

## NOTE

### CENSORSHIP AS SEGREGATION: BOOK BANS AND THE RETURN OF “SEPARATE BUT EQUAL”

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#### INTRODUCTION

The year is 2021. Parents are riddled with strife over their children learning about white supremacy,<sup>1</sup> “critical race

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<sup>1</sup> See Kelly Jensen, *Media Doesn’t Name Book Pulled From School; White Kids “Robbed of Innocence”: Book Challenges and Censorship This Week*, Book Riot (Oct. 22, 2021), <https://bookriot.com/book-challenges-october-22-2021/> [<https://perma.cc/CT3W-ZBPK>] (“It was ‘angry white faces’ as a description in a biography of Ruby Bridges for young readers that set a parent off on a rant during a recent Floyd County, Kentucky, school board meeting.”). Ruby Bridges was the first African-American to desegregate an all-white elementary school in the South. See also Evan McMorris-Santoro & Meredith Edwards, *Tennessee Parents Say Some Books Make Students ‘Feel Discomfort’ Because*

theory” is America’s new buzzword,<sup>2</sup> and 1,648 books have been banned.<sup>3</sup> Of those books, 40% featured protagonists or prominent secondary characters of color, 21% of the titles directly addressed issues of race and racism, and 10% of the titles included themes related to constitutional rights and activism.<sup>4</sup> But how did we get here?

In the aftermath of the murder of George Floyd,<sup>5</sup> mass protests spread across the United States as citizens demanded that the nation confront its racism. In response, Republican lawmakers co-opted the term “critical race theory,”<sup>6</sup> misapplying it to any issue related to diversity, equity, and inclusion. This move emboldened local, state, and national groups to weaponize the term as justification for censoring discussions of race and racism in K-12 schools.<sup>7</sup> What followed was a wave of anti-critical race theory (“anti-CRT”) legislation proposed

*They’re White. They Say a New Law Backs Them Up*, CNN (Sep. 29, 2021), <https://www.cnn.com/2021/09/29/us/tennessee-law-hb-580-book-debate> [<https://perma.cc/3PJL-THEE>] (discussing the story of a parent who kept her child out of public schools because of lesson plans that “make students feel bad about their race”).

<sup>2</sup> See Lauren L. Shepherd, *Critical Race Theory is Just the New Buzzword in Conservatives’ War on Campuses*, WASH. POST (July 7, 2021), <https://www.washingtonpost.com/outlook/2021/07/07/critical-race-theory-is-just-new-buzzword-conservatives-war-campuses/> [<https://perma.cc/J47K-ZALS>]; see also Brendan Ponton, *Critical Race Theory Becomes Campaign Buzzword in Virginia Governor’s Race*, WTKR (June 10, 2021), <https://www.wtkr.com/news/critical-race-theory-becomes-campaign-buzzword-in-virginia-governors-race> [<https://perma.cc/5NH9-7AD8>] (examining what the “buzzword” critical race theory means and questioning whether it is actually being taught in schools).

<sup>3</sup> Jonathan Friedman, *Banned in the USA: The Growing Movement to Censor Books in Schools*, PEN AM. (Sep. 19, 2022), <https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools/> [<https://perma.cc/BKG8-NSMY>].

<sup>4</sup> *Id.*

<sup>5</sup> See generally Ailsa Chang, Rachel Martin & Eric Marropodi, *Summer of Racial Reckoning*, NPR (Aug. 16, 2020), <https://www.npr.org/2020/08/16/902179773/summer-of-racial-reckoning-the-match-lit> [<https://perma.cc/63WY-L84E>] (discussing how the murders of George Floyd, Ahmaud Arbery, and Breonna Taylor at the hands of police brutality led to protests across the country). See also Jonathan Friedman & James Tager, *Educational Gag Orders*, PEN AM., at 13 (Nov. 8, 2021), <https://pen.org/report/educational-gag-orders/> [<https://perma.cc/J4XN-CYJE>].

<sup>6</sup> See Jacey Fortin, *Critical Race Theory: A Brief History*, N.Y. TIMES (Nov. 8, 2021), <https://www.nytimes.com/article/what-is-critical-race-theory.html> [<https://perma.cc/HQY8-3Z6U>]; see also Friedman & Tager, *supra* note 5, at 3.

<sup>7</sup> See Jacey Fortin, *supra* note 6; see also Jill Anderson, *The State of Critical Race Theory in Education*, HARV. GRADUATE SCH. OF EDUC. (Feb. 23, 2022), <https://www.gse.harvard.edu/ideas/edcast/22/02/state-critical-race-theory-education> [<https://perma.cc/E9FH-FF23>] (noting that critical race theory is a theoretical concept taught in law schools and graduate courses—not K-12 classrooms).

and enacted across the United States, accompanied by widespread bans of books addressing race and racism in America's classrooms.<sup>8</sup>

Chief Justice Warren wrote that “[education] is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”<sup>9</sup> Therefore, “[the opportunity for an education] where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”<sup>10</sup> However, contemporary book bans, which disproportionately ban works by authors of color and works discussing racism, deprive students of this cultural awakening, preparation, and environmental adjustment. Furthermore, the act in itself of disproportionately banning these works further marginalizes Black students and students of color.<sup>11</sup> What does it show Black students when books challenging notions of Black inferiority are considered “indoctrination” but books that do not mention Black people or reinforce notions of Black inferiority are considered “education”?<sup>12</sup> What does it demonstrate to students of color when school funding is revoked in schools that have chosen not to comply with book bans?<sup>13</sup> And, what

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<sup>8</sup> Friedman, *supra* note 3; see also Rashawn Ray & Alexandra Gibbons, *Why are States Banning Critical Race Theory?*, BROOKINGS (Nov. 2021), [https://www.brookings.edu/articles/why-are-states-banning-critical-race-theory/#\\_edn1](https://www.brookings.edu/articles/why-are-states-banning-critical-race-theory/#_edn1) [<https://perma.cc/V49C-4AX4>] (summarizing the widespread efforts to ban critical race theory from U.S. classrooms); Lisa Harrison et al., *But Is It Really About Critical Race Theory?: The Attack on Teaching about Systemic Racism and Why We Must Care*, 52 MIDDLE SCH. J. 2, 2 (2021) (explaining that book bans are not actually about critical race theory but instead a ban on teaching concepts related to race).

<sup>9</sup> Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).

<sup>10</sup> *Id.*

<sup>11</sup> Javaid Siddiqi, *Book Bans Increase the Marginalization of Our Most Vulnerable Students*, THE HILL (Apr. 1, 2022), <https://thehill.com/opinion/education/3012239-book-bans-increase-the-marginalization-of-our-most-vulnerable-students/> [<https://perma.cc/HTA3-96UH>].

<sup>12</sup> Zan Romanoff, *Ibram X. Kendi on His New Book and Why Kids Today Need the Kinds of Books Being Banned*, READER'S DIG. (Mar. 14, 2024), <https://www.rd.com/article/ibram-x-kendi-book-banning/> [<https://perma.cc/PY57-JUG7>].

<sup>13</sup> Sue Halpern, *The Fight For the Soul of a School Board*, NEW YORKER (May 18, 2023), <https://www.newyorker.com/news/dispatch/the-fight-for-the-soul-of-a-school-board> [<https://perma.cc/LZR6-KKKK>] (“[T]he Missouri chapter of the American Civil Liberties Union sued the prosecuting attorney in Jackson County . . . challenging S.B. 775, which it called ‘the government censorship law that caused school districts across the state to order the removal of hundreds of titles from library shelves.’ Weeks later, the chair of the Missouri House Budget Committee, Cody Smith, retaliated by removing all funding for public libraries from the state budget.”).

does it mean to these students when these acts are sanctioned by law?<sup>14</sup>

This Note argues that contemporary book bans violate the spirit of *Brown v. Board of Education*. Through contemporary anti-CRT and anti-Black book bans, Black students and students of color are receiving educational opportunities that are substantially inferior to those available to white students, thereby depriving them of equal protection of the law as guaranteed by the Fourteenth Amendment.<sup>15</sup> This Note makes the argument in three parts.

Part I distills the key school desegregation cases in America underscoring the importance of “intangible factors” of education in desegregation efforts. Part II surveys contemporary anti-CRT and anti-Black book bans in America to demonstrate that the bans operate as functional equivalents of segregation. Subpart II.A examines contemporary anti-CRT and anti-Black legislation and book bans in the states of Tennessee, Texas, and Florida. Subpart II.B discusses the implications that contemporary anti-CRT and anti-Black book bans have on America’s students in K-12 classrooms including the reimposition of segregation’s harms. Part III presents three solutions to the implications of contemporary anti-CRT and anti-Black book bans on K-12 students via a constitutional approach, civil approach, and policy approach. Ultimately, contemporary anti-CRT and anti-Black book bans violate the Equal Protection Clause of the Fourteenth Amendment and book banning in K-12 libraries should be abolished.

## I

### THE EDUCATIONAL DESEGREGATION CASES: *SWEATT*, *McLAURIN*, & *BROWN*

The United States has a long history of segregation in its education system.<sup>16</sup> In many of the cases that were litigated, the district courts denied Black students access to

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<sup>14</sup> Friedman, *supra* note 3 (listing Florida, Georgia, Tennessee, Utah, and Missouri as States that have proposed or supported bills directly impacting the selection and removal of books in school classrooms and libraries).

<sup>15</sup> See generally 347 U.S. 483 (1954). Another constitutional avenue for challenging book bans is through the First Amendment by arguing that such bans impermissibly regulate the speech of educators within public schools. See *Bd. of Educ. v. Pico*, 457 U.S. 853, 866 (1982). While this issue lies beyond the scope of this Note, it merits further scholarly exploration.

