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The (White) Washing of American History

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The (White) Washing of American History

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THE (WHITE) WASHING OF AMERICAN HISTORY

*Eric Petterson*¹

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INTRODUCTION

In 2019, the *New York Times Magazine* released a special issue of its magazine, called *the 1619 Project*, entirely dedicated to reframing the founding of America and placing the consequences of slavery and the contributions of Black Americans as central to America.² *The 1619 Project* quickly became a national lightning rod—the book version of the project reached the top 100 on the bestseller lists of Amazon.com and Barnes&Noble.com more than a month before its release date, and several states responded by banning the teaching of *The 1619 Project*

1. Eric Petterson, J.D. Candidate, University of Florida Levin College of Law, 2023. The Author would like to thank Nancy Dowd for her helpful comments and insight on this Article.

2. See NIKOLE HANNAH-JONES & THE NEW YORK TIMES MAGAZINE, *THE 1619 PROJECT: A NEW ORIGIN STORY* (Caitlin Roper, Ilena Silverman & Jake Silverstein eds., 2021); *The 1619 Project*, N.Y. TIMES MAG. (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html>.

in schools.³ Bans on teaching *The 1619 Project* have erroneously referred to its contents under the catch-all phrase critical race theory.⁴ In fact, critical race theory is a decades-old legal and academic framework that denotes that systemic racism is embedded in laws, institutions, and policies that uphold racial inequalities.⁵ The backlash to *The 1619 Project* has led to the ban of its teaching in schools across the country, with legislation passed in various states based on model legislation circulated by conservative activist groups and think tanks.⁶ These laws not only ban so-called critical race theory but also include bans on “divisive concepts,” which range from such topics as “anti-racism” to “collective guilt” to “critical self-reflection.”⁷ This Article will begin with a discussion of the manufactured controversy over *the 1619 Project*. Next, this article will address the efforts to ban and promote the teaching of *The 1619 Project* and Black history in schools and conduct a comparative analysis of legislative proposals across various states to whitewash American history. Following that, this Article will briefly address constitutional issues with these laws and make an argument that a critical reading of American history is not only necessary—but essential—to the progress of this country.

3. See, e.g., Fla. Admin. Code Ann. r. 6A-1.094124 (Providing that instruction in the State of Florida “may not utilize material from the 1619 Project and may not define American history as something other than the creation of a new nation based largely on “universal principles stated in the Declaration of Independence.”); see also Hillel Italie, ‘1619 Project’ Book Already Amazon Bestseller, HUFFINGTON POST (Nov. 13, 2021), https://www.huffpost.com/entry/bc-us-books-1619-project_n_618fdc4ce4b0ab5f284a161e (reporting that ‘The 1619 Project’ book reached the top 100 for both Amazon and Barnes & Noble ahead of its release date); Maiysha Kai, *Take That, History-Deniers: The 1619 Project Has Already Achieved Bestseller Status Ahead of Publication*, ROOT (Nov. 15, 2021), <https://www.theroot.com/take-that-history-deniers-the-1619-project-has-ahead-1848058165>. (describing ‘The 1619 Project’ as having “become the center of a national firestorm”).

4. See Donald J. Trump, 45th President U.S., Remarks at the White House History Conference at the National Archives in Washington, D.C. (Sept. 17, 2020) (“Critical race theory, the 1619 Project, and the crusade against American history is toxic propaganda, ideological poison that, if not removed, will dissolve the civic bonds that tie us together. It will destroy our country.”); see also Brigitte Meyer, *Lawyering in the Age of Lynching*, 13 NE. U. L. REV. 389, 436 (2021).

5. Derrick A. Bell, *Who’s Afraid of Critical Race Theory*, 1995 U. ILL. L. REV. 893, 898-99 (1995); see I. Bennett Capers, *Afrofuturism, Critical Race Theory, and Policing in the Year 2044*, 94 N.Y.U. L. REV. 1, 22-23 (2019) (discussing controversy at Harvard Law School over critical race theory in 1990).

6. See, e.g., Sarah Schwartz, *Who’s Really Driving Critical Race Theory Legislation? An Investigation*, EDUC. WK. (July 19, 2021), <https://www.edweek.org/policy-politics/whos-really-driving-critical-race-theory-legislation-an-investigation/2021/07>.

7. *Id.*; see, e.g., Idaho Code § 33-138 (2021); Tenn. Code Ann. § 49-6-1019 (2022).

I. A MANUFACTURED CRISIS

The 1619 Project began as a special feature of the *New York Times Magazine* consisting of eleven essays, nine poems, eight works of short fiction, and dozens of photographs.⁸ *The 1619 Project* covers topics that touch nearly every aspect of American life, from sugar to health care to traffic to democracy.⁹ *The 1619 Project* further expanded to include a podcast, a children's book, and a book expanding on the magazine feature.¹⁰ Authors and scholars who contributed to *The 1619 Project* include the historian Kevin Kruse, the legal scholar Dorothy Roberts, the sociologist Matthew Desmond, and attorney Bryan Stevenson, among others.¹¹ *The 1619 Project* partnered with the Pulitzer Center to create a school curriculum for K-12 classrooms, higher education, and out-of-school time programs.¹² The curriculum includes teaching tips, lesson plans, activities, and a guide of other resources.¹³ They also created a Law School Initiative focused on curricular resources created by law students and professors to initiate conversations about slavery's impact on legal education and emphasize an interdisciplinary approach to legal studies.¹⁴

The 1619 Project did not immediately become the national controversy that it is today. Some of the earliest criticism of *The 1619 Project* came from an obscure Trotskyist website that argued *The 1619 Project* was dividing the working class by race and "identity" to legitimize the Democratic Party's attempt to construct an electoral coalition based on racial identities.¹⁵ Prominent historians, including Gordon Wood¹⁶ and James McPherson,¹⁷ were interviewed by the Trotskyist

8. Lauren Michele Jackson, *The 1619 Project And The Demands Of Public History*, NEW YORKER (Dec. 8, 2021), <https://www.newyorker.com/books/under-review/the-1619-project-and-the-demands-of-public-history>.

9. *Id.*

10. THE 1619 PROJECT, <https://1619books.com/> (last visited Aug. 15, 2022).

11. *Id.*

12. See generally THE 1619 PROJECT FOR EDUCATORS, <https://1619education.org/> (last visited Oct. 15, 2022); THE 1619 PROJECT CURRICULUM, <https://pulitzercenter.org/lesson-plan-grouping/1619-project-curriculum> (last visited Oct. 15, 2022).

13. *The 1619 Project Curriculum*, PULITZER CTR., <https://pulitzercenter.org/lesson-plan-grouping/1619-project-curriculum> (last visited Oct. 15, 2022).

14. *The 1619 Project Law School Initiative*, 1619 PROJECT (Feb. 17, 2021), <https://1619education.org/lesson-grouping/1619-project-law-school-initiative>.

15. Niles Niemuth et al., *The New York Times's 1619 Project: A racialist falsification of American and world history*, WORLD SOCIALIST WEB SITE (Sept. 6, 2019), <https://www.wsws.org/en/articles/2019/09/06/1619-s06.html>.

16. Tom Mackaman, *An interview with historian Gordon Wood on the New York Times' 1619 Project*, WORLD SOCIALIST WEB SITE (Nov. 27, 2019), <https://www.wsws.org/en/articles/2019/11/28/wood-n28.html>.

website, the World Socialist Web Site, and complained about not being approached or interviewed for the publication of the 1619 Project.¹⁸ Gordon Wood also expressed concern that *The 1619 Project* could be incorporated into school curricula.¹⁹ The criticism advanced on the Trotskyist website soon found strange bedfellows as traditionally conservative outlets, such as the Wall Street Journal opinion pages, promoted these criticisms.²⁰

There were legitimate critiques of *The 1619 Project* that were not grounded in right-wing politics.²¹ The Marxist political scientist Adolph Reed criticized *The 1619 Project* for emphasizing race over class and reducing every contemporary social ill to slavery, while avoiding a broader critique of capitalism.²² Leslie Harris, a professor of history at Northwestern University, said that *The 1619 Project* asked her to fact check their claims but ignored her feedback.²³ Specifically, Harris raised concerns over the claim in *The 1619 Project* that the American Revolution was fought in large part to preserve the institution of slavery.²⁴ Slavery was an issue in the American Revolution, but *The 1619 Project* overstated its claim by stating that it was one of the *main* reasons for fighting the American Revolution, according to Harris.²⁵ This claim has been one of the most contentious factual claims made by *The 1619 Project*.²⁶ Since then, *The 1619 Project* has revised the claim, emphasizing that protecting the institution of slavery was a primary motivation for some of the colonists, but not all of them.²⁷

17. Tom Mackaman, *An interview with historian James McPherson on the New York Times' 1619 Project*, WORLD SOCIALIST WEB SITE (Nov. 14, 2019), <https://www.wsws.org/en/articles/2019/11/14/mcph-n14.html>.

18. Gordon Wood Interview, *supra* note 16 (Gordon Wood explained that, “[n]one of the leading scholars of the whole period from the Revolution to the Civil War, as far [as] I know, have been consulted. I read the Jim McPherson interview and he was just as surprised as I was.”).

19. *Id.* (Gordon Wood expressed concern about the scope of the project extending to school curricula, “and yet it is so wrong in so many ways.”).

20. See, e.g., Elliot Kaufman, Opinion, *The ‘1619 Project’ Gets Schooled*, WALL ST. J. (Dec. 16, 2019), <https://www.wsj.com/articles/the-1619-project-gets-schooled-11576540494>.

