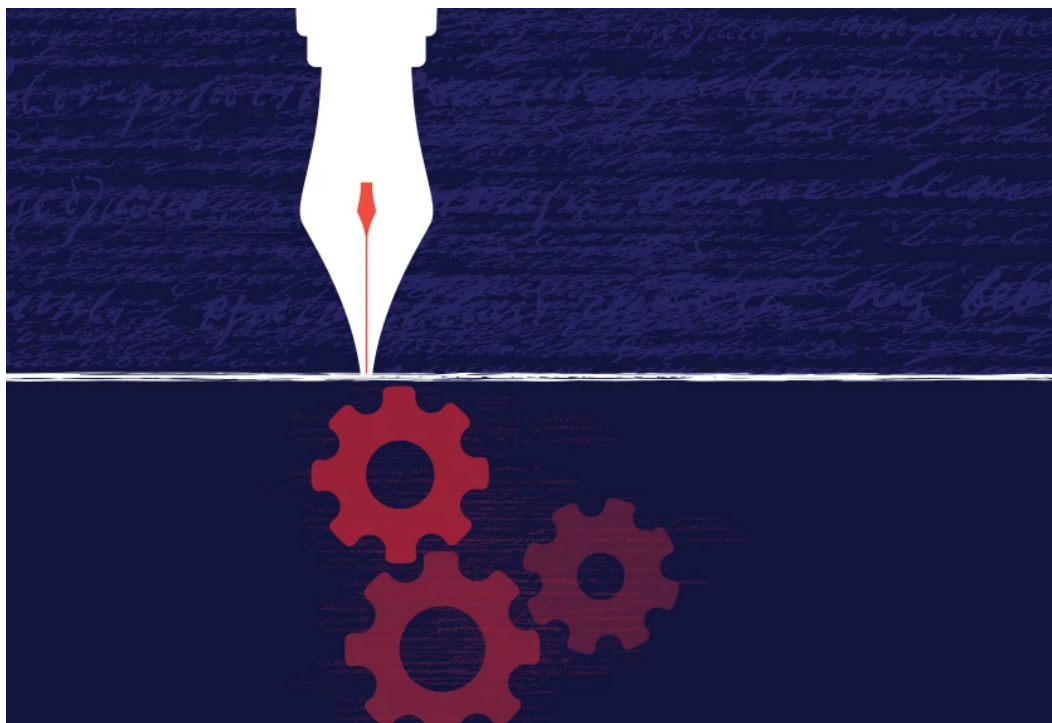


Who's Really Driving Critical Race Theory Legislation? An Investigation



Collage by Laura Baker/Education Week (Images: DigitalVision Vectors and iStock/Getty)

The furor over critical race theory in schools has reached a fever pitch this summer, becoming a central issue in school board debates and on cable news programs alike.

Within several months, Republican legislators in [more than 20 states have](#)

[introduced bills](#) that would restrict how teachers discuss racism, sexism, and controversial issues. In eight states, the bills have passed into law. The same language echoes throughout much of the legislation, from bans on “divisive” or “racist or sexist concepts,” to provisions that require teachers to present contending perspectives on “controversial” issues.

It can feel like the issue exploded overnight. Where did these bills come from? And who is driving legislators' interest?

At the core of most of the bills, including the eight signed into law, is language lifted from a September 2020 executive order by former President Donald Trump. But it's not that simple: Education Week reporting uncovered a complex web of individuals and conservative organizations that are writing model legislation and supporting these state-level bills.

Trump's executive order is origin of 'divisive concepts'

The Trump executive order, which was revoked by President Joe Biden immediately after he took office, banned certain types of diversity training in federal agencies and included a list of ideas deemed "divisive" (see below).

Broadly, bills that use language from this list aim to discourage teachers from making race or gender salient in conversations about power and oppression. Republicans proposing bills like this say that teachers who discuss these topics—who suggest, for example, that Black Americans are systemically oppressed—are practicing critical race theory.

Definition of 'Divisive Concepts' From Trump Executive Order 13950

See full text [here](#)

For the purposes of this order, the phrase:

(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.

(b) "Race or sex stereotyping" means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex.

(c) "Race or sex scapegoating" means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex. It similarly encompasses any claim that, consciously or unconsciously, and by virtue of his or her race or sex, members of any race are inherently racist or are inherently inclined to oppress others, or that members of a sex are inherently sexist or inclined to oppress others.