<sup>16</sup> See generally NAACP & Esri, *History of Brown v. Board of Education*, NAACP (2025), <https://naacp.org/history-brown-v-board-education> [<https://perma.cc/A4SF-HHM5>] (describing the history of *Brown v. Board of Education*).

state-supported education, invoking the “separate but equal”<sup>17</sup> doctrine.<sup>18</sup> Then, in *Missouri ex rel. Gaines v. Canada* and *Sipuel v. Board of Regents*, the Supreme Court of the United States began to challenge the utilization of the “separate but equal” doctrine, ruling that the states in those cases must provide “substantially equal educational opportunities” to Black and white students in conformity with the Equal Protection Clause of the Fourteenth Amendment.<sup>19</sup> Despite these legal advancements, educational inequalities persisted across the United States. Then, in 1950, two cases forced the Supreme Court to analyze the impacts of “separate but equal” education in graduate and professional schools.

The case of *McLaurin v. Oklahoma State Regents for Higher Education* began when plaintiff George W. McLaurin was denied admission to the University of Oklahoma for a Doctorate in Education, solely because he was a Black man.<sup>20</sup> The University grounded its decision in Oklahoma statutes which mandated segregation in education and made it a misdemeanor to operate a school at which both Black people and white people were enrolled or taught.<sup>21</sup> However, McLaurin filed suit, alleging that the University’s decision and the aforementioned Oklahoma statutes were unconstitutional and deprived him of equal protection of the laws.<sup>22</sup> Although later statutory amendments permitted McLaurin to be admitted to the University of Oklahoma’s doctoral program in education, he was assigned separate seating from white students in the classroom, cafeteria, and library, leading him to appeal to the Supreme Court of the United States.<sup>23</sup> The Court held that the Fourteenth Amendment precluded such differences in treatment by the State based upon race, and the conditions under which McLaurin

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<sup>17</sup> *Plessy v. Ferguson*, 163 U.S. 537, 544 (1896) (recognizing the permissibility of segregation based upon race so long as the separate facilities were equal), *overruled by Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

<sup>18</sup> See, e.g., *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 349–50 (1938), (applying the separate-but-equal framework later described as inherently misguided in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 203–04 (2023)); *Sipuel v. Bd. of Regents*, 332 U.S. 631, 632 (1948); *McLaurin v. Okla. State Regents for Higher Educ.*, 339 U.S. 637, 638 (1950); *Sweatt v. Painter*, 339 U.S. 629, 631 (1950).

<sup>19</sup> 305 U.S. at 337, 349–50; 332 U.S. at 632.

<sup>20</sup> 339 U.S. 637, 638 (1950).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 638–39.

<sup>23</sup> *Id.* at 640.

was required to receive his education deprived him of his "personal and present right to the equal protection of the laws."<sup>24</sup>

That same day, the Court ruled in *Sweatt v. Painter*.<sup>25</sup> Like McLaurin, Black plaintiff Heman Sweatt was denied admission to the University of Texas Law School solely because of his race.<sup>26</sup> No other law school in Texas admitted Black people; Sweatt filed suit for mandamus against the University, compelling his admission.<sup>27</sup> Despite recognizing that the State was depriving Sweatt of equal protection of the laws guaranteed by the Fourteenth Amendment by denying access to a legal education equal to that available to his white counterparts, the trial court did not grant the relief requested.<sup>28</sup> Instead, the trial court allowed the case to endure for six months to allow the State to supply substantially equal facilities.<sup>29</sup> Upon a showing that the university officials adopted an order to open a law school for Black people, the court denied Sweatt's writ.<sup>30</sup> Sweatt appealed the decision and while the appeal was pending, a law school for Black people opened in Texas; however, Sweatt refused to register.<sup>31</sup> Eventually, the Supreme Court of the United States ruled in *Sweatt* that the Fourteenth Amendment's Equal Protection Clause required that Sweatt be admitted to the University of Texas Law School.<sup>32</sup>

*McLaurin* and *Sweatt* were notable for the Supreme Court's findings of "intangible factors"<sup>33</sup> of education within the cases, as they would pave the way for *Brown v. Board of Education*.<sup>34</sup> In *McLaurin*, the Court found that the appellant was "handicapped in pursuit of effective graduate instruction" when his seating was separated from white students.<sup>35</sup> More specifically, the Court found that the appellant was deprived of certain "intangible factors" of education resulting from this separation including "his ability to study, to engage in discussions and

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<sup>24</sup> *Id.* at 642.

<sup>25</sup> 339 U.S. 629, 629 (1950).

<sup>26</sup> *Id.* at 631.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 631-32.

<sup>29</sup> *Id.* at 632.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 636.

<sup>33</sup> *Sweatt*, 339 U.S. at 634 ("those qualities which are incapable of objective measurement but which make for greatness in a . . . school.").

<sup>34</sup> 347 U.S. 483 (1954).

<sup>35</sup> 339 U.S. at 641.

exchange views with other students, and, in general, to learn his profession.”<sup>36</sup> Likewise, the Court found in *Sweatt* that the new Black law school was not substantially equal in educational opportunities to the white law school based upon “intangible factors” including “reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige.”<sup>37</sup>

Intangible factors played an even greater role in the consolidated case *Brown*<sup>38</sup> in which the Supreme Court of the United States found intangible factors also existed in grade and high schools.<sup>39</sup> The *Brown* plaintiffs were Black minors who were denied admission to their respective community public schools solely on the basis of race.<sup>40</sup> Each plaintiff alleged deprivation of the equal protection of laws under the Fourteenth Amendment, asserting that segregated public schools were not and could not be made “equal.”<sup>41</sup> Nevertheless, in three of the four cases, the plaintiffs were denied relief by the federal district courts according to the “separate but equal” doctrine.<sup>42</sup> The Supreme Court determined that it needed to rule on the question of “whether Plessy v. Ferguson should be held inapplicable to public education.”<sup>43</sup>

In *Brown*, unlike *Sweatt*, the “tangible factors” between the Black and white schools were either equalized or on the verge of equalization, making it impossible to ignore the inherent inequalities of segregation itself.<sup>44</sup> Thus, while ruling on *Plessy*’s applicability, the Court focused its attention again on the intangible factors of education.<sup>45</sup> The Court found that

<sup>36</sup> *Id.*

<sup>37</sup> 339 U.S. at 634.

<sup>38</sup> The state cases consolidated in *Brown* were *Brown v. Bd. of Education*, 98 F. Supp. 797 (D. Kan. 1951), *Briggs v. Elliott*, 103 F. Supp. 920 (E.D.S.C. 1952), *Davis v. Cnty. Sch. Bd.*, 103 F. Supp. 337 (E.D. Va. 1952), and *Gebhart v. Belton*, 91 A.2d 137 (Del. 1952). *Bolling v. Sharpe*, 347 U.S. 497 (1954), was also decided that same day as a companion case involving segregation in the District of Columbia under the Fifth Amendment.

<sup>39</sup> 347 U.S. at 493–94.

<sup>40</sup> *Id.* at 487–88.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 492.

<sup>44</sup> *Id.* at 492 (acknowledging that the buildings, curricula, qualifications, and salaries of teachers, in addition to other “tangible factors” were equalized or on the verge of equalization).

<sup>45</sup> *Id.* at 493–94 (noting that it relied in large part on “intangible considerations” in its *McLaurin* and *Sweatt* decisions and would have to do the same here).

"intangible factors" of education included "awakening the child to cultural values, [] preparing him for later professional training, and [] helping him to adjust normally to his environment."<sup>46</sup> Additionally, the Court found the same intangible factors acknowledged in *McLaurin*—the ability to study, to engage in discussions and exchange views with other students, and generally to learn one's profession—also applied with "added force to children in grade and high schools."<sup>47</sup> As the Court examined the effects of segregation itself on children in grade and high schools, it found several detrimental psychological impacts on Black children.<sup>48</sup>

The Court found that the policy of separating children by race in itself denoted the inferiority of the Black group, which generated feelings of inferiority within Black children as to their status in the community.<sup>49</sup> These feelings of inferiority affected the motivation of Black children to learn and, as the Court noted, would "affect their hearts and minds in a way unlikely ever to be undone."<sup>50</sup> Furthermore, the Court acknowledged that when segregation has the sanction of law, it not only has a greater impact on Black children but also "has a tendency to [delay] the[ir] educational and mental development [] and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."<sup>51</sup> Thus, despite equal "tangible factors" between Black and white schools, "separate but equal" facilities were ruled "inherently unequal" because they lacked the intangible factors so essential to education, depriving students of equal protection of the laws per the Fourteenth Amendment.<sup>52</sup>

Part I of this Note explained that in the initial school desegregation cases, the Court observed that the "intangible factors" of education were missing in Black schools under *Plessy's* "separate but equal" ruling, resulting in inherently unequal schools. This deprived students of equal protection of the law under the Fourteenth Amendment and inflicted irreversible psychological harm on Black students. Part II of this Note

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<sup>46</sup> *Id.* at 493.

<sup>47</sup> *Id.* at 493–94.

<sup>48</sup> *Id.* at 492–94.

<sup>49</sup> *Id.* at 494.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* (alteration in original) (citing *Belton v. Gebhart*, 87 A.2d 862, 865 (Del. Ch. 1952)). In *Belton*, the Delaware Court analyzed the constitutionality of State-imposed segregation in education and its effects on Black children.