21. See, e.g., Leslie M. Harris, *I Helped Fact-Check the 1619 Project. The Times Ignored Me.*, POLITICO MAG. (Mar. 6, 2020), <https://www.politico.com/news/magazine/2020/03/06/1619-project-new-york-times-mistake-122248>.

22. Tom Mackaman, *An interview with political scientist Adolph Reed, Jr. on the New York Times' 1619 Project*, WORLD SOCIALIST WEB SITE (Dec. 20, 2019), <https://www.wsws.org/en/articles/2019/12/20/reed-d20.html>.

23. Harris, *supra* note 21.

24. *Id.*

25. *Id.*

26. See Jake Silverstein, *An Update to The 1619 Project*, N.Y. TIMES MAG. (Mar. 11, 2020), <https://www.nytimes.com/2020/03/11/magazine/an-update-to-the-1619-project.html>.

27. *Id.*

Some critics of *The 1619 Project* mislabel the project as “critical race theory.”²⁸ They also mislabel school curricula across the nation and attempt to reckon with American racism and history as “critical race theory.”²⁹ Derrick Bell is considered the main founder of critical race theory in the 1970s.³⁰ Critical race theory is based on a multitudinous framework that encompasses diverse viewpoints that are contested, but it still has a few basic tenets.³¹ Critical race theory is a body of legal scholarship that is “ideologically committed to the struggle against racism, particularly as institutionalized in and by law.”³² A few of the basic tenets of critical race theory include the ideas that racism is an ordinary part of our society, race is a social construct, society is race-conscious rather than color-blind, and that legal rights are indeterminate but also incredibly important.³³ Thus, critical race theory recognizes that the voices of people of color were not considered when traditional legal standards were formulated; so critical race theorists incorporate the use of narrative to both ensure the voices of people of color are heard, and to subvert the notion that the law is objective or neutral.³⁴

Many credit the conservative activist, Christopher Rufo, with spearheading the conservative effort to demonize the 1619 Project, mislabel it as critical race theory, and ban its teaching in schools.³⁵ Rufo discovered slideshows and curricula used at anti-racism seminars put on by the City of Seattle and published the materials online.³⁶ The seminars mostly cited the works of Ibram X. Kendi, an anti-racism

28. Meyer, *supra* note 4.

29. *Id.*

30. Carlo A. Pedrioli, *Under a Critical Race Theory Lens*, 7 BERKELEY AFR.-AM. L. & POL'Y REP. 93, 96 (2005) (citing Cornel West, *Foreword to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, at xi (Kimberlé Crenshaw et. al. eds., 1995)).

31. See Adrien K. Wing, *Is There A Future for Critical Race Theory?*, 66 J. LEGAL EDUC. 44, 48 (2016).

32. Derrick A. Bell, *Who's Afraid of Critical Race Theory?*, 1995 U. ILL. L. REV. 893, 898 (1995).

33. Wing, *supra* note 31.

34. See Eleanor M. Brown, *The Tower of Babel: Bridging the Divide Between Critical Race Theory and “Mainstream” Civil Rights Scholarship*, 105 YALE L.J. 513 (1995) (describing critical race theory's use of narrative to subvert the supposed objectivity of the law).

35. See e.g., Benjamin Wallace-Wells, *How a Conservative Activist Invented the Conflict Over Critical Race Theory*, NEW YORKER (June 18, 2021), <https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory>; Adam Harris, *The GOP's ‘Critical Race Theory’ Obsession*, THE ATLANTIC (May 7, 2021), <https://www.theatlantic.com/politics/archive/2021/05/gops-critical-race-theory-fixation-explained/618828/> (“If a single person bears the most responsibility for the surge in conservative interest in critical race theory, it is probably Christopher Rufo.”).

36. See Christopher F. Rufo, *Separate but Equal*, CHRISTOPHER RUFO (Jul. 29, 2020), <https://christopherrufo.com/separate-but-equal/>.

scholar,³⁷ and Robin Diangelo, the author of books about Whiteness Studies.³⁸ Rufo read the footnotes of Kendi and DiAngelo's work and learned that they often cited critical race scholars, such as Kimberlé Crenshaw and Derrick Bell.³⁹ Rufo's article in *City Journal* inspired a flood of whistleblowers who complained to him about diversity seminars and training.⁴⁰

Rufo had found his boogeyman, and believed critical race theory was the perfect villain to symbolize the culture war that his conservative counterparts had been fighting against progressive racial ideology since the Obama era.⁴¹ Rufo has openly detailed his agenda to destroy the public school system, warning that conservatives are "preparing a strategy of laying siege to the institutions."⁴² Rufo advocated for reducing federal and state control over public education in order to give parents, who Rufo claims have been forced to place their children in "substandard schools with leftist ideologues[,] control over public school funding.⁴³ Rufo aimed to "politicize the bureaucracy" that he viewed as being dominated by liberals by using the debate over critical race theory as a means to challenge liberal ideology and create conservative power centers.⁴⁴ The crusade against critical race theory is a crusade against the very idea of public education, which, some believe, is "part of the long war against public goods and collective responsibility fought by conservatives on behalf of hierarchy and capital."⁴⁵

It was not long before Rufo's crusade against critical race theory and public education garnered the attention of the Trump administration.⁴⁶ On September 2, 2020, Rufo appeared on *Tucker Carlson Tonight* and described critical race theory as an "existential threat to the United States" that was being "weaponized against core American

37. See generally, IBRAM X. KENDI, *HOW TO BE AN ANTRACIST* (2019).

38. See ROBIN J. DIANGELO, *WHITE FRAGILITY: WHY IT'S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM* (2018).

39. Wallace-Wells, *supra* note 35.

40. Harris, *supra* note 35.

41. Wallace-Wells, *supra* note 35.

42. Michelle Goldberg, *Democrats Desperately Need Schools to Get Back to Normal*, N.Y. TIMES (Nov. 8, 2021), <https://www.nytimes.com/2021/11/08/opinion/public-school-enrollment.html>.

43. Christopher F. Rufo, *Laying Siege to the Institutions*, Speech Delivered at Hillsdale College (May 16, 2022) (adapted transcript available at <https://christopherrufo.com/laying-siege-to-the-institutions/>).

44. Wallace-Wells, *supra* note 35.

45. Jamelle Bouie, *Democrats, You Can't Ignore the Culture Wars Any Longer*, N.Y. TIMES (Apr. 22, 2022), <https://www.nytimes.com/2022/04/22/opinion/red-scare-culture-wars.html>.

46. Wallace-Wells, *supra* note 35.

values.”⁴⁷ Knowing that then-President Trump was a regular viewer of *Tucker Carlson Tonight*, Rufo declared that the President had the authority to issue an executive order to ban critical race theory training throughout the federal government.⁴⁸ The very next day, Trump’s chief of staff, Mark Meadows, called Rufo and told him that Trump had seen his segment on *Tucker Carlson Tonight*.⁴⁹ Meadows elicited Rufo’s assistance in drafting an executive order help to draft an executive order banning Critical Race Theory training from the federal government.⁵⁰

A. Executive Order and “Divisive Concepts”

On September 22, 2020, the White House issued an executive order entitled *Combating Race and Sex Stereotyping*.⁵¹ The executive order clearly lays out its ideological underpinnings in the first section of the order – claiming diversity training “promote[s] divisiveness in the workplace and distract[s] from the pursuit of excellence and collaborative achievements in public administration.”⁵² The executive order claims the mantle of Martin Luther King Jr., Abraham Lincoln, and the Black soldiers of the 54th Massachusetts Infantry Regiment who fought in the Civil War, as living embodiments of the principle expressed in the Declaration of Independence that “all men are created equal.”⁵³ The executive order even compares critical race theorists to Stephen A. Douglas, President Lincoln’s political rival, because of his position that the United States government was made by white men, for the benefit of white men.⁵⁴ This formulation ignores that Douglas was *defending* this basis for government while critical race theorists are *criticizing* this basis for government.

47. TUCKER CARLSON TONIGHT (Fox News 2021).

48. *Id.*

49. MARK MEADOWS, THE CHIEF’S CHIEF 121 (2021).

50. *Id.* at 120-21.

51. See *Combating Race and Sex Stereotyping*, 85 Fed. Reg. 60,683, 60, 685 (Sept. 22, 2020) (this executive order was later revoked by President Joseph Biden on his first day in the executive office); See *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 Fed. Reg. 7,009, 7012 (Jan. 20, 2021).

52. *Combating Race and Sex Stereotyping*, 85 Fed. Reg. at 60,684.

53. *Combating Race and Sex Stereotyping*, 85 Fed. Reg. at 60,683.

54. *Id.* (During the presidential debate with Abraham Lincoln, Stephen A. Douglas said that, in his opinion, “[the United States] Government was made by our fathers on the white basis. It was made by white men for the benefit of white men and their posterity forever, and was intended to be administered by white men in all time to come.”); *Fifth Presidential Debate in Galesburg, Illinois*, NAT’L PARK SERV. (Oct. 7, 1858), <https://www.nps.gov/liho/learn/historyculture/debate5.htm>.