The term refers to a [decades-old academic theory](#)

that says racism is embedded in laws, policies, and structures—and that as a result, even policies that are officially race-neutral can produce racist outcomes. Among conservatives, the term has become a catch-all for any conversation about historical or present inequities. And it's been conflated with a host of other initiatives schools have taken up to improve outcomes for students of color, like culturally responsive teaching or restorative justice.

These bills and laws have become known in the public sphere as anti-critical-race-theory legislation—but that doesn't tell the whole story. Not all of these measures ban the same things, and this sweeping categorization can hide differences that may be meaningful for schools and teachers.

An Education Week analysis of the proposed and passed bills has found five categories of legislation:

- **“Divisive” or “racist or sexist” concepts:** Bans on teaching all or some of the concepts in Trump's executive order
- **Other rules related to discussing identity:** Proposals that restrict making race, gender, or other social identities salient in some way, but don't use the language from the executive order
- **Banning “action civics”:** Language that prohibits students from participating in advocacy for course credit, and limits how teachers can talk about current events
- **Curriculum transparency:** Proposals that would require schools to publicly list the materials that teachers use
- **Prohibitions against teachers showing bias:** Language that states teachers can't show political or partisan bias in the classroom

When asked what sparked their interest in critical race theory, or perceived bias or discrimination in schools more generally, several lawmakers pointed to parents.

“Nobody was using the term critical race theory to me,” said Rep. Wendy Horman, a Republican in Idaho who sponsored the bill that became law there. She

said parents started reaching out to her six or seven months ago, concerned about discussions of the election and Black Lives Matter in classrooms. “It was more in the context of politics and bias. They weren’t even using the word discrimination.” (Idaho’s law—one of the first passed in the country—bans compelling students to affirm the “divisive concepts” found in the Trump executive order.)

But around the same time this past winter, a long list of groups were fighting to get “critical race theory” into state legislators’ sights and the public conversation, with the understanding that it was an issue that could mobilize parents—that is, voters.

“The stark contrast between Republicans empowering parents and Democrats empowering teachers’ unions will be one of many reasons that conservatives again have success in the states this cycle,” said Andrew Romeo, the communications director for the Republican State Leadership Committee, in an emailed statement.

Conservative groups draft model legislation

In interviews with Education Week, several proponents of these bills drew a direct link between the flurry of legislation and schools’ response to the murder of George Floyd by Minneapolis police officer Derek Chauvin last May.

“You could put a date on it,” said Larry Lockman, a former Republican Maine state representative and the co-founder of the Maine First Project, a right-wing advocacy group. “May 25th, the George Floyd killing in Minnesota. That was the spark,” he said, for teachers introducing new lessons that turned attention to police brutality, racism, and bias.

Others, like Rep. Brian Seitz of Missouri, a Republican, mentioned the 1619 Project, a New York Times series that reframes the American story by putting the legacy of slavery and African American history at the center. The project has an [accompanying curriculum developed by the Pulitzer Center](#)

. Seitz called it the “Trojan horse” that brought critical race theory into classrooms.

Floyd’s death, and the ensuing nationwide protests, sparked a racial reckoning that prompted many organizations—not just schools—to take up new anti-racism and diversity, equity, and inclusion initiatives. Conservative commentators pushed back, claiming that some of the exercises that asked white Americans to reflect on their privilege were racist and divisive.

One of the loudest voices was Christopher Rufo, a senior fellow at the right-leaning Manhattan Institute. He is widely credited with popularizing the labeling of these kinds of trainings as critical race theory. In early September 2020, Rufo appeared on Tucker Carlson’s show on Fox News, [urging the president to take action to stop these trainings in federal agencies](#)

. Later that month, the executive order emerged.

Over the past year, Rufo has stepped into the media spotlight as a leader in the anti-critical-race-theory movement, writing op-eds, appearing on conservative television, and Tweeting out strategy for bringing the issue to wider attention. Rufo did not respond to several requests for comment for this story.

Some of the bills introduced in state legislatures hew closely to the text of this original executive order—including two laws passed in Iowa and New Hampshire. Others more closely match other model legislation.

In the months after the 2020 election, former Trump administration officials and allies built up a network of think tanks and donor groups [dedicated to continuing](#)

[to advance his policy agenda](#)

Critical race theory has become a central issue for several of these organizations.

One such group is Citizens for Renewing America, an advocacy group that also counts voter fraud, border security, and big government among its top issues.