<sup>52</sup> *Brown*, 347 U.S. at 495.

will argue that contemporary anti-CRT and anti-Black book bans resurrect the “separate but equal” ideology in America’s schools, depriving Black students and students of color of equal educational opportunities. Further, these bans inflict the very harms on Black students and students of color that the *Brown* Court sought to avoid. To illustrate this point, Part II will also explore contemporary anti-CRT and anti-Black book bans in three states.

## II

### CONTEMPORARY BOOK BANS

A book ban occurs when a “private individual[], government official[] or organization[] remove[s], [restricts, or diminishes access to] books from libraries, school reading lists or bookstore shelves because they object to their content, ideas or themes.”<sup>53</sup> Book bans are not a novel concept to America; they date back to 1637, when Thomas Morton’s *New English Canaan* was banned by the Puritan government for its criticism of Puritan customs and power structures.<sup>54</sup> Contemporary book bans have been justified as efforts to protect others, frequently children, from “difficult ideas and information.”<sup>55</sup> The language of anti-CRT legislation propelling contemporary book bans aims to suppress teaching and discussion of alleged “divisive concepts” related to systemic racism, biases, discrimination, oppression, and privilege in the United States.<sup>56</sup> In effect, contemporary book bans have violated the spirit of *Brown*, which sought to ensure that all students had access to the “intangible factors” of education and received equal educational opportunities, and have reintroduced the educational segregation that *Brown* sought to dismantle in overruling *Plessy*.

Part A will explore contemporary anti-CRT and anti-Black legislation and book bans in Tennessee, Texas, and Florida, to illustrate this troubling trend. Part B will demonstrate that contemporary anti-CRT and anti-Black book bans resurrect

<sup>53</sup> Susan L. Webb, *Book Banning*, FREE SPEECH CTR. (Aug. 8, 2023), <https://firstamendment.mtsu.edu/article/book-banning/> [https://perma.cc/5FPD-WF5F] (discussing what book banning is and the surge in book bans in the United States).

<sup>54</sup> See Gutman Library, *History of Book Banning*, HARV. GRADUATE SCH. OF EDUC. (Sep. 24, 2024), <https://guides.library.harvard.edu/c.php?g=1269000&p=9306840> [https://perma.cc/88CN-ZTYX].

<sup>55</sup> ALA, *About Banned & Challenged Books* (Dec. 10, 2012), <https://www.ala.org/bbooks/aboutbannedbooks> [https://perma.cc/53KE-9FTU].

<sup>56</sup> See Friedman, *supra* note 3.

the “separate but equal” ideology from *Plessy* and examine the resulting harms on Black students and students of color.

## A. Case Studies: Tennessee, Texas, and Florida

### 1. *Tennessee*

According to Tennessee’s Social Studies Standards, Tennessee students as “future leaders” should “be aware of the changing cultural and physical environments of Tennessee, the United States, and the world; know and understand the past.”<sup>57</sup> Yet, in 2021, the Tennessee General Assembly passed a “critical race theory” law banning local education agencies, public charter schools, teachers, and employees from including or promoting fourteen concepts in curriculum and instruction related to systemic racism.<sup>58</sup> The law states that supplemental instructional materials on any of the concepts must include “impartial discussion of controversial aspects of history” without defining any of the terms, leaving it subject to varying interpretations.<sup>59</sup> Furthermore, it provides that schools found knowingly in violation of the law shall have state funds withheld.<sup>60</sup> A statewide process for complainants to appeal the decisions of locally elected officials on books challenged as being “inappropriate for the age or maturity levels” of students who can access them was also created in furtherance of the bill.

The new law had a range of impacts on its stakeholders. The law’s passage left many teachers and schools in turmoil, forcing them to quickly reconsider and revise curricula they had relied on for years. In Tipton County, Tennessee, the annual field trip to Memphis’ National Civil Rights Museum was replaced with a trip to a baseball game.<sup>61</sup> Although a choir director in Shelby County, Tennessee had taught students to

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<sup>57</sup> Tenn. Dep’t of Educ., *Tennessee Social Studies Standards*, (July 2017), [https://www.tn.gov/content/dam/tn/education/standards/ss/Social\\_Studies\\_Standards.pdf](https://www.tn.gov/content/dam/tn/education/standards/ss/Social_Studies_Standards.pdf) [<https://perma.cc/NLS2-LMG5>].

<sup>58</sup> TENN. CODE ANN. § 49-6-1019 (2025).

<sup>59</sup> *Id.* § 49-6-1019(b)(2)–(3); cf. Associated Press, *Tennessee Educators File Lawsuit Challenging Law Limiting School Lessons on Race, Sex and Bias*, ASSOCIATED PRESS (July 26, 2023), <https://wreg.com/news/mid-south/tennessee-educators-file-lawsuit-challenging-law-limiting-school-lessons-on-race-sex-and-bias/> [<https://perma.cc/QE8E-M7EC>] (illustrating that teachers find the Tennessee law unclear in its description of concepts).

<sup>60</sup> TENN. CODE ANN. § 49-6-1019(c).

<sup>61</sup> Associated Press, *Tennessee Educators File Lawsuit Challenging Law Limiting School Lessons on Race, Sex and Bias*, WREG MEMPHIS (July 26, 2023), <https://wreg.com/news/mid-south/tennessee-educators-file-lawsuit-challenging-law-limiting-school-lessons-on-race-sex-and-bias/> [<https://perma.cc/S7L5-8NL2>].

sing and understand the historical significance of spirituals sung by slaves for decades, he developed new concerns that it would be considered “divisive” in violation of the new law.<sup>62</sup> Matthew Hahn, a teacher in Sullivan County, Tennessee, was fired for using Ta-Nehisi Coates’ essay, *The First White President*, and Kyla Jenée Lacey’s poem, *White Privilege*, to teach students about racism.<sup>63</sup> Despite curricular requirements that third- through fifth-grade teachers in Tennessee must teach students how slavery became a national issue in the mid-1800s, including the significance of the *Scott v. Sanford*<sup>64</sup> decision,<sup>65</sup> the permissible explanations of concepts underlying slavery are severely limited under the bill.<sup>66</sup> For instance, when teaching students about slavery, teachers in Tennessee cannot explain that one “race . . . is inherently superior to another race,” that “[a]n individual should be discriminated against or receive adverse treatment because of the individual’s race or sex,” that “[a]ll Americans are not created equal and are not endowed by their Creator with certain inalienable rights, including life, liberty, and the pursuit of happiness,” or that “[g]overnments should deny to any person within the government’s jurisdiction the equal protection of the law.”<sup>67</sup>

While teachers in Tennessee were in a frenzy attempting to interpret the bill and modify their curriculum, parents in far-right political organizations such as Moms for Liberty sprang into action taking advantage of the law.<sup>68</sup> Shortly after the

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<sup>62</sup> Sam Stockard, *Teachers Association Files Suit to Stop Tennessee’s ‘Prohibited Concepts’ Law*, TENN. LOOKOUT (July 26, 2023), <https://tennesseelookout.com/2023/07/26/teachers-association-files-suit-to-stop-tennessees-prohibited-concepts-law/> [https://perma.cc/ZXD2-327T].

<sup>63</sup> Alejandro Ramirez, *Writers, Educators Show Support for Tennessee Teacher Fired for Discussing Racism*, NASHVILLE SCENE (Dec. 13, 2021), [https://www.nashvillescene.com/news/pithinthewind/writers-educators-show-support-for-tennessee-teacher-fired-for-discussing-racism/article\\_11c8f25a-5c5c-11ec-a522-67a349da7499.html](https://www.nashvillescene.com/news/pithinthewind/writers-educators-show-support-for-tennessee-teacher-fired-for-discussing-racism/article_11c8f25a-5c5c-11ec-a522-67a349da7499.html) [https://perma.cc/TR2L-8AWG]; Robin Bates, *White Privilege Explained in Oral Poetry*, BETTER LIVING THROUGH BEOWULF (July 13, 2021), <https://betterlivingthroughbeowulf.com/white-privilege-explained-in-oral-poetry/> [https://perma.cc/HKD9-R4TQ].

<sup>64</sup> *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

<sup>65</sup> Tennessee Department of Education, *supra* note 57, at 58–59, 72.

<sup>66</sup> Stockard, *supra* note 62.

<sup>67</sup> TENN. CODE ANN. § 49-6-1019(a)(1), (3), (13)–(14) (2025).

<sup>68</sup> Moms for Liberty is an organization, founded in 2021, “dedicated to fighting for the survival of America by unifying, educating and empowering parents to defend their parental rights at all levels of government.” MOMS FOR LIBERTY, <https://www.momsforliberty.org/about/> [https://perma.cc/Z38V-U7HR] (last visited Mar. 26, 2026).

law's passage, the Williamson County, Tennessee Chapter of Moms for Liberty filed an eleven-page complaint, alleging that the second-grade English curriculum module on "Civil Rights Heroes" violated the state ban.<sup>69</sup> The Chapter listed the following texts as in violation of the ban: *Martin Luther King Jr and the March on Washington*, *Ruby Bridges Goes to School: My True Story*, *The Story of Ruby Bridges*, and *Separate is Never Equal*.<sup>70</sup> The Chapter alleges that the books and accompanying teacher manuals reveal both "explicit and implicit Anti-American, Anti-White, and Anti-Mexican teaching" and imply that people of color continue to be oppressed by an "oppressive . . . white population."<sup>71</sup> Moreover, the Chapter states that "targeting elementary-age children with daily lessons on fighting past injustices as if they were occurring present day . . . will sow the seeds of racial strife, neo-racism, neo-segregation, and is an affront to the ideals of Dr. Martin Luther King, Jr."<sup>72</sup> The Chapter further asserts that the "explicit and implicit indoctrination—the relentless teachings of whites versus people of color under the dichotomy of oppressor versus oppressed and that our country is fundamentally racist—is prohibited" per the state ban.<sup>73</sup> In support of the complaint, they note that a biracial second-grade student is now "ashamed of his white half, his white father, and his country" and a Black second-grade student now "sees himself as oppressed because of his skin color."<sup>74</sup> In closing, the Chapter requested that per the text of the ban, the state withhold funds from the school until evidence that it is no longer in violation of the ban is provided.<sup>75</sup> Although the Tennessee Department of Education rejected the complaint on a technicality,<sup>76</sup> the Department encouraged the

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<sup>69</sup> Letter from Robin E. Steenman, Chair, Moms for Liberty Williamson County, to Penny Schwinn, Comm'r Tenn. Dep't Educ. (June 30, 2021), <https://drive.google.com/file/d/16W9grkwSFsIPRQOSpQfnAHNJzvDH5Bkk/view> [https://perma.cc/722F-3PFM].

