalism in education—as well as jurisdictional limitations—may well upend these lawsuits.”

Weishart, J. (2022) The right to teach. *UC Davis Law Review*, 56, 817. Retrieved November 8, 2023, from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4099102](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4099102)

125 Lambert, D. (2023, August 2). Temecula Valley Unified CRT ban has created a hostile school environment, lawsuit says. *EdSource*. Retrieved September 9, 2023, from <https://edsources.org/2023/temecula-valley-unified-crt-ban-has-created-a-hostile-school-environment-lawsuit-says/695080?amp=1>

126 Feingold, J. (2022). Reclaiming CRT: How regressive laws can advance progressive ends. *South Carolina Law Review*, 73, 723. Retrieved September 9, 2023, from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4094443](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4094443)

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A January 2022 Twitter thread from Nikole Hannah-Jones reflects the logic that would anchor such a strategy:

“The bill prohibits lessons that make kids feel ‘discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race.’ I imagine lessons that glorify enslavers and colonizers and downplay the contributions of POC would do just that. So, ok, sure!”

See Nikole Hannah-Jones (@NHannahJones), Twitter. (Jan. 19, 2022, 5:42 PM), <https://twitter.com/nhannahjones/status/1483929906732011524/>

“To test how race-neutral the DeSantis bill and others like it are, Black, Latino[,] and Indigenous parents should flood these states with lawsuits about lessons that make their children feel discomfort, or that one race is superior to another and see how it goes.”

See Nikole Hannah-Jones (@NHannahJones), Twitter. (Jan. 19, 2022, 5:30 PM), <https://twitter.com/nhannahjones/status/1483929906732011524/>

128 “Whether student, educator, or concerned parent, with this current rise in book challenges and censorship



across the US, we are all facing the same multi-headed beast, a dangerous and multifarious challenge to our fundamental rights for academic freedom and access to student-centered reading, writing, speaking, and listening.”

Waters, M. & Unsicker-Durham S. (2023). The Hydra nature of book banning and censorship. *Study and Scrutiny: Research in Young Adult Literature*, 6(1).

- 129 See Fuchs, H. (2020). Trump attack on diversity training has a quick and chilling effect. *New York Times*. Retrieved November 7, 2023, from <https://www.nytimes.com/2020/10/13/us/politics/trump-diversity-training-race.html>

“An executive order, issued in late September as Mr. Trump was stepping up his charged attacks on Black Lives Matter protesters and ‘political correctness,’ banned the federal government, as well as its contractors, subcontractors and grantees, from offering certain diversity training on racial and gender biases — teachings that the order called ‘divisive’ and a ‘malign ideology.’”

- 130 See Meckler, L. & Dawsey, J. (2021, June 21). Republicans, spurred by an unlikely figure, see political promise in targeting critical race theory. *The Washington Post*. Retrieved November 7, 2023, from <https://www.washingtonpost.com/education/2021/06/19/critical-race-theory-rufo-republicans/>

Wallace-Wells, B. (2021, June 18). How a conservative activist invented the conflict over critical race theory. *The New Yorker*. Retrieved November 7, 2023, from <https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory>

Quoting Rufo for writing that “‘Critical Race Theory’ is the perfect villain”; commenting that “[s]trung together, the phrase ‘critical race theory’ connotes hostile, academic, divisive, race-obsessed, poisonous, elitist, anti-American”; and explaining that its goal was “to politicize the bureaucracy . . . take some of these essentially corrupted state agencies and then contest them, and then create rival power centers within them.”

Crenshaw, K. (2022). This is not a drill. *UCLA Law Review*, 68, 1702.

“Critical Race Theory and intersectionality have not only been labeled as “divisive,” “dangerous” and “un-American,” they have also been appropriated as a container to denounce the wider project of antiracism and social justice writ large.”

- 131 Rufo, C. (2022, April 5). Laying siege to the institutions. *Imprimis*. Retrieved November 7, 2023, from <https://imprimis.hillsdale.edu/laying-siege-to-the-institutions/>

“Why do I say that we need to lay siege to our institutions? Because of what has happened to our institutions since the 1960s . . . You have to fight on terms that you define. In responding to opponents of the Florida bill, for instance, don’t argue against ‘teaching diversity and inclusion,’ but against sexualizing young children . . . Conservatives have for too long been resistant to attacking the credibility of our institutions.”

