

**EXPLORING LITIGATION OF ANTI-CRT STATE ACTION:  
CONSIDERING THE ISSUES, CHALLENGES & RISKS IN A  
TIME OF WHITE BACKLASH**

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## INTRODUCTION

The United States continues in an era of racial retrenchment and regression, as white backlash<sup>1</sup> intensifies nationwide.<sup>2</sup> Within this context of contemporary white backlash, Critical Race Theory (CRT), a theory taught primarily in graduate and law schools,<sup>3</sup> has become a focal point that has caught the significant attention of the general public.<sup>4</sup> The increased attention is partly a result of the use of the media apparatus by radical, right-wing groups and individuals who have framed CRT as an all-encompassing umbrella that includes within its scope any issue they perceive as a threat to the pernicious unequal, racialized status quo.<sup>5</sup> Through incessant messaging, including via

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1. I “define white backlash as a phenomenon that refers to the resistance and set of tactics a predominantly white majority has historically used to stall and regress social advancements towards racial equity.” See Matthew W. Hughey, *White Backlash in the ‘Post-racial’ United States*, 37 ETHNIC & RACIAL STUD. 721, 721–22 (2014); Raquel Muñiz & Sergio Barragán, *Disrupting the Racialized Status Quo in Exam Schools?: Racial Equity and White Backlash in Boston Parent Coalition for Academic Excellence v. The School Committee of the City of Boston*, 49 FORDHAM URB. L.J. 1043, 1044 n.4 (2022).

2. E.g., Leah M. Watson, *The Anti-“Critical Race Theory” Campaign — Classroom Censorship and Racial Backlash by Another Name*, 58 HARV. C.R.-C.L. L. REV. 487, 487 (2023); Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment*, 101 HARV. L. REV., 1331, 1331–1387 (1988); For an earlier discussion of the concept of retrenchment see Kimberlé W. Crenshaw, *This is Not a Drill: The War Against Antiracist Teaching in America*, 68 UCLA L. REV., 1702, 1707 (2022).

3. See generally RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 115–148 (4th ed. 2023) (providing a general, foundational overview of the Critical Race Theory, its formation, and current applications).

4. See Kimberlé Crenshaw, *The Manufactured Moral Panic Over Critical Race Theory*, OPEN SOC’Y FOUNDS. (Mar. 2, 2023), <https://www.opensocietyfoundations.org/voices/the-manufactured-moral-panic-over-critical-race-theory> (describing the significant public attention to Critical Race Theory as a moral panic).

5. The movement was started by Chris Rufo, who proudly boasted in the spring of 2021: “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 well as put all of the various cultural insanities under that brand category.” Christopher F. Rufo (@realchrisrufo), X (Mar. 15, 2021, 3:14 PM), <https://twitter.com/realchrisrufo/status/1371540368714428416>. A few minutes later, he noted: “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.” Christopher F. Rufo (@realchrisrufo), X (Mar. 15, 2021, 3:17 PM), <https://twitter.com/realchrisrufo/status/1371541044592996352>. See 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>.

social media and news outlets, these groups and individuals have shaped the public discourse.<sup>6</sup> The narrative that has emerged paints a gloomy picture and full-blown crisis that requires immediate amelioration: K-12 educators nationwide are indoctrinating white children into shame, self-hate, and hating the United States, and states need to adopt laws and policies to fix this.<sup>7</sup>

This emergent description caricatures the state of education. In actuality, educational institutions have increasingly adopted inclusive policies and practices responsive to decades of research that demonstrates the historical exclusion of racially marginalized students and the need to foster a sense of belonging in education.<sup>8</sup> However, the death of George Floyd, a Black man who was murdered by a police officer, catapulted public discussion of a racial reckoning nationwide in 2020<sup>9</sup> and led students to demand change<sup>10</sup> and educational institutions to revisit their efforts and adapt accordingly.<sup>11</sup>

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6. Wallace-Wells, *supra* note 5; Keith Benson, *Crying, “Wolf!” The Campaign Against Critical Race Theory in American Public Schools as an Expression of Contemporary White Grievance in an Era of Fake News*, 11 J. EDUC. AND LEARNING 1, 8–10 (2022).

7. *See* Benson, *supra* note 6, 8–10 (2022) (describing the narrative that right-wing movements painted vilifying Critical Race Theory).

8. The following sources exemplify the range of efforts that educational institutions have taken to address systemic issues of oppression: Jill Anderson & Richard Reddick, *Colleges as Courageous Spaces.*, HARV. EDCAST, (Oct. 30, 2019), <https://www.gse.harvard.edu/ideas/edcast/19/10/colleges-courageous-spaces>; *see generally* Taffye B. Clayton, *Refocusing on Diversity, Equity, and Inclusion During the Pandemic and Beyond: Lessons From a Community of Practice.* HIGHER EDUC. TODAY (Jan. 13, 2021), <https://www.higheredtoday.org/2021/01/13/refocusingdiversity-equity-inclusion-pandemic-beyond-lessons-community-practice/>; Pamela Fong, *Advancing Equity: Five Districts Focus on Improving Outcomes of Black and Latinx Students*, REG’L EDUC. LAB’Y PROGRAM (Dec. 17, 2021), <https://ies.ed.gov/ncee/rel/Products/Blog/100235>; VAJRA M. WATSON, TRANSFORMATIVE SCHOOLING: TOWARDS RACIAL EQUITY IN EDUCATION (2018) (demonstrating the range of efforts that educational institutions have taken to address systemic issues of oppression).

9. Audra D. S. Burch et al., *The Death of George Floyd Reignited a Movement. What Happens Now?*, N.Y. TIMES (June 23, 2023), <https://www.nytimes.com/2021/04/20/us/george-floyd-protests-police-reform.html>.

10. *See, e.g.*, Terry Nguyen, *Student Activists Want Change — And They’re Starting in the Classroom*, VOX (July 29, 2020, 7:30 AM), <https://www.vox.com/identities/2020/7/29/21345114/students-diversify-curriculum-change-antiracist>.

11. *How the Murder of George Floyd Changed K-12 Schooling: A Collection*, EDUCATIONWEEK, <https://www.edweek.org/leadership/how-the-murder-of-george-floyd-changed-k-12-schooling-a-collection> (last visited Feb. 28, 2024) (offering a collection of articles that detail the many efforts that educational institutions undertook prompted by the death of George Floyd).

Nonetheless, the media frenzy led to moral panic and calls for state legislators and other state actors (e.g., governors) to adopt laws and policies that would address the manufactured crisis.<sup>12</sup> By 2021, state legislators nationwide had begun to adopt laws to prevent “indoctrination” in K-12 schools and other state actors adopted regulations or policy guidance doing the same.<sup>13</sup> These laws became colloquially known as “anti-CRT” bans.<sup>14</sup> Similar measures were introduced at the federal and local levels, resulting in the introduction of more than 500 measures by federal, state, and local officials in forty-nine states by 2022.<sup>15</sup> Over 200 measures were adopted across the federal, state, and local levels.<sup>16</sup>

Researchers and scholars have begun to document trends across the bans, their magnitude, and the overall impact of the sociopolitical hostile climate and bans on schools.<sup>17</sup> The widespread adoption of the

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12. See Benson, *supra* note 6, 8-10 (2022); Crenshaw, *supra* note 4.

13. See Sarah Schwartz, *Map: Where Critical Race Theory Is Under Attack*, EDUCATIONWEEK (June 13, 2023), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06>; see generally Taifha Alexander et al., *CRT Forward Tracking Project*, UCLA SCHOOL OF L. CRITICAL RACE STUD. PROGRAM (Jan. 21, 2024), [www.crtforward.law.ucla.edu](http://www.crtforward.law.ucla.edu) (stating government actors (federally and across 49 states and their localities) introduced a total of 563 anti-“CRT” measures, 241 of which had been enacted or adopted).

14. Right-wing movements used “CRT” as a catch-all term to encompass any actions that countered racial inequity. See generally *supra* note 5 and accompanying sources. Thus, the measures to counter “CRT” became known as “anti-CRT” in the broader public discourse, as evidenced by popular press pieces. For an unexhaustive sample of the discourse see the following nationwide headlines: Peter Greene, *Teacher Anti-CRT Bills Coast to Coast: A State by State Guide*, FORBES (Feb. 16, 2022, 2:20 PM), <https://www.forbes.com/sites/petergreene/2022/02/16/teacher-anti-crt-bills-coast-to-coast-a-state-by-state-guide/?sh=6954caf84ff6>; Olivia B. Waxman, *Anti-‘Critical Race Theory’ Laws are Working. Teachers are Thinking Twice About How They Talk About Race*, TIME (June 30, 2022, 12:37 PM), <https://time.com/6192708/critical-race-theory-teachers-racism/>; and William H. Frey, *Anti-CRT Bills are Aimed to Incite the GOP Base—Not Parents*, BROOKINGS (Mar. 30, 2022), <https://www.brookings.edu/articles/anti-crt-bills-are-aimed-to-incite-the-gop-base-not-parents/>.