<sup>70</sup> *Id.* at 2.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 7.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Chris Walker, *Tennessee Rejects "Moms for Liberty" Complaint Over Lessons on MLK*, TRUTHOUT (Nov. 30, 2021), <https://truthout.org/articles/tennessee-rejects-moms-for-liberty-complaint-over-lessons-on-mlk/> [https://perma.cc/G2TD-JTCU]. Moms for Liberty filed a complaint describing allegations for the 2020-2021 academic year. However, state law only allowed complaints to be filed after the adoption of the rule, beginning with the 2021-2022 academic year.

Chapter to work with the Williamson County School District to resolve the issues in the complaint and ensure compliance with state law.<sup>77</sup>

While the Chapter's complaint addressed the emotional trauma that students had to overcome from learning this subject matter, it disregarded the emotional trauma that marginalized students face when experiencing racism. This is the exact psychological effect the *Brown* Court acknowledged results from educational segregation.

## 2. Texas

In June of 2021, the Texas House of Representatives enacted House Bill 3979, a "critical race theory" bill, restricting how America's history and current events could be discussed in Texas K-12 social studies classrooms.<sup>78</sup> The law outlined eight race-related concepts that teachers, administrators, and other employees should not require nor make part of a course, including "one race . . . is inherently superior to another race," "members of one race or sex cannot and should not attempt to treat others without respect to race or sex," and "an individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race."<sup>79</sup> Per the law, if teachers chose to discuss "controversial" or "widely debated" issues, they had to "strive to explore such issues from diverse and contending perspectives without giving deference to any one perspective."<sup>80</sup> Nonetheless, the inclusion of certain historical figures and civil rights documents in the curriculum was still required.

Later, in September of 2021, the Senate passed Senate Bill 3, follow-up legislation on House Bill 3979 that substantially rewrote the House Bill and further restricted discussions regarding "critical race theory."<sup>81</sup> This time the law was broadened to apply to all subjects, not just social studies.<sup>82</sup> This law stripped the curricular mandates featured in House Bill 3979 regarding specific civil rights leaders, women's suffrage figures,

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<sup>77</sup> *Id.*

<sup>78</sup> H.B. 3979, 87th Leg., Reg. Sess. (Tex. 2021).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> S.B. 3, 87th Leg., Reg. Sess. (Tex. 2021).

<sup>82</sup> *Id.*

and the history of white supremacy.<sup>83</sup> Historical documents related to the civic accomplishments of marginalized populations were also removed.<sup>84</sup> The law also added two additional race-related concepts that teachers, administrators, and other employees could not require nor make part of a course, including “the advent of slavery in the territory that is now the United States constituted the true founding of the United States,” and “with respect to their relationship to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States, which include liberty and equality.”<sup>85</sup> It mandated the inclusion of foundational documents on the nation’s history, such as the Declaration of Independence, the United States Constitution, and the Federalist Papers, while excluding the requirement of understanding the 1619 Project.<sup>86</sup> If teachers chose to discuss “controversial” or “widely debated” issues, the law expected them to explore the issues “objectively and in a manner free from political bias.”<sup>87</sup> If teachers, administrators, or other employees were found not to be in compliance with state and federal laws and district policies, the school district could take action.<sup>88</sup> Despite further clarifications from H.B. 3979, the text of the bill remained ambiguous, leading to confusion among educators regarding which curricular materials were in violation of the ban. The law left some stakeholders confused, while others sprang into action.

A Texas elementary school teacher felt that she would need to get rid of the picture book *Separate is Never Equal* due to its content regarding segregation.<sup>89</sup> Another elementary school teacher set aside the book *A Good Kind of Trouble* because the protagonist gets involved in the Black Lives Matter movement.<sup>90</sup> Another teacher mentioned that she no longer felt safe keeping a copy of *The Hate U Give* because of

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<sup>83</sup> Compare H.B. 3979, 87th Leg., Reg. Sess. (Tex. 2021), with S.B. 3, 87th Leg., Reg. Sess. (Tex. 2021).

<sup>84</sup> S.B. 3, 87th Leg., Reg. Sess. (Tex. 2021).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Mike Hixenbaugh, *Southlake, Texas, Schools Restrict Classroom Libraries After Backlash Over Anti-racist Book*, NBC NEWS (Oct. 8, 2021), <https://www.nbcnews.com/news/us-news/southlake-texas-anti-racist-book-school-library-rcna2734> [https://perma.cc/44QB-FSKN].

<sup>90</sup> *Id.*

its depictions of racialized reactions to a police shooting.<sup>91</sup> As teachers continued to grapple with the ambiguity of the law, some school boards sprang to action attempting to help filter the literature in classrooms.

Carroll Independent School District's school board in Texas created a rubric designed to filter the books teachers held in their classroom libraries.<sup>92</sup> The rubric asked teachers to evaluate their classroom library's books based upon credibility, perspective, and appropriateness on a two-point scale: standard fully met (2 points), standard partially met (1 point), and standard not met (0 points).<sup>93</sup> If the book received 0 points in any of the three categories, the book was precluded from use in the classroom library.<sup>94</sup> Even with the new rubric, teachers within the district struggled to grapple with what books fell within its parameters.<sup>95</sup>

While school boards attempted to conform with the law, parents in Texas also took matters into their own hands. After a parent complained that the award-winning graphic novels by Black author and illustrator Jerry Craft, *New Kid* and *Class Act*, promoted critical race theory, Katy Independent School District ("ISD") removed the books.<sup>96</sup> Shortly after, the district postponed a virtual event with Craft, to which about 5,000 students had been invited, after Bonnie Anderson, a parent, sent out a petition to have the event canceled.<sup>97</sup> In support of the petition, Anderson reasoned that Craft's books were "filled with microaggressions" which "teach[] children [the] preordained conclusion that White children have privilege or status, and that they are going to inherently do and say harmful things to children of color."<sup>98</sup> Another parent from Carroll Independent School District in Texas complained that a fourth-grade teacher kept the book *This Book is Anti-Racist* in her classroom library, alleging that the book violated her family's "morals and faith."<sup>99</sup>

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Alisha Ebrahimji, *Texas School District 'Postpones' a Black Author's School Visit because Parents Claim his Books Teach Critical Race Theory*, CNN (Oct. 7, 2021), <https://www.cnn.com/2021/10/07/us/katy-isd-book-critical-race-theory-trnd/index.html> [<https://perma.cc/A4NN-43DG>].

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> Hixenbaugh, *supra* note 89.

### 3. *Florida*

In June 2021, the Florida State Board of Education unanimously voted to ban teaching ideas related to critical race theory.<sup>100</sup> The ban states that instruction on significant historical events such as slavery, the Civil War and Reconstruction, the civil rights movement, and the contributions of African American people to the United States must “be factual and objective” and should not be distorted.<sup>101</sup> It further states that theories that could distort these historical events and thus are “inconsistent with State Board approved standards” include the “teaching of Critical Race Theory” and explicitly bans utilizing material from the 1619 Project in instruction.<sup>102</sup> Per the ban, teachers must not share their “personal views” or “attempt to indoctrinate or persuade students to a particular point of view that is inconsistent with the state academic standards.”<sup>103</sup> This ban was just the beginning of legislation related to race in Florida.

In April 2022, Florida’s House Bill 7, also known as the “Stop W.O.K.E. Act,”<sup>104</sup> was signed into law.<sup>105</sup> The anti-CRT law makes it “discrimination on the basis of race [or] color” to “subject any student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe” any of eight concepts related to race.<sup>106</sup> The concepts include “members of one race [or] color . . . morally superior to members of another race [or] color,” “a person’s moral character or status as either privileged or oppressed is necessarily determined by his or her race [or] color,” and “members of one race [or] color . . . cannot and should not attempt to treat others without respect to race [or] color.”<sup>107</sup> It notes that these concepts can be discussed provided that the instruction or training is given in an “objective manner without

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<sup>100</sup> Safia Samee Ali & The Associated Press, *Florida Board of Education Passes Rule Banning Critical Race Theory in Classrooms*, NBC NEWS (June 10, 2021), <https://www.nbcnews.com/news/us-news/florida-board-education-passes-rule-banning-critical-race-theory-classrooms-n1270363> [<https://perma.cc/9W52-AMLH>].

<sup>101</sup> FLA. ADMIN. CODE ANN. r. 6A-1.094124 (2021).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> John R. Vile, *Stop W.O.K.E. Act (Florida) (2022)*, FREE SPEECH CTR. (Aug. 10, 2023), <https://firstamendment.mtsu.edu/article/stop-w-o-k-e-act-florida/> [<https://perma.cc/RVL7-XV59>].