- 132 Associated Press. (2023, March 30). *Anatomy of a political takeover at Florida public college*. Retrieved November 6, 2023, from <https://apnews.com/article/desantis-new-college-florida-woke-timeline-5a5bcd78230ddd2a1adb8021fea8a755>

- 133 Feingold, J. (2022) Colorblind capture. *Boston University Law Review*, 102, 1949.

Clark, L. (2023) The critical racialization of parents’ rights. *Yale Law Journal*, 132, 2139.

- 134 Young, J.C., Friedman, J., & Sachs, J. (2022, March 30). *Educational gag orders seek to enforce compulsory patriotism*. PEN America, Retrieved September 9, 2023, from <https://pen.org/update-educational-gag-orders-seek-to-enforce-compulsory-patriotism/>

- 135 LaFrance, S. & Friedman, J. (2023, August 23). *Education intimidation*. PEN America, Retrieved September 9, 2023, from <https://pen.org/report/educational-intimidation/>



“Fear is the new watchword in public education.”

- 136 Natanson, H. (2023, June 9). Objection to sexual, LGBTQ content propels spike in book challenges. *Washington Post*. Retrieved September 9, 2023, from <https://www.washingtonpost.com/education/2023/05/23/lgbtq-book-ban-challengers/>
- 137 Natanson, H. (2023, June 9). Objection to sexual, LGBTQ content propels spike in book challenges. *Washington Post*. Retrieved September 9, 2023, from <https://www.washingtonpost.com/education/2023/05/23/lgbtq-book-ban-challengers/>
- 138 Marchant, B. (2023, June 12). Midlands teacher’s lessons on racism halted after complaints, citing state law. *The State*. Retrieved September 9, 2023, from <https://www.thestate.com/news/local/article276257911.html>
- 139 Marchant, B. (2023, June 12). Midlands teacher’s lessons on racism halted after complaints, citing state law. *The State*. Retrieved September 9, 2023, from <https://www.thestate.com/news/local/article276257911.html>
- 140 Natanson, H. (2023, September 18). Her students reported her for a lesson on race. Can she trust them again? *Washington Post*. Retrieved November 9, 2023, from <https://www.washingtonpost.com/education/2023/09/18/south-carolina-teacher-ta-nehisi-coates-racism-lesson/>
- 141 2023 South Carolina House Bill No. 4300, Section 1.82, [https://www.scstatehouse.gov/sess125\\_2023-2024/appropriations2023/ta23ndx.php](https://www.scstatehouse.gov/sess125_2023-2024/appropriations2023/ta23ndx.php)
- 142 Bailey, I. (2023, June 18). SC students afraid to talk about race would fail my college class. *The State*. Retrieved November 9, 2023, <https://www.charlotteobserver.com/opinion/article276363796.html>
- “You attended a school that’s more than 80 percent white, and still, you couldn’t handle a lesson on this country’s racial history and present without crying foul. Must this country, the world, forever cater to your every whim or preference?”
- Natanson, H. (2023, September 18). Her students reported her for a lesson on race. Can she trust them again? *Washington Post*. Retrieved November 9, 2023, from <https://www.washingtonpost.com/education/2023/09/18/south-carolina-teacher-ta-nehisi-coates-racism-lesson/>
- Miller et al. (2023, March). Misunderstanding the campaign against CRT: Absurdity and White supremacy in attacks on teaching and teacher education. *Thresholds*, 46(1).
- “The absurdity of CRT bans is the point: the resulting confusion and uncertainty develops an overarching climate of disaster that enables reinscribing White supremacy in public education.”
- 143 This is not to suggest that national organizations have been on the sidelines. National organizations have spearheaded most of the federal lawsuits challenging the constitutionality of state-level discriminatory censorship laws. See, e.g., Part IV (discussing anti-censorship lawsuits). Still, these lawsuits are far from the sort of comprehensive support—legal, financial, strategic, etc.—that front line educators need, and national organizations are positioned to provide.
- 144 Jacobson, L. (2023, September 14). Ed dept. hires book ban czar to monitor escalating challenges over content. *The 74*. Retrieved October 23, 2023, from <https://www.the74million.org/article/education-department-book-bans-matt-nosanchuk-deputy-assistant-secretary/>
- 145 “But the data also suggests an impact on quality of life in the profession and racial climate in schools, especially for teachers who identify as politically liberal.”
- See, e.g., Jayakumar, U. & Kohli, R. (2023). Silenced and pushed out: The harms of CRT-bans on K-12 teachers. *Thresholds in Education*, 46(1). Retrieved November 6, 2023, from <https://academyedstudies.files.wordpress.com/2023/03/jayakumarkohlifinal.pdf>
- 146 Pollock, M., Kendall, R., Reece, E., Lopez, D., & Yoshisato, M. (2022, April 11). Keeping the freedom to

