

# The Civil Rights Impact of Laws Prohibiting Certain Curricula in K-12 Education



A Report on the 2022 – 2026 term of the  
Missouri Advisory Committee to the  
U.S. Commission on Civil Rights

May 2026

## **Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission on civil rights issues in their states that fall within the Commission's jurisdiction. They are required to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

## **Acknowledgments**

The Missouri Advisory Committee would like to thank the panelists, stakeholders, community members, and others involved in the study.

## Missouri Advisory Committee to the U.S. Commission on Civil Rights

The 2022 – 2026 Missouri Advisory Committee to the U.S. Commission on Civil Rights was appointed to this term on February 18, 2022, and expires on February 17, 2026. Numerous meetings were held to select a topic, with the committee ultimately choosing to study the civil rights impact of laws prohibiting certain curricula in K-12 education in Missouri. There was broad support for this topic because the Missouri legislature introduced a number of bills relating to this topic, there were numerous legal cases in state and federal courts dealing with similar issues, and it was of bi-partisan interest.

The committee held three briefings to gather testimony for a report. Many luminaries in the fields of academics, policy studies, and political activism provided their views on the subject.

This report begins with a brief background of the issue to be considered by the Committee. It was also meant to then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil-rights concerns, however, **deep divisions along partisan lines prevented the committee from reaching consensus.** The Missouri committee entered this project with an earnest desire to examine the subject, honest disagreements about how to interpret the material mired the project and prevented a conclusion.

### Missouri Advisory Committee to the U.S. Commission on Civil Rights

**David Achtenberg**, Chair, *Kansas City*

**Mark Bremer**, *Vice Chair*, Chesterfield

**Lauren Bartlett**, St. Louis

**Michael Duff**

**Edward Greim**, Kansas City

**Emily Hartley**, Bridgeton

**Domingo Martinez-Castilla**, Columbia

**David Mitchell**, Columbia

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The committee based their analysis, in part, on testimony received from the following scholars and other stakeholders:

<b>Dr. Donald Yacavone</b>	Associate Professor, Harvard University, Hutchins Center for African and African American Research
<b>Dr. John McNay</b>	Professor of History, University of Cincinnati, Chair of American Association of University Professors
<b>Dr. James Grossman</b>	Associate Professor of History, University of Chicago, Executive Director of American Historical Association
<b>Dr. David Trowbridge</b>	Associate Research Professor, Humanities and Social Sciences, University of Missouri at Missouri City
<b>Dr. Sharonica Hardin-Bartley</b>	Superintendent, The School District of University City, MO
<b>Dr. Terry Ward</b>	Board Member, North Missouri City Schools
<b>Mr. James Copland</b>	Director of Legal Policy, The Manhattan Institute
<b>Dr. Peter Wood</b>	President, The National Association of Scholars
<b>Mr. Patrick Ishmael</b>	Director of Government Accountability, Show-Me Institute
<b>Dr. Morgan Polikoff</b>	Associate Professor of Education, University of Southern California
<b>Dr. Jeffery Sachs</b>	Associate Professor, Department of Politics, Acadia University
<b>Sec. Jay Ashcroft</b>	Missouri Secretary of State
<b>Ms. Hadar Harris</b>	Interim Washington Director, Pen America
<b>Mr. Tom Bober</b>	President, Missouri Association of School Librarians

## Overview

The Missouri Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal, to study the potential civil rights impact of laws prohibiting certain curricula in K-12 education. The Committee proposed to examine legislation filed, discussed, or adopted by the Missouri Legislature that seeks to *prohibit the teaching of race and race-related topics; gender; gender identity; sexual orientation; class (i.e., socioeconomic status); systemic bias, and other related topics*. Specifically, the Committee’s proposed inquiry focused on whether statewide legislation that bars the teaching of such curricula in public K-12 schools infringes upon the civil rights of students, the families of students, teachers and administrators, or whether it protects those rights.

The conceptual framework for this study, outlined in the next section, is grounded in systems theory. The Committee sought to understand the education framework in the state, the role of the legislature, the role of local control (school boards) and the civil rights concerns of the stakeholders.

## Methodology

Historically, advisory committees collect public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts who have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies. Sometimes, in complicated cases, a literature review can provide the committee with background information on a civil rights concept. The goal is to focus the study on answerable questions.

Committee members select panelists that are the most useful for the purposes of the study and will result in a broad and diverse understanding of the issue. This method of non-probability sampling requires committee members to draw from their representative experiences, knowledge, opinions, and views to gain understanding of the issue and possible policy solutions.

This study includes an examination of education public policy and understanding the scope of the issue requires evaluating the complex relations among institutions, policy actors, and processes involved in education policy decision making. These are in turn influenced by a variety of factors, including culture, history, and partisan political ideology. The question about how legislation affects civil rights cannot be examined in a vacuum. The precursor to understanding policy relationships in public K-12 education requires identification of the interrelationships across the education framework, and how external actors influence decision making within that framework. It was necessary to parse out individual actors to clarify roles, concepts, and responsibilities. See Figure 1 below.

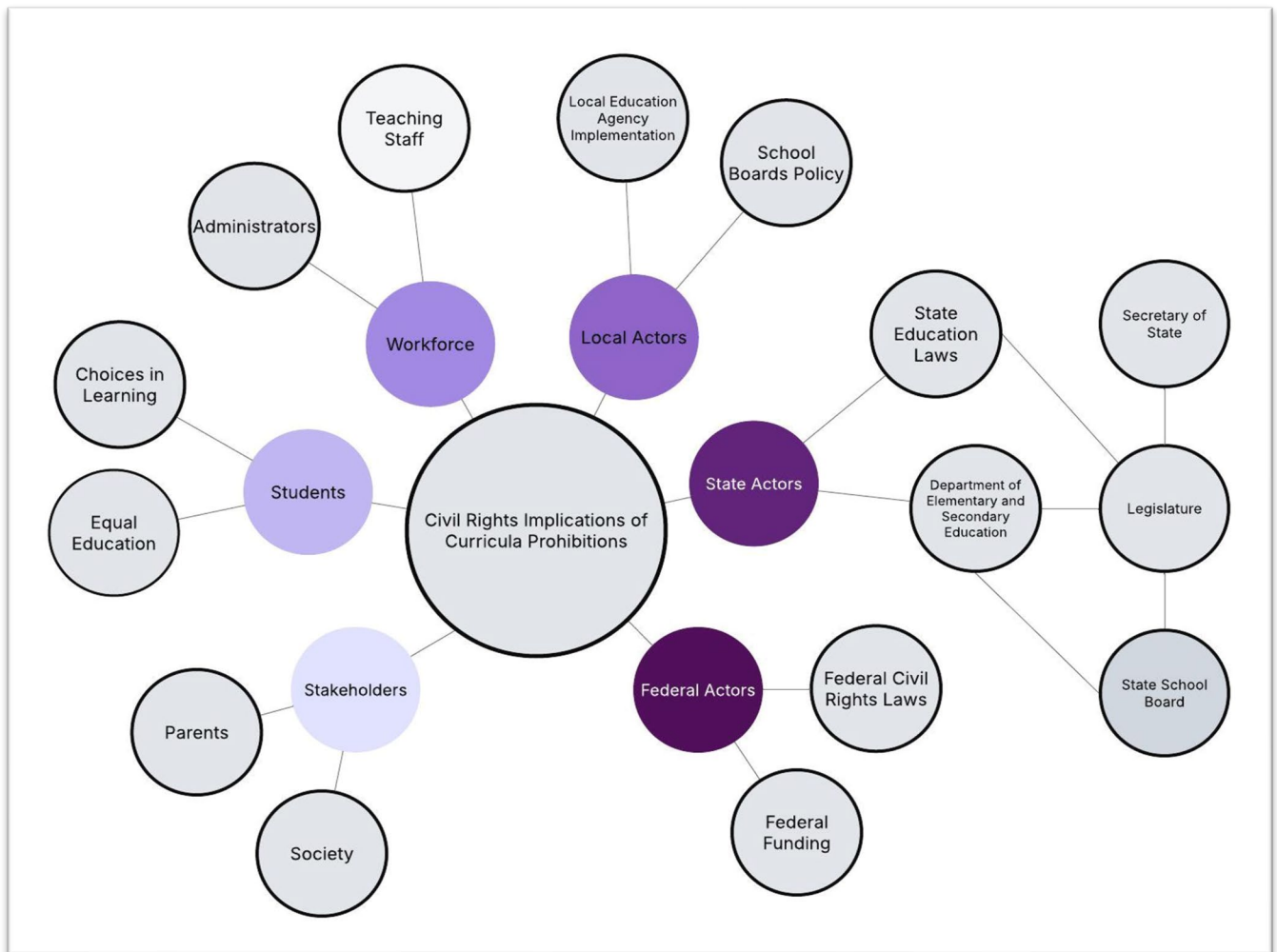


Figure 1: Conceptual Framework - Actors and Influences in this Study

As illustrated in Figure 1, state legislature is but one of the many influences in this study. On its face, the question about civil rights implications of curricula prohibitions appears to be a legal one. The application of civil rights law to any of the proposed bills in the Missouri legislature will yield an answer, such as the law discriminates against a protected class, or it doesn't. A complication, however, of this application of federal civil rights laws is that there is no federal right to education (as will be discussed in the next section). The application of federal law on state issues brings forth the concept of *Federalism*<sup>1</sup>, which would suggest this to be a state issue. A complication to *that* is the federal funding of state education, which states receive subject to adhering to federal law and policy, opens the door to the federal actor in this state issue.

Further complicating the scenario is the state government of Missouri's role in a seemingly local process. School boards have jurisdiction over local education agencies (LEAs), and it is a long-held argument that education is an issue best dealt with at the local level. The State Department of Education and Secondary Education, however, develops material to assist LEAs in creating curriculum. Society in general, and parents in particular, are stakeholders in a child's educational development, creating yet another group of actors in this web.

In policy analysis, a *framework* helps to identify the elements and relationships among elements that should guide the analysis of all types of institutional arrangements which help to generate the questions that are used in the analysis.<sup>2</sup> *Theories* make assumptions and identify the elements of a framework that have particular relevance for answering questions focused on diagnosing phenomena, explaining processes and predicting outcomes. Competing theories can be studied using comparative analysis.<sup>3</sup>

In fulfillment of the Missouri Committees' responsibility to advise the Commission of civil rights matters in the state, the committee conducted several briefings<sup>4</sup> which produced, at times, contradictory testimony. It became apparent that the legal questions that shaped the study did not

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<sup>1</sup> *Bond v United States*, 572 U.S. 844, 857-58 (2014). Federalism refers to the division and sharing of power between the national and state governments.

<sup>2</sup> Ostrom, E. (1999a). Institutional Rational Choice: An Assessment of the Institutional Analysis and Development Framework. In P. A. Sabatier (Ed.), *Theories of the Policy Process* (pp. 39-41). Boulder, Colorado: Westview Press.

<sup>3</sup> *Ibid.*

<sup>4</sup> The Missouri Advisory Committee held virtual briefings on May 31, 2023, June 7, 2023, and April 4, 2024.

adequately account for the political elements of the education system, nor did they take into account the stakeholder's dual influences on the education system.

*Theoretical frameworks* guide research by providing a structured lens through which to study a phenomenon, outlining key concepts, relationships between variables, and the underlying assumptions that inform the research design, data collection, analysis, and interpretation of findings, essentially acting as a foundation for understanding and explaining the research topic within the context of existing knowledge. The *phenomenon* in this study is the proposed banning of certain curricula. The challenge was to identify one framework that provided a common frame of reference for all different points of view. Rather than bridging various theories, the committee's conceptual framework suggests that David Easton's model of Political Systems Analysis<sup>5</sup> (or Systems Theory) provided the best framework to examine the relationships between the various actors in the research question. See Fig. 2 below.