Russell Vought, former director of the Office of Management and Budget, is the group's president. Vought's OMB directed federal agencies to [stop trainings](#)

[related to critical race theory](#)

in

advance of Trump's executive order in fall 2020. Citizens for Renewing America has drafted its own model legislation using the list of divisive concepts, which also bars schools from asking students to support any of the ideas outlined in the 1619 Project. The group has also released a tool kit, which advises on "how to stop Critical Race Theory and reclaim your local school board."

Two of the recently passed laws, in Idaho and Tennessee, most closely match language used in Citizens for Renewing America's model legislation (though neither of them explicitly bans the 1619 Project).

Also putting forth a model bill is the Alliance for Free Citizens, an advocacy organization that pursues state legislation and litigation on a slate of issues, including immigration, voting, and transgender students' participation in sports. Former Kansas Secretary of State Kris Kobach, who led Trump's voter fraud commission, is the group's general counsel. Kobach is currently running for Kansas attorney general.

The Alliance for Free Citizens' model legislation also includes a list of "racist or sexist" topics, but is more restrictive than some other bills—banning any materials that promote these concepts, and preventing schools from hosting

speakers that hold these views. “You can’t circumvent [the prohibition] by just inviting a speaker in,” Kobach said in an interview with Education Week.

State lawmakers in Pennsylvania have introduced this legislation, and Kobach said that his group had also consulted with legislators in Arizona, where the governor recently signed a divisive concepts bill into law. Representatives in both states did not respond to interview requests.

The America First Policy Institute, a think tank and advocacy group employing former Trump administration officials and advisers, has also consulted with at least two states on their proposed bills, including one where the measure became law, said James Sherk, the director of the Center for American Freedom at the organization. The group also supports policies aligned with the Trump administration’s positions on national security, foreign policy, and the economy.

Outside of this circle, critical race theory has also become a central issue for some conservative organizations established well before the Trump era, such as the Heritage Foundation. That think tank has released its own model legislation and has talked to lawmakers in New Hampshire, Louisiana, South Carolina, Texas, and Utah, said Jonathan Butcher, a fellow at the Heritage Foundation.

In December, Butcher and Rufo led a workshop on combatting critical race theory at the American Legislative Exchange Council’s annual States and Nation Policy Summit, alongside others from ALEC, the Heritage Foundation, the Woodson Center, and the American Enterprise Institute. ALEC, a conservative think tank known for writing model legislation used by Republican lawmakers, has [long](#)

[influenced K-12 policy](#) —though the group does not have its own model bill language on this issue.

The event covered “the important role state leaders play in reclaiming education and the American Dream.” Participants from at least 20 state legislatures registered to attend, according to an online list.

Some bills prohibit compelling students; laws ban topics of discussion

State-level conservative organizations have taken up the issue as well—the Texas Public Policy Fund supported the state’s bill in testimony; the Idaho Freedom Foundation issued a report on “social justice ideology” in December and has testified in support of a new task force assembled by Lt. Governor Janice McGeachin, created to investigate “indoctrination” in Idaho schools.

And despite the influence of national voices and groups, there is still regional variation to be found in some of the proposed legislation—especially in bills introduced earlier this year, before critical race theory and schools became such a hot national issue.

For example, Arkansas’ and South Dakota’s failed bills don’t include the list of concepts, but said teachers can’t promote overthrow of the U.S. government, or promote social justice for a race, gender, or social class. Louisiana’s bill, which its sponsor withdrew, said that schools can’t teach that capitalism or free markets oppress a certain race or sex. Bills in Michigan and Missouri would ban the 1619 Project; Missouri’s also bans a long list of materials including the Zinn Education Project, which provides free resources for history teachers that highlight the contributions and struggles of marginalized groups, and Black Lives Matter at School, a national group that organizes for racial justice in education. (Michigan’s bill is moving through the state legislature, and while Missouri’s legislative session has ended, Republican members have urged the governor to take up the issue.)

There’s another significant difference between available model legislation and some of the proposed bills—the difference between banning discussion of an idea versus banning promotion of that idea.

Most of the model legislation prohibits teachers from endorsing so-called divisive concepts, or from requiring that students endorse them. For example, model bills from both Citizens for Renewing America and the Heritage Foundation prohibit schools from compelling students to affirm, adopt, or adhere to the list of concepts in their model legislation. (The Alliance for Free Citizens’ is vaguer, saying that educators can’t “teach” any of the concepts outlined.)

But some of the bills introduced in state legislatures go a step further, saying that these concepts can’t be made “part of a course” or included in one. This suggests

that educators would be prohibited from introducing these ideas at all, even as one viewpoint among diverse perspectives. The laws passed in Arizona, Oklahoma, Tennessee, and Texas include this provision.