include: Teachers navigating “Pushback” and marshalling “Backup” to keep inclusion on the agenda. *Journal of Leadership, Equity, and Research*, 8(1). Retrieved September 9, 2023, from <https://journals.sfu.ca/cvj/index.php/cvj/article/view/185>

147 Friedman, J. (2023). *Educational gag orders*. PEN America. Retrieved September 9, 2023, from <https://pen.org/report/educational-gag-orders/>

148 “It is worth considering whether all of this—the confusion, the caution, the chilling effect—is intentional. . . . One wonders whether vagueness better suits the interests of the lawmakers pushing educational gag orders. It casts a wider shadow, raises greater alarm, and silences more voices, while also appearing to be less prescriptive. Legislators can appear to be moderate and reasonable—while offloading the hard work of prohibiting ideas and speech onto those enforcing the legislation at state agencies and educational institutions. They can leave educators uncertain about how lessons will be interpreted by potentially hostile students, parents, and government officials, effectively making them second-guess their teaching choices, and producing classrooms ruled by caution, silence, and fear, rather than robust inquiry and debate.”

Sachs, J., Young, J., & Friedman, J. (2022, April 28). *For educational gag orders, the vagueness is the point*. PEN America. Retrieved September 9, 2023, from <https://pen.org/for-educational-gag-orders-the-vagueness-is-the-point/>

149 Sachs, J., Young, J., & Friedman, J. (2022, April 28). *For educational gag orders, the vagueness is the point*. PEN America. Retrieved September 9, 2023, from <https://pen.org/for-educational-gag-orders-the-vagueness-is-the-point/>

150 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on Critical Race Theory. *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

LaFrance, S. & Friedman, J. (2023, August 23). *Education intimidation*. PEN America. Retrieved September 9, 2023, from <https://pen.org/report/educational-intimidation/>

151 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on Critical Race Theory. *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

152 Alexander, T., Clark, L.B., Reinhard, K., & Zatz, N. (2023). Tracking the attack on Critical Race Theory. *CRT Forward*. UCLA School of Law. Retrieved September 9, 2023, from [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law\\_CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law_CRT-Report_Final.pdf)

153 Sachs, J., Young, J., & Friedman, J. (2022, April 28). *For educational gag orders, the vagueness is the point*. PEN America. Retrieved September 9, 2023, from <https://pen.org/for-educational-gag-orders-the-vagueness-is-the-point/>

“Everyone involved has a strong incentive to define these terms cautiously: prohibitions will be interpreted as expansively as possible and protections as narrowly as possible. Predictably, the result will be self-censorship by institutions and individuals alike.”

154 Duffort, L. (2021, November 29). Critical race theory debate lingers. *Valley News*. Retrieved November 16, 2023, from <https://www.vnews.com/Schools-deal-with-critical-race-theory-backlash-43771701> (“The law in New Hampshire is ‘really frightening,’ Badams said, and will undoubtedly chill discussion in class. ‘If I’m teaching about Thomas Jefferson, how far can I go down the road of: Look at the real irony in the writing of our founding documents, and the deliberation by people who owned slaves, waxing eloquently about liberty?’ he asked.”).

155 Even before 2021, “most teachers reported experiencing frequent job-related stress and burnout.” This toll was most acute for Black teachers, nearly half of whom reported they planned to “leave their jobs by the end of the

school year.”