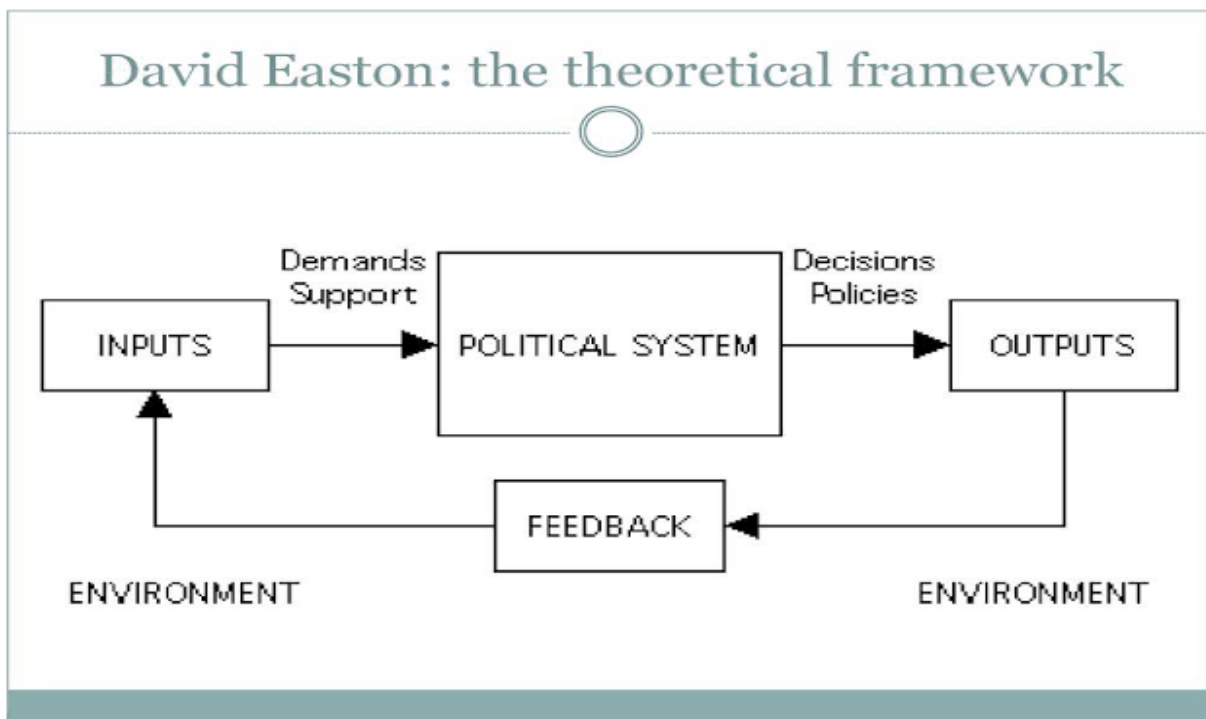


Figure 2: Easton's Systems Framework

<sup>5</sup> Easton David, *A Framework for Political Analysis*, p. 32, (1965).

The coupling problem between a *system* and its environment and between the component parts of a system is central to this general approach.<sup>6</sup>

Utilizing the identified framework, committee members use publicly collected information, often from those directly impacted by the topic of civil rights, and others with direct expert knowledge of such matters, to identify findings and recommendations to report to the Commission.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related findings. Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take specific action, or that the Commission forward recommendations to other federal or state agencies, policy makers, or stakeholders.

As part of this inquiry the Committee heard testimony on May 31, 2023, June 7, 2023, and April 4, 2024. The following report results from a literature review of the relevant materials, a review of testimony provided at these meetings by expert scholars and stakeholders, combined with written testimony submitted during this timeframe. It begins with a brief background that frames the issue studied by the committee. The testimony heard by the committee is identified. The committee conducts its analysis on the testimony and identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. This report focuses on K-12 curriculum. While other important topics may have surfaced throughout the committee's inquiry, matters that are outside the scope of this specific civil rights focus are left for another discussion. This report and the recommendations included within it were adopted by [*a majority of, unanimous, etc.*] the Committee on [DATE].<sup>7</sup>

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<sup>6</sup> See generally Easton's work in note 5.

<sup>7</sup> See Appendix F for Committee Member Statements.

## Background

### The Right to Education

The Supreme Court of the United States has held that education is not a fundamental right, meaning there is no explicit right to an education under the United States Constitution.<sup>8</sup> The Tenth Amendment to the Constitution, however, reserves the “powers not delegated to the United States...are reserved to the states respectively, or to the people.”<sup>9</sup> The Missouri Constitution mandates a free public education for all children in the state:

*A general diffusion of knowledge and intelligence, being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.<sup>10</sup>*

Although the U.S. Constitution is silent on the right to an education, the Fourteenth Amendment to the Constitution, as applied by the Court, mandates that “where the state has undertaken to provide an education, it is a right which must be made available to all on equal terms.”<sup>11</sup> Through a combination of state and federal law, the children of Missouri have a right to a free public education which must be provided to all on equal terms.

### Civil Rights and Education

The Missouri Advisory Committee shares subject-matter jurisdiction with the United States Commission on Civil Rights. The authorizing statute for the Commission describes its duties, in part, as to “study and collect information relating to, and make appraisals of the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin...”<sup>12</sup>

The conflicts over what qualify as Constitutional rights have shaped the nation’s public schools. Most Americans are aware of the Supreme Court’s decision in *Brown v. Board of Education*,<sup>13</sup>

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<sup>8</sup> *San Antonio Ind. School Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973).

<sup>9</sup> U.S. Const. amend. X.

<sup>10</sup> MO Const. Art. IX § 1(a).

<sup>11</sup> *Brown v. Board of Ed. Of Topeka*, 347 U.S. 483, 493 (1954).

<sup>12</sup> 42 U.S.C. § 1975a.

<sup>13</sup> 347 U.S. 483 (1954).

which held “separate but equal” segregation as a violation of the Equal Protection Clause<sup>14</sup> of the Fourteenth Amendment to the Constitution of the United States. Fewer people perhaps are aware that the Supreme Court has interpreted the Constitution to guarantee those within the schools the right to free speech, due process, criminal procedure, and protections under the free exercise and Establishment clause<sup>15</sup> for concerns involving religion in the public schools.

For students, each of these rights take a particular form in the public school that is different than exist for them when they are in public. Please see Appendix 1 for a list of civil rights laws applicable to public education.

### The Education Framework

As previously noted, the Missouri Constitution makes education a right for all children in the state. The Missouri Constitution provides the responsibility for providing that education, “The supervision of instruction in the public schools shall be vested in a state board of education.”<sup>16</sup> The Board sets policies, defines academic performance standards and assessment requirements for public schools, and sets minimum standards for curriculum, student testing, and high school graduation. The Missouri Department of Elementary and Secondary Education, under the supervision of a Commissioner of Education, fulfills the mandates of the state board and other duties as prescribed by law. To keep the instruction in Missouri schools relevant and meaningful, the Commissioner shall “seek in every way to elevate the standards and efficiency of the instruction given in the public schools of the state.”<sup>17</sup>

Educators, similar to doctors and lawyers, must be licensed by the state to practice their profession in Missouri. This licensure is based off college coursework, the results of licensure examinations, and background checks. Specialization in the field generally requires postgraduate work, and the top-tier educators hold Ed. D. or even Ph. D. level degrees. In Missouri, “teachers are certified in various areas of early childhood, elementary, middle, secondary, and special education. Certification is based upon completion of an approved teacher education program.”<sup>18</sup>The need for

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<sup>14</sup> U.S. Const. amend. XIV, § 1.

<sup>15</sup> U.S. Const. amend. I.

<sup>16</sup> MO Const. Art. IX § 2(a).

<sup>17</sup> MO. Rev. Stat. § 161.122 (2009).

<sup>18</sup> Missouri Department of Elementary and Secondary Education, Certification, <https://dese.mo.gov/educator-quality/certification/teachers>

educator licensure is best explained by the National Education Association’s webpage on teacher licensure, “Licensure provides the professional and public assurance that educators have met state teaching standards and have demonstrated their readiness to teach and improve student learning.”<sup>19</sup>

There are 2,473 public schools in Missouri serving 892,246 children and employing 69,838 teachers.<sup>20</sup> The fiscal investment in K-12 education represents one of the largest segments of expenditures for Missouri and makes public education the top employer in the state.

### The Role of Curricula in Education

What is Curriculum? Any attempt to define the concept of curriculum is difficult because of the variety of ways the term is used in the academy, but to understand the nature and extent of curriculum diversity one can look at the descriptions offered by past and present leaders in the field. As a concept, curriculum can be defined as prescriptive, descriptive, or both. Please see Appendix 2 for a discussion on the different types of curriculum theory.

The State of Missouri defines curriculum as the “day-to-day outline of strategies that teachers use to help students learn. It involves textbooks, homework assignments, classroom activities and assessments – the “how” of teaching”.<sup>21</sup> According to the Missouri State Department of Elementary and Secondary Education, the curriculum is the *process*, but the standards are the *goal*.<sup>22</sup> Under the current education scheme in Missouri, the Show-Me standards (1996)<sup>23</sup> and the Missouri Learning Standards (2016)<sup>24</sup> serve as blueprints from which local school districts develop challenging curriculums to help all students achieve.<sup>25</sup>

### Show Me Standards

The Show-Me Standards were approved as a final regulation by the Missouri State Board of Education, January 18, 1996. The standards are built around the belief that success of Missouri's

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<sup>19</sup> National Education Association, Professional Excellence, Teacher Licensure. <https://www.nea.org/professional-excellence/professional-learning/teacher-licensure#:~:text=Licensure%20provides%20the%20professional%20and,teach%20and%20improve%20student%20learning.&text=NEA%20believes%20that%20all%20teachers,of%20responsibility%20for%20student%20learning.>

<sup>20</sup> National Center for Education Statistics, Missouri State Dashboard for 2022, <https://nces.ed.gov/programs/digest-dashboard/state/missouri> .

<sup>21</sup> <https://dese.mo.gov/college-career-readiness/curriculum-vs-standards>

<sup>22</sup> Ibid.

<sup>23</sup> Missouri Department of Elementary and Secondary Education, Learning Standards, <https://dese.mo.gov/college-career-readiness/curriculum/missouri-learning-standards> .

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

students depends on both a solid foundation of knowledge and skills, and the ability of students to apply their knowledge and skills to the kinds of problems and decisions they will likely encounter after they graduate. The standards serve as a blueprint from which local school districts may write challenging curriculum to help all students achieve.

### The Missouri Learning Standards

In Missouri, school districts design or select their own curriculum based on local needs. Teachers adjust the curriculum to help students reach and go beyond the standards for learning.<sup>26</sup>

Curriculum decisions, along with textbook selections, instructional approaches, and teaching strategies are all choices made by the local school system.<sup>27</sup> The state Department of Elementary and Secondary Education is responsible for supporting the local school system with information and resources, providing in-service training for professional staff, and assisting the local system as they align their locally written curriculum to the state standards.

Schools reflect, to some extent, the culture of which they are a part and respond to forces within that culture. Any given school in Missouri is subject to Federal oversight, State regulation, and local school district control. They are also dependent upon local principals and teachers, as employees of the state, to carry out the approved curriculum. Parents and other stakeholders are part of the process and have a voice at each step. Because of the nature of this pattern of organization, support, and control, schools are especially vulnerable, and respond quickly, to the strongest social forces of political pressure and changes in social values.<sup>28</sup>

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<sup>26</sup> Ibid.

<sup>27</sup> <https://dese.mo.gov/college-career-readiness/curriculum/mls-for-parents>

<sup>28</sup> Callahan, *Education and the Cult of Efficiency*, The University of Chicago Press, p. 1. (1962).

## Education Bills Introduced in the Missouri Legislature

Censorship of books in the education system has been a recurring issue.<sup>29</sup> As the public debates over what is considered appropriate or objectional material for school-aged children, there are some legislators in Missouri who have introduced legislation aimed at protecting parent’s rights, full transparency in education curriculum, source materials, professional development materials and all guest speakers. While nondescript in appearance, some of the provisions of these bills would cause a great expense (creating and posting to websites) and would stress an already overloaded education workforce. A partial list of the legislation submitted in 2022-2023 is listed in Table 1 below.

**Table 1: Missouri Legislation Related to Curricula Prohibition**

	<b>Introduced</b>	<b>Bill #</b>	<b>Status</b>	
1.	1/12/2021	SB 647	Died	Parents may formally object to any instructional material that infringes upon their parental rights. If the objection is denied, parents may file a civil suit, and any award must be used for educational expenses.
2.	1/1/2022	SB 653	Died	Parents' bill of rights. Parents have the fundamental right to direct the education of their child. School districts must establish procedures to allow parents to view their child's curriculum and to learn about clubs and activities. The state commissioner of education must establish a statewide searchable website and must post to the website each school district's curriculum, source materials, professional development materials, and a list of all guest speakers, to be available to the public. School districts must update the information within seven days of changes. Establishes penalties for violation.
3.	1/5/2022	HB 2068	Died	Same as SB 653

<sup>29</sup> Fla. HB 1467, 2022 Leg., Reg. Sess. (Fla. 2022), codified in part at Fla. Stat. § 1006.28, requiring procedures for review and objection to school library and instructional materials; Tex. H.B. 900 (READER Act), 88th Leg., Reg. Sess. (Tex. 2023), codified in part at Tex. Educ. Code § 33.021, regulating library materials and requiring ratings for sexually explicit or sexually relevant content; Iowa S.F. 496, 90th Gen. Assem., Reg. Sess. (Iowa 2023), codified in part in Iowa Code Ch. 279 and related education provisions restricting books depicting “sex acts” in K–12 schools; Idaho H.B. 710, 67th Leg., 2d Reg. Sess. (Idaho 2024), codified at Idaho Code § 18-1517B (“Children’s School and Library Protection Act”), restricting minors’ access to materials deemed harmful to minors and authorizing civil actions for violations.