In prohibiting training on “divisive concepts” for federal contractors, federal agencies, and the military, the executive order defined the term by providing a list of nine concepts deemed divisive under the executive order.⁵⁵ As defined by the executive order, divisive concepts include the notion that the United States is fundamentally racist, the concept that an individual should bear responsibility for actions committed in the past by others of the same race, and the idea that any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of race.⁵⁶ The executive order expressly prohibits the United States Uniformed Services, including the United States Armed Forces, from “teach[ing], instruct[ing], or train[ing] any member of the United States Uniformed Services . . . to believe any of the divisive concepts” defined in the executive order.⁵⁷ The executive order imposes a similar restriction on federal contractors, prohibiting them from using “any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating,” including the divisive concepts listed in the executive order.⁵⁸ Under the executive order, federal contractors who fail to comply could face cancellation of their contracts and be deemed ineligible for further Government contracts.⁵⁹ A contractor who provided training for a federal agency and taught “divisive concepts” could also face monetary sanctions.⁶⁰ The definition of divisive concepts effectively silenced diversity training programs throughout the federal government and laid the groundwork for states to model this language when passing their own laws to ban critical race theory by other means.⁶¹ The executive order prompted a floodgate of pro-

55. *Id.*

56. Combating Race and Sex Stereotyping, 85 Fed. Reg. at 60,683 (“‘Divisive concepts’ means the concepts that (1) one race or sex is inherently superior to another race or sex; (2) the United States is fundamentally racist or sexist; (3) an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously; (4) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; (5) members of one race or sex cannot and should not attempt to treat others without respect to race or sex; (6) an individual’s moral character is necessarily determined by his or her race or sex; (7) an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex; (8) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or (9) meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.”).

57. Combating Race and Sex Stereotyping, 85 Fed. Reg. at 60,685.

58. Combating Race and Sex Stereotyping, 85 Fed. Reg. at 60,685.

59. Combating Race and Sex Stereotyping, 85 Fed. Reg. at 60,685.

60. Combating Race and Sex Stereotyping, 85 Fed. Reg. at 60,685.

61. Schwartz, *supra* note 6.

posed legislation across the United States at the state level, which sought to ban training on critical race theory by state agencies and in the public school system and echoed the definition of divisive concepts used in President Trump's executive order.⁶²

Executive Order 13950 wrapped itself in the shawl of the civil rights struggle, yet misrepresented the history of the civil rights struggle in its call to ban diversity seminars for federal employees and contractors.⁶³ Those same civil rights activists whose names were used in the executive order to disguise its underlying intentions, in fact, had realized long ago that the United States had never lived up to the principles expressed in the Declaration of Independence that "all men are created equal."⁶⁴ The executive order offers a masterclass in Orwellian obfuscation, claiming that "[o]ur Founding documents rejected these racialized views of America,"⁶⁵ despite the protection they afforded to the institution of slavery and to the interests of slaveholders. For instance, our Founding documents ratified the Three-Fifths Compromise, which gave slave owners more political power by including enslaved people in the calculus to apportion the House of Representatives.⁶⁶ Our Founding documents also prohibited Congress from abolishing importation of slaves at any time before 1808⁶⁷ and afforded slaveowners the right to seize slaves who escaped to free states, which no state law could restrain or regulate.⁶⁸ Thus, the executive order attempts to flip much of American history on its head to

62. See, e.g., H.B. 377, 66th Leg., 1st Reg. Sess. (Idaho 2021) (prohibiting Idaho public schools from compelling students to affirm "divisive concepts" and mirroring the definition of divisive concepts used in President Trump's executive order); H.B. 1508, 67th Leg., 1st Spec. Sess. (N.D. 2021) (banning instruction in critical race theory, and defining critical race theory as "the theory that racism is not merely the product of individual bias or prejudice, but that racism is systemically embedded in American society and the American legal system to facilitate racial inequality"); H.B. 1218, 93rd Leg., 1st Reg. Sess. (Ark. 2021) (banning teaching of critical race theory in Arkansas public schools); S.B. 627, 93rd Leg., 1st Reg. Sess. (Ark. 2021) (prohibiting "divisive concepts" in Arkansas state agency training).

63. Combating Race and Sex Stereotyping, 85 Fed. Reg. at 60,683 (expressing the purpose of the executive order is to ensure the United States lives up to its creed that "all men are created equal").

64. Dr. Martin Luther King, Jr., Speech on the Steps of the Lincoln Memorial (Aug. 28, 1963) ("I have a dream that one day this nation will rise up and live out the true meaning of its creed: We hold these truths to be self-evident, that all men are created equal.").

65. Combating Race and Sex Stereotyping, 85 Fed. Reg. at 60,685; See also GEORGE ORWELL, NINETEEN EIGHTY-FOUR (1961) (explaining the ways in which his experience in the Spanish Civil War educated him on the failures of Soviet communism, whose tactics of oppression and obfuscation mirrored those of the fascists the communists were fighting despite existing on opposite ends of the political spectrum).

66. U.S. CONST. art. I, § 2, cl. 3.

67. U.S. CONST. art. I, § 9, cl. 1.

68. U.S. CONST. art. IV, § 2, cl. 3.

make it appear that diversity programs and diversity training are the real racism we should all be worried about.

B. 1776 Commission and 1776 Report

On November 2, 2020, President Trump issued an executive order establishing the 1776 Commission—a commission dedicated to promoting “patriotic education” throughout the country.⁶⁹ The executive order asserted that children were being taught in public school to hate their own country.⁷⁰ It warned that teaching a critical reading of American history “could fray and ultimately erase the bonds that knit our country and culture together[,]” and called for unity through a “rediscovery of a shared identity rooted in our founding principles.”⁷¹ It takes the position that emphasis should be placed on teaching unifying aspects of American history.⁷² Significantly, it argues that parents and local school boards should have more influence over curriculum.⁷³ In doing so, the executive order explicitly calls for state and local officials to introduce and pass legislation and curricula aimed at teaching one version of American history that is “patriotic” and “unifying” at the expense of teaching a critical reading of American history.⁷⁴

Two months later, in January of 2021, the 1776 Commission released a report concluding, in part, that the task of renewing our nation includes restoring a patriotic education which valorizes our Founders and emphasizes that racism is a thing of the past.⁷⁵ Addressing challenges to America’s principles, the report claims the notion that the Founders were “hypocrites who didn’t believe in their stated principles” is false and has caused enormous damage to our civic unity and social fabric.⁷⁶ The report identifies other threats to America’s

69. Establishing the President’s Advisory 1776 Commission, 85 Fed. Reg. at 70,951 (Nov. 2, 2020) (the executive order was later revoked by President Joseph Biden on his first day in the executive office); *See* Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. at 7,009, 7,012.

70. *Id.* (“Despite the virtues and accomplishments of this Nation, many students are now taught in school to hate their own country, and to believe that the men and women who built it were not heroes, but rather villains.”).

71. *Id.*

72. *Id.* (“Thus it is necessary to provide America’s young people access to what is genuinely inspiring and unifying in our history, as well as to the lessons imparted by the American experience of overcoming great national challenges.”).

73. *Id.* (“Parents and local school boards must be empowered to achieve greater choice and variety in curriculum at the State and local levels.”).

74. *Id.*

75. THE PRESIDENT’S ADVISORY STATE 1776 COMMISSION, THE 1776 REPORT (Comm. Rep. 2021).

76. *Id.*

principles including slavery, progressivism, fascism, and communism.⁷⁷

Notwithstanding that the committee was ordered to identify founding principles that existed over 200 years ago, its report detailing its conclusions and findings lacks a bibliography and fails to identify any sources to support its conclusions.⁷⁸ The report was widely criticized by historians for lacking intellectual rigor, whitewashing American history, appropriating Black leaders.⁷⁹

C. *Activist Efforts and State Legislation*

Following the 2020 presidential election and President Trump's loss at reelection, conservative activist groups and former Trump administration officials continued their fight against critical race theory.⁸⁰ Conservative activists and former Trump administration officials built a network of donors and think tanks dedicated to combatting diversity training programs and so-called critical race theory.⁸¹ For instance, Trump's former director of the Office of Management and Budget, Russell Vought, is the president of an advocacy group called Citizens for Renewing America.⁸² The group offered model legislation for states based on the "divisive concepts" defined in Executive Order 13950.⁸³ Citizens for Renewing America also released a toolkit to teach local conservative activists how to influence their school board and to

77. *Id.*

78. *Id.*

79. See, e.g., Kenya Evelyn, *Historians rail against Trump administration's 1776 Commission*, THE GUARDIAN (Jan. 22, 2021), <https://www.theguardian.com/us-news/2021/jan/22/1776-commission-report-trump-administration-historians> (referring to the report as a "puerile, politically reactionary document"); Jennifer Schuessler, *The Ideas Behind Trump's 1776 Commission Report*, N.Y. TIMES (Jan. 19, 2021), <https://www.nytimes.com/2021/01/19/arts/1776-commission-claims-trump.html> (pointing out that the report was written without the input of any professional historians of the United States and does not include a bibliography or list of citations); Ibram X. Kendi (@DrIbram), TWITTER (Jan. 18, 2021, 9:07 PM), <https://twitter.com/DrIbram/status/1351350475338211330> (opining that the report makes it seem as if the "slaveholding founding fathers were abolitionists" and "Americans were the early beacon of the global abolitionist movement").