15. *Supra*, note 13.

16. *Id.*

17. See generally Uma Mazyck Jayakumar & Rita Kohli, *Silenced and Pushed Out: The Harms of CRT-bans on K-12 Teachers*, 46 THRESHOLDS IN EDUC., 96, 96-113 (2023). Laura Beth Kelly, *What Do So-Called Critical Race Theory Bans Say?*, 52 EDUC. RESEARCHER 248, 248-50 (2023); N. A. Marrun et al., *Indifferent, (Un)critical, and Anti-Intellectual: Framing How Teachers Grapple with Bans on Teaching Truth About Race and Racism, and Critical Race Theory*, RACE ETHNICITY & EDUC., 75, 75-98 (2023); and Jonathan Feingold & Joshua Weishart, *How Discriminatory Censorship Laws Imperil Public Education*, NAT’L EDUC. POL’Y CTR. (Nov. 30, 2023), <https://nepc.colorado.edu/publication/censorship> (collectively identifying the trends across state bans and impact of the bans in K-12 schools).

bans and these findings raise questions about the legality of the bans. Thus, I contribute to the emerging literature by focusing my analysis on a less explored area: the legal challenges to the so-called anti-CRT state bans. I examine litigation trends regarding the anti-CRT state-level bans from 2020, when the manufactured crisis began, to 2023, the latest completed legislative session as of this writing. To provide a more in-depth analysis of the legal challenges, I focus on the actions taken by state legislatures and other state-level entities (e.g., governors, administrative agencies) (hereafter collectively “state action”). One question guides the analysis: *What trends are present across litigation challenging so-called anti-CRT state action adopted 2020-2023?* The analysis shows that advocates have only challenged anti-CRT restrictions in six states, countering a mere fraction of the bans adopted in seventeen states.<sup>18</sup> These lawsuits have focused on state law violations, free speech, and due process claims.<sup>19</sup> Only one lawsuit alleging state law violations has been successful thus far. The empirical findings raise practical and normative questions. Thus, I interrogate the lack of litigation, focusing on practical and normative issues that the findings raise.<sup>20</sup>

I begin in Part I, situating the anti-CRT state action within the historical patterns of white backlash.<sup>21</sup> Then, I turn to the current study in Parts II and III.<sup>22</sup> After introducing the litigation trends from 2020-2023 in Part IV,<sup>23</sup> I turn to a discussion of practical and normative considerations raised by the lack of litigation challenging anti-CRT state action in Part V.<sup>24</sup> I conclude with reflections of potential pathways forward.<sup>25</sup>

#### I. SITUATING CONTEMPORARY ANTI-CRT STATE ACTION WITHIN HISTORICAL WHITE BACKLASH MOVEMENTS

Scholars and researchers conceptualize eras of racial retrenchment and regression as white backlash, where the magnitude of the backlash is intensified when those racialized as white collectively perceive racial progress as a substantial threat to their position in the

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18. *See infra* Part IV, including Table 1.

19. *Id.*

20. *See infra* Part V.

21. *See infra* Part I.

22. *See infra* Parts II, III.

23. *See infra* Part IV.

24. *See infra* Part V.

25. *See infra* Concluding Thoughts.

societal racial hierarchy.<sup>26</sup> As scholars note, the purpose of white backlash is to stall and regress racial progress and ultimately maintain the racialized status quo.<sup>27</sup> Today's retrenchment is marked by the years following the presidential election of President Barack Obama.<sup>28</sup> His time in office was met with significant backlash, followed by the election of a right-wing, authoritarian president that was elected, even though (and arguably because) he engaged in openly racist behavior.<sup>29</sup> The new administration breathed life into racially regressive policies and right-wing social movements that collectively have led to the current racial retrenchment and regression.<sup>30</sup>

In the midst of efforts to regress policies across a multitude of social arenas, education and schools quickly became a focal point for the administration and these right-wing social movements.<sup>31</sup> As noted

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26. See Hughey, *supra* note 1, 721-24 (chronicling white backlash movements from civil rights to contemporary times); Athena D. Mutua, *Reflections on Critical Race Theory in a Time of Backlash*, 100 DENV. L. REV. 553, 556-74 (2023) (mapping white backlash movements from the civil rights movement to the murder of George Floyd). See also generally Terry Smith, *White Backlash in a Brown Country*, 50 VALPARAISO U. L. REV. 89 (2015) (chronicling white backlash in response to the election of President Barack Obama).

27. See Hughey, *supra* note 1, at 721-22.

28. David G. Embrick et al., "*Capitalism, Racism, and Trumpism: Whitelash and the Politics of Oppression*", 17 FAST CAPITALISM 203, 208-18 (2020) (mapping Trumpism as a reaction to Obama's presidency and long history of white backlash); Mutua, *supra* note 26, at 562-63 (describing the election of Trump as a direct backlash to President Obama's tenure).

29. Embrick et al., *supra* note 28, at 208 (characterizing Trumpism as a reaction to Obama's presidency and long history of white backlash); see also Athena D. Mutua, *supra* note 26, at 562-63 ("As a political matter, President Trump was the response to President Obama's election. He rode into office on insults to Black and Brown people, women, immigrants, and the disabled, after having instigated the 'birther movement,' which challenged President Obama's birth and citizenship several years earlier.").

30. Embrick et al., *supra* note 28, at 208-18 (offering two cases in point of white backlash efforts); Mutua, *supra* note 26, at 563, 569, 573 (describing instances when Trump took action to fuel racially regressive action).

31. See Benson, *supra* note 6, 8-10 (2022) (chronicling white backlash in the educational context). The focus on education is unsurprising, given the unique position that education occupies in our democratic society. The U.S. Supreme Court has historically noted the role of education in the United States, noting that public schools are crucial "in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests." *Ambach v. Norwick*, 441 U.S. 68, 76 (1979). Most recently, the Supreme Court labeled K-12 schools "nurseries of democracy." *Mahanoy Area School D. v. B. L.*, 141 S. Ct. 2038, 2046 (2021). Thus, movements targeting schools as places to restrict racial progress, such as the anti-CRT movement, have the potential to shape race relations from an early age and thereby prevent or stall racial progress in our democratic society.

above, the murder of George Floyd catapulted educational institutions to revisit and address their role in propagating racial oppression and systemic racism.<sup>32</sup> Soon after educational institutions began to adopt efforts in response to the murder of Floyd and right-wing activist Christopher Rufo called attention to these efforts, the Trump administration connected with Rufo and subsequently issued Executive Order (EO) 13950.<sup>33</sup> The EO banned institutional training that promoted, what the administration termed, “divisive concepts.”<sup>34</sup> As civil rights advocates have noted, the language used in the EO acted as a proxy for what the political rhetoric made clear: the administration sought to

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32. See generally *How the Murder of George Floyd Changed K-12 Schooling: A Collection*, *supra* note 11, for a collection of articles that detail the many efforts that educational institutions undertook prompted by the death of George Floyd; see also Watson, *supra* note 2, and accompanying sources (exemplifying how educational institutions adopted efforts to address racial oppression and systemic racism).

33. Wallace-Wells, *supra* note 5 (detailing the story and strategy of Rufo); Fabiola Cineas, *Critical Race Theory, and Trump’s War on It, Explained*, VOX (Sept. 24, 2020, 2:20 PM), <https://www.vox.com/2020/9/24/21451220/critical-race-theory-diversity-training-trump>.

34. In relevant part, EO 13950 defines prohibited divisive concepts as follows:

(a) “**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.

The term “**divisive concepts**” also includes any other form of **race or sex stereotyping** or any other form of **race or sex scapegoating**.

prohibit educational institutions from discussing and addressing the accurate history of systemic racism in the United States.<sup>35</sup>

Though federal anti-CRT efforts were stalled when a court partially struck-down the EO<sup>36</sup> and the Biden administration ultimately revoked it,<sup>37</sup> the EO served a broader purpose, acting as a blueprint for an onslaught of state-level laws (so-called anti-CRT bans).<sup>38</sup> Many of the bans and state action adopted or adapted the language of EO 13950 and banned the discussion of the same “divisive concepts” in K-12 schools.<sup>39</sup> Functionally, these state actions ban schools from engaging in historically-accurate discussions of race and systemic racism.

## II. OVERVIEW OF THE CURRENT STUDY

This current study of the legal challenges to so-called anti-CRT bans is part of a larger project examining the use of law and policy designed to counter education equity efforts at the federal, state, and local levels. This article focuses on the legal challenges to anti-CRT state action (i.e., state legislative or executive action from 2020-2023) that prohibits K-12 schools from engaging in historically-accurate discussions of race and systemic racism. The following question guided the current inquiry: *What trends are present across litigation challenging so-called anti-CRT state action adopted 2020-2023?*

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35. LDF Statement on Revocation of Trump Administration’s Anti-Diversity Executive Order, LEGAL DEF. FUND 1 (Jan. 20, 2021), <https://www.naacpldf.org/press-release/ldf-statement-on-revocation-of-trump-administrations-anti-diversity-executive-order/> (noting “The Trump administration’s Executive order was a sweeping attempt at historical revision and unprecedented censorship in the workplace. It was a ban on free speech, freedom of expression, and critical thinking, and an attempt to erase the lived experiences of people of color, women, and members of the LGBTQ+ community.”).

36. Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump, 508 F. Supp. 3d 521, 547-48 (2020).

37. Revocation of Executive Order 13950, U.S. DEP’T OF LABOR, [https://www.dol.gov/agencies/ofccp/executive-order\\_13950#:~:text=On%20January%2020%2C%202021%2C%20as,things%2C%20prohibited%20federal%20contractors%20and;LDF%20Statement%20on%20Revocation%20of%20Trump%20Administration%20s%20Anti-Diversity%20Executive%20Order,](https://www.dol.gov/agencies/ofccp/executive-order_13950#:~:text=On%20January%2020%2C%202021%2C%20as,things%2C%20prohibited%20federal%20contractors%20and;LDF%20Statement%20on%20Revocation%20of%20Trump%20Administration%20s%20Anti-Diversity%20Executive%20Order,) *supra* note 35.

38. Watson, *supra* note 2, at 509–512 (2023) (detailing how the right-wing movement shifted their sociopolitical efforts to the state level after Biden took office, including by drafting model legislation to codify EO 13950 into state law and using media as a tool to incite moral panic).

39. See generally Alexander et al., *supra* note 13 (additionally recognizing student researchers LaToya Baldwin Clark, Isabel Flores-Ganley, Lynn McLelland, Paton Moody, Nicole Powell, Kyle Reinhard, Milan Smith) (for a database of laws and other policies passed at the federal, state, and local levels).



The research team comprised three research assistants and the lead researcher (i.e., the Author). The research team systematically collected the so-called anti-CRT state action and legal challenges to the bans. As noted above, data collection and analysis are ongoing for the larger project. For this Article, I focus on the first wave of data collection and analysis.

### III. DATA AND METHODS

The data comprised state action in states prohibiting K-12 school classrooms from engaging in historically-accurate discussions of race and systemic racism. To collect the state bans, the research team created an initial list of search terms informed by the literature and the public discourse surrounding the state prohibitions (e.g., “educational gag orders,” “CRT ban,” and “divisive concepts law.”). Each research team member focused on a select number of states and searched for the state actions prohibiting the teaching of historically-accurate discussions of U.S. race relations. To conduct the systematic search, the team used multiple databases to identify, triangulate, and ensure that no pertinent state action was missing from the dataset.<sup>40</sup> Subsequently, the team used two legal research databases (LexisNexis and Bloomberg Law) and a general search engine (Google, Inc.) to identify the legal challenges to the state bans. Thereafter, using descriptive content

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40. *Id.* (The research teams used are (1) States’ legislative and executive webpages (e.g., State Department of Education); (2) EdWeek’s Tracker (Sarah Schwartz, *Map: Where Critical Race Theory is Under Attack*, EDUCATIONWEEK (updated June 13, 2023), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06>); (3) UCLA’s CRT tracker (*see* Alexander et al., *supra* note 13 (last visited Jan. 2024)); (4) New York Magazine’s Tracker (Alice Markham-Cantor et al., *28 States 71 Bills, and an Education System Transformed: A Running Tally of How Republicans are Remaking the American Classroom*, NAT’L INTEREST: INTELLIGENCER (May 8, 2023), <https://nymag.com/intelligencer/2023/05/us-education-state-school-laws.html>.); and (5) Google search engine).

analysis,<sup>41</sup> we identified the legal challenges in each lawsuit. Lastly, we identified trends across the legal challenges across states.<sup>42</sup>

#### IV. FINDINGS: TRENDS ACROSS LITIGATION CHALLENGING SO-CALLED ANTI-CRT STATE ACTION ADOPTED 2020-2023

The analysis of the state action and legal challenges to them showed that seventeen states adopted bans that undermine historically-accurate teaching of race in K-12 schools, and litigation only challenged state action in six of the states (See Table 1). The state action was largely concentrated in the southern region of the United States, with few exceptions, e.g., New Hampshire. State action comprised primarily state laws (i.e., adopted house and senate bills). Notably, as of the time of this writing, there were states that had also adopted other state action to implement and achieve the prohibitions in addition to state laws: for example, Idaho (Senate Resolution 118),<sup>43</sup> North Dakota (Senate Resolution 4011),<sup>44</sup> South Dakota (Executive Order 2022-02, Executive Order 2021-11),<sup>45</sup> Tennessee (Department of

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41. *See generally* Klaus Krippendorf, CONTENT ANALYSIS: AN INTRODUCTION TO ITS METHODOLOGY (2004) (defining content analysis and providing an overview of how to conduct content analysis. The content analysis focused on the following processes: a) identifying the type of state action (i.e., legislative v. executive) challenged in the lawsuits and b) identifying federal and state challenges in each lawsuit, c) quantifying the types of substantive legal challenges across all lawsuits to identify the themes, and d) identifying and quantifying the lawsuits that have succeeded and identifying under what type of law).

42. *See generally* Krippendorf, *supra* note 41 (for details regarding the process of descriptive analysis).

43. *See generally* S. Con. Res. 118, 66th Leg., Reg. Sess. (Idaho 2022) (Idaho Senate Resolution to implement non-accurate teachings of race in K-12 schools).

44. *See generally* S. Con. Res. 4011, 67th Leg., Reg. Sess. (N.D. 2021) (North Dakota Senate Resolution to implement non-accurate teachings of race in K-12 schools).

45. *See generally* S.D. Exec. Order No. 02 (2022) (Executive Order explaining that CRT “is a political and divisive ideology that teaches a distorted view of the United States if America”. The Governor of the state of SD orders that all K-12 schools not direct students to affirm, adopt, or adhere to “inherently divisive concepts”); *See generally*, S.D. Exec. Order No. 11 (2021) (Executive Order explains that he has become “increasingly concerned about a growing movement throughout the country to reject patriotic education”, and thus Orders that all state Department of Education officials will “refrain from applying for *any* federal grants in history or civics until after the 2022 South Dakota legislative session” and that during the legislative session it is anticipated that legislation will be created to “prohibit any curriculum that requires or encourages students to take positions against one another on the basis of race, sex, or the historical activity of members of a student’s race or sex”).

Education Regulation),<sup>46</sup> Utah (State Board of Education Resolution 277-328),<sup>47</sup> and Virginia (Executive Order 1).<sup>48</sup> State action often borrowed from the language in EO 13950, with a few exceptions where state action explicitly prohibited teaching of CRT.<sup>49</sup>

The lawsuits challenging state action were only present in six states: Arizona,<sup>50</sup> Arkansas,<sup>51</sup> Florida,<sup>52</sup> New Hampshire,<sup>53</sup>

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46. See generally TENN. COMP. R. & REGS. 0520-12-04 (2022) (explaining prohibited concepts in Tennessee education K-12).

47. See generally UTAH ADMIN. CODE R. 277-328 (LexisNexis 2022) (explaining Utah's administrative policy on education equity in schools).

48. See generally Va. Exec. Order No. 1 (2022) (Governor of Virginia Orders that any policies that promote "divisive or inherently racist concepts" be removed).

49. Ark. Senate Bill No. 294, 94th Leg. (2023) ("The secretary shall ensure that no public school employee or public school student shall be required to attend trainings or orientations based on prohibited indoctrination or Critical Race Theory. . . . Steps required . . . include the review of the rules, policies, materials, and communications of the Department of Education to identify any items that may, purposely or otherwise, promote teaching that would indoctrinate students with ideologies, such as Critical Race Theory, otherwise known as 'CRT.'"); see Idaho Senate Resolution *supra* note 43 ("WHEREAS, this theories taught under 'critical race theory' and writings in the 'The 1619 Project' attempt to re-educate children in to the belief that they are to be ashamed of or limited by their race or ethnicity . . . we encourage the schools of Idaho to provide children with knowledge, strength, and virtue of a free people by viewing the history both clearly and wholly, not only the offenses but also the triumphs."); H.B. 377, 66th Leg., 1st Reg. Sess. (Idaho 2021); H.B. 1508, 67th Leg., Spec. Sess. (N.D. 2021) ("A school district or public school may not include instruction relating to critical race theory in any portion of the district's required curriculum . . .").

50. *Ariz. Sch. Bds. Ass'n v. State*, 501 P.3d 731, 734 (Ariz. 2022) ("We conclude that, because these bills violate the title requirement, they are void in part, and because SB 1819 also violates the single subject rule, it is entirely void.").

51. *Ark. Dep't of Educ. v. Jackson*, 675 S.W.3d 416, 421 (Ark. 2023) ("In this instance, the legislative journals reflect that the LEARNS Act and its emergency clause were adopted by separate votes. The House Journal indicates a separate roll call and vote for the emergency clause. Likewise, the Senate Journal indicates a separate roll call and vote for the emergency clause. Thus, according to the official record, the emergency clause was passed in compliance with article 5, section 1 of the Arkansas Constitution.").