Blevins, B. (2022, January). Research on equity in civics education. *The Journal of Social Studies Research*, 46, 1-6. Retrieved September 9, 2023, from <https://doi.org/10.1016/j.jssr.2021.12.001>

- 156 Jochim, A., Diliberti, M., Schqarts, H., Destler, K., & Hill, P. (2023, January). *Navigating political tensions over schooling: Findings from the fall 2022 American School District Panel survey*. Center on Reinventing Public Education. Retrieved September 9, 2023, from [https://crpe.org/wp-content/uploads/ASDP-\\_Navigating-Political-Brief\\_v6.pdf](https://crpe.org/wp-content/uploads/ASDP-_Navigating-Political-Brief_v6.pdf)

School board members have also faced increased threats of physical violence and verbal harassment. See, for example, Bartlett, T. (2023, Summer). Warning, may cause truth decay: Exploring the cannibalizing effect of social digital media and conspiracy theories on democracy and our public schools. *New Directions for Adult and Continuing Education*, 178, 79-90.

“Turning Point USA launched the School Board Watchlist (following its watchlist of ‘woke’ university professors) that ‘finds and exposes school board leadership that supports anti-American, radical, hateful, immoral, and racist teachings in their districts.’ The site garners tips provided by the public and then openly provides the “evidence” of woke indoctrination, school board member contact information, links to board meeting documents, and details about when and where to attend the next meeting.”

- 157 Will, M. (2023, August 31). “I was not done”: How politics drove this teacher of the year out of the classroom. *EdWeek*. Retrieved September 9, 2023, from <https://www.edweek.org/teaching-learning/i-was-not-done-how-politics-drove-this-teacher-of-the-year-out-of-the-classroom/2023/08>
- 158 Kopan, T. (2023, August 10). Teacher of the year was supposed to be an honor. Then politics intervened. *Boston Globe*. Retrieved September 9, 2023, from <https://www.bostonglobe.com/2023/08/10/nation/teacher-of-the-year-culture-wars/>
- 159 Kopan, T. (2023, August 10). Teacher of the Year was supposed to be an honor. Then politics intervened. *Boston Globe*. Retrieved September 9, 2023, from <https://www.bostonglobe.com/2023/08/10/nation/teacher-of-the-year-culture-wars/>
- 160 Jochim, A., Diliberti, M., Schqarts, H., Destler, K., & Hill, P. (2023, January). *Navigating political tensions over schooling: Findings from the fall 2022 American School District Panel survey*. Center on Reinventing Public Education. Retrieved September 9, 2023, from [https://crpe.org/wp-content/uploads/ASDP-\\_Navigating-Political-Brief\\_v6.pdf](https://crpe.org/wp-content/uploads/ASDP-_Navigating-Political-Brief_v6.pdf)
- 161 Jochim, A., Diliberti, M., Schqarts, H., Destler, K., & Hill, P. (2023, January). *Navigating political tensions over schooling: Findings from the fall 2022 American School District Panel survey*. Center on Reinventing Public Education. Retrieved September 9, 2023, from [https://crpe.org/wp-content/uploads/ASDP-\\_Navigating-Political-Brief\\_v6.pdf](https://crpe.org/wp-content/uploads/ASDP-_Navigating-Political-Brief_v6.pdf)
- 162 Woo, A, Wolfe, R., Steiner, E., Doan, S., Lawrence, R., Berdie, L., Greer, L. Gittens, A., & Schwartz, H. (2022) *Walking a fine line—educators’ views on politicized topics in schooling: Findings from the state of the American teacher and state of the American principal surveys*. Rand Corporation. Retrieved November 6, 2023, from [https://www.rand.org/pubs/research\\_reports/RRA1108-5.html](https://www.rand.org/pubs/research_reports/RRA1108-5.html)
- 163 O’Connell-Domenech, A. (2022, December 12). *Advocates, union rep blame national teacher shortage on censorship*. The Hill. Retrieved October 23, 2023, from <https://thehill.com/changing-america/respect/equality/3772671-advocates-union-rep-blame-national-teacher-shortage-on-censorship/>
- 164 Quote from Florida-based K-12 teacher interviewed during preparation of this report.
- 165 Hawkins, B. (2023, May 24). Scared of school: Even in states with protective laws, LGBTQ students are reporting attacks from other kids—and teachers. *The 74*. Retrieved October 24, 2023, from <https://www.the74million.org/article/scared-of-school-even-in-states-with-protective-laws-lgbtq-students-are-reporting->