80. See Schwartz, *supra* note 6.

81. *Id.*

82. See CITIZENS FOR RENEWING AMERICA, <https://citizensrenewingamerica.com/about/> (last visited Nov. 10, 2022).

83. *Model School Board Language to Prohibit Critical Race Theory*, CITIZENS RENEWING AM. (June 4, 2021), <https://citizensrenewingamerica.com/issues/model-school-board-language-to-prohibit-critical-race-theory-2/>.

prevent critical race theory from being taught in schools.⁸⁴ Another advocacy group, the Alliance for Free Citizens, employed Kris Kobach, who ran Trump's voter fraud commission.⁸⁵ Alliance for Free Citizens also promotes model legislation based on the "divisive concepts" defined in Executive Order 13950.⁸⁶ Yet another conservative advocacy group filled with former Trump administration officials and advisers, the America First Policy Institute, has also assisted states with passing legislation to ban the teaching of "divisive concepts."⁸⁷

The controversy over critical race theory was on the back burner for several months after the election until Fox News put the issue into heavy rotation on their network.⁸⁸ Beginning in March 2021, Fox News mentioned critical race theory over 1,300 times in the span of three months.⁸⁹ On March 15, 2021, Rufo boasted that critical race theory was now branded and that he, along with others, were driving up its negative perceptions, and vowed to make critical race theory toxic.⁹⁰ Six weeks after Fox News began its campaign to elevate the issue of critical race theory, it was trending on Google.⁹¹ Fox News did not invent the controversy over critical race theory, but they made the controversy salient for their millions of viewers, thereby influencing other national news networks to make the issue more salient in mainstream culture.⁹² As one journalist noted, critical race theory "didn't really go anywhere until Fox decided to make it the latest outrage of its

84. *Toolkit: Combatting Critical Race Theory in Your Community*, CITIZENS RENEWING AM. (June 8, 2021), <https://citizensrenewingamerica.com/issues/combating-critical-race-theory-in-your-community/>.

85. Kris W. Kobach, General Counsel, ALL. FREE CITIZENS, <https://www.allianceforfreecitizens.org/about-us/kris-kobach/index> (last visited Nov. 10, 2022).

86. See CITIZENS FOR RENEWING AMERICA, *supra* note 82.

87. See *Critical Race Theory*, AM. FIRST POL'Y INST., <https://americafirstpolicy.com/priorities/critical-race-theory> (last visited Aug. 15, 2022).

88. Kevin Drum, *The Real Source of America's Rising Rage*, MOTHER JONES (2021), <https://www.motherjones.com/politics/2021/07/american-anger-polarization-fox-news/>.

89. Lis Power, *Fox News' obsession with critical race theory, by the numbers*, MEDIA MATTERS (June 15, 2021), <https://www.mediamatters.org/fox-news/fox-news-obsession-critical-race-theory-numbers>.

90. Christopher Rufo (@realchrisrufo), TWITTER (Mar. 15, 2021, 12:17 PM), <https://web.archive.org/web/20210609235759/https://twitter.com/realchrisrufo/status/1371541044592996352> ("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.").

91. See Drum, *supra* note 88.

92. Drum, *supra* note 88; Jeremy Barr, *Critical Race Theory is the hottest topic on Fox News. And it's only getting hotter*. Wash. Post (June 24, 2021), <https://www.washingtonpost.com/media/2021/06/24/critical-race-theory-fox-news/>

White viewers.”⁹³ In sum, the controversy over critical race theory was ignited by the activist Christopher Rufo, the Trump White house and their allies poured gasoline on the controversy, and Fox News turned the controversy into a full-blown wildfire.

D. *The Liberal and Critical Responses*

On January 20, 2021, on his first day in office, President Biden revoked Trump’s executive order banning divisive concepts.⁹⁴ President Biden issued Executive Order 13,985, entitled *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, which revoked Trump’s executive order and directed the federal government to pursue a comprehensive approach to advance equity for everyone.⁹⁵ Biden’s order defined “equity” as “the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment. . . .”⁹⁶ Biden’s executive order called for federal agencies to review their programs and assess whether underserved communities faced systemic barriers in accessing benefits and programs undertaken by these federal agencies.⁹⁷ Additionally, the executive order also called for equitable delivery of government benefits and opportunities, and the allocation of federal resources to advance equity and opportunity for underserved communities.⁹⁸

Many liberals reacted to the manufactured crisis over critical race theory by mocking conservatives, saying that they did not even know what critical race theory was.⁹⁹ Other critics downplayed the outrage of parents and local school boards as completely guided by Republican operatives and experts.¹⁰⁰ Critical race theorist Kimberle Crenshaw has argued that the backlash is actually part of a larger historical pattern of backlash to progressive reforms.¹⁰¹ Crenshaw said the manufactured crisis over critical race theory was to distract from

93. Drum, *supra* note 88.

94. Exec. Order No. 13,985, 86 Fed. Reg. 7,009 (Jan. 20, 2021).

95. *Id.*

96. *Id.*

97. *Id.* at 7011.

98. *Id.*

99. Wallace-Wells, *supra* note 35.

100. *Id.*

101. Jon Weiner & Kimberlé Crenshaw, *The Predictable Backlash to Critical Race Theory: A Q&A With Kimberlé Crenshaw*, NATION (July 5, 2021), <https://www.thenation.com/article/politics/critical-race-kimberle-crenshaw/>.

the problem of structural racism and instead emphasize diversity training and seminars.¹⁰² She argued that following the murder of George Floyd, elites within society, including corporations, powerful people, and institutions who shape opinions within our culture, created the potential for a broad anti-racist alignment that threatened conservative media and political elites.¹⁰³ According to Crenshaw, “reform itself creates its own backlash, which reconstitutes the problem in the first place.”¹⁰⁴ She emphasized that anti-racist seminars could be a force for good but could also be seen as a shortcut to rooting out structural racism within our country when there is no true shortcut.¹⁰⁵ Addressing structural racism is a long, grueling process that takes dedication, hard work, and determination in the face of pessimism and cynicism.

There are at least seventeen states that promote expanded education on race and bias, with some focusing on Black history, while others focus on Asian American history, or Latino history, or all of the above.¹⁰⁶ For instance, Connecticut was the first state to require all high schools to offer African American Studies and Latino Studies.¹⁰⁷ Delaware passed a law requiring school districts and charter schools to incorporate Black history into their curricula for grades Kindergarten through Twelve.¹⁰⁸ Delaware’s law requires school curricula to include, at minimum, a lesson on the relationship between white supremacy and slavery, including how the “tragedy of slavery was perpetuated through segregation,” the contributions of Black people to American arts, history, culture, and the central role that racism played in the Civil War.¹⁰⁹ California was among the first states to make ethnic studies a high school graduation requirement, including their “four

102. Wallace-Wells, *supra* note 35.

103. *Id.*

104. Vivian E. Hamilton, *Reform, Retrench, Repeat: The Campaign Against Critical Race Theory, Through the Lens of Critical Race Theory*, 28 WM. & MARY J. RACE, GENDER & SOC. JUST. 61 (2021).

105. Wallace-Wells, *supra* note 35.

106. Cathryn Stout & Thomas Wilburn, *CRT Map: Efforts to restrict teaching racism and bias have multiplied across the U.S.*, CHALKBEAT (Feb. 1, 2022), <https://www.chalkbeat.org/22525983/map-critical-race-theory-legislation-teaching-racism>. (state-by-state interactive map displaying efforts to expand education on racism, bias, the contributions of specific racial or ethnic groups to U.S. history)

107. *An Act Concerning the Inclusion of Black and Latino Studies in the Public School Curriculum*, H.B. 7082, 2019 Gen. Assemb. (June 21, 2019) (codified as amended in scattered sections of CONN. GEN. STAT. § 10-16b).

108. *An Act to Amend Title 14 of the Delaware Code Relating to Black History Education*, H.B. 198, 151st Gen. Assemb. (June 17, 2021) (codified as amended at DEL. CODE ANN. Tit. 14, § 4143).

109. DEL. CODE ANN. tit. 14, § 4143 (2021).

foundational disciplines” of African American Studies, Latina Studies, Native American Studies, and Asian American and Pacific Islander Studies.¹¹⁰ Even some more conservative states, such as Wyoming, are mandating the teaching of Indigenous history.¹¹¹ Louisiana expanded courses that make students eligible for a scholarship program to include African American history along with courses that were previously included, such as Western Civilization and European history.¹¹² Fittingly, these states have taken a diverse approach to expanding the teaching of history to include marginalized and oppressed groups. Together, the actions of these states demonstrate a path forward for teaching a fuller, more robust history of our country.

Critical race theory began as an obscure legal theory that was debated and pondered by academics.¹¹³ A dedicated group of conservative activists, led by Christopher Rufo, initiated a campaign to warp critical race theory into an all-encompassing term to disparage nearly any race-conscious program or teaching of history.¹¹⁴ Spurred on by Rufo, the Trump White House elevated the issue through executive orders that banned the teaching of “divisive concepts” to federal contractors, employees, and members of the armed forces.¹¹⁵ The Trump White House continued its assault, and more directly rebuked *The 1619 Project*, by releasing *The 1776 Report* to promote “patriotic education” that would “unify” the country.¹¹⁶ National conservative activist groups and organizations continued the assault on critical race theory by creating model legislation and toolkits for state and local actors to use in their fight against critical race theory.¹¹⁷ Fox News then elevated the issue by mentioning critical race theory over 1,300 times in the short span of three months.¹¹⁸ Since then, the issue has spread like wildfire, with state and local activists, parents, and school boards

110. MacKenzie Mays, *California students will have to take ethnic studies to get a diploma*, POLITICO (Oct. 14, 2021), <https://www.politico.com/news/2021/10/14/california-students-ethnic-studies-diploma-515972>.