52. *Falls v. DeSantis*, No. 4:22cv166-MW/MJF, 2023 U.S. Dist. LEXIS 87714, at \*1, \*4-5 (N.D. Fla 2023) ("For reasons set out below, Plaintiffs' remaining claims are DISMISSED without prejudice for lack of standing and Plaintiff Falls's second motion for preliminary injunction, ECF No. 99, is DENIED as moot.").

53. *Loc. 8027 v. Edelblut*, 651 F. Supp. 3d 444, 446, 464 (2023) ("The plaintiffs in these consolidated actions are public school teachers, administrators, and teachers' associations. They challenge the constitutionality of several recent amendments to New Hampshire's education and antidiscrimination laws that restrict what public school teachers can say to their students about how to understand, prevent, and redress discrimination in our society. Several of the plaintiffs contend that the new laws violate their First Amendment right to free speech. They all argue that the laws

Oklahoma,<sup>54</sup> and Tennessee.<sup>55</sup> Lawsuits in two states (Arizona and Arkansas) argued state claims,<sup>56</sup> while three states challenged prohibitions on federal legal claims (Florida, Oklahoma, and Tennessee)<sup>57</sup> and one incorporated both state and federal legal claims (New Hampshire).<sup>58</sup>

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are unconstitutionally vague. The defendants have responded with a motion to dismiss for failure to state a claim. . . . Defendants' motion to dismiss AFT plaintiffs' First Amendment claim (Doc. No. 36) is granted in part and denied in part. Defendants' motions to dismiss the plaintiffs' vagueness claims (Doc. Nos. 36 and 37) are denied.").

54. Amended Complaint at para. 1, *Black Emergency Response Team v. O'Connor*, No. 5:21-cv-01022-G (W.D. Ok. 2021) ("This is an action brought by Oklahoma students and educators challenging the state legislature's unprecedented and unconstitutional censorship of discussions about race and gender in schools through the passage of House Bill 1775 . . . and its implementing regulations . . .").

55. Complaint at para. 1, *Tenn. Educ. Ass'n v. Gonzalez Reynolds*, No. 3:23-cv-00751 (M.D. Tenn. 2023) ("This is an action brought by the Tennessee Education Association ('TEA') and Tennessee K-12 public school educators Kathryn Vaughn, Roland Wilson, Michael Stein, Rebecca Dickerson, and Mary McIntosh, challenging Public Chapter No. 493 . . . and its implementing regulations . . . (the 'Rules,' together with the Act, the 'Prohibited Concepts Ban' or the 'Ban.'").

56. *Ariz. Sch. Bds. Ass'n*, 501 P.3d at 734 ("We consider whether four legislative budget reconciliation bills ('BRBs') . . . violate the Arizona Constitution's 'title requirement' or 'single subject rule.' See *Ariz. Const. art. 4, pt. 2, § 13.*"); *Ark. Dep't of Educ.*, 675 S.W.3d at 418 (Ark. 2023) ("At issue is the circuit court's finding that the emergency clause contained within the Act 237 of 2023 (the 'LEARNS ACT') did not receive a separate roll-call vote as required by the Arkansas Constitution, rendering the clause procedurally invalid.").

57. Complaint at 19-25, *Falls v. DeSantis*, No. 4:22cv166-MW/MJF, 2023 U.S. Dist. LEXIS 87714, at \*1 (N.D. Fla 2023) (outlining the alleged violations of First and Fourteenth Amendment constitutional rights); Amended Complaint at 68-76, *Black Emergency Response Team v. O'Connor*, No. 5:21-cv-01022-G (W.D. Ok. 2021) (outlining the federal legal claims); Complaint at 49-50, *Tenn. Educ. Ass'n v. Gonzalez Reynolds*, No. 3:23-cv-00751 (M.D. Tenn. 2023).

58. Complaint at 43-51 & Complaint for Injunctive Relief at 60-61, *Loc. 8027 v. Edelblut*, 651 F. Supp. 3d 444 (2023) (Both cases and complaints were consolidated into one case).

Table 1.  
*Legal Challenges to State Action Prohibiting Historically-Accurate Teaching of Race, 2020-2023*

State Action		No. of Lawsuits	State Law Challenges	Federal Law Challenges	
				1st Amend.	14th Amend.
AZ	HB 2898	1*	X		
AR	SB 294	1*	X		
FL	HB 7; Board of Educ. Rule 6A- 1.094124, FAC	1 <sup>+</sup>		X	X
GA	HB 1084				
ID	HB 377; Senate Resol. 118				
IA	HF 802				
KY	SB 1				
MS	SB 2113				
ND	HB 1508; Senate Resol. 4011				
NH	HB 2	1	X	X	X
OK	HB 1775; Okla. Admin. Code Sec. 210:10-1-23	1		X	X

SC	HB 4100; HB 4300; HB 5150		
SD	HB 1012; Executive Ord. 2022-02; Executive Ord. 2021-11		
TN	HB 580/SB 623; Dept. of Educ. Reg., Tenn. Comp. R. & Regs. 0520-12- 04	1	X
TX	HB 3979/SB 3		
UT	HB 427; HR 901; State Board of Educ. Resol. 277-328		
VA	HB 127; Executive Ord. 1		

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**Action in 17  
States**

**Challenges to State Action in  
6 States**

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Note: \* indicates the lawsuit is resolved; + indicates the lawsuit has been dismissed.

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There were no universal substantive trends regarding the types of legal challenges brought forth under state law. Rather, these claims were guided by non-discrimination laws and technical violations. For instance, advocates in Arizona challenged the state ban based on state law that requires the legislature to include a single subject in the laws

it passes.<sup>59</sup> Advocates argued that the Arizona anti-CRT law violates the single-subject rule because the law was passed under a budgetary bill unrelated to the prohibition of teaching the history of race relations in K-12.<sup>60</sup> Similarly, the Arkansas legal challenge to the so-called anti-CRT ban rested on an argument that legislators failed to follow proper procedures when adopting the ban, alleging that the way the ban was adopted violated the state constitutional emergency clause.<sup>61</sup>

Federal challenges focused on First Amendment and Fourteenth Amendment arguments.<sup>62</sup> Generally, arguments focused on the First Amendment presented a legal theory that the state action violated the students' right to receive information;<sup>63</sup> were overbroad and confusing for educators to interpret and apply in practice;<sup>64</sup> and engaged in viewpoint discrimination by forcing educators to single out and discriminate against certain views on race and racism in the classroom.<sup>65</sup> Claims under the Fourteenth Amendment alleged that the state bans were vague and advanced a racially discriminatory purpose.<sup>66</sup> With the exception of Arizona (where plaintiffs were successful), Arkansas (where defendants were successful), and Florida (where the court dismissed the case), the lawsuits remained ongoing as of this writing.

In sum, while state action has proliferated nationwide, the legal challenges to these bans have been relatively sparse. Moreover, these lawsuits remain ongoing and the only ones that have experienced success on the merits in the courtroom are lawsuits brought under state

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59. Complaint at 26-31, *Ariz. Sch. Bds. Ass'n v. State*, 501 P.3d 731, 734 (Ariz. 2022).

60. *Id.*

61. Complaint at 13-18, *Ark. Dep't of Educ. v. Jackson*, 675 S.W.3d 416, 421 (Ark. 2023).

62. *See, e.g.*, Complaint at 19-25, *Falls v. DeSantis*, No. 4:22ev166 MW/MJF2023 U.S. Dist. LEXIS 87714 (N.D. Fla. May 19, 2023) (outlining the alleged violations of First and Fourteenth Amendment constitutional rights).

63. *Id.* at 23-24; Amended Complaint at 66-74, *Black Emergency Response Team v. O'Connor*, 5:21-cv-01022-G (W.D. Ok. Nov. 9, 2021) (outlining the federal legal claims); Complaint at 43-51 & Complaint for Injunctive Relief at 60-61, *Local 8027 v. Edelblut*, 651 F. Supp. 3d 444, 449 (2023) (Both cases and complaints were consolidated into one case).

64. *See DeSantis*, No. 4:22ev166 MW/MJF2023 U.S. Dist. LEXIS 87714. *See also O'Connor*, 5:21-cv-01022-G; *Edelblut*, 651 F. Supp. 3d 444.

65. *See, e.g.*, Amended Complaint at 66-74, *O'Connor*, 5:21-cv-01022-G; Complaint at 43-51 & Complaint for Injunctive Relief at 60-61, *Edelblut*, 651 F. Supp. 3d at 449.

66. *See, e.g.*, Amended Complaint at 66-74, *O'Connor*, 5:21-cv-01022-G; Complaint at 49-50, *Gonzalez Reynolds*, No 3:23-cv000751; Complaint at 43-51 & Complaint for Injunctive Relief at 60-61, *Edelblut*, 651 F. Supp. 3d at 449.

law claims. These findings raise practical and normative considerations, to which I turn next.