<sup>105</sup> H.B. 7, 2022 Leg., Reg. Sess. (Fla. 2022).

<sup>106</sup> *Id.* at 9–16, 72–103.

<sup>107</sup> *Id.* at 72–74.

endorsement of the concepts.”<sup>108</sup> Nonetheless, the lawmakers request in the same law that “students . . . develop an understanding of the ramifications of prejudice, racism, and stereotyping on individual freedoms” with instructional materials that “celebrate the inspirational stories of African Americans who prospered, even in the most difficult circumstances.”<sup>109</sup> They also state that instruction may include discussions regarding

how the individual freedoms of persons have been infringed by slavery, racial oppression, racial segregation, and racial discrimination, as well as topics relating to the enactment and enforcement of laws resulting in racial oppression, racial segregation, and racial discrimination and how recognition of these freedoms has overturned these unjust laws.<sup>110</sup>

The juxtaposition of these requests created chaos and confusion in Florida schools.<sup>111</sup>

In 2023, Florida’s House Bill 1069 took effect.<sup>112</sup> Though the law primarily aimed to limit instruction related to sexual orientation and gender identity in Florida’s classrooms,<sup>113</sup> the law also opened the door to more book bans in Florida. According to the law, each district school board must “adopt a policy regarding an objection by a parent or a resident of the county to the use of a specific material” in Florida classrooms.<sup>114</sup> Parents and Florida residents are also at liberty to present evidence to the district school board of materials that are “not suited to student needs and their ability to comprehend the material presented” or “inappropriate for the grade

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<sup>108</sup> *Id.* at 106–08.

<sup>109</sup> *Id.* at 365–67, 379–81.

<sup>110</sup> *Id.* at 383–89.

<sup>111</sup> The Eleventh Circuit Court of Appeals later decided this bill was unconstitutional in violation of the First Amendment and Fourteenth Amendment. See Press Release, ACLU, Judge Blocks Florida’s “Stop W.O.K.E.” Censorship Bill from Taking Effect in Higher Education (Nov. 17, 2022), <https://www.aclu.org/press-releases/judge-blocks-floridas-stop-woke-censorship-bill-taking-effect-higher-education> [<https://perma.cc/U5T8-5GDV>].

<sup>112</sup> H.B. 1069, 2023 Leg., Reg. Sess. (Fla. 2023).

<sup>113</sup> See ACLU, *HB 1069 - Government Control Over What is Taught in Sex Ed and Expanded Book Banning*, (2023), <https://www.aclufl.org/en/legislation/hb-1069-government-control-over-what-taught-sex-ed-and-expanded-book-banning> [<https://perma.cc/42WY-2G88>]; see also Press Release, Human Rights Campaign, Florida Senate Passes Expansion of ‘Don’t Say LGBTQ+’ Bill (Mar. 31, 2023), <https://www.hrc.org/press-releases/breaking-florida-senate-passes-expansion-of-dont-say-lgbtq-bill> [<https://perma.cc/96RP-482H>] (explaining the HB 1069 bill and how it “targets LGBTQ+ youth and educators”).

<sup>114</sup> H.B. 1069, *supra* note 112, at 12.

level and age group for which the material is used.”<sup>115</sup> With no other clarification, this leaves complete and utter discretion regarding the appropriateness and suitability of instructional materials for all of Florida’s students in the hands of Florida’s parents and residents. The combination of the Florida Department of Education ban on critical race theory, House Bill 7, and House Bill 1069 opened the floodgates to book bans in Florida.

In Miami-Dade County, Florida, an elementary school parent filed a complaint alleging that Amanda Gorman’s poem, *The Hill We Climb*,<sup>116</sup> “is not educational and have [sic] indirectly hate messages.”<sup>117</sup> The parent also states that the poem would “cause confusion and indoctrinate students.”<sup>118</sup> This resulted in the school’s review panel relocating the poem to another section of the library that was limited to older children.<sup>119</sup> The same parent also complained about Black poet Langston Hughes’s biography, *Love to Langston*, as well as *The ABCs of Black History*.<sup>120</sup> In Escambia County, Florida, several books were banned from its school’s shelves during the 2022-2023 school year due to ideological objections.<sup>121</sup> However, the books targeted in the county disproportionately addressed messaging related to race.<sup>122</sup> Among the books targeted were *All*

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<sup>115</sup> *Id.* at 12–13.

<sup>116</sup> Gorman’s poem focusing on themes of resilience, healing, unity, and hope, was read at President Joe Biden’s inauguration ceremony in January 2021. See Amanda Gorman, *The Hill We Climb: The Amanda Gorman poem that stole the inauguration show*, THE GUARDIAN (Jan. 20, 2021), <https://www.theguardian.com/us-news/2021/jan/20/amanda-gorman-poem-biden-inauguration-transcript> [<https://perma.cc/6D6C-RDMK>].

<sup>117</sup> Tatyana Tandanpolie, *Fla. School Yanks Amanda Gorman poem over complaint from one parent who “confused” her with “Oprah,”* SALON (May 24, 2023), <https://www.salon.com/2023/05/24/fla-school-yanks-amanda-gorman-poem-over-complaint-from-one-parent-confused-her-with-oprah/> [<https://perma.cc/GDF3-F6TG>].

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> See Complaint, *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Dist.*, No. 3:23-cv-10385, 2023 WL 3493959 (N.D. Fla. May 17, 2023). PEN America filed suit alleging that the District violated the First Amendment rights of the students, authors, and publishers by removing books during the 2022-2023 school year “based on ideological objections to their contents or disagreement with their messages or themes” violated the First Amendment and Fourteenth Amendment. The books targeted for removal disproportionately addressed themes and messages related to race and LGBTQ+ identity. See also PEN America, *PEN America v. Escambia County School District*, (Oct. 9, 2024), <https://pen.org/pen-america-v-escambia-county/> [<https://perma.cc/EY4Z-NPHH>].

<sup>122</sup> *Id.*

*Boys Aren't Blue*,<sup>123</sup> *Beloved*,<sup>124</sup> *When Wilma Rudolph Played Basketball*,<sup>125</sup> *Race and Policing in Modern America*, and *Black Girl Unlimited: The Remarkable Story of a Teenage Wizard*.<sup>126</sup> PEN America brought suit against the county which resulted in twenty-four books being returned to shelves, but several books still remain restricted.<sup>127</sup>

Texas, Tennessee, and Florida are just three of forty-four states that have introduced bills or taken actions to restrict the teaching of critical race theory and limit classroom discussions of racism.<sup>128</sup> These states often define “racist” concepts in broad and vague terms, allowing for subjective and inconsistent interpretation. Despite this ambiguity, their efforts have proven effective—intimidating certified teachers, empowering unqualified parents to shape curricula, and dismissing the lived experiences of students of color. Moreover, parents have played a leading role in these efforts, propelling book bans by labeling content related to race in schools as “Anti-American”, “Anti-White” or detrimental to students’ ability to “learn and appreciate the continual progress in America.”<sup>129</sup> In many cases, a single parent’s challenge is sufficient to remove access to the book across an entire school district.<sup>130</sup> These legislative

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<sup>123</sup> This book, written by Black journalist and activist George M. Johnson, explores Johnson’s coming of age as a queer Black man. See *All Boys Aren’t Blue: A Memoir-Manifesto* by George M. Johnson Audiobook Preview, <https://www.youtube.com/watch?v=vWSZrOsbeoc&t=482s>; GEORGE M. JOHNSON, *ALL BOYS AREN’T BLUE: A MEMOIR MANIFESTO*.

<sup>124</sup> This Pulitzer Prize for Fiction winning novel, written by Black novelist Toni Morrison, explores the story of an escaped slave in post-Civil War Ohio. TONI MORRISON, *BELoved* (1987).

<sup>125</sup> This book explores the story of a Black legendary American sprinter, Wilma Rudolph, who overcame adversity in the Jim Crow South and became a successful Olympic athlete. MARK WEAKLAND, *WHEN WILMA RUDOLPH PLAYED BASKETBALL* (2016); see Judd Legum, Meet the Florida English Teacher trying to Ban 150 Books from School Libraries, *POPULAR INFO*. (Dec. 20, 2022), <https://popular.info/p/meet-the-florida-english-teacher> [<https://perma.cc/NQK5-JLLY>].

<sup>126</sup> PEN America, *supra* note 121.

<sup>127</sup> *Id.*

<sup>128</sup> Sarah Schwartz, *Map: Where Critical Race Theory is Under Attack*, *EDUC. WK.* (June 11, 2021), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> [<https://perma.cc/RV4F-CDSM>].

<sup>129</sup> Letter from Robin E. Steenman, *supra* note 69, at 2.

<sup>130</sup> See, e.g., Kelly Jensen, *One Parent Got 444 Books Removed from a Wisconsin School District*, *BOOK RIOT* (Dec. 14, 2023), <https://bookriot.com/one-parent-got-444-books-removed-from-a-wisconsin-school-district/> [<https://perma.cc/D6F8-AR32>]; Erum Salam, *Book About Book Bans Banned By Florida School Board*, *THE GUARDIAN* (June 11, 2024), <https://www.theguardian.com/books/article/2024/jun/11/florida-book-bans-book-banned> [<https://perma.cc/FA9Y-Q8ZW>]; Jennisen Lucas, *A Book Challenge in Park County*, *WYOMING STATE LIBRARY*

and community-driven actions largely overlook the tangible effects on students—particularly students of color—who bear the consequences of an educational environment that omits critical aspects of their historical and lived realities. Part B will examine these effects.