4.	1/5/2022	HB 1995	Died	Parents' bill of rights. School districts must provide electronically all curriculum and instructional materials, as well as private students' records upon request. Parents may voice objections to instructional material used in their child's classroom. Schools must post to a centralized statewide portal all curricular, professional development, and guest speaker materials, to be updated twice yearly. Does not extend parents' rights to actions that would end life.
5.	1/5/2022	HB 1752	Died	Amends existing statute. Schools must notify parents of any instructional material or survey related to sexuality or gender identity and parents may opt their child out of said instruction. Schools must make all curricular materials used in sex education or that pertains to sexuality or gender identity available for public review.
6.	1/5/2022	HB 2008	Died	School boards must post to their website the curricula for each school, to be updated upon revision. School boards must notify parents of all revisions.
7.	1/5/2022	HB 1767	Died	Public schools must notify the department of education and make information available on the school's website any instructional materials or planned programming related to concepts including racism and sexism no later than 30 days prior to instruction.
8.	1/5/2022	HB 1755	Died	Parents' bill of rights. Parents have the right to review their child's curriculum. Parents may object to any instruction in their child's classroom. Schools must notify parents prior to any instruction related to sexuality and may opt their child out. Parents have the right to learn about extracurriculars.
9.	1/5/2022	SB 810	Died	Parents' bill of rights. Establishes procedures for parents to receive instructional material and to object to any instructional material used in the child's classroom. Parents may opt their child out of sex education instruction or objectionable material. Parents have the right to learn about extracurriculars. Schools must notify parents 2 weeks prior to instruction related to divisive concepts. Schools must notify parents of these provisions twice yearly. Schools must post to a centralized statewide portal all curricular, professional development, and guest speaker materials, to be updated no later than 5 days after revision. Does not extend parents' rights to actions that would end life.
10.	1/5/2022	HB 1858	Died	Parents' bill of rights. Parents have the right to review all curricula and instructional materials in an electronic format. Parents have the right to visit their child during school hours. Establishes a statewide database of all school curricula and instructional materials in the state, to be updated twice yearly by school districts. Parents may report gag order violations to the attorney general.

11.	1/5/2022	HB 2189	Died	Schools must post to their website any professional development materials and attendance records and must make professional development programming open for public attendance. Schools must post professional development programming on their website no later than 30 days in advance and must maintain video recordings of programming for 3 years. Schools must post to a centralized statewide portal all curricular, professional development, and guest speaker materials, to be updated no later than 5 days after revision. School districts must post to their website all instructional and professional development materials related to DEI, race, sex, and bias. If materials were created by a teacher, the teacher's identity must be listed.
12.	1/5/2022	SB 740	Died	The department of education must post to their website all professional development materials they sponsor or recommend. Schools must post to their website all syllabi, professional development materials, and instructional materials. If materials were created by a teacher, the teacher's identity must be listed. Schools must post procedures for parents to opt their child out of formal or informal education. Schools must notify parents prior to lectures, presentations, or assemblies and may opt their child out.
13.	1/5/2022	SB 775	Law <sup>30</sup>	Public and private school employees including teachers and librarians are guilty of a misdemeanor for providing "sexually explicit materials" to students. <b>As of September 27, 2023 this law was challenged in court and is still in the legal process.</b> <sup>31</sup>
14.	1/6/2022	HJR 110	Died	Parents' bill of rights. Schools must post to their website all curricula, professional development materials, and instructional materials for parental and public review no later than 30 days prior to the semester. Parents may opt their child out of material they object to. Parents have the right to be notified about the wellbeing of their child.
15.	1/10/2022	SB 645	Died	Schools must post to their website any professional development materials and attendance records and must make professional development programming open for public attendance. Schools must post professional development programming on their website no later than 30 days in advance and must maintain video recordings of programming for 3 years. Schools must post to a centralized statewide portal all curricular, professional development, and guest speaker materials, to be updated no later than 5 days after revision. School districts must post to their website all instructional and professional development materials related to DEI, race, sex, and bias. If materials were created by a teacher, the teacher's identity must be listed.

<sup>30</sup> Missouri Revised Statute § 573.550.

<sup>31</sup> *Missouri Assn. of School Librarians, et. al. v. Jean Peters Baker, et. al.*, 23-CV-00536-SRB, (2023).

16.	1/12/2022	SB 776	Died	Parents' bill of rights. Schools must provide all syllabi and instructional materials to parents from all schools in the district, and parents may opt their child out of instruction they object to. Parents may object to material in their child's classroom.
17.	1/13/2022	HB 2294	Died	Parents' bill of rights. Parents have the right to review all curricular and instructional materials. Schools must provide parents with a list of all library materials at the beginning of each school year. Schools must post to their website reports and investigations regarding these rules from the preceding year.
18.	1/13/2022	HB 2195	Died	Parents' bill of rights. Parents have the right to be informed of a child's counseling and behavior and wellbeing. Parents have the right to review curriculum and instructional materials used in their child's school.
19.	2/14/2022	HB 2693	Died	Schools must post to their website all curricular plans and instructional materials for public review.
20.	2/25/2022	HJR 135	Died	Parents' bill of rights. Schools must post to their website all curricula, professional development materials, and instructional materials for parental and public review no later than 30 days prior to the semester. Parents may opt their child out of material they object to. Parents have the right to be notified about the wellbeing of their child.
21.	2/28/2022	HB 2827	Died	The department of education must post to their website all professional development materials they sponsor or recommend. Schools must post to their website all syllabi, professional development materials, and instructional materials. If materials were created by a teacher, the teacher's identity must be listed. Schools must post procedures for parents to opt their child out of formal or informal education. Schools must notify parents prior to lectures, presentations, or assemblies and may opt their child out.
22.	5/1/2022	HB 1474	Died	Parents' bill of rights. Parents have the right to review curriculum and instructional materials.
23.	9/14/2022	SB 22	Died	Parents' bill of rights. Schools must post to their website all curricula, professional development materials, and instructional materials for parental and public review no later than 30 days prior to the semester. Parents may opt their child out of material they object to.
24.	1/4/2023	SB 134	Died	Schools must notify parents within 24 hours if a student expresses changes in their gender identity or sexual orientation, including pronouns.
25.	1/4/2023	SB 158		Parents' bill of rights. Parents have the right to access and inspect district instructional material and curricula. Parents have the right to

			Died	review all school records related to their child. School districts must establish policies for parents to report concerns about the veracity or appropriateness of instructional materials used in their child's classroom; reports may be related to morality, religion, or beliefs related to sexuality or wellbeing, and parents may opt their child out of said material. Parents may opt their child out of sex education. Parents have the right to learn about the nature and purpose of clubs and extracurriculars and may opt their child out. Superintendents must respond to requests for information within ten days. Public school employees cannot encourage a child to keep information from a parent. Does not extend parental rights to actions that would end life. The department of education shall develop an online tool with access to the curriculum and professional development materials of each public school district, which districts must update every six months.
26.	1/4/2023	HB 634	Died	Schools must develop model policies to notify parents of any changes to a student's health or wellbeing. Employees are required to encourage a student to discuss their wellbeing with a parent and/or must facilitate that discussion. Schools must develop policies for reporting any violations of this policy to the principal.
27.	1/4/2023	HB 137	Died	Expands parental notification guidelines from notification of sex education instruction to notification of any curriculum or activity related to sexuality or gender identity in any course. Parents have the right to excuse their child from any curriculum or activity related to sexuality or gender identity. School districts must make all materials related to sexuality or gender identity available to the public.
28.	1/4/2023	SB 4	Died	Parents' bill of rights. Parents have the right to inspect curricula including books, instructional materials, and the source of these materials, as well as the names of any instructors. The commissioner of education will establish a statewide transparency portal for citizens to access and review all curricula including syllabi and textbooks, to be updated monthly by each school district. The portal shall list materials, attendance records, costs, and descriptions of professional development programs. If a parent believes a teacher is violating the gag order, the parent may report it to the state department of education. Report cards describing each school's academic achievement, budgets, and other information must be posted to the school district's website and distributed to parents.
29.	1/4/2023	HB 482		Parents have the right to know about instructional materials, including books. Parents must opt their child in to any extracurricular activity. Employees may not encourage students to withhold any information from parents. The department of education shall develop an online tool with access to the curriculum and professional development

			Died	materials of each public school district, which districts must update every six months. School districts must also post to their own websites all curricula used in the district and notify parents when it has been updated.
30.	1/18/2023	SB 89	Died	The commissioner of education will establish a statewide transparency portal for citizens to access and review all curricula including syllabi and textbooks, to be updated weekly by each school district. The portal shall list materials, attendance records, costs, and descriptions of professional development programs. Schools must provide parents with all syllabi and reading lists. Parents must opt their children into clubs/extracurriculars. Parents may object to any instructional material used in their child's classroom and may opt their child out, on the basis that they are inappropriate for any reason.
31.	1/24/2023	SB 42	Died	Schools must post to their website all professional development materials and all student syllabi and instructional materials, including links and descriptions when available, as well as the identity of the teacher if created by a teacher, procedures for review and approval of lesson plans and curricula, and a list of all library materials. Information must be posted prior to instruction and remain online for two years. Residents of school districts may bring a suit for violations. Schools may not use subscription-based services for student learning unless they also provide parents with login information. Parents' bill of rights. Schools must provide parents with syllabi and reading lists. Parents may object to any instructional material and may opt their child out, on the basis that they are inappropriate for any reason.

Included in the proposed legislation are provisions for parents to object to any instructional material for any reason. Some proposals would prohibit teaching about DEI, race, sex, and bias. In some bills, teachers who created materials for these topics would have to be named on the school website. In light of these pieces of proposed legislation, the Missouri Advisory Committee to the U.S. Commission on Civil Rights considered the civil rights impact of laws prohibiting certain curricula in K-12 education.

## Testimony in Favor of Curricula Restrictions

### Secretary of State Jay Ashcroft

In Missouri, the Secretary of State, Jay Ashcroft, secures resources vital for library access. The State Library helps enhance the gateway to learning for all Missourians by distributing grants to libraries across the state. Then Secretary Jay Ashcroft offered testimony to the committee. Secretary Ashcroft argued that Missouri's education system is failing, with fewer than 25% of eighth graders proficient in math and reading.<sup>32</sup> He emphasized the need to focus on fundamental subjects- reading, writing, and arithmetic—before expanding into other topics.<sup>33</sup> Ashcroft opposed schools discussing topics like gender and sexuality, arguing that schools should not replace parents in shaping children's values.<sup>34</sup> Ashcroft said he supported legislation restricting certain curriculum topics and asserts that states have the right to determine educational content.<sup>35</sup> He was opposed to teaching ideologies that classify individuals as "oppressors" or "victims" based on race.<sup>36</sup> While he values civic education, he believed it should come after mastering fundamental subjects.<sup>37</sup> Ashcroft said he supports shifting control of education to parents, allowing them to decide how public funds for education are used.<sup>38</sup> He critiqued government intervention in education, arguing that centralized control limits parental decision-making.<sup>39</sup> He stated that “school choice” only has meaning if the state does not dictate curriculum.<sup>40</sup>

### James Copland

James Copland, senior fellow and director of legal policy at the Manhattan Institute, presented his perspective to the committee on legislative approaches to critical race theory (CRT)<sup>41</sup> in

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<sup>32</sup> Jay Ashcroft, Testimony, *Hearing Before the Missouri Advisory Committee, Web-based, April 4, 2024*, transcript, p.2 (hereafter cited as April 4 transcript.)

<sup>33</sup> *Ibid.* p. 3.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.* p. 4.

<sup>37</sup> *Ibid.* p. 5.

<sup>38</sup> *Ibid.* p. 6.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> James Copeland, Testimony, *June 7, 2023*, p.3. Mr. Copeland acknowledged in his testimony that “the reference to critical race theory itself is a bit of an umbrella catchphrase that gained public consciousness, is not necessarily reflective either of the sort of model principles for legislation that we articulate, nor of necessarily what many state legislatures, including those in Missouri, have been looking at. But I do think it's a touch point for some of these principles that evolved intellectually.”

public education.<sup>42</sup> He discussed his 2021 report, *How to Regulate Critical Race Theory in Schools: A Primer and Model Legislation*, which examines principles for legislative intervention in school curricula.<sup>43</sup> Copland emphasized three key principles: transparency, prohibition of compelled speech, and clarification of curricular choices.<sup>44</sup>

His testimony focused on how Missouri’s SB4 bill<sup>45</sup> aligns with these principles, highlighting concerns about ideological compulsion in classrooms.<sup>46</sup> He drew a distinction between teaching factual content and compelling students or teachers to affirm ideological positions.<sup>47</sup> Copland also acknowledged challenges in measuring the extent of CRT-related teaching and emphasized that legislative interventions should avoid excessive burdens on teachers, legal vagueness, and unnecessary financial strain on school systems.<sup>48</sup>

James Copland’s testimony supports anti-Critical Race Theory (CRT)-related legislation that ensures transparency, prevents ideological coercion, and clarifies curricular decisions.<sup>49</sup> While he acknowledges that CRT discussions extend beyond race to gender and identity issues, he argues that laws should focus on preventing compelled speech rather than restricting open discussion.<sup>50</sup> He also warns against vague or overly punitive policies that could burden schools or chill academic discourse.<sup>51</sup>

Copland believes schools should disclose curricula and instructional materials but without overburdening teachers.<sup>52</sup> He said legislation should prevent schools from forcing students or teachers to affirm ideological beliefs about race, gender, or other identities. He added that public schools inevitably make content decisions, but legislation should not suppress discussion of historical and social issues.<sup>53</sup>

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<sup>42</sup> James Copeland, Testimony, *June 7, 2023*, p. 2.