V. PRACTICAL AND NORMATIVE ISSUES, CHALLENGES, AND RISKS  
REGARDING THE LACK OF LEGAL CHALLENGES TO ANTI-CRT STATE  
ACTION

The few legal challenges to the anti-CRT state action raise an important foundational question: What is the role of litigation in countering white backlash efforts? Admittedly, this is a difficult question with no one right answer. I discuss various considerations below. These are not exhaustive issues or definitive answers to the question. Rather the discussion aims to serve as an initial point of inquiry that points to broader generative discussions that can orient us as we move forward. I organize these related considerations from practical to normative and integrate relevant research and historical context accordingly.

*A. Material and Other Resources*

A main consideration in challenging anti-CRT state action is the availability or lack of material and other resources, i.e., monetary, time, and cultural capital.<sup>67</sup> Communities most negatively impacted by the anti-CRT state action include educators and students from historically marginalized communities.<sup>68</sup> Politicians and the right-wing

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67. See the following describing the general costs needed for litigation: Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 949 (2007) (“Litigation entails high monetary costs and requires heavy investment of time and energy, all of which inevitably decrease the ability of a movement to engage in alternative courses of action. Financial costs include both direct expenses, such as attorney’s fees, trial fees, and expert witness fees — and the indirect expenses associated with preparing for cases and interacting with lawyers and courts.”). See generally David M. Trubek et al., *The Costs of Ordinary Litigation*, 31 UCLA L. REV. 72 (1983) (empirically documenting the costs of litigation); Marc Galanter, 9 L. & SOC. REV. 95 (1974) (offering a canonical discussion of how power and capital enables some to better navigate the legal system).

68. See, e.g., Ashley Woo et al., *Walking on Eggshells—Teachers’ Responses to Classroom Limitations on Race- or Gender-Related Topics: Findings from the 2022 American Instructional Resources Survey*, RAND 9, 17-18, 23 (2022), [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RRA100/RRA134-16/RAND\\_RRA134-16.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RRA100/RRA134-16/RAND_RRA134-16.pdf) (“Teachers of color . . . were more likely to be aware of or influenced by limitation. . . . [T]eachers felt that the effects of these limitations would be especially detrimental for students from historically marginalized backgrounds, such as students of color who identify as LGBTQ+, as teachers perceived that these restrictions might impede students’ opportunities to ‘see themselves’ in



extremists targeted Black people in their anti-CRT movement.<sup>69</sup> The history of oppression and discrimination against marginalized communities position them at a disadvantage in the debate such that they are less likely to have the material and other resources to file suit. Lawsuits can be expensive, time-consuming, and require a certain level of know-how to navigate the legal system.<sup>70</sup> Thus, filing a lawsuit to challenge anti-CRT state action does not only involve identifying plaintiffs who have been harmed and who can establish a legal claim under state or federal law. Rather, it also requires determining whether there are sufficient monetary resources available for litigation. Additionally, it requires the ability and willingness to litigate the case across months and, at times, years, while navigating a complex legal system.

At the onset of the state bans, civil rights organizations, such as the American Civil Liberties Union (ACLU), and teacher unions and professional organizations, such as the American Federation of Teachers (AFT) and the NEA (National Education Association), reported that they had the funds necessary to challenge the state bans and

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their instructional materials; indeed, more than one-half of teachers who expressed this concern worked in schools serving a majority of student of color. . . . This survey findings raise the possibility that these limitations may be affecting teachers of color, and especially Black or African American teachers, even more strongly than their White counterparts, which could eventually lead to detrimental consequences for the diversity of the educator workforce given the concerns that teachers have raised about these restrictions.”); *see also* Eesha Pendharkar, *Efforts to Ban Critical Race Theory Could Restrict Teaching for a Third of America’s Kids*, EDUCATIONWEEK (Jan. 27, 2022) <https://www.edweek.org/leadership/efforts-to-ban-critical-race-theory-now-restrict-teaching-for-a-third-of-americas-kids/2022/01> (noting that New Hampshire’s commitment to hire more educators of color to fight racism were derailed after parents protested CRT).

69. *See* Daniel Golden, *It’s Making Us More Ignorant*, ATLANTIC (Jan. 3, 2023), <https://perma.cc/K98A-7B72> (“Activists such as Christopher Rufo, a senior fellow at the conservative Manhattan Institute, conceived of targeting CRT to foment backlash against measures enacted following George Floyd’s murder in May 2020. At that time, Rufo told me in an email, ‘school districts across the country suddenly started adopting equity statements, hiring diversity and inclusion bureaucrats, and injecting heavily partisan political content into the curriculum.’ . . . In our email exchange, Rufo described ‘the fights against critical race theory’ as ‘the most successful counterattack against BLM as a political movement. We shifted the terrain and fought on a vector the Left could not successfully mobilize against.”); Nora Benavidez et al., *Closing Ranks: State Legislators Deepen Assaults on the Right to Protest*, PEN AM., <https://pen.org/closing-ranks-state-legislators-deepen-assaults-on-the-right-to-protest/> (last visited Mar. 24, 2024) (“ . . . PEN America found that many bills were seemingly or explicitly designed to target movements led by people of color, including Black Lives Matter protests and anti-pipeline protests often led by Native American communities; and the anti-fascist or ‘antifa’ movement.”).

70. *See generally* Woo et al., *supra* note 68. *See also* Pendharkar, *supra* note 68.

defend educators accused of violating the laws.<sup>71</sup> It is unclear whether the entities have used all allocated resources, have reallocated the resources, or are in need of additional resources (both time and monetary) to challenge the state bans in court. There is a need for additional understanding of the needs and capacity of such organizations to file and litigate these lawsuits.

Regarding time, potential plaintiffs can be disadvantaged when they do not have available time to focus on litigation when focused on other pressing issues, including survival. Research on historically marginalized communities has documented that when people are focused on surviving oppressive systems, challenging the system can become a secondary concern, as oppressive systems can take a toll on and erode their overall wellbeing.<sup>72</sup> Said differently, when one is focused on day-to-day challenges, there is less time to transform or challenge unfair structural, systemic issues.<sup>73</sup>

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71. Julia Carrie Wong, *The ACLU on Fighting Critical Race Theory Bans: 'It's About Our Country Reckoning with Racism,'* GUARDIAN (July 1, 2021), <https://www.theguardian.com/us-news/2021/jul/01/aclu-fights-state-bans-teaching-critical-race-theory> (“I hesitate to get too much into detail of any particular legal strategy, but I think it’s definitely fair to say that multiple organizations are actively exploring litigation”); Madeline Will, *Teachers’ Unions Vow to Defend Members in Critical Race Theory Fight*, EDUCATIONWEEK (July 6, 2021), <https://www.edweek.org/teaching-learning/teachers-unions-vow-to-defend-members-in-critical-race-theory-fight/2021/07>.

72. See generally BETTINA L. LOVE, WE WANT TO DO MORE THAN SURVIVE: ABOLITIONIST TEACHING AND THE PURSUIT OF EDUCATIONAL FREEDOM (2019) (offering a powerful analysis of survival in oppressive systems and the desire to do more than survive); MARY-FRANCES WINTERS, BLACK FATIGUE: HOW RACISM ERODES THE MIND, BODY, AND SPIRIT (2020) (narrating the effects of systemic racism in the mind, body, and spirit of Black people); see also, e.g., Jamal Smith, *Is Racism Making us Too Tired to Fight It?* WYOMING TRIB. EAGLE (June 17, 2023), [https://www.wyomingnews.com/opinion/guest\\_column/smith-is-racism-making-us-too-tired-to-fight-it/article\\_aef7834c-0c7e-11ee-a9c8-7ffdef0dbf4d.html](https://www.wyomingnews.com/opinion/guest_column/smith-is-racism-making-us-too-tired-to-fight-it/article_aef7834c-0c7e-11ee-a9c8-7ffdef0dbf4d.html); Meagan Call-Cummings & Sylvia Martinez, *'It Wasn't Racism; It Was More Misunderstanding.'* *White Teachers, Latino/a Students, and Racial Battle Fatigue*, 20 RACE ETHNICITY AND EDUC., 561, 572 (2017) (“Racial battle fatigue, but more specifically, psychological responses to racial microaggressions appear to be afflicting the students in the research collective. Noting being ‘tired’ and being afraid of retribution if they presented a unit on racism rather than one on unity, the students are showing classic examples of racial battle fatigue. Other examples of psychological stress response in this study include feeling apathetic, feeling helpless, and being irritable.”); Stephen John Quayle et al., *'Why Can't I Just Chill?: The Visceral Nature of Racial Battle Fatigue'*, 61 J. COLL. STUDENT DEV. 609, 619 (2020) (“Lo felt that if she did not suppress who she was and her emotions, she would not keep her job: ‘If you didn’t conform, you didn’t survive. So, if you had a moment or had something going on, you needed to hide and not be emotional. You couldn’t be your full self . . . .”).