111. See WYO. STAT. ANN. § 21-4-602 (2017).

112. See LA. STAT. ANN. §17:5025 (2021).

113. See Bell, *supra* note 32.

114. See Wallace-Wells, *supra* note 35.

115. Combating Race and Sex Stereotyping, 85 Fed. Reg. at 60,683.

116. Establishing the President’s Advisory 1776 Commission, 85 Fed. Reg. at 70,951 (the executive order was later revoked by President Joseph Biden on his first day in the executive office); See Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. at 7,009, 7,012.

117. See Schwartz, *supra* note 6.

118. See Drum, *supra* note 88.

pushing the agenda further and further.¹¹⁹ An NBC News analysis found that at least 165 national and local organizations are trying to disrupt or block lessons on race and gender in schools.¹²⁰ However, many states across the nation are pushing back and making efforts to include more education on race, bias, and the history of groups who have traditionally been ignored in classrooms.¹²¹

II. LEGISLATIVE EFFORTS TO BAN CRITICAL RACE THEORY AND THE 1619 PROJECT

After this manufactured crisis was created and spread across the country, conservative state legislatures took up the mantle and began proposing and passing laws to limit or ban the teaching of *The 1619 Project* and critical race theory in schools and workplaces.¹²² Many of these laws are modeled after Trump's Executive Order 13,950, which defined "divisive concepts."¹²³ The laws refer to ideas defined under the "divisive concepts" umbrella as critical race theory.¹²⁴ Some laws restrict teachers from compelling children to adhere to or adopt critical race theory, while other laws prohibit the mere discussion of certain topics surrounding race.¹²⁵ Many of the laws that have been proposed and passed into law across the country are heavily adopted from model legislation propagated by conservative organizations, including the Trump-connected Citizens for Renewing America and the Alliance for Free Citizens.¹²⁶ The model legislation proposed by Citizens for Renewing America is less restrictive than the model legislation proposed by Alliance for Free Citizens, which bans the teaching of certain subjects.¹²⁷

Model legislation is not being promoted only by relatively new advocacy groups such as Citizens for Renewing America and the Alliance for Free Citizens.¹²⁸ Rather, more traditional, powerful

119. See Char Adams, Allan Smith & Aadit Tambe, *Map: See which states have passed critical race theory bills*, NBC NEWS (June 17, 2021), <https://www.nbcnews.com/news/nbcblk/map-see-which-states-have-passed-critical-race-theory-bills-n1271215> [hereinafter *Adams, Smith & Tambe Article*].

120. *Id.*

121. See Stout, *supra* note 106.

122. *Id.*

123. Adams, *supra* note 119.

124. See Schwartz, *supra* note 6.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

conservative advocacy groups—such as the Manhattan Institute, where Christopher Rufo works, and the Heritage Foundation—are also promoting model legislation to silence discussion of America’s history of racism.¹²⁹ The Heritage Foundation has model legislation that is more similar to the model legislation promoted by Citizens for Renewing America.¹³⁰ The Heritage Foundation’s model legislation copies the language that prohibits educational employees and institutions from compelling students and teachers “to adopt, affirm, adhere to, or profess specific beliefs,” such as the “divisive concepts” defined in Trump’s Executive Order or the tenets of “critical race theory.”¹³¹ The Manhattan Institute has similarly worded model legislation.¹³² Neither of these advocacy groups promote the more restrictive language promoted by the Alliance for Free Citizens.¹³³

The Heritage Foundation, as a traditional power center within the Republican Party and the conservative movement, has had great success promoting its model legislation.¹³⁴ The Heritage Foundation webpage boasts that Mississippi Governor, Tate Reeves, signed a bill into law that used Heritage’s recommended language.¹³⁵ A fellow at the Heritage Foundation, Jonathan Butcher, said that the Heritage Foundation spoke to legislators in New Hampshire, Louisiana, South Carolina, Texas, and Utah about its model legislation.¹³⁶ Butcher and Rufo also led a workshop on combatting critical race theory that at least twenty state legislatures registered to attend.¹³⁷ Thus, conservative advocacy groups that arose during the Trump era have joined with more traditional conservative advocacy groups to pass legislation attempting to silence the discussion of critical race theory and *The 1619 Project* all over the country.¹³⁸

129. See *Protecting K–12 Students from Discrimination*, HERITAGE FOUND., <https://www.heritage.org/article/protecting-k-12-students-discrimination> (last visited Nov. 10, 2022); James R. Copland, *How to Regulate Critical Race Theory in Schools: A Primer and Model Legislation*, MANHATTAN INST. (Aug. 26, 2021), <https://www.manhattan-institute.org/copland-critical-race-theory-model-legislation>.

130. *Protecting K-12 Students from Discrimination*, *supra* note 129.

131. *Id.*

132. Copland, *supra* note 129.

133. *The Teaching Racial and Universal Equality (“TRUE”) Act*, ALL. FREE CITIZENS, https://www.allianceforfreecitizens.org/static/media/Model_Teaching_Racial_and_Universal_Equality_Act.a99a426f990e929e93b0.pdf (last visited Aug. 15, 2022).

134. *States Use Heritage’s Model Legislation to Reject Critical Race Theory in Classrooms*, AM. HERITAGE (Mar. 18, 2022).

135. *Id.*; see also Miss. Code § 37-13-2 (2022).

136. Schwartz, *supra* note 6.

137. *Id.*

138. *Id.*

According to PEN America, there have been 122 bills introduced across the country in state legislatures to restrict training and teaching on topics of race and gender in schools.¹³⁹ Since January 2021, at least forty-two states have introduced legislation aimed at curtailing the teaching of critical race theory or limiting how educators can discuss issues evolving around racism, sexism, and oppression.¹⁴⁰ Conversely, seventeen states have undertaken efforts to expand education on racism and bias.¹⁴¹ Therefore, efforts to teach America's actual history of racism is vastly outnumbered and is being vastly overpowered by efforts to sweep America's racial history under the rug and teach a "unifying" history that erases Black Americans from our history and instills a fake "patriotic education."¹⁴²

A. *Idaho and Tennessee Adopt Model Legislation for Renewing America*

Idaho is among the states that passed legislation closely matching the model legislation proposed by Citizens for Renewing America.¹⁴³ The Idaho legislation prohibits public schools, public institutions of higher education, and school districts from compelling students to "personally affirm, adopt, or adhere" to the tenets of "critical race theory."¹⁴⁴ The text of the model legislation outlined by Citizens for Renewing America reads:

The tenets outlined in section (1)(B), often found in 'critical race theory,' undermine a free society and sound education and otherwise exacerbate and inflame divisions on the basis of sex, race, ethnicity, religion, color, national origin, or other criteria in ways contrary to the unity of the nation, the founding principles of the nation, and the well-being of the citizens of [insert local school board jurisdiction].¹⁴⁵

Likewise, the Idaho legislation reads:

The Idaho legislature finds that tenets outlined in subsection (3)(a) of this section, often found in 'critical race theory,' undermine the

139. Jeffrey Sachs, *Steep Rise in Gag Orders, Many Sloppily Drafted*, PEN AM. (Jan. 24, 2022), <https://pen.org/steep-rise-gag-orders-many-sloppily-drafted/>.

140. Sarah Schwartz, *Map: Where Critical Race Theory Is Under Attack*, PEN AM. (May 9, 2022), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06>.

141. Stout, *supra* note 106.

142. *Id.*

143. Schwartz, *supra* note 140.

144. Idaho Code § 33-138 (2021).

145. CITIZENS FOR RENEWING AMERICA'S MODEL LEGISLATION, *supra* note 82.

objectives outlined in subsection (1) of this section and exacerbate and inflame divisions on the basis of sex, race, ethnicity, religion, color, national origin, or other criteria in ways contrary to the unity of the nation and the well-being of the state of Idaho and its citizens.¹⁴⁶

The wording of the model legislation proposed by Citizens for Renewing America and the actual legislation signed into law by the Idaho governor are nearly identical.¹⁴⁷

There are, however, a few minor differences between the model legislation and Idaho Bill 377.¹⁴⁸ One difference between the model legislation and the Idaho legislation is that the model legislation not only prohibits compelling or directing students to adhere to certain beliefs defined as “divisive concepts” or “critical race theory” but also prohibits courses of instruction that directly or indirectly “encourage[] or incentivize[]” students to personally affirm or adopt such beliefs.¹⁴⁹ The model legislation prohibits units of study, courses of instruction, or any other curricular or extracurricular offering from “directing, facilitating, enabling, permitting, sponsoring, supporting or otherwise compelling students to personally affirm, adopt, or adhere to any of the tenets identified in” the notion of “divisive concepts” or “critical race theory.”¹⁵⁰ Prohibiting public schools and school districts from merely “permitting” students to adhere to certain beliefs implies that these students must be compelled to not adhere to these beliefs.¹⁵¹ This provision of the model legislation also implies that teaching materials that even mention any “divisive concepts,” such as the United States being fundamentally or systematically racist, are prohibited from being included in units of study or courses of instruction.¹⁵² Under those definitions, teaching materials that mention Jim Crow or slavery would be prohibited because Jim Crow and slavery are racist systems and may enable or permit students to adopt the belief that the United States is fundamentally or systematically racist.

Idaho’s legislation does not explicitly ban the teaching of *The 1619 Project*, but the model legislation proposed by Citizens for Renewing America does.¹⁵³ The model legislation proposed by Citizens for

146. Idaho Code § 33-138 (2021).

147. Compare Idaho Code § 33-138 (2021), with CITIZENS FOR RENEWING AMERICA’S MODEL LEGISLATION, *supra* note 82.

148. *Id.*

149. *Id.*

150. CITIZENS FOR RENEWING AMERICA’S MODEL LEGISLATION, *supra* note 82.

151. *Id.*

152. *Id.*

153. *Id.*; Idaho Code § 33-138 (2021).