<sup>43</sup> *Ibid.* p. 3.

<sup>44</sup> *Ibid.*

<sup>45</sup> SB 4, 102<sup>nd</sup> General Assembly, First Regular Session, (MO, 2023).

<sup>46</sup> Copeland, Testimony, *June 7, 2023*, p.3.

<sup>47</sup> *Ibid.* p. 4.

<sup>48</sup> *Ibid.* p. 6.

<sup>49</sup> *Ibid.* p. 3.

<sup>50</sup> *Ibid.* p. 5.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

Mr. Copland referred to *West Virginia v. Barnette*<sup>54</sup> and other Supreme Court cases to argue that compelled ideological speech is unconstitutional, however he thinks bills should not create excessive litigation risks for schools by allowing open-ended lawsuits.<sup>55</sup>

While anecdotes abound, systematic data on CRT-related teaching in K-12 schools is limited.<sup>56</sup> He indicated that some studies indicate its prevalence in teacher education programs, but public K-12 education does not have the same academic freedom protections as universities, making curriculum regulation more viable.<sup>57</sup> Unlike CRT, evolution is a scientific theory, and past legal disputes about teaching it involved constitutional religious protections.<sup>58</sup> Copland debated whether charter schools should be exempt from CRT-related regulations, noting their role in educational pluralism.<sup>59</sup> Ultimately, he believes laws should not discourage legitimate discussion of race, history, and social issues in classrooms.<sup>60</sup>

Copland also advocates for educational pluralism, stating that private and charter schools should have curricular flexibility, provided they maintain transparency.<sup>61</sup> He notes that the Missouri bill does apply to charter schools, which is debatable, as different states handle charter schools differently.<sup>62</sup>

A key issue is the distinction between knowledge demonstration and ideological endorsement. He agrees with a committee member that asking students to demonstrate knowledge of a concept differs from forcing them to endorse it.<sup>63</sup> For example, answering questions about historical theories is distinct from being required to affirm a belief about their personal identity.<sup>64</sup>

On empirical proof, Copland acknowledges the difficulty of systematically quantifying these issues on a national scale due to a lack of centralized data.<sup>65</sup> However, he notes that anecdotal

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<sup>54</sup> 319 U.S. 624, (1943).

<sup>55</sup> Copland, *Testimony*, June 7, 2023, p.6.

<sup>56</sup> *Ibid.* p. 9.

<sup>57</sup> *Ibid.* p. 4.

<sup>58</sup> *Ibid.* p. 10.

<sup>59</sup> *Ibid.* p. 4.

<sup>60</sup> *Ibid.* p. 7.

<sup>61</sup> *Ibid.* p. 6.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.* p. 9.

<sup>64</sup> *Ibid.* p. 10.

<sup>65</sup> *Ibid.* p. 8.

evidence suggests widespread concerns, as seen in the investigative work of figures like Chris Rufo.<sup>66</sup>

#### Dr. Peter Wood

Dr. Peter Wood, an anthropologist and president of the National Association of Scholars, testified before the committee about race-related curricula, specifically addressing the 1619 Project. He critiqued the project's interpretation of American history, arguing that it misrepresents key facts, particularly regarding the origins of slavery in the U.S.<sup>67</sup> He stressed the importance of neutrality, non-ideological teaching, and presenting historical context accurately to avoid distortions.<sup>68</sup> Dr. Wood also warns that teaching race through ideological frameworks, such as critical race theory (CRT), risks generating racial hostility and political division rather than fostering a balanced understanding.<sup>69</sup>

Dr. Wood asserted that race is fluid and socially constructed, with anthropologists and historians differing on how to define it.<sup>70</sup> He said the 1619 Project is politically driven. He said the 1619 Project promotes a narrative that race and racial privilege are the defining factors of American history, rather than one part of a broader historical picture.<sup>71</sup> Dr. Wood highlights that while historical facts—such as the arrival of African captives in Virginia in 1619—are important, their interpretation must be accurate.<sup>72</sup> He disputes claims that slavery began in America at that moment, noting that the individuals initially became indentured servants.<sup>73</sup>

Dr. Wood advocated for an unbiased, non-ideological approach to history education, avoiding curricula that serve political or activist agendas.<sup>74</sup> He warned that race-based curricula can lead to feelings of historical guilt or victimization, fostering racial division rather than understanding.<sup>75</sup> He maintained that K-12 education should focus on fundamentals, arguing that primary and secondary education should emphasize clear, essential facts rather than introducing

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<sup>66</sup> Ibid. p. 9.

<sup>67</sup> Peter Wood, *Testimony, June 7, 2023*, p. 11.

<sup>68</sup> Ibid. p. 11.

<sup>69</sup> Ibid. p. 12.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

overly complex or politically charged nuances.<sup>76</sup> He stresses the need to prioritize the most relevant aspects of history rather than allowing ideology to dictate educational content.<sup>77</sup>

Dr. Wood was opposed to "opt-out" provisions believing that allowing parents to opt out of race-related curricula would not solve the issue, as it would indicate that the education system is failing to provide balanced instruction.<sup>78</sup> He told the committee historical accuracy was more important than political advocacy, criticizing educational materials that serve political purposes, such as promoting reparations, arguing that they violate principles of neutrality in public education.<sup>79</sup>

### Patrick Ishmael

Patrick Ishmael, Director of Government Accountability at the Show Me Institute, presented his testimony on government transparency, particularly regarding educational curricula in Missouri.<sup>80</sup> He emphasized that transparency in governance and spending should not be a partisan issue, citing the U.S. Constitution and policies from both Republican and Democratic administrations.<sup>81</sup> Ishmael detailed the Show Me Curricula Project, which investigated how racial topics, particularly Critical Race Theory (CRT), are being taught in Missouri schools.<sup>82</sup> He revealed that while some districts were forthcoming, others resisted transparency through high fees and obfuscation.<sup>83</sup>

Ishmael pointed to specific districts that either acknowledged or denied teaching CRT, noting inconsistencies in responses.<sup>84</sup> He highlighted cases where schools used fees as a barrier to Sunshine Law requests, with some districts demanding hundreds of thousands of dollars for access to curricula.<sup>85</sup> He argued that transparency in public education is essential and called for mandatory online publication of curricula and training materials.<sup>86</sup> He also discussed concerns

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<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid. p. 16.

<sup>80</sup> Ishmael, *Testimony, June 7, 2023*, p. 16.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid. p. 17.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid. p. 18.

over CRT-aligned instruction and its potential impact on students.<sup>87</sup>In a Q&A session, Ishmael clarified that transparency should focus on district-level policies rather than naming individual teachers.<sup>88</sup> He agreed that history should be taught honestly but opposed framing students as responsible for past racial injustices.<sup>89</sup> He emphasized that taxpayer money mandates accountability and suggested transparency reforms at the local level to build public trust.<sup>90</sup>

## Testimony Against Curricula Restrictions

### Dr. Donald Yacavone

Dr. Donald Yacovone, an historian and lifetime associate at Harvard’s Hutchins Center, presented an argument about the exclusion of African American history from American textbooks and the impact of white supremacy in education. His research, based on analyzing 250 history textbooks, reveals how American history has been shaped to favor a white narrative while marginalizing Black, Native American, and immigrant histories.<sup>91</sup> Dr. Yacovone highlighted for the committee how historical distortions have influenced generations of students and contributed to racial inequities in modern society.<sup>92</sup>

He said textbooks from the 19th and 20th centuries shaped American identity as exclusively white. These books either ignored Black contributions or framed them as societal burdens. Even modern textbooks, while improved, often fail to challenge ingrained notions of white superiority. Yacavone stressed the importance of teaching about lynching and racial terror beyond the South.<sup>93</sup> Cases like Zachariah Walker’s 1911 burning in Pennsylvania demonstrate how racism permeated the entire nation.<sup>94</sup> Excluding racial violence and Black struggles from education prevents students from understanding America’s racial history.<sup>95</sup> This, he argued, undermines efforts toward justice and equality.<sup>96</sup>

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<sup>87</sup> Ibid. p. 19.

<sup>88</sup> Ibid. p. 20.

<sup>89</sup> Ibid. pp. 21-22.

<sup>90</sup> Ibid. p. 22.

<sup>91</sup> Yacavone, *Testimony, May 31, 2023*. p. 3.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid. p. 4.

<sup>96</sup> Ibid.

Dr. Yacavone said prominent historians like John D. Hicks have published textbooks describing slavery as a beneficial institution for African Americans, portraying them as incapable of higher education and naturally suited for servitude.<sup>97</sup> Older textbooks justified racial discrimination, and portrayed African Americans as inferior.<sup>98</sup> These books remain accessible online and are still used by some homeschoolers.

The omission or misrepresentation of Black history has led to internalized racial inferiority, as described by journalist Charles Blow and students who protested biased curricula.<sup>99</sup> Dr. Yacavone cited a 2018 survey that found only 8% of 1,000 students identified slavery as the primary cause of the Civil War, while many wrongly believed taxation was the cause.<sup>100</sup> Conservative-led efforts in states like Texas and Florida have removed hundreds of books addressing race, gender, and social justice, suppressing discussions on systemic racism.<sup>101</sup> This reflects a broader campaign to suppress discussions about racism.<sup>102</sup> Some states have proposed laws restricting how race and discrimination are taught, with language that enables parents to object to lessons they find "offensive."<sup>103</sup> Yacovone argued that these policies are designed to appease white parents rather than uphold educational integrity. Dr. Yacovone argues that the backlash against inclusive history is rooted in anxiety over the decreasing white majority in the U.S.<sup>104</sup> He attributes the backlash against inclusive history to white Americans' fear of losing racial dominance.<sup>105</sup> By 2040, white Americans will be just another minority group, which, he suggests, is at the heart of these racial anxieties.<sup>106</sup> He concluded by urging Americans to fully confront their history, arguing that ignoring past injustices only fuels modern racial divisions.<sup>107</sup> He drew parallels to Germany's reckoning with the Holocaust, arguing that the U.S. must fully confront its history of racism to achieve national unity.<sup>108</sup>

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<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

## Dr. John McNay

Dr. John McNay emphasized that academic freedom is a cornerstone of higher education and a vital component of democracy.<sup>109</sup> He argued that a strong university system thrives on free inquiry and open dialogue, allowing students to develop critical thinking skills and engage with diverse perspectives.<sup>110</sup> This, he said, contributes to a well-informed and active citizenry, which is essential for sustaining democratic institutions.<sup>111</sup> Current legislative efforts, however, in multiple states are attempting to restrict what educators can teach, particularly on sensitive topics like race, gender, and social justice.<sup>112</sup> McNay warns that these policies threaten to erode academic freedom, replacing it with state-mandated ideological instruction.<sup>113</sup> He insists that allowing political figures to dictate educational content is a dangerous precedent that contradicts the fundamental values of democracy and intellectual independence.<sup>114</sup>

Dr. McNay highlights several state-level legislative efforts that pose a serious threat to academic freedom, focusing on Ohio Senate Bill 83 and Missouri Senate Bill 4.<sup>115</sup> These bills, like others across the country, aim to regulate classroom content, restrict discussions on certain topics, and impose ideological oversight on educators.<sup>116</sup> He notes that while some of these bills claim to protect teacher rights, their true intent appears to be political control over education.<sup>117</sup> The proposed laws often include provisions that discourage or prohibit discussions on race, social justice, and gender issues, thereby limiting students' exposure to critical historical and societal topics.<sup>118</sup>

One of McNay's main concerns is that these bills shift decision-making power away from educators—who are experts in their fields—and place it in the hands of politicians, many of

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<sup>109</sup> John McNay, *Transcript, May 31, 2023*, p. 9.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

whom have no background in education.<sup>119</sup> He warns that once political figures start determining what is and isn't acceptable in education, the risk of ideological indoctrination increases.<sup>120</sup>