Horman draws a practical distinction between these two types of wording. Idaho's law prohibits schools from compelling students to agree with these concepts, not from discussing them at all.

"You can talk about communism, socialism, or any other ism. This bill is not going to stop you," she said, of her state's law. "Any time you're teaching theory, you ought to leave room for students to make their own decision."

Representatives from groups touting model legislation have responded similarly, saying that directing teachers not to inculcate beliefs is very different from telling teachers they can't acknowledge the existence of certain ideas.

But John Rumel, a professor of law at the University of Idaho, said that confusion about what counts as compelling students could chill teachers' speech.

"It might cause teachers not to teach anything on the subject for fear of crossing the line, if you don't know quite where the line is," he said.

For example, he said—if a teacher talks about communism for five minutes in a broader conversation about world economic systems, is that compelling students to affirm it? Maybe not. But what if that teacher discusses it for longer than she does capitalism? "It's in the eye of the beholder, and we don't want that on a First Amendment issue," Rumel said.

Texas' law: the Partisanship Out of Civics Act

Other legislation includes restrictions around how teachers discuss current events and what activities they can assign for course credit.

The most significant example of this is in Texas. Its law, passed in May, does include the list of divisive concepts, noting that they cannot be made part of a course. But it also states that a teacher cannot be compelled to discuss a particular current event or controversial issue, and that if a teacher chooses to do so, they must "strive to explore the topic from diverse and contending perspectives." And it says that teachers can't make engaging in political activism or advocacy part of

their courses. Finally, it says that schools can't teach that slavery is anything else but a betrayal of America's founding values.

This language all matches provisions outlined in the Partisanship Out of Civics Act, a piece of model legislation authored by Stanley Kurtz, of the Ethics and Public Policy Center, a conservative think tank and advocacy group. Bills proposed in Ohio and Arizona this session also include this language. (When asked in an email whether he advised lawmakers in these states, Kurtz replied, "If and when I am consulted by public office-holders, policy experts, or writers, I keep those consultations off the record.")

Kurtz, who is also a contributing editor at the National Review Online, has written extensively about the culture wars in education and free speech on college campuses. He is an outspoken opponent of "action civics," a brand of civic education that suggests students should learn about current issues and act on those they care about. The discipline, [he has argued](#)

, supports "intentionally agitating grievance, and at times even glamorizing the refusal of angry student activists to accord a respectful hearing to contrary views."

These concerns about action civics echo the fears anti-CRT activists commonly cite about indoctrination: "[W]hat distinguishes classroom-based protest and lobbying from manipulation of a student's untutored prejudices in the service of a teacher's or a school's political agenda?" [Kurtz wrote in January](#)

'The labels will change'

Other recently introduced bills focus on curriculum transparency or rooting out perceptions of teacher bias. And a couple of organizations that have proposed model legislation of this nature seek to put some rhetorical distance between their aims and the controversy of the critical race theory debate.

In Maine, Rep. Meldon Carmichael, a Republican, introduced legislation this session that would prevent teachers from “engaging in political, ideological or religious advocacy in the classroom.” The David Horowitz Freedom Center, a right-wing, anti-Muslim foundation that advised Carmichael on his bill, drew from its K-12 Code of Ethics—model legislation launched in 2018 that would prevent teachers from taking political positions in the classroom.

After Trump’s election in 2016, the group started to get complaints from parents about teachers sharing their political opinions in the classroom, or encouraging students to do activism, said Lonny Leitner, director of special programs at the David Horowitz Freedom Center, and vice president of LS2Group, a public relations firm. He believes that this issue, of teacher bias in the classroom, should “come before” the campaign the right is waging against critical race theory.

“It’s not that controversial issues can’t be taught. ... Teachers can certainly teach the controversies, but they have to present both sides objectively,” Leitner said.

And legislators in South Carolina and Wisconsin have proposed measures that, along with banning some “divisive” concepts, would require schools to publicly list the materials that teachers use in their lessons.

“For conservatives, critical race theory has been a topic of increased interest. But we think in general, families and taxpayers should be aware of what’s being taught in their schools,” said Will Flanders, the research director at the Wisconsin Institute for Law and Liberty.

Transparency makes it easier for parents to get information and “do with it what they will,” he said, regardless of what topics are officially banned or not.

“What often happens is the labels will change. If we ban CRT, folks that want to teach this material will move on to something else,” Flanders said.