Renewing America says the purpose of the legislation is to prohibit “forms of government-sanctioned or facilitated-racism in our school district.”¹⁵⁴ The model legislation goes on to define “government sanctioned or facilitated racism” as any concept, theory, ideology, action, omission, custom, policy or practice enacted by public officials or taxpayer-funded entities that reinforces, supports, or affirms the ideas promoted by *The 1619 Project*.¹⁵⁵ This definition of racism is an Orwellian maneuver that turns the actual definition of racism on its head. Notwithstanding that defining racism based on the content of a single book is absurd, a definition of racism based on *The 1619 Project*—a vast and diverse work of essays and poetry—would also prohibit affirming ideas such as White musicians being inspired by Black musicians,¹⁵⁶ or that some highways were constructed to segregate neighborhoods.¹⁵⁷

The model legislation also prohibits the teaching of critical race theory, which it defines, in part, as any ideology that “teaches or promotes that social problems are created by racist or patriarchal societal structures and systems.”¹⁵⁸ The wording of this provision is so vague and all-inclusive that it appears to prohibit the teaching of slavery or Jim Crow, since these were racist structures and systems that created social problems. Other racist systems or structures that created social problems, and thus would be prohibited, include redlining, excluding many Black people from Social Security, and mass incarceration.¹⁵⁹ Idaho’s bill is not so upfront. However, the bill passed in Idaho has approximately the same effect as the model legislation proposed by the Citizens for Renewing America group by silencing the discussion of racism in America, as teachers say they are self-censoring due to these laws.¹⁶⁰

Tennessee also passed a bill similar to this model legislation that does not explicitly mention the 1619 Project, but it bans “divisive

154. Idaho Code § 33-138 (2021).

155. CITIZENS FOR RENEWING AMERICA’S MODEL LEGISLATION, *supra* note 82.

156. Wesley Morris, *Why Is Everyone Always Stealing Black Music?*, N.Y. TIMES MAG. (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/music-black-culture-appropriation.html>.

157. Kevin M. Kruse, *How Segregation Caused Your Traffic Jam*, N.Y. TIMES MAG. (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/traffic-atlanta-segregation.html>.

158. Citizens for Renewing America’s Model Legislation, *supra* note 82.

159. See IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* (W.W. Norton & Co. 2005).

160. Adrian Florido, *Teachers Say Laws Banning Critical Race Theory Are Putting A Chill On Their Lessons*, NPR (May 28, 2021), <https://www.npr.org/2021/05/28/1000537206/teachers-laws-banning-critical-race-theory-are-leading-to-self-censorship>.

concepts” laid out in Trump’s Executive Order.¹⁶¹ Both Citizens for Renewing America’s model legislation and Tennessee’s Bill 580 explain definitions of “divisive concepts” that are remarkably similar to the definition of “divisive concepts” prescribed by Trump’s Executive Order.¹⁶² Furthermore, Tennessee Bill 580 prohibits the use of training materials or programs that use so-called “divisive concepts.”¹⁶³ Tennessee’s bill also prohibits the use of funds appropriated by the state to incentivize a faculty member of a school to incorporate “divisive concepts” into school curricula.¹⁶⁴ This mirrors a section of Citizens for Renewing America’s model legislation that prohibits school districts from expending funds to incorporate the concept of some of these so-called “divisive concepts” into school curricula.¹⁶⁵ In sum, Tennessee’s Bill 580 closely mirrors the model legislation promoted by Citizens for Renewing America.¹⁶⁶

Tennessee’s law is actually more restrictive than Idaho’s because Tennessee’s law prohibits teachers and educational institutions from not only compelling students to adhere to or adopt certain beliefs, but it prohibits even *including* certain concepts in courses of instruction.¹⁶⁷ Thus, teachers are prevented from assigning materials or even discussing certain concepts in their classroom, even in an impartial manner.¹⁶⁸ Therefore, Tennessee’s law is more restrictive than Idaho’s and has more of a chilling effect on education.

The Tennessee and Idaho bills demonstrate the willingness of state legislatures to closely match the legislative wording of conservative activist groups such as Citizens for Renewing America, while slightly changing the wording of their own legislation to distance themselves from such groups.¹⁶⁹ Both the model legislation and the laws passed by Tennessee and Idaho accomplish the same task – silencing discussion of a critical reading of American history.¹⁷⁰ Laws in these states, whether they are merely proposed or are actually enacted into

161. 2021 Tenn. Pub. Acts c.493. Tenn. Code Ann. § 49-6-1019 (2022).

162. *Id.*

163. *Id.*

164. *Id.*

165. CITIZENS FOR RENEWING AMERICA’S MODEL LEGISLATION, *supra* note 82.

166. *Id.*

167. Tenn. Code Ann. § 49-6-1019 (2022); Idaho Code § 33-138 (2021).

168. *Id.*

169. *Id.*

170. Laura Meckler & Hannah Natanson, *New critical race theory laws have teachers scared, confused and self-censoring*, WASH. POST (Feb. 14, 2022), <https://www.washingtonpost.com/education/2022/02/14/critical-race-theory-teachers-fear-laws/> [hereinafter *Meckler & Natanson Article*].

law, have created a “climate of fear” and subsequently many teachers avoid discussions of race altogether to protect themselves.¹⁷¹ Florida’s Education Commissioner has even bragged that he has “censored or fired or terminated numerous teachers.”¹⁷² Laws have not only created a “climate of fear,” but have led to a Missouri teacher being fired for asking students to examine their own racial privilege,¹⁷³ a Tennessee teacher who was fired for telling his students white privilege was a “fact,”¹⁷⁴ and the first Black principal at a Texas high school was suspended after writing a letter calling on the community to fight systemic racism after George Floyd was murdered.¹⁷⁵ While the model legislation and the actual legislation passed in these states may differ on minor issues, the purpose of each piece of legislation is the same – silencing discussion of race and racism in America.

B. *Alliance for Free Citizens Has More Restrictive Model Legislation*

The Alliance for Free Citizens, a conservative advocacy group that employs Kris Kobach, has also proposed model legislation for banning critical race theory in schools.¹⁷⁶ Ironically, the legislation is entitled *The Teaching Racial and Universal Equality (TRUE) Act*.¹⁷⁷ The model legislation again adopts the “divisive concepts” that originated in Trump’s Executive Order nearly word for word.¹⁷⁸ The model legislation proposed by the Alliance for Free Citizens is more restrictive than model legislation proposed by other groups, such as Citizens for Renewing America.¹⁷⁹ This is because it not only prohibits mandating that students adhere or believe in certain concepts, but it bans any materials that even promote certain concepts.¹⁸⁰ This means

171. *Id.*

172. *Id.*

173. Claudette Riley, *Southwest Missouri high school teacher accused of using critical race theory loses job*, SPRINGFIELD NEWS-LEADER (Apr. 7, 2022), <https://www.news-leader.com/story/news/education/2022/04/07/greenfield-missouri-teacher-kim-morrison-accused-teaching-critical-race-theory-crt-loses-job/7264924001/>.

174. Hannah Natanson, *A White teacher taught White students about White privilege. It cost him his job.*, WASH. POST (Dec. 6, 2021), <https://www.washingtonpost.com/education/2021/12/06/tennessee-teacher-fired-critical-race-theory/>.

175. Brian Lopez, *How a Black high school principal was swept into a “critical race theory” maelstrom in a mostly white Texas suburb*, TEXAS TRIB. (Sept. 18, 2021), <https://www.texastribune.org/2021/09/18/colleyville-principal-critical-race-theory/>.

176. *The Teaching Racial and Universal Equality (“TRUE”) Act*, *supra* note 133.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

that the model legislation promoted by the Alliance for Free Citizens stifles free speech in the sense that it prohibits the mere discussion of certain concepts.¹⁸¹ Not only are educators prohibited from forcing students to “adhere” to these principles, but they are prohibited from even bringing such concepts up for discussion in class.¹⁸² Thus, the model legislation proposed by the Alliance for Free Citizens is more restrictive than the model legislation proposed by Citizens for Renewing America.

The model legislation proposed by the Alliance for Free Citizens takes its prohibition one step further – it prohibits schools from hosting speakers that hold views included in the list of “divisive concepts.”¹⁸³ This model legislation even prohibits the use of state funds to teach or communicate such theories.¹⁸⁴ The legislation requires the attorney general to investigate *any* complaint by *any* resident of the state about a possible violation of the legislation.¹⁸⁵ If the attorney general’s investigation finds that an educational institution is in violation of this law, the attorney general is required to order the cessation of state funds to the educational institution for the remainder of the fiscal year and the entirety of the following fiscal year.¹⁸⁶ This model legislation again takes its enforcement one step farther by giving private citizens standing and a private cause of action to file a civil complaint in a district court claiming that an institution has violated the model legislation.¹⁸⁷ Thus, any private citizen residing in a state that passes such a law can bring a civil suit against an educational institution that teaches “divisive concepts.”¹⁸⁸

State legislators in Pennsylvania introduced House Bill 1532, copying the legislation proposed by the Alliance for Free Citizens, but they have not passed it into law.¹⁸⁹ Pennsylvania’s bill even adopted the title from the model legislation.¹⁹⁰ Pennsylvania’s bill is nearly identical to the model legislation proposed by the Alliance for Free Citizens.¹⁹¹ Even the subheadings of both the bill and the model legislation are essentially the same and are in the same exact order: definitions,

181. *Id.*

182. Schwartz, *supra* note 6.

183. Schwartz, *supra* note 6.

184. *The Teaching Racial and Universal Equality (“TRUE”) Act*, *supra* note 133.