Furthermore, he argues that the enforcement mechanisms in these bills create an atmosphere of fear and self-censorship, where teachers may avoid discussing important but controversial topics to protect their jobs.<sup>121</sup> This weakens the overall quality of education, depriving students of the opportunity to engage in meaningful discussions and think critically about complex issues.<sup>122</sup>

Dr. McNay expressed particular concern about how restrictive legislation impacts K-12 teachers, arguing that these laws stifle educators' ability to teach historical truths and create a climate of fear.<sup>123</sup> A major consequence of these laws is that teachers may hesitate to discuss essential historical topics, such as slavery, racism, or the civil rights movement, even though these are fundamental to understanding American history.<sup>124</sup>

McNay said he believes that a well-rounded education includes both the uplifting and the painful parts of history.<sup>125</sup> Censorship laws weaken students' ability to critically analyze the past and its connection to present-day issues, limiting their overall educational development.<sup>126</sup>

Dr. McNay critiqued the way politicians are misusing the concept of intellectual diversity to justify restricting academic freedom and forcing specific viewpoints into the classroom.<sup>127</sup> While "intellectual diversity" sounds positive, promoting a marketplace of ideas—he argues that in practice, it is being selectively applied to enforce conservative cultural ideas in humanities and social sciences, rather than truly encouraging a diversity of perspectives.<sup>128</sup>

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<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*

For example, legislators who advocate for intellectual diversity, McNay explained, often mandate that teachers present "both sides" of an issue, even when one side is objectively false or morally indefensible.<sup>129</sup> He asked, "should slavery be taught from 'both perspectives?'"<sup>130</sup>

Ultimately, he argues that the purpose of education is not to give equal weight to all ideas but to teach students how to critically evaluate evidence and distinguish between credible and unfounded claims.<sup>131</sup>

Dr. McNay argues that legislative restrictions on race-related topics create an unequal education system, particularly affecting students of color.<sup>132</sup> By censoring discussions on slavery, racial discrimination, and civil rights, these laws erase critical parts of American history, making it harder for students to understand the present-day impacts of racism.<sup>133</sup>

He emphasizes that education should provide a common foundation of knowledge, ensuring that all students, regardless of where they live, learn key historical truths. However, these new laws could lead to inconsistent teaching standards across different states and school districts, meaning some students receive a more complete and honest education than others.<sup>134</sup>

He concludes that quality education must include difficult and complex topics, as shielding students from uncomfortable truths does not prepare them to engage with the real world.<sup>135</sup> By restricting these discussions, policymakers risk creating a generation of students with an incomplete understanding of history and social justice.<sup>136</sup>

Dr. McNay acknowledged that parents have a legitimate interest in their children's education, but he warns that giving them veto power over curriculum decisions can undermine educational quality.<sup>137</sup> While parental concerns should be heard and respected, he argues that curriculum should ultimately be guided by professional educators who are trained in their fields.<sup>138</sup>

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<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

McNay said he believes that quality education is not just about job training, it is about shaping informed, engaged, and thoughtful citizens.<sup>139</sup> Restricting what students can learn only serves to weaken democracy and critical thought, and he calls on everyone to stand up for the right to a complete and accurate education.<sup>140</sup>

#### Ms. Hadar Harris

Hadar Harris, Interim Washington Director of PEN America, testified on the increasing threats to free expression in education, particularly in Missouri. She detailed PEN America's efforts in tracking and resisting censorship in schools, including educational gag orders, educational intimidation bills, and book bans.<sup>141</sup> Harris argued that these restrictions violate First Amendment rights, intimidate educators, and limit students' access to diverse perspectives.<sup>142</sup>

According to Harris, PEN America has tracked 392 bills aimed at chilling classroom speech through intimidation, rather than direct censorship.<sup>143</sup> Missouri led the nation with 30 such bills in 2023.<sup>144</sup> Harris informed the committee that nearly 6,000 book bans have been recorded in 41 states, disproportionately affecting works by women, people of color, and LGBTQ+ authors.<sup>145</sup> She said laws are stifling educators' ability to teach and forcing librarians to remove books to avoid legal consequences.<sup>146</sup> Ms. Harris said PEN America supports limited opt-outs (e.g., sex education) but opposes broad opt-outs that allow parents to censor core subjects for their children.<sup>147</sup> The growing "Ed Scare" movement threatens free speech, civil rights, and democratic values by censoring books, restricting curriculum, and intimidating educators.<sup>148</sup> Harris urged lawmakers to resist government overreach in education and uphold the freedom to read, learn, and think.<sup>149</sup>

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<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Hadar Harris, Testimony, April 4, 2024, p. 8.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

### Mr. Tom Bober

Tom Bober, president of the Missouri Association of School Librarians (MASL), testified before the committee about the increasing number of book bans in Missouri schools. He highlighted that Missouri ranks third in the U.S. for school book bans, with many targeted at books featuring marginalized identities, including LGBTQIA+, Black, immigrant, Jewish, and Muslim characters.<sup>150</sup> He described how organized groups, often coordinating via private social media channels, overwhelm school districts with book challenges, leading to the removal of books and a strain on school resources.<sup>151</sup>

Mr. Bober emphasized that while reconsideration policies exist to ensure books meet collection standards, they are being weaponized to target specific stories.<sup>152</sup> He told the committee that school librarians also face harassment, being labeled as "groomers" and pedophiles, creating a chilling effect on their book selections.<sup>153</sup> Additionally, Senate Bill 775<sup>154</sup>, which bans "explicit sexual material" in schools, has led to thousands of book removals, disproportionately affecting LGBTQIA+ literature.<sup>155</sup> He said violations of this law can result in a year in jail and a \$2,000 fine, further restricting access to diverse perspectives.<sup>156</sup>

Bober said his organization, MASL, has taken steps to support librarians, including providing training and joining the ACLU and Missouri Library Association in a lawsuit challenging the law on First Amendment grounds.<sup>157</sup> He argued that such censorship disproportionately affects lower-income students who rely on school libraries for access to books.<sup>158</sup> Ultimately, Bober warned that Missouri's aggressive book banning sets a dangerous precedent for intellectual freedom and access to diverse stories.<sup>159</sup>

### Dr. David Trowbridge

Dr. David Trowbridge's presentation focused on the importance of teaching history as a process rather than just a set of answers. He emphasizes that what we exclude is just as important as what

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<sup>150</sup> Tom Bober, Testimony, April 4, 2024, p. 15.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Mo. Rev. Stat. § 573.550 (2023).

<sup>155</sup> Tom Bober, Testimony, April 4, 2024, p. 15

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

we include and warns against the dangers of intentional exclusion of certain perspectives.<sup>160</sup> Dr. Trowbridge critiqued the way history has been traditionally taught—often through memorization rather than inquiry—and highlighted the importance of teaching students how to think like historians by following evidence rather than starting with predetermined conclusions.<sup>161</sup>

He also raised concerns about the fear-driven educational environment, where teachers and students may be afraid to make mistakes due to punitive consequences.<sup>162</sup> He argued that this fear stifles learning and prevents meaningful engagement with history.<sup>163</sup> He draws on the work of Dr. Carter G. Woodson, who advocated for education that fosters independent thinking, rather than mere rote learning.<sup>164</sup>

Dr. Trowbridge also discussed the practical challenges of education policies, particularly the difficulties of managing opt-out policies where students can be withdrawn from specific lessons.<sup>165</sup> He argued that these policies create logistical nightmares for teachers and disproportionately affect lessons on race and diversity.<sup>166</sup> Moreover, he asserted, that withholding crucial historical knowledge is a civil rights issue, as it deliberately miseducates students.<sup>167</sup> Trowbridge concluded by highlighting the need for better teacher support, more resources, and a commitment to honest historical education.<sup>168</sup> He warned against political interference in curriculum decisions, arguing that such attempts often backfire in the long run.<sup>169</sup>

#### Dr. Jeffrey Sachs

Dr. Jeffrey Sachs, a political scientist at Acadia University and research consultant for PEN America, presented his testimony on the dangers of education gag orders, which are laws and policies restricting discussions of race, gender, and other social issues in schools.<sup>170</sup> He emphasized that these restrictions not only undermine students’ understanding of the world but

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<sup>160</sup> David Trowbridge, Testimony, May 31, 2023, p. 19.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> Jeffrey Sachs, Testimony, June 7, 2023, P. 33.

also disproportionately harm marginalized communities.<sup>171</sup> His testimony to the committee highlighted specific states, including North Dakota, Florida, and Tennessee as states that have passed laws against promoting division.<sup>172</sup> He warned of censorship effects, the chilling impact on educators, and the broader implications for democracy.<sup>173</sup>

Dr. Sachs argued that education gag orders severely limit students' ability to engage with crucial societal topics, fostering ignorance rather than critical thinking.<sup>174</sup> He provided multiple examples of how these laws have led to extreme censorship, including teachers being afraid to discuss slavery or assign historical texts.<sup>175</sup> He also addressed the disproportionate impact on marginalized students, particularly LGBTQ individuals.<sup>176</sup> While acknowledging that opt-out provisions could offer a balanced solution, he warned against overly broad implementations.<sup>177</sup> Ultimately, he urged legislators to avoid adopting such gag orders, as they harm educators, students, and the public education system itself.<sup>178</sup>

#### Dr. Morgan Polikoff

Dr. Morgan Polikoff, a leading education researcher and an associate professor of education at the University of Southern California, emphasized that while every U.S. state has educational standards outlining what students should learn at each grade level, these standards do not dictate specific classroom content.<sup>179</sup> Instead, individual school districts and teachers make daily decisions about what materials to use and how to teach the content.<sup>180</sup> For example, Missouri's learning standards cover subjects like English, math, science, social studies, and computer science.<sup>181</sup> However, within Missouri's approximately 500 school districts, teachers have significant autonomy over curriculum choices, including selecting textbooks, creating lesson plans, and incorporating supplementary materials such as online resources and books.<sup>182</sup>

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<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*

<sup>173</sup> *Ibid.*

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.*

<sup>177</sup> *Ibid.*

<sup>178</sup> *Ibid.*

<sup>179</sup> Morgan Polikoff, Testimony, June 7, 2023, p. 26.

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

Dr. Polikoff highlighted extensive research showing that students perform better academically when they see their cultural and racial identities reflected in the curriculum.<sup>183</sup> One key study he referenced was conducted by Stanford professor Tom Dee, which examined the effects of an ethnic studies curriculum in San Francisco Unified School District.<sup>184</sup> The study found that students who were assigned this curriculum due to poor grades experienced higher attendance and improved academic performance.<sup>185</sup> A follow-up study confirmed that these gains were long-lasting, leading to higher graduation rates: 90% of students in the ethnic studies group graduated within five years compared to 75% in a control group,<sup>186</sup> more courses passed: Students in the ethnic studies program passed six more courses than their peers,<sup>187</sup> and increased college enrollment: Students exposed to the curriculum were 15% more likely to enroll in college within six years.<sup>188</sup>

Dr. Polikoff said beyond quantitative research, decades of qualitative studies show that culturally relevant instruction enhances student engagement, persistence, and sense of belonging in school.<sup>189</sup> He argued that the current status quo in U.S. history curricula often focuses predominantly on the contributions of white men, which excludes diverse perspectives.<sup>190</sup> Policies that seek to remove discussions of race from classrooms could, therefore, be harmful to students' academic success, particularly for racial and ethnic minorities.<sup>191</sup>

Although there is limited large-scale research on the impact of LGBTQ+ inclusive curricula, Polikoff suggested that similar benefits likely apply.<sup>192</sup> He noted that LGBTQ+ students often lack support at home, making school representation even more critical for their well-being.<sup>193</sup>

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<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

<sup>192</sup> *Ibid.*

<sup>193</sup> *Ibid.*

Dr. Polikoff presented findings from his nationally representative survey of over 3,700 Americans conducted in 2022.<sup>194</sup> The survey explored public opinion on teaching race and LGBTQ+ topics in schools, differentiating between elementary and high school levels.<sup>195</sup>

His key findings for high school found strong majority support (over 85%) for teaching: the causes and effects of racial inequality, the causes and effects of income inequality, immigrant rights, patriotism, the contributions of women and people of color, and slavery. Even for more controversial topics like gay rights and criminal justice reform, at least 65% of respondents supported including them in high school curricula.<sup>196</sup>

His key findings for elementary school showed public opinion was more mixed regarding younger students<sup>197</sup> with 75%+ supported teaching about slavery, the contributions of women and people of color, and patriotism. He said 40-61% supported teaching about immigrant rights, racial inequality, and income inequality.<sup>198</sup>

Polikoff emphasized that opposition to race-related topics in education is a minority position.<sup>199</sup> While there are disagreements on how such topics should be taught, most Americans believe they belong in schools.<sup>200</sup> He suggested that one reason for this broad support is that people recognize that children already receive messages about these issues from the media, family, and peers.<sup>201</sup> Schools, therefore, have a responsibility to provide an accurate and balanced perspective, encouraging students to think critically and form their own opinions.<sup>202</sup>