## B. Implications for Students

Book bans carry consequences for student learning and development, including decreased student engagement, cultural amnesia, and a lack of the robust exchange of ideas.<sup>131</sup> Banning books decreases student engagement with reading material, inhibiting the development of critical thinking skills.<sup>132</sup> Books also serve to help people understand the world around them.<sup>133</sup> However, according to the National Women's Law Center, systematically erasing the history and experiences of marginalized communities through targeted censorship creates a "cultural amnesia" which "distorts our understanding of the world . . . [and] den[ies] their stories a place in

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(Apr. 17, 2019), <https://library.wyo.gov/a-book-challenge-in-park-county/> [<https://perma.cc/GK3J-NM4U>].

<sup>131</sup> See generally Jordyn L. Bailey, *To Read or Not to Read: How Book Censorship Affects Students and Undermines Different Worldviews* (Dec. 2, 2024) (Honors Theses, Eastern Kentucky University) (examining the effects of book challenges and bans on adolescent readers).

<sup>132</sup> BreeAnna Virrueta, *Nationwide Book Bans Cause More Damage Than We Are Acknowledging*, DAVIS POL. REV. (May 21, 2024), <https://www.davispoliticalreview.com/article/nationwide-book-bans-cause-more-damage-than-we-are-acknowledging> [<https://perma.cc/9BZZ-ZUL9>] ("[B]anning books decreases their students' engagement with reading materials, which inevitably inhibits students' ability to build critical thinking skills that are crucial to their educational success."); accord Robert Kennedy, *Understanding the Consequences of Banning Books in K-12 Education*, PUB. SCH. REV. (Apr. 15, 2025), <https://www.publicschoolreview.com/blog/understanding-the-consequences-of-banning-books-in-k-12-education#:~:text=Banning%20books%20can%20have%20detrimental,understanding%20of%20important%20societal%20issues> [<https://perma.cc/N473-LQQ5>] ("Shielding children . . . through practices such as book banning has far-reaching implications beyond limiting their literary exposure. . . . It can . . . inhibit the development of their critical thinking skills . . ."). But see Shawnta S. Barnes, *Banning Books Only Makes Students Want to Read Them More*, ED POST (Sep. 18, 2023), <https://www.edpost.com/stories/banning-books-only-makes-students-want-to-read-them-more> [<https://perma.cc/QQT7-H7HZ>] (stating that banning books makes students want to read them more).

<sup>133</sup> See Erin Bartnett, *Science Says Reading a Book Makes You a Better Friend*, ELECTRIC LIT (July 27, 2018), <https://electricliterature.com/science-says-reading-a-book-makes-you-a-better-friend/> [<https://perma.cc/E7V5-HC3U>] (explaining studies that demonstrate a positive correlation between reading and empathy); see also The Beanstack Team, *How Reading Changes Your Perspective*, BEANSTACK (June 30, 2022), <https://www.beanstack.com/blog/how-reading-changes-your-perspective> [<https://perma.cc/Q4FA-UJ8K>].

our collective consciousness.”<sup>134</sup> Research also shows that limited access to books representing diverse viewpoints hinders students’ ability to empathize with experiences beyond their own.<sup>135</sup> Furthermore, students regularly encounter societal problems outside of the classroom and, as future leaders of our nation, will be responsible for addressing them.<sup>136</sup> In *Keyishian v. Bd. of Regents*, the Court said “[t]he classroom is peculiarly the ‘marketplace of ideas.’”<sup>137</sup> The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth “out of a multitude of tongues, [rather] than through any kind of authoritative selection.”<sup>138</sup> Yet book bans prevent students from being exposed to a “robust exchange of ideas,” expressed “out of a multitude of tongues,” in a forum where students can discuss and explore them with peers. While anti-CRT book bans negatively impact all students, they disproportionately affect Black students and students of color.<sup>139</sup>

Black students and students of color engage with content that does not reflect them and their lived experiences for most of their lives.<sup>140</sup> In the past, school and classroom libraries

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<sup>134</sup> National Women’s Law Center, *The Peril of Book Bans: Targeting Women and People of Color*, NWLC (Aug. 29, 2024), <https://nwlc.org/the-peril-of-book-bans-targeting-women-and-people-of-color/> [https://perma.cc/5WUE-HPU8].

<sup>135</sup> Robert Nguyen et al., *Educational Censorship: Bans and Their Impact on Student Identity & Expression*, INST. FOR YOUTH IN POL’Y (July 5, 2024), <https://yip-institute.org/policy/educational-censorship-impact-on-student-identity-expression> [https://perma.cc/KG8N-YMAH]; cf. Erin Bartnett, *Science Says Reading a Book Makes You a Better Friend*, ELECTRIC LIT (July 27, 2018), <https://electricliterature.com/science-says-reading-a-book-makes-you-a-better-friend/> [https://perma.cc/Y5Q9-47UA] (explaining studies that demonstrate a positive correlation between reading and empathy).

<sup>136</sup> See generally Rachel Brooks, *Taking a Stand Against Book Bans*, AM. PSYCH. ASS’N (July 1, 2025), <https://www.apa.org/monitor/2025/07-08/fighting-book-bans-censorship> (addressing the point that restricting access to diverse perspectives via censorship of diverse books could “hinder children’s readiness to engage in a pluralistic and interconnected world”) [https://perma.cc/8FUT-RY2Z].

<sup>137</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

<sup>138</sup> *Id.*

<sup>139</sup> See generally NAACP, *Challenges in Public Education: Book Bans, Teacher Shortages, and the Negative Effects of Miseducation Regarding Slavery*, (2024), <https://naacp.org/resources/challenges-public-education-book-bans-teacher-shortages-and-negative-effects-miseducation> [https://perma.cc/2H9B-8KQB] (acknowledging that book banning by legislatures and local school boards has a “discriminatory impact”).

<sup>140</sup> See Royel M. Johnson et al., *Black Student Belonging in K12 Schools: Implications for Policy and Practice Amid Attacks on Diversity, Equity, and Inclusion*, 19 SOC. ISSUES & POL’Y REV. 1, 1 (2025); see also Luisa Sanchez, A

provided these students with options to engage with content that reflected their lived experiences. However, contemporary book bans, which disproportionately target books by authors of color or works dealing with race, have several consequences for Black students and students of color including limiting their freedom of choice and creating additional stigmas due to lack of diverse representation in books. Contemporary book bans limit their freedom to choose books representing their realities.<sup>141</sup> When students see their identities and experiences reflected in books, they begin to envision broader possibilities for themselves.<sup>142</sup> Contemporary book bans, however, further marginalize Black students and students of color by preventing them from accessing books that affirm their identities and help them better understand their lives. In effect, book bans silence their voices, erase their histories, and invalidate their experiences while reinforcing the idea that only dominant narratives<sup>143</sup> matter. This marginalization can deeply affect the mental health of young Black students and students of color<sup>144</sup>—a serious concern given that communities of color

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*War Beyond Words: How Book Bans Perpetuate the Underrepresentation of Vulnerable Communities*, KSVT (Oct. 5, 2023), <https://www.ksvt.org/article/a-war-beyond-words-how-book-bans-perpetuate-the-underrepresentation-of-vulnerable-communities> [<https://perma.cc/CLQ6-9D9U>].

<sup>141</sup> See generally Friedman, *supra* note 3 (outlining the key findings of growing book censorship in the United States).

<sup>142</sup> Morgan Gilbard, *What You Need to Know About the Book Bans Sweeping the U.S.*, TCHRS. COLL. COLUM. UNIV. (Sep. 6, 2023), <https://www.tc.columbia.edu/articles/2023/september/what-you-need-to-know-about-the-book-bans-sweeping-the-us/> [<https://perma.cc/M93L-83CF>] (emphasizing the power of books in changing outcomes for students through representation); see also Elaine McArdle, *Book Bans and the Librarians Who Won't Be Hushed*, HARV. GRADUATE SCH. OF EDUC. (Nov. 6, 2023), <https://www.gse.harvard.edu/ideas/ed-magazine/23/11/book-bans-and-librarians-who-wont-be-hushed> [<https://perma.cc/84DW-L4KA>] (“The more access you have to books and to a variety of books, the better reader you become and the more interested in reading. It changes the whole trajectory of someone’s life, how they see themselves.”).

<sup>143</sup> The narratives of white, cisgender, heterosexual people in the United States.

<sup>144</sup> Press Release, PEN America, *Book Bans in Schools Sweep Across Reading Levels, Genres and Topics, While Censorship Erases Stories about People of Color and LGBTQ Topics Most Often* (Feb. 27, 2025), <https://pen.org/press-release/book-bans-in-schools-sweep-across-reading-levels-genres-and-topics-while-censorship-erases-stories-about-people-of-color-and-lgbtq-topics-most-often/> [<https://perma.cc/N9CK-RM56>]. See generally John Shumway, *The impact book bans can have on youth mental health*, CBS NEWS (Nov. 1, 2023), <https://www.cbsnews.com/pittsburgh/news/the-impact-book-bans-can-have-on-youth-mental-health/> [<https://perma.cc/GXV9-KRXQ>] (discussing the impacts of book bans on the mental health of youth).

already face a higher risk of mental health challenges and significant barriers to accessing care.<sup>145</sup>

Beyond the psychological harm of erasing students' identities, book bans also create material barriers to access.<sup>146</sup> Proponents of book bans may argue that despite anti-CRT legislation, students and parents retain the autonomy to purchase books reflective of their identities and experiences. Nonetheless, this argument overlooks that purchasing books is a privilege not all families can afford. Removing free books from libraries denies access to students and families in low-income households and disproportionately impacts students in under-resourced schools.<sup>147</sup> Proponents of book bans may also counter that students can go to public libraries to find books removed from their school libraries. However, this imposes additional labor on students who must find extra time and transportation to get to public libraries when their school's library is readily accessible without additional labor. Furthermore, these arguments resuscitate the "separate but equal" ideology. White students are allowed to access books written by white authors and reflecting their lived experiences in the classroom while Black students and students of color are forced to perform additional labor to get access to books written by Black authors and books reflective of their lived experiences.

