



NASSAU COUNTY CIVIC ASSOCIATION, INC.

"The government is us, we are the government, you and I." Teddy Roosevelt

January 8, 2023

Superintendent of Schools
College/University President

Re: Promotion and or application of Critical Race Theory in the Classroom

To Whom it may Concern:

This correspondence is in reference to the promotion and proliferation of Critical Race Theory (CRT) within both public and private education K-12 to post-secondary schools. While teachers and educators have academic freedom to discuss CRT in the abstract, the promotion and or application of CRT in the educational setting may violate state and federal law. Our purpose is to inform and educate educational entities about CRT, the deleterious effects of utilizing CRT in the classroom setting and potential constitutional and or civil rights violations which may ensue. Furthermore, it is our desire to educate parents and students on their right to be free from racial hostility in the classroom as well as equip them with the knowledge of how to enforce their rights under the law.

CRT is an evolving ideology rooted in Marxism and seeks to divide society based on race.¹ In Karl Marx's Critique of Ideology, he asserts systems such as Capitalism perpetuate a false belief that workers created the system by their hard work when in fact an oppressive society forced the system upon the workers. In the 1930's, sociologists from the Frankfurt School further refined this related body of thought involving social change as Critical Theory. Beginning in the 1970's, William Bell a professor at Harvard University began promoting Critical Legal Theory which addressed his views related to racial inequities in the legal system. After the publication of his book in 1973, "Race, Racism and American Law", Bell began to articulate a new related ideology, Critical Race Theory. Over time, CRT began to take hold in progressive academia with notable socialist thinkers such as Alan Freeman, Kimberle Crenshaw, Richard Delgado and Cheryl Harris.

CRT is Orwellian in construct as it rejects equal opportunity and color blindness but demands equal outcome through the use of unlawful discrimination in order to achieve so called equity. The famed CRT acolyte Ibram X. Kendi left no doubt as to the reality of CRT's racist ideology with the following quote; "The only remedy to racist discrimination is anti-racist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination."²

When exposed, the fall back defense is often a claim of misinterpretation. Even so, advocating for discrimination is quite problematic to say the least considering the moral and legal implications. Yet

¹ Critical Race Theory Briefing Book, by Christopher Ruffo

² From the book "How to be an Antiracist", 2019 by Ibram X. Kendi

Kendi has a long history of making controversial statements on race. Back in 2003, when writing for his college newspaper, *The Famuan*, Kendi known as Ibram Rogers, wrote the following, “Europeans are simply a different breed of human. They are socialized to be aggressive people. They are taught to live by the credo, “survival of the fittest.” They are raised to be racist”. He went on to say, “Caucasians make up only 10 percent of the world’s population and that small percentage of people have recessive genes. Therefore, they’re facing extinction. Whites have tried to level the playing field with the AIDS virus and cloning, but they know these deterrents will only get them so far. This is where the murder, psychological brainwashing and deception comes into play”.³

The ideology promotes segregation of individuals based solely on their ancestry and race instead of the content of one’s character as a unique individual. This ugly vestige of America’s past is now repeating itself. Those who are white are labeled oppressors and non-whites as the oppressed. CRT actually promotes a eugenic oriented falsehood that all whites are born racists. It also claims that all institutions public and private are guilty of institutional or systemic racism based on the dominant culture or “whiteness”. The word “whiteness” is used exclusively as a pejorative.

While there is debate surrounding the meaning of social justice and the role of educators in promoting social justice, the question is, what defines social justice? The promotion of a racist ideology targeting a specific racial group in order to achieve a racial spoils system or equity is not social justice but rather racism. Even when rejecting CRT, the aim of the social justice movement has been ill defined while promoting a dystopian view of America and its institutions. The methodology of this movement is one of any means necessary to reach equity. Advocates of social justice often reject facts related to the number of actual adjudicated cases of discrimination and the lawful definition of discrimination. Focusing solely on any disparate outcome without examining the underlying basis is beyond disingenuous and is clearly ideologically driven.