Dr. Polikoff said historically, state governments have focused on setting standards rather than banning specific content, but this is changing due to political debates.<sup>203</sup> In describing the traditional role of States in curriculum, he said all U.S. states establish learning standards that outline what students should know in subjects like math, science, and history.<sup>204</sup> Some states go

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<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

further by recommending or approving textbooks, but very few mandate specific curricula.<sup>205</sup> He said traditionally, states have emphasized what should be taught rather than prohibiting content.<sup>206</sup>

He described recent shifts toward curriculum bans by explaining some states are now actively restricting content on topics related to race, gender, and LGBTQ+ issues.<sup>207</sup> Examples include banning discussions on critical race theory (CRT) or limiting how schools talk about systemic racism and sexual orientation.<sup>208</sup> Polikoff noted that similar restrictions have been historically applied to topics like sexual health education and evolution.<sup>209</sup>

Polikoff's perspective on State involvement centered on state governments playing a greater role in ensuring that curriculum materials align with learning standards.<sup>210</sup> He opposes, however, excessive state control that micromanages day-to-day classroom instruction.<sup>211</sup> He warned that overregulation could lead to inequality, as individual teachers may struggle to find high-quality, vetted materials on their own.<sup>212</sup> State involvement in curriculum is not new, but recent debates have shifted focus from guidance to restriction.<sup>213</sup> Polikoff argues that states should focus on ensuring access to strong instructional materials rather than banning controversial topics, which could negatively impact student learning.<sup>214</sup>

Dr. Polikoff emphasized that Missouri has a significant racial history that is directly relevant to discussions about race in education.<sup>215</sup> He pointed to well-documented public policies that have contributed to racial inequality in the state.<sup>216</sup>

Polikoff's key examples from Missouri's history:

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<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid.

<sup>216</sup> Ibid.

- Redlining and Housing Discrimination: Missouri, particularly St. Louis, has a history of redlining, a practice where banks and real estate agencies denied home loans to Black residents, restricting them to poorer neighborhoods. This widened racial wealth and education gaps over generations.
- The Ferguson Report: Following the 2014 police shooting of Michael Brown in Ferguson, the U.S. Department of Justice investigated systemic racism in law enforcement and local governance. The findings highlighted deep racial disparities in policing, fines, and civic engagement.
- School Segregation and Inequality: Missouri was historically segregated, and even after legal desegregation, Black students often attended underfunded schools due to local funding disparities.<sup>217</sup>

Dr. Polikoff said this matters because Missouri’s racial history is not just a national issue—it is a local one.<sup>218</sup> Ignoring it in schools means students may lack context about the racial disparities they see today.<sup>219</sup> Teaching about these topics does not inherently stigmatize any racial group; rather, it provides historical context for ongoing social issues.<sup>220</sup> Research suggests that teaching students about historical racial injustices in an age-appropriate way can increase empathy and intercultural understanding.<sup>221</sup>

He thinks avoiding discussions of race in Missouri classrooms would mean omitting critical aspects of the state's own history and teaching about past racial injustices can be done in a way that is educational, not divisive.<sup>222</sup> Historical accuracy should take priority over political concerns in deciding what is included in school curricula.<sup>223</sup>

Dr. Polikoff addressed the common misconception that Critical Race Theory (CRT) is being taught in Missouri public schools, stating that to his knowledge, CRT has never been part of Missouri’s K-12 curriculum.<sup>224</sup> CRT is an academic framework developed in law schools that

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<sup>217</sup> *Ibid.*

<sup>218</sup> *Ibid.*

<sup>219</sup> *Ibid.*

<sup>220</sup> *Ibid.*

<sup>221</sup> *Ibid.*

<sup>222</sup> *Ibid.*

<sup>223</sup> *Ibid.*

<sup>224</sup> *Ibid.*

examines how laws and policies have historically perpetuated racial inequalities.<sup>225</sup> It is not a standard part of K-12 education, but some of its core ideas (such as systemic inequality) may overlap with broader discussions of history and race in schools.<sup>226</sup>

Missouri schools do teach about slavery, the civil rights movement, and racial inequalities—topics that are part of standard history education.<sup>227</sup> Some discussions, such as how public policies have contributed to racial disparities, might align with certain principles of CRT, but that does not mean CRT itself is being taught.<sup>228</sup> The misconception arises from political debates that conflate CRT with any discussion of race or systemic inequality.<sup>229</sup>

Dr. Polikoff's national survey found that most Americans support teaching about racial inequality in high school, however, opinions were more divided when the term "Critical Race Theory" was used.<sup>230</sup> This suggests that public opposition to CRT is often about *terminology* rather than *content*.<sup>231</sup> He acknowledged that reasonable debates can be had about how race-related topics should be taught. However, he warned against banning discussions of systemic inequality just because they share ideas with CRT.<sup>232</sup> He emphasized that teaching history accurately—including discussions of systemic racism—is different from indoctrination.<sup>233</sup> Discussions of systemic racism are not inherently CRT, but some political groups have conflated the two.<sup>234</sup> Most Americans support teaching about race and inequality, but using the term "CRT" tends to create political opposition.<sup>235</sup>

Dr. Polikoff emphasized that states should fund independent research to evaluate the impact of curriculum policies on students and teachers.<sup>236</sup> He argued that policy changes should be evidence-based, not driven solely by political debates.<sup>237</sup> Research can assess whether changes in

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<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid.

<sup>230</sup> Ibid., See Polikoff, M., Silver, D., Rapaport, A., Saavedra, A., & Garland, M. (2022, October). *A House divided? What Americans really think about controversial topics in schools*. University of Southern California.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

curriculum policies improve or harm student achievement, graduation rates, and college enrollment.<sup>238</sup> Studies like the ethnic studies research in San Francisco show that inclusive curricula can boost student success. Similar studies could help evaluate Missouri’s curriculum policies.<sup>239</sup>

Policies restricting discussions of race and identity may impact student engagement, mental health, and classroom dynamics, he added, and research could help determine whether these policies create unintended consequences, such as lower student motivation or increased teacher burnout.<sup>240</sup> Without research, policymakers may implement bans or mandates without knowing their real-world effects and evidence-based decision-making ensures that education policies serve students’ best interests rather than political agendas.<sup>241</sup>

## Analysis

The goal of this study was to assess the civil rights impact of laws prohibiting certain curricula in K-12 education. The Missouri legislature filed 31 pieces of legislation associated with or on the margins of this topic between 2021 and 2023. One of these bills became law, SB775, which is currently the subject of a lawsuit.<sup>242</sup> That particular bill was focused on sexually explicit material and only marginally applies to curricula.<sup>243</sup>

The committee heard from panelists who provided testimony that allowed the committee to establish a framework for their question, and perhaps some guidance for further study.

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<sup>238</sup> *Ibid.*

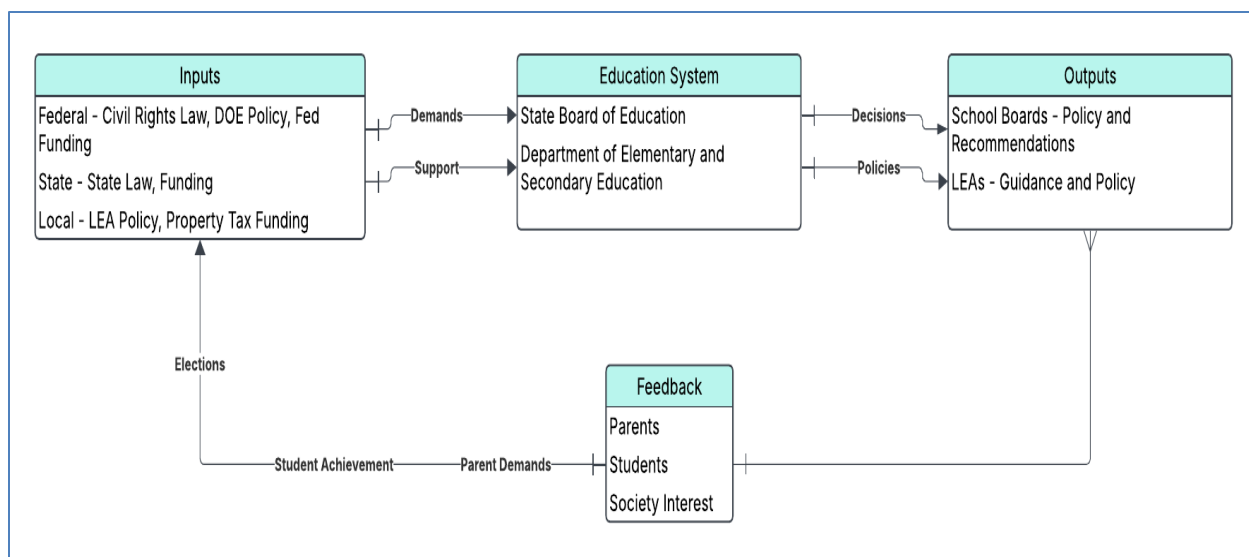
<sup>239</sup> *Ibid.*

<sup>240</sup> *Ibid.*

<sup>241</sup> *Ibid.*

<sup>242</sup> Mo. Rev. Stat. § 573.550 (2023).

<sup>243</sup> *Id.*



*Figure 3: Systems Theory Framework Modified for this Study*

Testimony provided by scholars and stakeholders shows the education system (identified as the Missouri Department of Elementary and Secondary Education) directly influenced by the demands and support of the government (federal, state, and local). The education system filters the demands of the government by way of policies and decisions to the local school boards and LEAs, categorized as outputs.

### **Findings in Favor of Curricula Restrictions**

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,<sup>244</sup> the Missouri Advisory Committee submits the following findings to the Commission regarding the civil rights impact of laws prohibiting certain curricula in K-12 education. This report seeks to highlight the most salient civil rights themes, both in favor of and against such laws, as they emerged from the Committee’s inquiry.

#### **Finding I:**

<sup>244</sup> 45 C.F.R. § 703.2 (2018).

## **Recommendations in Favor of Curricula Restrictions**

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>245</sup> In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should:

## **Findings Against Curricula Restrictions**

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,<sup>246</sup> the Missouri Advisory Committee submits the following findings to the Commission regarding the civil rights impact of laws prohibiting certain curricula in K-12 education. This report seeks to highlight the most salient civil rights themes, both in favor of and against such laws, as they emerged from the Committee's inquiry.

Finding I:

## **Recommendations Against Curricula Restrictions**

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports

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<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

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1. The U.S. Commission on Civil Rights should:

**STAFF NOTE:**

The advisory committee process, as was in place for this study, required the committee to agree on findings and recommendations as a whole committee. The level of division between committee members, and the political nature of the disagreements created an environment that was not conducive to compromise. Various factors led to the ‘clock running out’ on this study. There is a possibility that the next iteration of the Missouri committee could take up this work and complete it.

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<sup>247</sup> *Id.*



## Appendix 1

The following are representative civil rights protections in education:

**Brown v. Board of Education**<sup>248</sup> – This 1954 case outlawed segregation in public schools.

**Civil Rights Act of 1964**<sup>249</sup> – prohibits discrimination in education based on race, color, or national origin in programs that receive federal funds. The Civil Rights Act of 1964 is a pivotal legislation that prohibits discrimination in various areas, including housing, employment, and education. The education-related sections of the Act include Title IV, which empowers the Attorney General to tackle specific equal protection violations concerning race, color, national origin, sex, and religion in public schools and higher education institutions;<sup>250</sup> Title VI, which forbids discrimination by recipients of federal funding based on race, color, and national origin;<sup>251</sup> and Title IX, which allows the United States to intervene in ongoing lawsuits alleging discrimination.<sup>252</sup> The Equal Educational Opportunities Act of 1974<sup>253</sup> also prohibits, among other actions, intentional segregation based on race, color, and national origin.

**Gender Discrimination** - Title IV of the Civil Rights Act of 1964<sup>254</sup> empowers the Attorney General to address specific equal protection violations related to sex, along with other grounds, in public schools and institutions of higher education. Furthermore, Title IX of the Education Amendments of 1972<sup>255</sup> prohibits sex-based discrimination in educational programs and activities conducted by entities that receive federal financial assistance. In accordance with these statutes, all individuals, irrespective of their sex, are afforded equal educational opportunities. The Commission reports on the policies of the United States government, including tackling sex-based

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<sup>248</sup> Supra, note 7. (Note 7 does not correspond to this citation) 347 U.S. 483 (1954).

<sup>249</sup> Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964).

<sup>250</sup> Add the code sections for these parts of the civil rights act.