Given the psychological harms, material harms, and constitutional conflicts contemporary book bans pose to Black students and students of color, it is imperative to pursue actionable solutions that ensure equitable access to diverse educational resources while protecting student rights to a complete and inclusive education.

Part I of this Note established the constitutional significance of the "intangible factors" of education, particularly with regard to desegregating schools. Part II of this Note established how contemporary anti-CRT and anti-Black book bans reintroduce the educational segregation *Brown* sought to dismantle in overturning *Plessy's* "separate but equal" ruling. Furthermore,

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<sup>145</sup> Heather Rose Artushin, *Why Book Bans Are Bad for Mental Health*, PSYCHO. TODAY (May 9, 2024), <https://www.psychologytoday.com/us/blog/well-read/202405/why-book-bans-are-bad-for-mental-health> [https://perma.cc/R35N-8A4Q].

<sup>146</sup> See Roger Chesley, *Closing School Libraries Would Harm the Students Who Need Them Most*, VA. MERCURY (Apr. 6, 2023), <https://viriniamercury.com/2023/04/06/closing-school-libraries-would-harm-the-students-who-need-them-most> [https://perma.cc/NE3G-ZFUX].

<sup>147</sup> *Id.*

it examined the resulting harms on Black students and students of color. Part III will explore approaches to challenging the constitutionality and legality of contemporary anti-CRT and anti-Black book bans.

### III

#### SOLUTIONS TO BOOK BANS

While there are several avenues—both constitutional and extraconstitutional—to challenging anti-CRT and anti-Black book bans,<sup>148</sup> this Note principally advocates for a constitutional approach grounded in the “intangible factors” of education noted in *Sweatt*, *McLaurin*, and *Brown*.

##### A. Constitutional Approach

This Note proposes—at least as a primary approach—challenging book bans under the Equal Protection Clause of the Fourteenth Amendment: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”<sup>149</sup>

The “intangible factors” of education that the Court noted in *Sweatt*, *McLaurin*, and *Brown* were connected to an understanding that education molds students to be successful participants in society. Yet the issues the Black plaintiffs faced in those cases—whether through entirely separate facilities or unequal conditions within ostensibly desegregated schools—denied them substantially equal educational opportunities that violated the Fourteenth Amendment. Accordingly, the Black plaintiffs in *Sweatt*, *McLaurin*, and *Brown* were fundamentally unprepared to be successful participants in society and relied on the Equal Protection Clause of the Fourteenth Amendment to support their demands for an equal education.

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<sup>148</sup> Other scholarship also presents various avenues for challenging anti-CRT and anti-Black book bans. See, e.g., Johany G. Dubon, Note, *Rereading Pico and the Equal Protection Clause*, 92 FORDHAM L. REV. 1567, 1599–1603 (2024) (recommending that BIPOC and LGBTQ+ students use a disparate impact and discriminatory intent argument to prove the legitimacy of their equal protection claims against book bans); Morenike Fajana, Katrina Feldkamp & Allison Scharfstein, *The Anti-Truth Movement in Context: Rethinking the Fight for Truth and Inclusive Education*, 16 DREXEL L. REV. 787, 789–90, 796 (2024) (acknowledging that anti-truth proponents seek to roll back the impacts of *Brown v. Board of Education* by reducing opportunities for cross-racial and inter-racial understanding and communicating the inferiority of the communities who they censor, in part, through book bans). However, no other scholarship recommends utilizing the “intangible factors” of education approach to challenging these book bans.

<sup>149</sup> U.S. CONST. amend. XIV, § 1.

Here, too, contemporary anti-CRT and anti-Black book bans in schools, which create substantially unequal educational opportunities, deprive Black students and students of color of the competencies necessary to contribute to society. Thus, several arguments can be made that these contemporary book bans deprive Black students and students of color of equal protection of the laws guaranteed by the Fourteenth Amendment.

Here, Black students and students of color are subjected to substantially different educational opportunities from their white counterparts. Contemporary anti-CRT and anti-Black book bans have resulted in the suppression of discussions of racism and physical removal of books written about the lived experiences of Black people, books written by Black authors and people of color, and books related to CRT. By contrast, texts centered on white history and white, cisgender, heterosexual experiences remain unchallenged. Furthermore, the content of these banned books and conversations about racism is reflective of the society in which the Court indicated students should be prepared to be successful participants. The juxtaposition of the experiences of Black students and students of color versus their white counterparts demonstrates unequal educational opportunities. These inequities impose the same harms to Black students with which the Court was concerned in *Sweatt*, *McLaurin*, and *Brown*.

First, the *Brown* Court, acknowledging its decision in *McLaurin*, noted that the ability to engage in classroom discussions and exchange views is an “[in]tangible ‘factor’” of education.<sup>150</sup> In fact, the *Brown* Court noted that this intangible factor applied with “added force to children in grade and high schools.”<sup>151</sup> Here, this ‘intangible factor’ of education is missing in the educational experiences of Black students and students of color. Contemporary anti-CRT and anti-Black book bans preclude Black students and students of color from their full ability to engage in discussions and exchange views by removing classroom and school library access to literature outside of the dominant or favorable view of whiteness and white history. On the contrary, under contemporary book bans, white students can access literature and engage in discussions by white authors and about their lived experiences. This limited access to information for Black students and students of color necessarily restricts these students from the ability to exchange

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<sup>150</sup> See 347 U.S. at 493.

<sup>151</sup> See *id.* at 493–94.

views. An exchange of views would warrant a mutual and substantive sharing of opinions and perspectives between students. However, when Black students and students of color are banned from viewing literature outside of the dominant or favorable view of whiteness and white history, these students are left without a basis to understand and ground their prospective views in facts. As a result, their ability to engage in classroom discussions and exchange views is altered in a manner that is not the case for their white counterparts. Thus, as in *McLaurin*, although Black students and students of color attend school with their white counterparts, the implications of contemporary anti-CRT and anti-Black book bans have made their educational experiences unequal. Moreover, contemporary book bans are occurring in K-12 classrooms, a context the *Brown* Court identified as particularly critical, even more so than in graduate or professional schools.<sup>152</sup>

The *Brown* Court also noted that “awakening the child to cultural values” is another “intangible factor” of education.<sup>153</sup> Here, contemporary anti-CRT and anti-Black book bans fail to awaken students to cultural values by removing literature discussing cultures such as Black culture from classroom libraries. This act of censorship reinforces the notion that values related to white history and white narratives are the only cultural values of importance. Additionally, this censorship forces Black children and children of color to acclimate themselves to the environment of white children—but not vice versa—resulting in feelings of inferiority in the former group, which the *Brown* Court sought to avoid. Accordingly, through anti-CRT and anti-Black book bans, Black students and students of color are deprived of another “intangible factor” of education.

Furthermore, the *Brown* Court noted that “helping [children] to adjust normally to [their] environment[s]” is another “intangible factor” of education.<sup>154</sup> However, anti-CRT and anti-Black book bans produce a markedly different outcome for Black students and students of color. School climate is an indicator of the quality and character of school life reflected by the norms, goals, values, teaching, and learning practices in a school.<sup>155</sup> As such, a positive school climate would help students adjust

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<sup>152</sup> *Id.*

<sup>153</sup> *See id.* at 493.

<sup>154</sup> *See id.* at 493–94.

<sup>155</sup> National School Climate Center, *What is School Climate and Why is it Important?*, (last visited Apr. 13, 2026), <https://schoolclimate.org/school-climate/> [<https://perma.cc/DQ3S-JBF3>].

normally to their environment by fostering their development and learning, which are necessary for students to contribute to society.<sup>156</sup> More specifically, positive school climates include environments where students feel socially and emotionally secure, and educators model and nurture the benefits gained from learning.<sup>157</sup> However, contemporary anti-CRT and anti-Black book bans undermine schools' ability to cultivate a positive school climate for Black students and students of color. The censorship results in a lack of empathy and understanding in students when they are not actively exposed to views about different people and ideas they are not accustomed to being exposed to.<sup>158</sup> Furthermore, the censorship of books and classroom content related to the lived experiences of Black students and students of color effectively silences their voices, demonstrating that their views and perspectives are not welcome in the classroom.<sup>159</sup> Continued exposure to an environment in which their voices are not respected and lived experiences are not discussed can lead to mental health issues, isolation, detachment, and loneliness.<sup>160</sup> The *Brown* Court affirmed the psychological harms Black children face resulting from educational segregation, noting that these harms are irreversible.<sup>161</sup> Accordingly, Black students and students of color are not afforded the opportunity to adjust normally to their school environments—an “intangible factor” of education—due to contemporary anti-CRT and anti-Black book bans. In effect, there has been a return of “separate but equal” in which Black students and students of color are deprived of educational opportunities equal to those available to their white counterparts, as was the case in *McLaurin*, *Sweatt*, and *Brown*.

Proponents of contemporary book bans may contend that despite anti-CRT legislation, students and parents retain the autonomy to purchase books reflective of their identities and experiences.<sup>162</sup> However, the *Brown* Court unequivocally held

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<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> Sanchez, *supra* note 140.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> 347 U.S. at 492–94.