73. See generally *supra* note 72.

Lastly, cultural capital in the anti-CRT context involves possessing the knowledge to identify and label issues of discrimination happening to oneself or others in the community.<sup>74</sup> Legal advocates have historically engaged in “know your rights” training with underserved communities and other similar grassroots efforts to empower people.<sup>75</sup> In the context of anti-CRT bans, “know your rights” efforts can better equip and empower educators and families in schools.<sup>76</sup>

### *B. Threats to Educators’ Careers*

To contextualize the threats to educators’ professional careers in the current hostile sociopolitical context, it is important to note the consistent and gradual history of the depletion and demoralization of educators as professionals.<sup>77</sup> Educators have over time faced destabilization of their legal rights and defunding of their schools.<sup>78</sup> Today, K-12 educators enjoy few legal protections in their jobs<sup>79</sup> and have a

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74. See generally Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC. REV. 95 (1974) (discussing the role of cultural capital in navigating a complex legal system); Katheryne M. Young & Katie R. Billings, *Legal Consciousness and Cultural Capital*, 54 L. & SOC. REV. 33 (2019) (detailing how cultural capital leads to a greater sense of self-efficacy for individuals who come in contact with the legal system, a more salient sense of entitlement, as well as understanding their own needs and desires in the process, while conversely finding that people with limited cultural capital are thus more susceptible to arrest and prosecution).

75. See, e.g., Brandi M. Lupo, *Legal Rights, Real-World Consequences: The Ethics of Know Your Rights Efforts and Towards Improved Community Legal Education*, 17 NW. J. HUM. RIGHTS 1, 20-21 (2019); Nhi T. Dang, *Know Your Rights and Police Misconduct: A Case Study of Organizers’ Perceptions of Community-Based Work*, 1, 28 (May 2015) (M.S.W. thesis, University of California, Santa Barbara) (“Within these various community empowerment and civil rights movements, Know Your Rights workshops were justified under a community-centered and client-centered rationale”).

76. While “Know Your Rights” are a potential transformative tool, it is important to engage community education in non-deficit approaches that do not assume people to be not knowledgeable and instead seek to empower them. See generally Ascanio Piomelli, *The Lawyer’s Role in a Contemporary Democracy, Promoting Access to Justice and Government Institutions, The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383 (2009); Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLINICAL L. REV. 433 (1998) (collectively arguing for democratic approach to community education).

77. See Joshua E. Weishart, *The Right to Teach*, 56 U.C. DAVIS L. REV. 817, 850-65 (2022) (mapping the history of multiple law and policy reforms that have collectively destabilized the teaching profession).

78. *Id.*

79. *Id.* at 826-50.

precarious professional role that has, through a net result of a patchwork of reforms, left them with little political power.<sup>80</sup>

Given this history, it is unsurprising that educators restricted by the state bans face professional threats that can disincentivize them from challenging the state bans. While there are no studies that explore and explain the magnitude of this issue, journalists have begun to report on educators' choice to not challenge the state bans in court for fear of professional repercussions, including losing their license or other sanctions.<sup>81</sup> These emerging reports suggest that there is a concern and fear of speaking out against the bans.<sup>82</sup> This is a well-founded concern. For instance, some state bans include a loss of funding to schools and disciplinary sanctions for educators who promote prohibited concepts.<sup>83</sup>

Conversely, there is an additional type of fear educators face with the state bans in place. Emerging research is finding that working under the bans is leading educators to live in fear of violating the bans, leading educators to self-censor in ways that undermine educational equity and unnecessarily restrict discussions of issues and topics.<sup>84</sup>

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80. *Id.* at 850-64.

81. See generally Hannah Natanson, *Few Legal Challenges To Laws Limiting Lessons On Race, Gender*, WASH. POST (Mar. 17, 2023, 6:00 AM) <https://www.washingtonpost.com/education/2023/03/17/legal-challenges-gender-critical-race-theory/>.

82. *Id.*

83. E.g., H.R. 377, 66th Leg. 1st Sess. (Idaho 2021) and S.B. 623, Pub. Chap. 493 (Tenn. 2021) include loss of funds as a stated penalty. See also Under New Hampshire's divisive concepts law, educators can potentially lose their teaching credentials if found in violation of the law. The threat to professional credentials "is a factor that weighs in favor of a court intervening at this juncture and saying that the laws are impermissibly vague. . . . Because people are really guessing about their professional futures, when they're making decisions about how they're going to talk about racism and sexism in the country." (internal quotations omitted). Eesha Pendharkar, *Legal Challenges to 'Divisive Concepts' Laws: An Update*, EDUCATIONWEEK (Oct. 17, 2022), <https://www.edweek.org/policy-politics/legal-challenges-to-divisive-concepts-laws-an-update/2022/10>.

84. See, e.g., Intercultural Dev. Research Ass'ns, *17 States Have Classroom Censorship Policies*, IDRA (Aug. 19, 2022), <https://www.idra.org/resource-center/17-states-have-classroom-censorship-policies/> ("IDRA found four main negative impacts to [Texas] schools and students from classroom censorship bills: weakened quality curriculum; lower teacher, staff and student morale; limited real-world learning and leadership opportunities for students; and threats to students' civil rights and safe school climates"); Mica Pollock, et al., *The Conflict Campaign: Exploring Local Experiences of the Campaign to Ban "Critical Race Theory" in Public K-12*

Unfortunately, educators working in this chilling climate self-censor even when no state ban is in place.<sup>85</sup> Overall, the situation places educators in a quandary: they face potential professional consequences, if they challenge the bans in court; they face punishment, if they violate the bans in practice; or they self-censor out of fear of violating the bans. None is ideal.

*C. The Power that States and Districts Hold Over Education and Teaching*

Thus far, the considerations above focus on potential challenges to filing lawsuits that could remedy legal violations. However, the lack of lawsuits of anti-CRT state action also invites a closer analysis of the legal doctrine and whether, even if provided resources and no professional threats were present, the lawsuits would be legally viable. This subsection explores that consideration.

Historically, the courts have allocated significant power to states and school districts in governing K-12 generally and curriculum more

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*Education in the U.S., 2020-2021*, UCLA/IDEA PUBL'NS 1, 8, 10, (Jan. 2022), <https://idea.gseis.ucla.edu/publications/the-conflict-campaign/> (finding in a national study of nearly 300 educators nationwide that “In States with passed or pending legislation, teachers shared a sense of looming ‘attack’ on ‘what is taught’ and described colleagues ‘terrified, confused and/or demoralized. . . . Describing feeling ‘terrified’ to teach ‘in this polarized environment,’ some teachers indicated that they and colleagues intended to remain silent on an array of issues that they otherwise would have taught, on topics as broad as ‘race’ and ‘race and gender.’”); N.A. Mar-run et al., *supra* note 17, at 75, 72 (presenting a quote from a participant who explained their fear of speaking with the entire class about race and racism, “I have become really afraid about talking about it [CRT] or just exposing my students to it. When our school was still online, I noticed one of my student’s [sic] left our school and I personally think it was because I made a comment in class about how a lot of the math we teach is eurocentric and the parent heard it and told me how I was a horrible teacher for exposing their child to such an idea and then he was gone and off my roster the following week.”).

85. Pollock et al., *supra* note 84 (“Notably, teachers in places with *no* state prohibitions also described a censorship drive by local critics inflamed by broader forces, often also noting tactics common in the conflict campaign. Some described how local pushback ‘led by parents’ often ‘associated with parent groups on social media’ or ‘individuals from outside our community’ created a ‘chilling’ atmosphere for ‘teaching and learning’ and professional development. Even in places with no restrictions at the state level, the broad campaign made some educators ‘hesitant’ about ‘teaching about equity and social justice topics,’ racism or racial inequality, or even just ‘race and gender’ or ‘race,’ in case ‘parents or the community complain’ and ‘administration’ acquiesced to their demands for ‘restrictions.’ One teacher described a colleague afraid to teach the Bill of Rights.”).

specifically.<sup>86</sup> This expansive power includes states and school districts authority to set rules that determine who must attend school, who can teach in schools, the goals of what should be taught (e.g., job preparation, democratic inculcation for future citizenry, intrinsic development, etc.), and what can be taught.<sup>87</sup> However, states and districts do not have unfettered authority; courts must weigh the interests of the states and districts against the interests of other parties, including teachers, parents, and students.<sup>88</sup>

Given this historical context of the ways in which the courts have shaped the power of states and districts to govern schools,<sup>89</sup> there is a possibility that the lack of lawsuits against the anti-CRT state action is because the states have absolute power to dictate what depictions of race and racism in U.S. history can be taught in the classroom. However, taken to its logical conclusion, this premise is deeply problematic and dangerous. To accept that premise without further interrogation

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86. Julie Underwood, *The Legal Balancing Act Over Public School Curriculum*, KAPPAN (Feb. 25, 2019), <https://kappanonline.org/legal-balancing-act-public-school-curriculum-underwood/> (offering an overview of the multiple interests of states, districts, parents, and students in balancing curricular policies in schools and noting the state and school districts' significant discretion and power over such choices).