<sup>251</sup>

<sup>252</sup>

<sup>253</sup> Equal Educational Opportunities Act of 1974, Pub. L. No. 93-380, 88 Stat. 514 (1973) (codified at 20 U.S.C. § 1701 et seq.)

<sup>254</sup> 42 U.S.C. § 2000c et seq.

<sup>255</sup> Education Amendments Act of 1972, Pub. L. No. 92-318, 86 Stat. 235 (codified at 20 U.S.C. §§ 1681- 1688).

discrimination, which encompasses sexual harassment, harassment related to nonconformity to gender stereotypes, and disparities in athletic participation opportunities for students.

**Religious Discrimination** - Title IV of the Civil Rights Act of 1964 also empowers the Attorney General to tackle specific equal protection violations related to religion, among other factors, in public schools and higher education institutions.<sup>256</sup> All individuals, irrespective of their religious beliefs, have access to equal educational opportunities. The Missouri committee's responsibilities encompass forwarding to the Commission any allegations of systemic discrimination and harassment based on religion, covering all religious affiliations.

**English Language Learners** - Section 1703(f) of the Equal Educational Opportunities Act of 1974<sup>257</sup> mandates that state educational agencies (SEAs) and school districts (LEAs) implement measures to eliminate language barriers that hinder English Language Learner (ELL) students from participating equitably in state and district educational programs. As part of its mandate to evaluate the effectiveness of federal civil rights laws, the Missouri committee is charged with reporting to the Commission any allegations regarding SEAs or school districts that fail to provide adequate services to ELL students or neglect to take appropriate actions in other areas. While section 1703(f) of the EEOA does not mandate a specific type of language acquisition program, courts typically evaluate the adequacy of such programs based on three factors:

- Whether the school's program is founded on sound educational theory or principles.
- Whether the school's program is effectively designed to implement the educational theory; and
- Whether, after a sufficient trial period, the results indicate that language barriers are being successfully addressed.<sup>258</sup>

**The Americans with Disabilities Act (ADA)**<sup>259</sup>, enacted in 1990, aims to combat discrimination against individuals with disabilities (refer to the [ADA homepage](#) for more information). Title II of the ADA stipulates that no individual with a disability shall be excluded from participation in, denied the benefits of, or subjected to discrimination in the services, programs, or activities of a

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<sup>256</sup> Needs citation.

<sup>257</sup> 20 U.S.C. § 1701 et seq.

<sup>258</sup> *Id.*

<sup>259</sup> Americans with Disabilities Act of 1990, Pub. L. No. 110-325, 122 Stat. 3553 (42 U.S.C. § 12101 et. seq.)

public entity due to that disability. Title III of the ADA prohibits discrimination against individuals with disabilities in public accommodations, including schools operated by private entities.

**Section 504 of the Rehabilitation Act of 1973**<sup>260</sup> prohibits the exclusion, denial of benefits, and discrimination based on disability in programs or activities that receive federal funding.

**The Individuals with Disabilities in Education Act (IDEA)**<sup>261</sup> mandates that states and local education agencies offer free and appropriate public education to children with disabilities. The Department of Education is primarily responsible for the enforcement of IDEA.

The Missouri Department of Elementary and Secondary Education actively supports the mission of the Office for Civil Rights of the U.S. Department of Education: "to ensure equal access to a high-quality education for all students through the vigorous enforcement of civil rights."<sup>262</sup>

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<sup>260</sup> 28 CFR 35.104 – Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified at 29 U.S.C. § 794.)

<sup>261</sup> 20 U.S.C. § 1400.

<sup>262</sup> Missouri Department of Elementary and Secondary Education, Civil Rights Compliance, <https://dese.mo.gov/governmental-affairs/civil-rights-compliance-moa>

## Appendix 2

*Prescriptive* curriculum definitions “provide us with what ought to happen, and they more often than not take the form of a plan, and intended program, or some kind of expert opinion about what needs to take place in the course of study.”<sup>263</sup> This is analogous to medical prescriptions that patients have filled by a pharmacist: we do not know how many are actually followed, “the best guess is that most are not.”<sup>264</sup> Figure 3, arranged chronologically, are representations of this.

Prescriptive Definitions of Curriculum		
<i>Date</i>	<i>Author</i>	<i>Definition</i>
1902	John Dewey	Curriculum is a continuous reconstruction, moving from the child’s present experience out into that represented by the organized bodies of truth that we call studies . . . the various studies . . . are themselves experience—they are that of the race.
1918	Franklin Bobbitt	Curriculum is the entire range of experiences, both directed and undirected, concerned in unfolding the abilities of the individual.
1927	Harold O. Rugg	[The curriculum is] a succession of experiences and enterprises having a maximum lifelikeness for the learner . . . giving the learner that development most helpful in meeting and controlling life situations.
1935	Hollis Caswell in Caswell & Campbell	The curriculum is composed of all the experiences children have under the guidance of teachers. . . . Thus, curriculum considered as a field of study represents no strictly limited body of content, but rather a process or procedure.
1957	Ralph Tyler	[The curriculum is] all the learning experiences planned and directed by the school to attain its educational goals.

Figure 4: *Prescriptive Definitions of Curriculum*

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<sup>263</sup> Ellis

<sup>264</sup> *Ibid.*

Descriptive Definitions of Curriculum		
Date	Author	Definition
1935	Hollis Caswell & Doak Campbell	All the experiences children have under the guidance of teachers.
1941	Thomas Hopkins	Those learnings each child selects, accepts, and incorporates into himself to act with, on, and upon, in subsequent experiences.
1960	W. B. Ragan	All experiences of the child for which the school accepts responsibility.
1987	Glen Hass	The set of actual experiences and perceptions of the experiences that each individual learner has of his or her program of education.
1995	Daniel Tanner & Laurel Tanner	The reconstruction of knowledge and experience that enables the learner to grow in exercising intelligent control of subsequent knowledge and experience.
2006	D. F. Brown	All student school experiences relating to the improvement of skills and strategies in thinking critically and creatively, solving problems, working collaboratively with others, communicating well, writing more effectively, reading more analytically, and conducting research to solve problems.
2009	E. Silva	An emphasis on what students can do with knowledge, rather than what units of knowledge they have, is the essence of 21st-century skills.

Figure 5: Descriptive Definitions of Curriculum

Descriptive definitions of curriculum displayed, in Figure 4, go beyond the prescriptive examples, as they force thought about the curriculum “not merely in terms of how things ought to be . . . but how things are in real classrooms” (Ellis, 2004, p. 5).

In 1949 Ralph Tyler indicated that the philosophy behind the school curriculum has only two major alternatives.

*Should the schools develop young people to fit into present society as it is, or does the school have a revolutionary mission to develop young people who will seek to improve the society?*<sup>265</sup>

Tyler, being the founder of the modern traditionalist school of curriculum, obviously opted for the first of the two choices. The curriculum design prescribed by Tyler continues to be one of the most used, and outlines a simple formula and consists of four key thoughts:

1. What are the educational purposes that a school should seek to attain? (Educational Objectives).
2. What learning experiences can be selected to fulfil the educational objectives? (Learning Experiences).
3. How should the learning experiences be organized to achieve the desired outcomes? (Organization of Experiences.)

<sup>265</sup> Tyler Ralph, *Basic Principles of Curriculum and Instruction*, Univ. of Chicago Press, 1949.

4. What assessment and evaluation techniques can be used to determine the success of the implemented curriculum? (Assessment and Evaluating).<sup>266</sup>

The complete opposite of Tyler’s theory, in a well-known example in educational circles, comes from Paulo Freire, who, in considering basically the same two choices suggested by Tyler, opted for the second. Freire implemented the *social perspective of conflict theory*<sup>267</sup> in teaching illiterate Brazilian adults to read fluently in a relatively short time by developing a political literature with them that was critical of their living conditions.<sup>268</sup>

Table 1 below highlights key curriculum, concepts, and key contributors to the theory.

Table 1: Key Curriculum Theories

Curriculum Theory	Main Concepts	Key Contributors
<b>Tyler's Rationale</b>	Focus on clear objectives, systematic approach to planning curriculum.	Ralph W. Tyler
<b>Taba's Model</b>	Inductive approach: teachers design the curriculum based on needs of students.	Hilda Taba
<b>Hidden Curriculum</b>	Implicit lessons taught outside formal content, e.g., social norms, values.	Various theorists (e.g., Jackson)
<b>Progressive Education</b>	Child-centered, experiential learning, emphasis on critical thinking and problem-solving.	John Dewey
<b>Humanistic Curriculum</b>	Focus on individual growth, self-actualization, and fostering intrinsic motivation.	Abraham Maslow, Carl Rogers
<b>Constructivist Curriculum</b>	Learning as an active, social process; students build knowledge through experience.	Jean Piaget, Lev Vygotsky
<b>Social Reconstructionism</b>	Education should address social issues, inequalities, and promote change.	George Counts, Paulo Freire
<b>Behavioral Curriculum</b>	Focus on measurable learning outcomes and observable behaviors.	B.F. Skinner, John B. Watson
<b>Critical Pedagogy</b>	Education should challenge power structures, promote social justice.	Paulo Freire, Henry Giroux

<sup>266</sup> Ibid.

<sup>267</sup> Freire Paulo, *Pedagogy of the Oppressed*, Herder and Herder, 1970.

<sup>268</sup> Ibid.

Curriculum Theory	Main Concepts	Key Contributors
<b>Curriculum as Praxis</b>	Integration of theory and practice, teachers critically reflect and adapt curriculum.	William Pinar, Michael Apple

As Table 1 illustrates, there are numerous views, theories, and approaches to curriculum. This serves to highlight that there is no universal accepted standard representing a “best practice.”

### Appendix 3: Statement of Committee Member Mark Bremer

Racial discrimination against students or employees of K-12 public schools violates the Equal Protection Clause of the Fourteenth Amendment as well as the Civil Rights Act of 1964.<sup>269</sup> “Our Constitution is color-blind, and it neither knows nor tolerates classes among citizens.” *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). Colorblindness “was the rallying cry for the lawyers who litigated [*Brown v. Board of Education*],” and it has been the law since. *Parents Involved in Cmty. Sch. v. Seattle Dist. No 1*, 551 U.S. 701, 772 (2007) (Thomas, J., concurring). “Classifications of citizens solely on the basis of race are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. They threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility.” *Shaw v. Reno*, 509 U.S. 603, 643 (1993); *Richmond v. J. A. Croson Co*, 488 U.S. 469, 493 (1989) (racial classifications unlawfully “stereotype” individuals and “promote notions of racial inferiority”). And state-sanctioned discrimination is an impermissible means of promoting even the most laudable of goals. “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” *Parents Involved*, 551 U.S. at 748 (plurality op.).

Public school students and staff also have First Amendment protection for speech regarding matters of public concern (see *Morgan v. Robinson*, 881 F.3d 646 (2018)), and “[s]peech about racial discrimination is a matter of public concern.” *Katosang v. Wasson-Hunt*, U.S. Dist. LEXIS 122122, at \*4 (W.D.Mo. Nov. 18, 2010) (unpublished op.) (quoting *Connick Myers*, 461 U.S. 138, 148 (1983)). “[T]he right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). “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.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

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<sup>269</sup> Racial discrimination that violates the Equal Protection Clause also violates Title VI of the Civil Rights Act where, as here, public schools are recipients of federal funds. *Gratz v. Bollinger*, 539 U.S. 244, 257 n.23 (2003). As to employees, Title VII of the Civil Rights Act is also violated because that statute applies to public schools like other employers.

The enactment of state statutes that are specifically tailored to prohibit K-12 public schools from violating these fundamental civil rights is not (and cannot be) a violation of civil rights. To the contrary, such statutes foster and enhance protection of federal civil rights by clarifying and reminding the state’s K-12 public schools of their responsibilities to comply with the applicable federal laws, and by providing additional state measures to deter and remedy civil rights violations. A number of such statutes have been proposed in Missouri and elsewhere that would do precisely that. For example, Missouri’s HB 1858 (101<sup>st</sup> General Assembly) provides in pertinent part:

No school or school employee shall compel a teacher or student to personally adopt, affirm, adhere to, or profess ideas in violation of ... Title VI of the federal Civil Rights Act of 1964, as amended, including the following:

- (1) That individuals of any race ... are inherently superior or inferior;
- (2) That individuals should be adversely or advantageously treated on the basis of individual race...; or
- (3) That individuals, by virtue of their race ..., bear collective guilt and are inherently responsible for the actions committed in the past by others of the same race ....