185. *Id.*

186. *Id.*

187. *The Teaching Racial and Universal Equality (“TRUE”) Act*, *supra* note 133.

188. *Id.*

189. H.B. 1532, 2021 Gen. Assemb., Reg. Sess. (Pa. 2021).

190. H.B. 1532, 2021 Gen. Assemb., Reg. Sess. (Pa. 2021).

191. H.B. 1532, 2021 Gen. Assemb., Reg. Sess. (Pa. 2021).

communication and action by public entities, educational instruction at schools and post-secondary institutions receiving public funds, requirement for public contractors, enforcement, private cause of action, and severability. Both define “contractor” and “racist or sexist concept” the same way.¹⁹² Racist or sexist concepts that are prohibited from being taught include the idea that the United States of America is fundamentally racist and the idea that “an individual should receive favorable treatment due to the individual’s race or sex.”¹⁹³ The latter concept implies that the mere idea of affirmative action cannot be taught in schools, since affirmative action arguably provides favorable treatment due to an individual’s race, regardless of whether or not such favorable treatment is done to promote diversity or correct a historical wrong.

The area where the model legislation proposed by the Alliance for Free Citizens even further stifles the teaching of a critical reading of American history is found in the section entitled “educational instruction at schools and post-secondary institutions receiving public funds.”¹⁹⁴ This section states that “[n]o instructor, teacher, or professor at any public school district or public post-secondary institution receiving any funding from the State of [State] shall teach, advocate, or encourage the adoption of any racist or sexist concept,” which includes the ideas that people should receive favorable treatment based on their race and merit-based systems are racist.¹⁹⁵ Similarly, Pennsylvania’s bill states that “[n]o instructor, teacher or professor at a public school district or public postsecondary institution shall: (i) teach, advocate or encourage the adoption of a racist or sexist concept while instructing students.”¹⁹⁶ Thus, both versions of this legislation are more restrictive than the model legislation proposed by Citizens for Renewing America because they prohibit the *teaching* of concepts. The legislation proposed by Citizens for Renewing America prohibited teachers from facilitating or enabling students to adopt certain viewpoints, but, theoretically, such concepts could still be discussed, depending on the definition of facilitating and enabling.¹⁹⁷

The vagueness of these bills has caused confusion among teachers and school districts about what they are allowed and not allowed to

192. H.B. 1532, 2021 Gen. Assemb., Reg. Sess. (Pa. 2021).

193. H.B. 1532, 2021 Gen. Assemb., Reg. Sess. (Pa. 2021).

194. *The Teaching Racial and Universal Equality (“TRUE”) Act*, *supra* note 133.

195. *Id.*

196. H.B. 1532, 2021 Gen. Assemb., Reg. Sess. (Pa. 2021).

197. CITIZENS FOR RENEWING AMERICA, *supra* note 82.

discuss in their classrooms.¹⁹⁸ This has the intended effect of silencing any critical reading of America’s history and ensuring that teachers provide a sanitized version of history that contributes to the “unity” of our country. In Idaho, teachers may still discuss “divisive concepts” but are prohibited from compelling students to adopt or adhere to certain views.¹⁹⁹ Pennsylvania’s House Bill 1532 was not enacted into law, but if it is it would prohibit teachers from even bringing these topics up for discussion.²⁰⁰ The vague wording of these bills, along with the extremely harsh penalties and the granting of a private right of action to all citizens of the state, is leading teachers to be extremely cautious and avoid controversial topics whatsoever.²⁰¹ There is an incredibly thin line between facilitating a discussion on certain topics and enabling or facilitating students to adopt certain views on issues. In sum, these bills are vague and confusing and are already causing teachers to unnecessarily self-censor themselves and their curricula to avoid being sued and investigated by a state’s attorney general or by any private citizen in their state who brings a civil suit, thereby stifling discussion of American racism and history.²⁰²

III. CONSTITUTIONAL ISSUES

This paper will not conduct an in-depth analysis of the constitutional issues raised by these laws, but legal scholars contend that legislation being proposed and passed in states have serious constitutional issues.²⁰³ Most legal scholars say that these bills infringe on the right to free speech and will likely be dismissed in court.²⁰⁴ The legislative and policy director at the Foundation for Individual Rights in Education says that “none of the bills are fully constitutional.”²⁰⁵ Erwin Chemerinsky, the dean of the law school at the University of California Berkeley, says the laws are too vague to give teachers clear direction on what can and cannot be taught.²⁰⁶ Free speech advocates believe the bills are unconstitutional and will not survive challenges in

198. Meckler & Natanson, *supra* note 170.

199. Idaho Code § 33-138 (2021).

200. H.B. 1532, 2021 Gen. Assemb., Reg. Sess. (Pa. 2021).

201. Meckler & Natanson, *supra* note 170.

202. Meckler & Natanson, *supra* note 170.

203. Harris, *supra* note 35.

204. *Id.*

205. *Id.*

206. Jennifer Schuessler, *Bans on Critical Race Theory Threaten Free Speech, Advocacy Group Says*, N.Y. TIMES (Nov. 9, 2021), <https://www.nytimes.com/2021/11/08/arts/critical-race-theory-bans.html>.

court, but the bills may serve their purpose anyway – to silence discussion of systemic racism in schools, companies, and throughout the government.²⁰⁷

There is some Supreme Court precedent to suggest that the laws may not be unconstitutional for K-12 education.²⁰⁸ In *Garcetti v. Ceballos*, the Supreme Court established that government employees cannot rely on First Amendment protection if they are punished for speech that is part of official work duties.²⁰⁹ However, the Court specifically stated that its holding in *Garcetti* does not necessarily apply to academic freedom or classroom instruction.²¹⁰ The Court acknowledged that there may be “additional constitutional interests” related to expression in academic scholarship or classrooms that are not accounted for by the Court’s decision in *Garcetti*.²¹¹ The Court stated: “We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.”²¹² The Court did not apply the *Garcetti* ruling to speech related to teaching, but it left the door open for a future Court to do so. In sum, many legal scholars believe these laws are unconstitutional, but there is Supreme Court precedent that would allow the Court to uphold these laws if it decides to do so.

Civil rights groups, such as the American Civil Liberties Union and the Lawyers’ Committee for Civil Rights, have challenged Oklahoma’s anti critical race theory law in federal court.²¹³ The lawsuit argues that Oklahoma’s law is unconstitutional under both the First and Fourteenth Amendments.²¹⁴ The lawsuit argues Oklahoma’s law violates the First Amendment by placing unlawful restraints on the free expression of students and teachers through its vague and overbroad terms.²¹⁵ The lawsuit also claims that Oklahoma’s law violates the Fourteenth Amendment by denying access to equitable, culturally relevant teaching and ideas aimed at advancing educational and civic equality of historically marginalized students.²¹⁶ As the Oklahoma lawsuit and other likely legal challenges wind their way

207. Harris, *supra* note 35.

208. See, e.g., *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

209. *Id.* at 424.

210. *Id.* at 425.

211. *Id.*

212. *Id.*

213. See *Black Emergency Response Team v. O’Connor*, No. 5:21-cv-01022-G (W.D. Okla. Filed Oct. 19, 2021).

214. *Id.*

215. *Id.*

216. *Id.*

through the court system, a Supreme Court with a conservative supermajority lies in waiting, armed with the precedent of *Garcetti*.

V. A CRITICAL READING OF AMERICAN HISTORY IS NECESSARY AND ESSENTIAL

Attempts to silence *The 1619 Project* and prohibit the teaching of critical race theory in schools emphasize the importance of “unity” in our country.²¹⁷ President Trump’s 1776 Commission explicitly stated that it was meant to instill “patriotic education.”²¹⁸ Such attempts at teaching a certain version of history, to the exclusion of different interpretations or different events in history, serve to whitewash American history. One purpose of this attempt to whitewash American history is to protect white children and adults from confronting what their ancestors and their country did in the past. The goal is to protect white innocence. Another objective of these educational gag orders is to create a national mythology that only unites the country by stripping Black people of autonomy and ignoring the role of Black people in history. Such a goal is consistent with the most famous compromises throughout American history, such as the Three-Fifths Compromise which served the interest of slaveholding White people in the South while stripping Black people of their full humanity.²¹⁹ The rights of Black people are “compromised” to create “unity.” Attempts to teach a national mythology grounded in “patriotic education” rather than history that acknowledges the role that racism has played in America and a history emphasizes the autonomy and humanity of Black people are simply new efforts to compromise Black people out of our nation to create a false sense of unity.²²⁰

The study of history and interpretations of our nation’s history have constantly been changing.²²¹ The traditionalist view of history, particularly the Dunning School viewpoint named after Columbia University President William Archibald Dunning, taught that Reconstruction was a corrupt, political blunder that proved Black freedmen were incapable of self-government and required racial segregation.²²² The Dunning School was even able to generalize the use of