87. See, e.g., *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 683 (1986) (“The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of civilized social order”); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (“A school need not tolerate student speech that is inconsistent with its ‘basic educational mission,’ even though the government could not censor similar speech outside the school.”); *Morse v. Frederick*, 551 U.S. 393, 396-397 (2007) (“Our cases make clear that students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. At the same time, we have held that the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings, and that the rights of students must be applied in light of the special characteristics of the school environment. Consistent with these principles, we hold that the schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use.” (internal quotation marks and references omitted)); *Mahanoy Area Sch. Dist. v. B. L.*, 141 S. Ct. 2038, 2045 (2021) (“Finally, in *Tinker*, we said schools have a special interest in regulating speech that ‘materially disrupts classwork or involves substantial disorder or invasion of the rights of others.’ These special characteristics call for special leeway when schools regulate speech that occurs under its supervision.” (internal references omitted)).

88. Underwood, *supra* note 86.

89. *Id.*

positions educators as mere tools or mouthpieces of the state, and as the U.S. Supreme Court has noted, “If there is any fixed star in our constitutional constellation, it is that no official high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”<sup>90</sup> Nonetheless, this is precisely what the anti-CRT state action accomplishes. It reduces educators to mere mouthpieces of the state, limiting educators’ ability to teach students to engage in critical thinking and exercise their right to criticize the government itself.<sup>91</sup>

But, if educators are not mere mouthpieces, what rights do they have to exercise discretion in the classroom? This question is also unresolved.<sup>92</sup> In *Garcetti v. Ceballos*,<sup>93</sup> the Supreme Court held that public employees were not “speaking as citizens for First Amendment purposes” when making statements “pursuant to their official duties.”<sup>94</sup> Even though *Garcetti* did not take place in the educational context and Justice Kennedy specifically exempted *Garcetti*’s application to the educational context,<sup>95</sup> the ruling has laid governing precedent that some courts have extended into the K-12 context.<sup>96</sup> These courts have curbed the free speech rights of teachers while on their official duties.<sup>97</sup> It is important to underscore that though the lower courts

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90. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

91. For a more explicit argument regarding the role of educational spaces as mere mouthpieces of the state, *See generally* Douglas Soule, *That’s authoritarianism’: Florida argues school libraries are for government messaging*, TALLAHASSEE DEMOCRAT (Dec. 4, 2023) <https://www.tallahassee.com/story/news/politics/2023/12/04/florida-says-school-libraries-have-right-to-remove-lgbtq-books/71742277007/> (detailing how Florida argues that school libraries are only government messaging spaces, not spaces of free speech).

92. *See generally* Tess Bissell, *Teaching in the Upside Down: What Anti-Critical Race Theory Laws Tell Us About the First Amendment*, 75 STAN. L. REV. 205, 230-240 (mapping the multiple approaches that courts take to educator speech).

93. *Garcetti v. Ceballos*, 547 U.S. 410, 421-422 (2006) (“Restricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.”).

94. *Id.* at 421.

95. *Id.* at 425 (“There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence. 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.”).

96. Bissell, *supra* note 92.

97. *Id.*

extended *Garcetti* to the educational context, the U.S. Supreme Court has not definitively closed the door regarding questions of educator free speech in the classroom.

Educators are an important stakeholder in democratic education. As Joshua Weishart notes, “Teachers also owe a duty to cultivate democratic experiences in their classrooms. To fulfill all of these duties, teachers must have the freedom to educate afforded by privileges and immunities under the right to education.”<sup>98</sup>

Assuming litigation is a vehicle for potential change and to establish the rights of educators, challenging the anti-CRT state action in court offers an opportunity for the courts to further define the bounds of discretion as allocated among states, school districts, *and educators*. For instance, this opens up an opportunity for courts to recognize educator free speech (though as the findings note, courts have yet to weigh in on this issue). Alternatively, courts may also recognize a right to teach under state constitutional law.<sup>99</sup>

#### *D. The Role of Litigation as a Tool of Resistance and Change*

Whether litigation is the proper venue to advance social change towards social justice has been a point of contention throughout history.<sup>100</sup> Critical race theory scholars, such as Derek Bell, have argued that the law can further marginalize historically oppressed people rather than liberate them.<sup>101</sup> Bell offered the ruling in *Brown v. Board of*

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98. Weishart, *supra* note 77, at 875.

99. *Id.*

100. See Matthew Liebman, *Litigation & Liberation*, 49 *ECOLOGY L. Q.* 715, 726-733 (2022) and accompanying sources (offering a detailed overview of critiques of litigation as a tool of social justice and progress); See Lobel, *supra* note 67 at 946-48.; See Anneke Dunbar-Gronke, *The Mandate for Critical Race Theory in this Time*, 69 *UCLA L. REV. DISCOURSE (L. MEETS WORLD)* 4, 10, 16 (2022) (“The unique nature of this vision means that Black liberation movement has distinct goals and needs, and consequently, that generic movement lawyering, along is insufficient to serve those goals. . . . The law itself will never bring genuine change and should never be considered the only source of support for liberation, but it can be useful for certain strategic and temporary wins. This assessment distills the important distinction between using legal interventions as one point within a constellation of tactics moving the needle toward Black liberation versus working for legal wins for their own sake.”).

101. Derrick A. Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 *HARV. L. REV.* 518 *passim*. See also generally Angela Onwuachi-Willig, *Reconceptualizing the Harms of Discrimination: How Brown v. Board of Education Helped to Further White Supremacy*, 105 *V. L. REV.* 343



*Education*<sup>102</sup> as an example, arguing that the Court ruled on the case in favor of racial desegregation only because the interests of the Court converged with the interests of the white majority (i.e., positioning the United States globally as a beacon of equality during a time of war).<sup>103</sup> However, this approach of interest convergence positioned the ruling in a precarious state, allowing for future abrogation of the rights whenever the gained rights threatened white people.<sup>104</sup> Indeed, since *Brown*, the promise of racial integration in education has been gutted case after case.<sup>105</sup>

At the same time, white backlash movements have fiercely employed all law and policy tools to advance their agenda to maintain the inequitable racialized status quo.<sup>106</sup> They have passed state laws,<sup>107</sup> adopted executive orders,<sup>108</sup> appointed conservative judges and

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(2019) (arguing that the gaps in the *Brown* decision contribute to the current racial inequities and disparities, as well as the resurgence of white supremacist movements).

102. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

103. Bell, *supra* note 101, at 522-523.

104. Cynthia Lee, *Cultural Convergence: Interest Convergence Theory Meets the Cultural Defense*, 49 ARIZ. L. REV. 911, 924, n.68 (2007) (citing Sheryll D. Cashin, *Shall We Overcome? Transcending Race, Class, and Ideology Through Interest Convergence*, 79 ST. JOHN'S L. REV. 253, 272 (2005) (citing Derrick A. Bell, Jr., *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPE FOR RACIAL REFORM* 69 (2004))).

105. See Dana N. Thompson Dorsey & Terah T. Venzant Chambers, *Growing C-D-R (Cedar): Working at the Intersections of Interest Convergence and Whiteness as Property in the Affirmative Action Legal Debate*, 17 RACE ETHNICITY & EDUC. 56, 63-81 (2014) (analyzing how the rights of racially marginalized students have been gutted legal case after case in the race related affirmative action debate).

106. See Hughey, *supra* note 1 at 721-22 (chronicling white backlash movements from civil rights to contemporary times); Embrick *supra* note 28 at 208-20 (mapping Trumpism as a reaction to Obama's presidency and long history of white backlash); Benson, *supra* note 6 at 8-10 (chronicling white backlash in the educational context).

107. Taifha Alexander et al., *supra* note 13, at 14-17, [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) (additionally recognizing student researchers Isabel Flores-Ganley, Cheryl Harris, Jasleen Kohli, Lynn McLelland, Paton Moody, Nicole Powell, and Milan Smith) (analyzing the up-to-date CRT Forward Tracking Project at [www.crtforward.law.ucla.edu](http://www.crtforward.law.ucla.edu)).

108. *E.g.*, *Executive Order on Combating Race and Sex Stereotyping*, WHITE HOUSE (Sept. 22, 2020), <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-combating-race-sex-stereotyping/>.

justices to uphold the legality of their actions,<sup>109</sup> to name a few actions. These actions have been fueled and supplemented by culture wars through social media and other public outlets (e.g., school board meetings) meant to change public opinion on these issues.<sup>110</sup> Judging by the actions adopted at the state level, they have been wildly successful.

This nuanced social context requires the consideration of the role of litigation as a mechanism for change and as a tool of resistance during white backlash movements. As the findings show, there are few lawsuits challenging state actions, functionally leaving the state bans in place.<sup>111</sup> Litigation of the anti-CRT state action can be a source to prevent further regression of the rights of racially marginalized individuals in education. It is not entirely clear whether the lack of lawsuits is also a strategic choice. And admittedly, challenging the state action in the current hostile sociopolitical movement may be counterproductive inasmuch as conservative judges and Justices may rule in a manner that creates precedent that further guts the rights of racially marginalized individuals in education. Thus, there is no straightforward, clear answer as to whether litigation should be more prominent in this area. This is an open area for further exploration both through research and advocacy mechanisms, including litigation.