*Id.* at 170.355, 3. Other proposed legislation (*e.g.*, Missouri HB 952 and SB 21, 101<sup>st</sup> General Assembly) similarly prohibit other specific violations of federal civil rights, such as racial “stereotyping,” identifying and classifying students and staff as either “privileged” or “oppressed” based on their race, and separating them into groups by race (so called “affinity groups”) for the purpose of providing targeted messaging and training based on the color of their skin. The specific conduct prohibited by such proposed legislative provisions squarely violates federal civil rights under the settled legal authorities cited above.<sup>270</sup> Such provisions, if enacted, would accordingly be lawful and pass constitutional muster. *See generally* James Copland, “How To Regulate Critical Race Theory In Schools: A Primer and Model Legislation,” Manhattan Institute (August 2021) (<https://media4.manhattan-institute.org/sites/default/files/copland-crt-legislation.pdf>).

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<sup>270</sup> Race-based “affinity groups,” in particular, have been characterized as “prima facie unlawful” and indeed “beyond appalling,” with the author also noting that school-compelled “[d]iscussions of politically correct notions of ‘privilege’ . . . are by their own definition discriminatory.” *See* Letter of USCCR Commissioner Peter Kirsanaw to Adrian Harries of Illinois School District 65 (Evanston/Skokie) dated March 23, 2018 (<https://wirepoints.org/wp-content/uploads/2018/04/Letter-to-Nichols-Middle-School-re-Racial-Segregation-002.pdf>).

Apart from the state’s robust authority to proscribe by its own statutes violations of federal civil rights laws, a state also has broad authority to regulate the content of curricula taught in its K-12 public schools. In the public school context, when performing their official duties, teachers act as agents of the state -- essentially giving voice to government approved speech, and state legislatures have significant constitutional authority to direct such speech. *See* Copland at 7 (and authorities there cited). Pursuant to this authority, state legislatures and state and local boards of education routinely do make curricular decisions, including ones involving controversial topics. *Id.*

Thus, for example, regardless whether K-12 public school classroom instruction materials provided by the Pulitzer Center’s “1619 Project”<sup>271</sup> violate or could violate federal civil rights laws, a state could nevertheless determine that such instruction should not be permitted in its K-12 on the ground that it presents an inaccurate and unsupported view of history<sup>272</sup> (or, alternatively, that if it is permitted, it must be accompanied by a rebuttal perspective such as The Hillsdale 1776 Curriculum). Other examples of classroom messages the legislature could justifiably prohibit – as inaccurate and unsupported opinion – would include telling students that beliefs in “colorblindness” or “meritocracy” are forms of white supremacy.

In order to minimize any doubt about their lawfulness and the soundness and fairness of the public policies they embody, many of the proposed statutes described above contain disclaimer provisions, and Copland (at 8-9 & 13-14) recommends such disclaimers. These provisions state that nothing in the proposed statute shall be construed as prohibiting (for example): speech protected by the First Amendment; *voluntary* attendance in controversial training and discussion sessions; access to sources on an individual basis that advocate concepts identified in the proposed statute as violative of federal civil rights, for the purpose of research or independent study; discussion or assignment of materials incorporating such concepts for educational purposes where the public school expressly makes clear that it does not sponsor, approve, or endorse such concepts;

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<sup>271</sup> These materials, based on a controversial series of essays in the New York Times, were reportedly adopted by 4,500 schools within the first year of their issuance. Copland at 9. The popularity and ready acceptance of such race-related curricular materials by many American educators may be reflective of the fact that education schools at leading American universities have emphasized the pedagogical works of prominent Critical Race Theory adherents to students aspiring to be K-12 teachers. *Id.* at 4-5 (and materials there cited).

<sup>272</sup> See, e.g., <https://reason.com/2022/03/09/the-1619-project-unrepentantly-pushes-junk-history/>.

or age-appropriate consideration of accurate historical facts and other information regardless whether some students may find it disturbing or otherwise a source of negative reaction.

In conclusion, from this counter perspective, proposed state legislation of the kind described above does not and cannot violate federal civil rights. To the contrary, it is highly protective of such rights. After investigative hearings by the Committee, it is possible that the evidence will show that the only civil rights violations actually occurring in Missouri are the ones such proposed statutes seek to prohibit. This would be an issue for the Committee to investigate and determine.

## Appendix 4: Statement of committee member David Mitchell

In 2022, the Missouri Legislature introduced no less than twenty bills in the House and Senate prohibiting the teaching of such topics.<sup>273</sup> None of the proposed bills passed, but in advance of the 2023 session, there were 5 pre-filed bills<sup>274</sup> addressing the same issue. Not only does such proposed legislation prohibit the teaching of such topics, but in some legislation the Missouri Legislature has also provided for a financial penalty if a school district is found to be in violation of the proposed statutes.

The Committee acknowledges that there are multiple perspectives regarding such legislation and its relationship with Federal Civil Rights law. The Committee will engage in fact-finding and study alleged discrimination related to all views of such legislation.

Prohibiting the teaching and by extension the learning of race and race-related topics; gender; gender identity; sexual orientation; class; systemic bias; and other related topics, raises an issue of educational equity because it violates students' rights to learn and to receive information and ideas and violates the rights of families of students who want them to learn about such issues in school.<sup>275</sup> Moreover, the concomitant penalty provisions that withhold funding from public school districts further impacts the civil rights of students and their families by reducing funding thereby having a detrimental impact on programs in the public school districts. Additionally, compliance with the statutes may result in educational inequity as students who are prohibited from learning such material in schools may be unable to access it elsewhere due to financial costs. In brief, the proposed investigation focuses on how current statewide educational legislation, local school board actions, legal cases, and government agencies may be infringing

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<sup>273</sup> *See e.g.*, Missouri's HB 1858, HB 952 and SB 21 (101<sup>st</sup> General Assembly). *See also* Sarah Schwartz, *Map: Where Critical Race Theory is Under Attack*, Education Week (Sept. 28, 2022), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06>; *UCLA School of Law Critical Race Studies: CRT Forward Tracking Project*, <https://crtforward.law.ucla.edu>; *No Left Turn in Education*, The Missouri Times (Jun. 14, 2021), <https://themissouritimes.com/wp-content/uploads/2021/07/Dossier-FINAL-6-14-21-PDF-version.pdf>.

<sup>274</sup> HB 75, HB 165, HB 482, HB 627, and HB 634. *See* <https://www.house.mo.gov/LegislationSP.aspx?year=2023&code=R>.

<sup>275</sup> *See Pernell v. Florida Board of Governors*, 2022 WL 16985720, Case No. 4:22-cv-304, N.D. Florida, Tallahassee Division (Nov. 17, 2022); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

upon the civil rights of students and families of students who want to be taught or have their children learn about such topics and subject matter but are prevented from doing so.<sup>276</sup>

The enactment of state statutes that are specifically tailored to prohibit K-12 public schools from teaching race and race-related topics; gender; gender identity; sexual orientation; class (i.e., socioeconomic status); systemic bias, and other related topics, also has a chilling effect on the teaching of subject matter. Any discussion of race, gender identity and other topics disfavored by the proposed legislation is more likely to occur between these students and in the classrooms of these teachers,<sup>277</sup> thus having a detrimental impact on learning for all students.

Furthermore, the proposed legislation exposes these teachers and students to more harassment and discrimination because of the suppression of viewpoints disfavored by the legislation.<sup>278</sup>

For the students, families, and teachers who claim that the teaching of such curricula infringes their civil rights to not be subjected to such material, Missouri as many other states have long resolved that issue through the use of “opt-out” provisions. Parents who do not wish for their children to be exposed to material that they deem inappropriate can have their children opt-out from the lesson. Although the use of such provisions occurs most frequently around the teaching of sexual education,<sup>279</sup> it will allow students and families not wishing to learn about such topics to avoid them. The blanket prohibition of teaching these topics does not have a similar mechanism that to support the civil rights of students and families who want to be taught and learn about these topics. There is no effective “opt-in” provision. Students and their families must find alternative sources thus creating not only an educational burden but potentially also a

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<sup>276</sup> The Associated Press, *Missouri House passes bill on race, parents' roles in school*, KY3 (Apr. 20, 2022), <https://www.ky3.com/2022/04/20/missouri-house-passes-bill-race-parents-roles-school/>; Tessa Weinberg, *Missouri education committee puts early focus on parental rights, critical race theory*, Missouri Independent (Jan. 11, 2022), <https://missouriindependent.com/2022/01/11/missouri-education-committee-puts-early-focus-on-parental-rights-critical-race-theory/>; Tessa Weinberg, *A Parents' 'Bill of Rights'? Missouri May Give Families More Influence in Classrooms*, The74 (Jan. 13, 2022), <https://www.the74million.org/article/missouri-education-committee-puts-early-focus-on-parental-rights-critical-race-theory/>.

<sup>277</sup> See *Pernell v. Florida Board of Governors*, Complaint, Case No. 4:22-cv-304, N.D. Florida, Tallahassee Division (Aug. 18, 2022), [https://www.naacpldf.org/wp-content/uploads/ECF-No.-1\\_HB-7-Complaint.pdf](https://www.naacpldf.org/wp-content/uploads/ECF-No.-1_HB-7-Complaint.pdf).

<sup>278</sup> Sheretta T. Butler Barnes, et al., *Promoting Resilience Among African American Girls: Racial Identity as a Protective Factor*, 89 Child Dev. 552 (2018), <https://pubmed.ncbi.nlm.nih.gov/29154406/>.

<sup>279</sup> Sex Ed for Social Change (SIECUS), Missouri State Profile, [https://siecus.org/state\\_profile/missouri-state-profile/](https://siecus.org/state_profile/missouri-state-profile/).

financial one for students and the families of students who do not have access to such material because of socio-economic status.

Students and families have First Amendment rights not to learn subjective matter that they deem may be inappropriate.<sup>280</sup> The enactment of state statutes that are specifically tailored to prohibit K-12 public schools from teaching certain curricula would not be a violation of civil rights. To the contrary, such statutes would foster and enhance the protection of federal civil rights by clarifying whether the state's K-12 public schools' curricula complies with the applicable federal laws, and by providing additional state measures to deter and remedy civil rights violations. The provisions, if enacted, should accordingly be lawful and pass constitutional muster.<sup>281</sup>

The state has the authority to proscribe by statute what constitutes violations of federal civil rights laws. Moreover, a state has the authority to regulate the content of curricula taught in its K-12 public schools. When performing their official duties, teachers act as agents of the state -- essentially giving voice to government approved speech, and state legislatures have significant constitutional authority to direct such speech.<sup>282</sup>

To minimize any doubt about their lawfulness and fairness of the public policies they embody, many of the proposed statutes contain disclaimer provisions.<sup>283</sup> These provisions state that nothing in the proposed statute shall be construed as prohibiting (for example): speech protected by the

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<sup>280</sup> See *Henderson v. School District of Springfield R-12*, Complaint, Case No. 6: 21-cv-03219, W.D. Mo. (Aug. 18, 2021), <https://flatcreek.wpenginepowered.com/wp-content/uploads/sites/12/2021/08/20210818-Complaint-Doc-1.pdf>, which alleges that compelled speech on race-related topics in a Missouri school district violated the First Amendment. HB 1858, *supra* note 1, is among the bills introduced in the Missouri Legislature that would prohibit such compelled speech.

<sup>281</sup> See generally James Copland, *How To Regulate Critical Race Theory In Schools: A Primer and Model Legislation*, Manhattan Institute (Aug. 2021), <https://media4.manhattan-institute.org/sites/default/files/copland-crt-legislation.pdf>.

<sup>282</sup> See *id.* at 7 (and authorities there cited); see also *Pernell*, *supra* note 3, 2022 WL 16985920, at \*8, n.14 (circuit courts outside the Eleventh Circuit hold that the Supreme Court's decision in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988) "permits viewpoint-based discrimination" in K-12 public schools) (citing and quoting authority), at \*10 (K-12 public school teacher's "in-class conduct is not [protected by the First Amendment]") (citing authority, bracketed material in original), at \*9 (it has been "emphasized that different 'constitutional rules applicable to higher education do not necessarily apply in primary and secondary schools, where students generally do not choose whether or where they will attend school'") (citing and quoting authority), & at \*6 (unlike and in contrast to K-12 public schools, public universities play a "unique role" and "occupy a special niche in our constitutional tradition," involving "the marketplace of ideas" and "academic freedom") (citing and quoting authority).

<sup>283</sup> See Copland, *supra* note 10, at 8-9 and 13-14.

First Amendment; *voluntary* attendance in controversial training and discussion sessions; access to sources on an individual basis that advocate concepts identified in the proposed statute as violative of federal civil rights, for the purpose of research or independent study; discussion or assignment of materials incorporating such concepts for educational purposes where the public school expressly makes clear that it does not sponsor, approve, or endorse such concepts; or age-appropriate consideration of accurate historical facts and other information regardless whether some students may find it disturbing or otherwise a source of negative reaction.

Accordingly, the proposed state legislation of the kind described above would not violate federal civil rights and, to the contrary, would protect against violations of such rights. The Committee seeks to solicit input from experts to assess whether the proposed legislation is violative or protective of civil rights.

**Missouri Advisory Committee to the  
United States Commission on Civil Rights**



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