<sup>162</sup> See, e.g., Makiya Seminera, North Carolina Advances Bill on Book Bans in Public Schools, AP (Apr. 16, 2025), <https://apnews.com/article/book-ban-north-carolina-library-schools-4bd03b88af0a71eb375c506f6a7097cb> [<https://perma.cc/ST7Y-HGL6>] (“Some GOP legislators spoke in support of the bill and adamantly denied that the legislation facilitated book bans. Instead, they

that “separate but equal” is “inherently unequal.”<sup>163</sup> Banning anti-CRT and anti-Black books from schools while relegating them to bookstores for purchase or public libraries is in itself “separate but equal.” Furthermore, this argument fails to account for the disparate impact that will inevitably result as purchasing books is a privilege not all families can afford. Removing free books from libraries denies access to students and families in low-income households and disproportionately impacts students in under-resourced schools.

Therefore, contemporary anti-CRT and anti-Black book bans in schools across the United States have, in effect, reintroduced the educational segregation that *Brown* sought to dismantle in overturning *Plessy*.<sup>164</sup> Black students and students of color are being deprived of equal educational opportunities to their white counterparts, as was the case in *McLaurin*, *Sweatt*, and *Brown*. Therefore, the education Black students and students of color are receiving is inherently unequal to the education their white counterparts are receiving, thus depriving Black students and students of color of equal protection of the laws per the Fourteenth Amendment.

Ultimately, pursuing litigation grounded in constitutional violations, via the “intangible factors” of education argument, offers the benefit of establishing enduring legal precedent against unlawful censorship and viewpoint discrimination in education.

## B. Civil Approach

In addition to the constitutional approach, this Note proposes invoking civil rights statutes in cases where book bans result in discrimination or the suppression of protected identities. This Note contends that contemporary book bans are *per se* discriminatory and serve only to marginalize protected identities. Accordingly, litigants could challenge the bans under Title VI of the Civil Rights Act of 1964, which states: “No individual, on the basis of race [or] color . . . shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.”<sup>165</sup>

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said parents could choose to buy books . . . if they weren’t available at their school.”).

<sup>163</sup> 347 U.S. at 495.

<sup>164</sup> *Id.* at 494–95.

<sup>165</sup> 42 U.S.C. § 2000d.

Contemporary book bans effectively deny Black students and students of color the full benefits of education by disproportionately removing educational materials representative of their identities and experiences. Students are also denied the benefits of education when conversations regarding race and racism, which contemporary book bans currently restrict, are prohibited. Consequently, punitive actions taken against students or teachers for engaging in discussions of racial concepts constitute discrimination on the basis of race, which is also in violation of Title VI of the Civil Rights Act of 1964.

This secondary approach to the issue of book bans has been used by the National Women's Law Center, which filed complaints with the U.S. Department of Education's Office for Civil Rights against Georgia's Cobb County School District and Florida's Collier County Public School District.<sup>166</sup> NWLC alleged, in part, that the school districts censored learning materials that "feature, tell the stories of, or are written by LGBTQIA+ people and people of color," creating a hostile environment for students in violation of Title VI of the Civil Rights Act of 1964.<sup>167</sup> Furthermore, teachers were intimidated into censoring books they would typically assign as some were disciplined for giving students access to inclusive books.<sup>168</sup> Additionally, NWLC alleges that the bans have made students feel "targeted, unwelcome, and unsafe at school by suggesting that their identities and experiences are inappropriate or unacceptable."<sup>169</sup>

Ultimately, the statutory approach to addressing book bans provides greater flexibility than the purely constitutional approach, as it can be tailored to more specific harms on a case-by-case basis. Although it may yield meaningful outcomes in individual instances, it is unlikely that this approach will lead to systemic reform unless it is applied broadly and consistently across jurisdictions.

### C. Policy Approach

Finally, in addition to the constitutional and civil approaches, it is imperative that state legislators pass laws

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<sup>166</sup> Press Release, National Women's Law Center, National Women's Law Center Files Civil Rights Complaints Against Georgia and Florida School Districts for Censoring Inclusive Books (May 13, 2024), <https://nwlc.org/press-release/national-womens-law-center-files-civil-rights-complaints-against-georgia-and-florida-school-districts-for-censoring-inclusive-books/> [<https://perma.cc/S7J2-FD5Y>].

<sup>167</sup> See § 2000d.

<sup>168</sup> National Women's Law Center, *supra* note 166.

<sup>169</sup> *Id.*

prohibiting book bans in public libraries. As the Court acknowledged in *Brown*, the ramifications of educational segregation, especially “when it has the sanction of the law” can negatively impact the “educational and mental development of [Black] children.”<sup>170</sup> However, in today’s political climate marked by increasing resistance to diversity, equity, and inclusion,<sup>171</sup> the prospect of federal legislation prohibiting book bans appears unlikely. Therefore, the responsibility falls to the states to pass laws that ban book banning. Notably, states such as Illinois and New Jersey have already taken legislative action in this regard.

Illinois House Bill 2789 became effective in January of 2024, declaring it to be the policy of the State to “encourage and protect the freedom of libraries and library systems to acquire materials without external limitation and to be protected against attempts to ban, remove, or otherwise restrict access to books or other materials.”<sup>172</sup> It further declares that the rules and regulations established by the State librarian shall be designed to achieve standards and objectives including developing a written policy declaring that the library has inherent authority to both “provide an adequate stock of books . . . to satisfy the library needs of the people of this state” and “prohibit the practice of banning specific books or resources.”<sup>173</sup> Furthermore, the Illinois bill states that the written policy prohibiting the practice of banning books within the public library or library system must be developed in order to be eligible for state grants. Illinois’ bill is an example of robust legislation that is unambiguous in its effort to prevent book banning and protect literary freedoms.

New Jersey’s Freedom to Read Act<sup>174</sup> passed in December of 2024. The law states that library material shall not be

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<sup>170</sup> See 347 U.S. at 494.

<sup>171</sup> See generally Alexis Agathocleous et al., *Trump on DEI and Anti-Discrimination Law*, ACLU (2024), <https://www.aclu.org/publications/trump-on-dei-and-anti-discrimination-law> [<https://perma.cc/F4PJ-5NXX>] (outlining the Trump Administration’s attempts to “dismantl[e] efforts to address systemic racism and promote a more equitable and just society.”). See also Diana Forster & Michael Nicholson, *DEI in the Trump Era: Adapting to Policy Shifts, Ensuring Organizational Commitment*, SERAMOUNT (Jan. 27, 2025), <https://seramount.com/articles/dei-in-the-trump-era-adapting-to-policy-shifts-ensuring-organizational-commitment/> [<https://perma.cc/S9J2-SZN9>] (discussing how President Trump’s new executive orders are reshaping the DEI landscape).

<sup>172</sup> H.B. 2789, 103d Gen. Assemb., Reg. Sess. (Ill. 2023).

<sup>173</sup> *Id.*

<sup>174</sup> A.B. 3446, 221st Leg., Reg. Sess. (N.J. 2024).

removed from a school library in the district by the board of education because of the “origin, background, or views of the library material or those contributing to its creation.”<sup>175</sup> It also provides that the board of education shall “allow a student to reserve [or] check out . . . any developmentally appropriate library material, including diverse and inclusive material.”<sup>176</sup> The law provides protections for library staff members, granting them immunity from civil and criminal liability “arising from good faith actions” performed pursuant to the law.<sup>177</sup> New Jersey’s bill is another example of robust legislation that protects literary freedoms and protects its constituents in the event that legal action should arise related to book bans.

Another approach would involve state legislators enacting legislation specifically protecting access to books addressing race and identity, thereby preventing book bans driven by discriminatory motives. States such as California and Pennsylvania have already proposed legislation using this approach.

California proposed the Freedom to Read Act, which would

prohibit library materials in a public library from being excluded, and access to library materials from being limited, solely on the bases of (1) specified protected characteristics of a subject of the library materials, an author of the materials, the sources of the library materials, or the perceived or intended audience for the library materials, (2) that the materials contain inclusive and diverse perspectives, or (3) that the materials may include sexual content, except as provided.”<sup>178</sup>

It also prohibits employees of public libraries from being subjected to “termination, demotion, discipline, or retaliation” for making decisions in accordance with the bill’s provisions.<sup>179</sup> Similarly, Democratic Senators proposed legislation prohibiting book bans in Pennsylvania’s libraries.<sup>180</sup> The legislation would require the State and local libraries to adopt the American Library Association’s Library Bill of Rights, and develop a written statement prohibiting the local library from

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<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> A.B. 1825, 2023-2024 Leg., Reg. Sess. (Cal. 2024).

<sup>179</sup> *Id.*

<sup>180</sup> S.B. 926, 2023-2024 Gen. Assemb., Reg. Sess. (Pa. 2023).

banning books or other materials.<sup>181</sup> It also imposes penalties (denied state funding) for libraries that fail to comply with the law.<sup>182</sup>

### CONCLUSION

This Note has demonstrated that contemporary anti-CRT and anti-Black book bans in public schools and libraries significantly threaten educational equity, particularly for Black students and students of color. By disproportionately removing materials that reflect the identities and lived experiences of Black students and students of color while restricting critical conversations about race and racism, these bans perpetuate the educational segregation *Brown* endeavored to abrogate in overruling *Plessy's* "separate but equal" ruling. In view of that, this Note has proposed combining litigation with legislative and grassroots efforts to ensure that intellectual freedoms in America remain protected for all students. While federal action remains uncertain, it is up to the states to protect students' right to a comprehensive, inclusive education that prepares them to participate in a diverse society. Moreover, it is important to continue to monitor the book bans as more information becomes available.

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<sup>181</sup> *Id.*

<sup>182</sup> *See id.*