217. THE PRESIDENT’S ADVISORY 1776 COMMISSION, *supra* note 76.

218. *Id.*

219. U.S. CONST. art. I, § 2, cl. 3.

220. THE PRESIDENT’S ADVISORY 1776 COMMISSION, *supra* note 75.

221. Edmund S. Morgan, *Slavery and Freedom: The American Paradox*, 59 J. AM. HIS. 5 (1972).

222. Eric Foner, *Black Reconstruction: An Introduction*, 112 S. ATL. Q. 409 (2013).

derogatory terms such as “carpetbagger” and “scalawag” to describe northerners who settled in the South and southern white republicans, respectively.²²³ This school of historical interpretation was considered necessary to “unify” the country following the Civil War.²²⁴ Such efforts were supported by cultural interpretations and presentations of history, as seen in *Gone With the Wind* and *Birth of a Nation*.²²⁵ In order to achieve this unity, white people “compromised” the rights of Black people by installing the Jim Crow system and preventing Black people from being full citizens of the country they called home until Black people forced them to do so during the 1950s and 1960s during the civil rights movement.²²⁶

The historian Edmund Morgan is largely credited with starting the Consensus School of history, which highlighted the Founders’ shared values and principles and downplayed conflict.²²⁷ Two historians who signed a letter criticizing the 1619 Project,²²⁸ Gordon Wood²²⁹ and Sean Wilentz,²³⁰ also belong to the Consensus School. This approach to historiography was challenged in the 1950s and 1960s by historians who began to emphasize the lives of common people rather than the Founders or other elites.²³¹ One of the new focuses of study in this school of historical thought was the lives of Black people.²³² Until the 1950s and 1960s, the institution of slavery was treated as an exception to American liberty, or as an aberration of our nation’s history.²³³ Edmund Morgan, who founded the Consensus school, converted to the

223. *Id.*

224. W.E.B. DuBois, *Black Reconstruction in America: 1860-1880* 713-14 (1998).

225. Jake Silverstein, *The 1619 Project and the Long Battle Over U.S. History*, N.Y. TIMES MAG. (Nov. 9, 2021), <https://www.nytimes.com/2021/11/09/magazine/1619-project-us-history.html>.

226. *Id.*

227. Willard L. Hogeboom, *The New Left and the Revision of American History*, 2 HIST. TCHR. 51 (1968).

228. Victoria Bynum, et. al., *We Respond to the Historians Who Critiqued The 1619 Project*, N.Y. TIMES (Jan. 19, 2021), <https://www.nytimes.com/2019/12/20/magazine/we-respond-to-the-historians-who-critiqued-the-1619-project.html>.

229. Philip Gould, *Virtue, Ideology, and the American Revolution: The Legacy of the Republican Synthesis*, 5 AM. LITERARY HIST. 564 (1993).

230. William Hogeland, *Against the Consensus Approach to History*, NEW REPUBLIC (Jan. 25, 2021), <https://newrepublic.com/article/160995/consensus-approach-history>.

231. John Higham, *Changing Paradigms: The Collapse of Consensus History*, 76 J. AM. HIST. 460 (1989).

232. BENJAMIN QUARLES, ET AL., *The Negro in the American Revolution* (1996).

233. Gerald W. McFarland, *Notes on the New Left Historians*, 53 SOUNDINGS: AN INTERDISC. J. 440 (Winter 1970).

new school of historical thought and began to explore the interplay between freedom and slavery in America.²³⁴

The telling of America's history has constantly been in flux.²³⁵ The interpretation of our history has itself changed over the course of time.²³⁶ Interpretations change when new records and documents are found, but they also change as historians grapple with what perspectives to emphasize and what perspectives to downplay.²³⁷ The telling of history has never been a dry recitation of facts that are universally agreed upon.²³⁸ Moreover, American history and all of the aforementioned historical schools of thought were dominated and dictated by White historians.²³⁹ Meanwhile, history was also quietly being written by Black people whose voices were not heard.²⁴⁰ One Black historian who contributed to *The 1619 Project* said that “[h]istory is a science, a social science, but it’s also politics[,]” and that “Black historians have always known that.”²⁴¹ When Black people were written out of the body politic during slavery and Jim Crow, the stories of Black people were written out of the history books.²⁴² Only in the 1950s and 1960s, when Black people wrote themselves back into the body politic, did a new emphasis on slavery, racism, and the humanity of Black people emerge in America's historiography. As the historian Nell Irvin Painter said, “The new histories expose the sad fact that the purported syntheses of the 1950s . . . claimed to encompass all the American people but spoke only of a small segment.”²⁴³

W.E.B. Dubois said that historians determined to tell a unified story about the Civil War and Reconstruction was “a deliberate attempt so to change the facts of history that the story will make pleasant reading for Americans.”²⁴⁴ Similarly, bans on teaching *The 1619 Project* or critical race theory in schools are attempts to make reading pleasant for Americans. One of the main goals of these bans

234. Edmund S. Morgan, *Slavery and Freedom: The American Paradox*, 59 J. AM. HIST. 5 (June 1972).

235. Jonathan M. Wiener, *Radical Historians and the Crisis in American History, 1959-1980*, 76 J. AMER. HIST. 399 (Sept. 1989).

236. *Id.*

237. Silverstein, *supra* note 225.

238. David W. Blight, *The Fog of History Wars*, NEW YORKER (June 9, 2021), <https://www.newyorker.com/news/daily-comment/the-fog-of-history-wars>.

239. Silverstein, *supra* note 225.

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. DuBois, *supra* note 224, at 713.

which silence historical education is to protect white innocence by shielding White children from having to learn about the historical atrocities committed by their country, and perhaps even by their familial ancestors. Moreover, the parents of these children want to protect their own idyllic notion of their country that they were taught in school.²⁴⁵ Being forced to grapple with historical atrocities is uncomfortable and difficult, but it is necessary and essential to come to a fuller understanding of our nation's history and *everyone's* place within it.

Critics of *The 1619 Project* claim that it is divisive and fails to unify the country around a common vision of America.²⁴⁶ They also contend that they are the purveyors of “historical fact” and cloak themselves in objectivity,²⁴⁷ even though they are also practicing history as politics. Such critics contend that the Consensus School of history is more unifying and makes people feel patriotic and proud of their country.²⁴⁸ The historian Gordon Wood said about criticisms of the American Revolution: “Can a revolution conceived mainly as sordid, racist and divisive be the inspiration for a nation?”²⁴⁹ Such a criticism gives no weight to historical facts or the truth, nor does it grapple with the Founders own cognitive dissonance in writing the words of the Declaration of Independence while owning other human beings as property.²⁵⁰ As DuBois said, “we are using a version of historic fact in order to influence and educate the new generation along the way we wish.”²⁵¹ Wood and his colleagues view history as a way to unite the country and create a national patriotic myth.²⁵² But how can a telling of history that writes Black Americans out of our country's history be an “inspiration for a nation?” Emphasizing “unity” and “inspiration” while completely ignoring the humanity of Black people is no inspira-

245. Evan McMorris-Santoro & Meridith Edwards, *Tennessee parents say some books make students 'feel discomfort' because they're White. They say a new law backs them up*, CNN (Sept. 29, 2021), <https://www.cnn.com/2021/09/29/us/tennessee-law-hb-580-book-debate/index.html>.

246. THE PRESIDENT'S ADVISORY 1776 COMMISSION, *supra* note 75.

247. Sean Wilentz, *A Matter of Facts*, ATLANTIC (Jan. 22, 2020), <https://www.theatlantic.com/ideas/archive/2020/01/1619-project-new-york-times-wilentz/605152/>.

248. *Id.*

249. Gordon Wood, *How the American Revolution Worked Against Blacks, Indians, and Women*, N.Y. TIMES (Sept. 6, 2016) (book review), <https://www.nytimes.com/2016/09/11/books/review/alan-taylor-american-revolutions.html>.

250. Terry Gross & Clint Smith, *Slavery Wasn't 'Long Ago': A Writer Exposes The Disconnect In How We Tell History*, NPR (June 1, 2021), <https://www.npr.org/2021/06/01/1001243385/slavery-wasnt-long-ago-writer-exposes-the-disconnect-in-how-we-tell-history>.

251. DuBois, *supra* note 224, at 714.

252. Wood, *supra* note 249.

tion at all – it is merely another attempt to whitewash American history and disregard the lived humanity of Black people in the name of a false “unity.”

IV. CONCLUSION

Studying history in its entirety is done to understand the past and how we have arrived at the current moment. History also informs us how we can move forward and avoid the mistakes of the past. If we refuse to reckon with history, refuse to even acknowledge our own history, then we will never fully understand how we arrived at the current moment and how we can move forward. History should be more than a nice fairy tale we tell ourselves to feel good and patriotic. History that writes out the autonomy and humanity of an entire race of Americans can never be truly “unifying” or “inspiring.” A critical reading of history is not only necessary for the progress of our nation, but it is essential. Understanding the truth of our nation, learning from that truth, and honoring everyone’s humanity and autonomy is essential for progress and equality.

To reach a fuller and more complex understanding of history, and thereby a fuller and more complex understanding of how to progress forward, the country should follow in the steps of the seventeen states identified earlier that are expanding educational efforts regarding race, ethnic studies, and bias. These states are mandating the study of subjects such as African American Studies and Latino studies,²⁵³ other states are incorporating Black history into more courses,²⁵⁴ and other states are encouraging students to be “agents of social change.”²⁵⁵ These states’ efforts, coupled with litigation to combat anti-education laws across the nation, are concrete steps we can take to ensure children are taught a critical reading of American history that teaches how we have arrived at the current moment, emphasizes various viewpoints and experiences, and honors everyone’s autonomy and humanity.

253. Mays, *supra* note 110.

254. DEL. CODE. ANN. tit. 14, § 4143 (2021).

255. NEW YORK STATE BD. OF REGENTS, POLICY STATEMENT ON DIVERSITY, EQUITY AND INCLUSION IN NEW YORK STATE SCHOOLS (2021).