Scholars have long noted how the law and legal system have not recognized or protected the rights of historically racially marginalized people.<sup>112</sup> However, to dismiss or not give proper attention to the role

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109. See, e.g., John Gramlich, *How Trump Compares with Other Recent Presidents in Appointing Federal Judges*, PEW RSCH. CTR. (Jan. 13, 2021), <https://www.pewresearch.org/short-reads/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/>.

110. Benson, *supra* note 6 at 2-10.

111. See *supra* Part IV.

112. See Catherine Albiston, *The Dark Side of Litigation as a Social Movement Strategy*, 96 IOWA L. REV. BULL. 61, 74-76 (2011) (offering several examples of how using litigation fails to account for those most marginalized and can undermine their interest: “First, several scholars have shown how litigation as a social movement can deradicalize both the message and the objectives of a movement,” including regarding abortion rights, racial justice in education, and LGBTQ+ rights. . . . “Second social movement scholars caution that litigation, including litigation loss, can reshape how the movement defines its identity and understands itself,” including in areas such as the American labor movement. . . . “Third, litigation as a social movement tactic can end up promoting some factions within the movement at the expense of others . . . Finally, critical legal studies scholars offer a longstanding critique of litigation as essentially winning the battle, but losing the war. In this view, litigation strategies may win short-term advantages for the

of courts in the current hostile sociopolitical context can present future costs and challenges, such as living under the regressive anti-CRT laws. Thus, while courts and litigation are not the panacea, courts have created, upheld, and reshaped structural racism since their creation.<sup>113</sup> So, engaging in the legal process as advocates is important in a moment of racial retrenchment and regression. In other words, while the courts won't save us, they can cause further harm, and thus advocates must engage accordingly.

#### CONCLUDING THOUGHTS

We stand in a critical juncture in history. White backlash has gained significant traction and forcefully pushed back against decades of racial equity advances. Since 2020, the regressive state actions prohibiting the accurate teaching of race and racism in schools have mushroomed.<sup>114</sup> Yet, they have not been met with similar resistance through litigation, leaving them in place to govern the silencing of accurate teaching of race and racism in the classrooms in most states where these state actions have been adopted (See Table 1).<sup>115</sup> These state laws and policies ultimately uphold an inequitable racialized status quo.

Challenging these state actions through litigation could lead to courts ruling that the state action is in violation of the law. However, it is not entirely clear what challenges or hurdles are contributing to the lack of legal challenges. As discussed in the preceding section, history, precedent, emerging research, and journalistic investigation show that there is likely a confluence of issues accounting for the lack

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parties, but by working within the system such strategies help legitimate the larger structure of domination through legal ideology and law. The law, in this view, helps stave off revolution and justify the status quo of unequal social relations by providing nominal individual remedies for unequal treatment.”); see also Mari J. Matsuda, *Looking to the Bottom Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 327 (1987) (acknowledging how Critical Legal Studies was bound together in part by an understanding that “legal ideals are manipulable and that law serves to legitimate existing maldistributions of wealth and power—rings true for anyone who has experienced life in non-white America.”).

113. Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1262-1307 (2011) (chronicling the historical role and power of law in shaping systemic racism in society).

114. See Alexander et al., *supra* note 13.

115. See *supra* Part IV.

of litigation.<sup>116</sup> However, the lack of litigation deserves future consideration, given that courts play a significant role in shaping policies and practice in education.<sup>117</sup>

While litigation may not be the “right” solution for the current social context<sup>118</sup> and as evidenced by the current sparse litigation nationwide,<sup>119</sup> there is a need for a multi-systemic approach at the moment. There are other areas that deserve attention in the coming years. One key area is the need to diversify the legal profession, including the judiciary. Research has found that racial representation in state entities carries profound, positive effects for those who are represented.<sup>120</sup> The legal profession remains largely white and male.<sup>121</sup>

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116. See *supra* Part V.

117. See generally Maria M. Lewis et al., *Handbook of Education Policy Research*, in EDUCATIONAL POLICY, RACIAL EQUITY, AND THE COURTS, (in press) (detailing how the courts shape educational policy and practice across areas of educational law).

118. See *supra* Part V.D.

119. See *supra* Part IV.

120. See e.g., Christina L. Boyd, *Representation on the Courts? The Effects of Trial Judges' Sex and Race*, 69 POL. RES. Q. 788, 795-96 (2016); Jonathan P. Kastellec, *Racial Diversity and Judicial Influence on Appellate Courts*, 57 AM. J. POL. SCI. 167, 177-79 (Jan. 2013); Pat K. Chew & Robert E. Kelley, *The Realism of Race in Judicial Decision Making: An Empirical Analysis of Plaintiffs' Race and Judges' Race*, 28 HARV. J. RACIAL & ETHNIC JUST. 91, 110-12 (2012); SETH GERSHENSON ET AL., *TEACHER DIVERSITY AND STUDENT SUCCESS: WHY RACIAL REPRESENTATION MATTERS IN THE CLASSROOM* (2021); Matthew Shirrel et al., *The Effects of Student-Teacher Ethnoracial Matching on Exclusionary Discipline for Asian American, Black, and Latinx Students: Evidence From New York City* 30-31 (Annenberg Inst. Brown U., Working Paper No. 21-475, 2021); Constance A. Lindsay & Cassandra M. D. Hart, *Exposure to Same-Race Teachers and Student Disciplinary Outcomes for Black Students in North Carolina*, 39 EDUC. EVAL. & POL'Y ANALYSIS 485, 505-08 (Sep. 2017); Jason A. Grissom & Christopher Redding, *Discretion and Disproportionality: Explaining the Underrepresentation of High-Achieving Students of Color in Gifted Programs*, 2 AERA OPEN 1, 1 (2016); Jason A. Grissom et al., *Teacher and Principal Diversity and the Representation of Students of Color in Gifted Programs: Evidence from National Data*, 117 ELEM. SCH. J. 396, 416-18 (2017); Christopher Redding, *A Teacher Like Me: A Review of the Effect of Student-Teacher Racial/Ethnic Matching on Teacher Perceptions of Students and Student Academic and Behavioral Outcomes*, 89 REV. EDUC. RES. 499, 523-33 (2019).

121. See Jonathan K. Stubbs, *Demographic History of Federal Judicial Appointments by Sex and Race: 1789-2016*, 26 BERKELEY LA RAZA L.J. 92, 113 (2016). In its “Profile of the Profession 2023” report, the American Bar Association reported that lawyers who are white are overrepresented in the profession

Recruiting future lawyers who are racially diverse is critical in the diversification of the profession. Efforts to do so can include outreach efforts to undergraduate students and pipeline programs that support students' trajectories from undergraduate to law school. These efforts remain permitted even after the companion cases *Students for Fair Admissions v. Harvard and University of North Carolina*, the U.S. Supreme Court's 2023 ruling prohibiting the explicit use of race in undergraduate admissions.<sup>122</sup>

A second key area is the need for changes to legal education. For too long, law schools have favored the teaching of the law using the case method, which focuses on deconstructing legal cases, identifying legal doctrines, and applying them in-class and in evaluative assignments. After the death of George Floyd, a group of leading law school deans launched the Law Deans Antiracist Clearinghouse Project, an effort to rethink discussions of race in legal education.<sup>123</sup> This project has yielded positive results and resources that can be instructive on the topic.<sup>124</sup>

Aligned with these movements, I argue that there is a need for expanding the paradigm we employ in law schools to accommodate a more nuanced approach that educates students through an interdisciplinary lens. This would accommodate important critical perspectives that inform the role of lawyers, including history (e.g., how the law has historically marginalized certain groups) and research trends that impact different areas of law (e.g., educational research on the importance of belonging for racially marginalized students in schools). These interdisciplinary approaches can better prepare students for the

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(79%), compared to other ethnic/racial minoritized groups—Hispanic (6%), Asian American (6%), Black (5%), Multiracial (3%), and Native American (1%). Moreover, while the number of Hispanic, Asian American, and Multiracial lawyers has grown over the last decade, the number Black lawyers remains virtually unchanged. The ABA also tracks binary gender demographics, finding that in 2023, 61% of lawyers in the profession identified as male and 39% as female. In sum, the latest data show that the profession remains largely white and male. See American Bar Association, Profile of the Profession, Demographics (last visited April 5, 2024), <https://www.abalegalprofile.com/demographics.html>.

122. *Students for Fair Admissions v. President & Fellows of Harv. Coll.*, 143 S. Ct. 2141, 2175-2176 (2023).

123. *Law Deans Antiracist Clearinghouse Project*, ASS'N OF AM. L. SCH. (last visited Mar. 4, 2024), <https://www.aals.org/antiracist-clearinghouse/#:~:text=By%20creating%20a%20space%20for,on%20strategies%20to%20eradicate%20racism>.

124. *Id.*

current times where sociopolitical movements seek to regress racial progress through the law. Some of these students will go on to serve in the judiciary as well. We stand in a juncture where multi-systemic approaches are necessary.