The current state of jurisprudence relies on the principal of equal opportunity not equal outcome or equity as defined under CRT. This distinction was recently tested by the federal courts upon the enactment of the American Rescue Plan Act of 2021. The law attempted to utilize equity in the application of debt relief to farmers and grants for small businesses. Equity was soundly rejected. Ironically the law helps to exemplify the distinction of actual institutional or systemic racism versus false claims of pervasive systemic racism.

In the matter of *Wynn v. Vilsack* 2021, the court held that a program that targeted debt relief to farmers based on a race-based qualification that excluded whites was unlawful nor were any race neutral alternatives considered. The ruling noted that the program was not narrowly tailored to correct or remedy any specific instance of past discrimination. A previous effort by the government to justify race-based only programs by claiming statistical disparities was deemed “administrative convenience” by the 11th Circuit and rejected.

In a second case, *Vitolo, Jake’s Bar and Grill, LLC v. Guzman, Administrator of the Small Business Administration*, 2021 held that a Covid relief program that targeted relief to small businesses using race and sex qualifications was unlawful. The program specifically provided grants to priority applicants only. The applicants were restaurants that were at least 51% owned and controlled by women, veterans, or the “socially and economically disadvantaged”.

As defined by the Small Business Act, *“a person is considered “socially disadvantaged” if he has been “subjected to racial or ethnic prejudice” or “cultural bias” based solely on his immutable characteristics.*

³ “Living with the White Race”, 2003 by Ibram Rogers, [Living with the White Race – The Famuan \(thefamuanonline.com\)](https://thefamuanonline.com)

15 U.S.C. § 637(a)(5); 13 C.F.R. § 124.103(a). A person is considered “economically disadvantaged” if (1) he is socially disadvantaged; and (2) he faces “diminished capital and credit opportunities” compared to non-socially disadvantaged people who operate in the same industry. 15 U.S.C. § 637(a)(6)(A).⁴

The SBA relief program did not require an actual showing of racial, ethnic discrimination or cultural bias from Black, Hispanic, Asian-Pacific or Native American applicants but did require proof from white applicants. The court held that government policies that classify people by race are presumptively invalid. Furthermore, the government’s claim of societal discrimination against minority business owners was insufficient as they failed to provide specific incidents of past discrimination, provided no evidence of past intentional discrimination, failed to show the government itself participated in the discrimination they sought to remedy and even if proof of discrimination was shown, the program was not narrowly tailored nor did it seek a race neutral alternative.

Martin Luther-King fought for a color-blind society where a person “will not be judged by the color of their skin, but by the content of their character.” In regard to CRT, men are judged by the color of their skin without respect to their character. He made it very clear as to his resolve in fighting for equality not equity, “The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.” MLK actually addressed racial supremacy in a balanced way, "Black supremacy is as dangerous as white supremacy, and God is not interested merely in the freedom of black men and brown men and yellow men...., "God is interested in the freedom of the whole human race and the creation of a society where all men will live together as brothers, and all men will respect the dignity and the worth of all human personality."

While there are many differing views on how to reach a truly color-blind society and racial unity, the discussion of race can often be controversial. That in of itself is understandable. The discussion can also involve differing ideologies with some more outside the mainstream than others. That is often the struggle between critical thinking and academic freedom. It is one thing to have conflicting ideologies or opinions in the class room and quite another to promote racial hostility/bigotry toward a particular racial group.⁵

In CRT, the mere act of expressing “whiteness” is promoting white supremacy. When a member of the white race is confronted for their “white supremacy”, any reaction without contrition and acknowledgment of one’s in bred racism is defined as “White Fragility”. Thus, there will always be a perpetual cycle of acknowledgment and sorrow often stymied by the inherent racism of the white race. Therefore, white people will never reach a state of antiracist nirvana.⁶ This paradoxical line of thought is irrational on its face, is offensive and shocks the conscious. While there is academic freedom, racial hostility and bigotry couched in a discredited ideology crosses a well-established bright line.