attacks-from-other-kids-and-teachers/

- 166 Sylvester, E. (2023, January 19). *New poll emphasizes negative impacts of anti-LGBTQ policies on LGBTQ youth*. West Hollywood, CA: The Trevor Project. Retrieved September 9, 2023, from <https://www.thetrevorproject.org/blog/new-poll-emphasizes-negative-impacts-of-anti-lgbtq-policies-on-lgbtq-youth/>
- Goldberg, A.E. (2023, January). *Impact of HB 1557 (Florida's Don't Say Gay bill) on LGBTQ+ parents in Florida*. Williams Institute, UCLA School of Law. Retrieved September 9, 2023, from <https://williamsinstitute.law.ucla.edu/publications/impact-dont-say-gay-parents/>
- 167 Hawkins, B. (2023, May 24). Scared of school: Even in states with protective laws, LGBTQ students are reporting attacks from other kids—and teachers. *The 74*. Retrieved October 24, 2023, from <https://www.the74million.org/article/scared-of-school-even-in-states-with-protective-laws-lgbtq-students-are-reporting-attacks-from-other-kids-and-teachers/>
- 168 Hawkins, B. (2023, May 24). Scared of school: Even in states with protective laws, LGBTQ students are reporting attacks from other kids—and teachers. *The 74*. Retrieved October 24, 2023, from <https://www.the74million.org/article/scared-of-school-even-in-states-with-protective-laws-lgbtq-students-are-reporting-attacks-from-other-kids-and-teachers/>
- 169 Lambert, D. (2023, August 2). *Temecula Valley Unified CRT ban has created a hostile school environment, lawsuit says*. EdSource. Retrieved September 9, 2023, from <https://edsources.org/2023/temecula-valley-unified-crt-ban-has-created-a-hostile-school-environment-lawsuit-says/695080?amp=1>
- 170 “The quantitative data, in particular, demonstrates that bans contribute to teachers’ burnout/pushout and their desire to take another job in another state. As our findings reveal, the majority of teachers are experiencing additional pressure and stress in the wake of legislative bans that feel like a deceptive attack on education and teacher’s autonomy in making the best pedagogical choices for their students.”
- Jayakumar, U. & Kohli, R. (2023). Silenced and pushed out: The harms of CRT-bans on K-12 teachers. *Thresholds in Education*, 46(1). Retrieved November 6, 2023, from <https://academyedstudies.files.wordpress.com/2023/03/jayakumarkohlifinal.pdf>
- 171 “For instance, nearly all LGBT students report hearing anti-gay or anti-trans comments in their schools, and more than half report hearing such comments from teachers. LGBT students are also more likely than non-LGBT students to report physical threats or assault, and to report missing school as a consequence of fears related to their identities.”
- LGBTQ+ students, for example, have historically faced “substantial discrimination . . . in America’s schools.” See Polikoff, M., Fienberg, M., Silver, D., Garland, M., Saavedra, A., & Rapaport, A. (2023, September). *Who wants to say “Gay”? Public opinion about LGBT issues in the classroom*. EdWorkingPaper: 23-838. Annenberg Institute at Brown University. Retrieved September 9, 2023, from <https://doi.org/10.26300/50rz-tb81>
- 172 Jacobson, L (2023, May 22). *Feds: Book removal in Ga. school district may have caused “hostile environment.”* The 74. Retrieved October 23, 2023 from <https://www.the74million.org/article/feds-book-removal-in-ga-school-district-may-have-caused-hostile-environment/>
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- 174 Waxman, O.B. (2022, June 30). Anti-‘critical race theory’ laws are working. Teachers are thinking twice about

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- 176 Waxman, O.B. (2022, June 30). Anti-‘critical race theory’ laws are working. Teachers are thinking twice about how they talk about race. *Time*. Retrieved November 8, 2023, from <https://time.com/6192708/critical-race-theory-teachers-racism/>
- 177 Little, A. (2023, September 15). *On the frontlines of the fight against classroom censorship*. ACLU. Retrieved November 6, 2023, from <https://www.aclu.org/news/free-speech/teachers-frontlines-classroom-censorship>
- 178 Stitzlein, S. (2021, June 21). Divisive concepts in classrooms: A call to inquiry. *Studies in Philosophy and Education*, 41, 595-612. Retrieved September 9, 2023, from <https://doi.org/10.1007/s11217-022-09842-8>
- 179 Bonilla, S., Dee, T., & Penner, E. (2021, September 7). Ethnic studies increases longer-run academic engagement and attainment. *Proceedings of the National Academy of Sciences of the USA*, 118(37)
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- Zaldana, C. (2010). *Multicultural education: What is it and does it have benefits?* CMC Senior Theses. Paper 64.
- 180 Bonilla, S. Dee, T., & Penner, E. (2021, September 7). Ethnic studies increases longer-run academic engagement and attainment. *Proceedings of the National Academy of Sciences of the USA*, 118(37).
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- 181 Bonilla, S., Dee, T., & Penner, E. (2021, Sept. 7). Ethnic studies increases longer-run academic engagement and attainment. *Proceedings of the National Academy of Sciences of the USA*, 118(37).
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- 183 Blevins, B. (2022, January). Research on equity in civics education. *The Journal of Social Studies Research*, 46, 1-6. Retrieved September 9, 2023, from <https://doi.org/10.1016/j.jssr.2021.12.001>
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- Smith, B. & Stitzlein, S. (2023, May 2). Classroom conflict, ‘divisive concepts’ and educating for democracy. In H. Tam (Ed.), *Who’s Afraid of Political Education? The Challenge to Teach Civic Competence and Democratic*



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“Most of the teachers in our study name what is underlying the bans—calling it out as whitewashing history, bad faith cultural wars, and buzz-word scare tactics from the extreme right.”

Jayakumar, U. & Kohli, R. (2023). Silenced and pushed out: The harms of CRT-bans on K-12 teachers. *Thresholds in Education*, 46(1). Retrieved November 6, 2023, from <https://academyedstudies.files.wordpress.com/2023/03/jayakumarkohlifinal.pdf>

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Oppenheimer, M. (2018, March/April). *Inside the right-wing YouTube empire that's quietly turning millennials into conservatives*. Mother Jones. Retrieved November 9, 2023, from <https://www.motherjones.com/politics/2018/03/inside-right-wing-youtube-turning-millennials-conservative-prageru-video-dennis-prager/>

Ceballos, A. & Brugal, S. (2022, July 5). Conservative Hillsdale College is helping DeSantis reshape Florida education. *Tampa Bay Times*. Retrieved October 23, 2023, from <https://www.tampabay.com/news/florida-politics/2022/07/01/conservative-hillsdale-college-is-helping-desantis-reshape-florida-education/>

Sheridan, K. (2023, Aug. 11). *Videos by PragerU, a conservative media company, can be played in Florida classrooms*. NPR. Retrieved October 23, 2023, from <https://www.npr.org/2023/08/11/1193534564/videos-by-prageru-a-conservative-media-company-can-be-played-in-florida-classroom>

- 186 “Hillsdale’s description of the Founding Fathers’ views on slavery is highly misleading. In 1781, Jefferson wrote in Notes on the State of Virginia about his belief in the ‘biological differences between blacks and whites.’ Jefferson also had a ‘purported relationship’ with his slave Sally Hemings, and it is believed that he fathered at least some of Hemings’ children. While Madison argued that slaves ‘were ‘not like merchandize’ and were ‘not consumed,’ and thus ‘could not be held as property,’ Madison chose to ‘not free his slaves in his will,’ instead leaving them to his wife, who ‘sold them off to pay debts.’ While Washington did leave instructions to free his slaves after his death, the instructions also stated that the slaves should not be freed until after his wife had also passed. Washington also ‘order[ed] an enslaved man to be whipped for walking on the lawn’ and ‘aggressively pursued runaway’ slaves. This context is not mentioned in the Hillsdale unit.”

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