Creating a hostile educational environment and or treating students differently based on their membership in a particular racial class or ethnic group can cause significant harm to those students. This can lead to severe emotional duress, anxiety, diminished self-esteem, feelings of inferiority and other forms of irreputable harm. A students’ ability to learn will be significantly impacted which is contrary to acting within the best interests of the child and or the student. This can also lead to unequal outcomes related to class participation, attendance, test scores, achievement and graduation.

⁴ From page 3 of the Opinion, <https://www.opn.ca6.uscourts.gov/opinions.pdf/21a0120p-06.pdf>.

⁵ Arkansas AG Opinion on Legality of Critical Race Theory, August 16, 2021

⁶ CRT concepts from the book, “White Fragility” by Robin DiAngelo, 2018

Under the Federal False Claims Act, teaching CRT can call into question the accuracy of the claims presented in a school district or a college mission statement that promotes academic excellence, equal opportunity and other standards. Authorizing the use of a racist ideology that masquerades as a critical intellectual theory which promotes racial hostility, stereotyping and discrimination toward a particular racial group conflicts with equal opportunity, academic excellence and critical thinking.

While many proponents of CRT actually believe CRT is rationally based, the truth of CRT has been exposed in the public arena and has been rightfully rejected for promoting bigotry. As all K-12 school districts and institutions of higher learning are required to adhere to equality under the law, it is well within reason to believe and conclude that parents, students and alumni would have serious questions for any administration should it come to light that CRT is being taught or promoted in the classroom.

While the use of race currently can be considered as one of many factors in the admissions process, segregation of students by race in the classroom is unlawful.⁷ This paradigm may not involve physical segregation but rather an even more insidious form of racial segregation involving the use of a racist ideology, CRT to separate students by race. This is achieved by labeling each student based on race as either an oppressor or the oppressed and denigration of their culture based on race. To wit, all white students are oppressors with their entire culture i.e. “whiteness” as a form of evil as compared to all non-white students who are the oppressed and who possess a culture that is superior as it is not construed as evil. This type of atmosphere can constitute a hostile educational environment for promoting and or encouraging racial hostility and bigotry which is unlawful.⁸

The legal standard a court would apply in such cases is strict scrutiny. Whether a school is public or private, no entity is exempt from the 1964 Civil Rights Act as it relates to race under Title VI and beginning in 1972 as it relates to sex under Title IX. If there are actions that are found to be deliberate and intentional as it relates to racial discrimination, a private right of action exists under 42 U.S. Code §1983 for redress as K-12 schools, colleges and universities all receive federal funds in one form or another. Furthermore, administrative remedies are also available such as filing a complaint with the U.S. Department of Education, Office of Civil Rights.⁹

All schools, colleges and universities must ensure that the education environment is one without hostility or discrimination based on race and ethnicity. It must be based on equal opportunity, academic excellence and critical thinking. Equal protection for all students and their parents without regard to race, ethnicity or national origin is the current law of the land. What constitutes a mere discussion of differing abstract philosophies in certain classroom discussions is not the same as incorporating and applying an ideology into the educational program that promotes unlawful discrimination based on race, ethnicity and or national origin. It is our intention to empower all students and parents with the knowledge of this distinction and how to protect their rights.

It is our hope that this information helps to educate all stake holders on the truth behind Critical Race Theory and how together we can ensure equal opportunity for all by abiding by the law.

⁷ The issue of race based admissions are pending a decision before SCOTUS in *Students for Fair Admissions v. President of Harvard*, and *Students for Fair Admissions v. University of North Carolina*

⁸ U.S. Commission on Civil Rights, Kirsanow letter to Richfield High School, 11/1/2021

⁹ Montana AG Opinion, Critical Race Theory in the classroom, May 27, 2021

Sincerely,

Robert Kosowski, Esq.
Executive Director, Board of Directors
Nassau County Civic Association, Inc.

Enclosure: Legal Opinion, Office of Attorney General, Montana
Legal Opinion, Office of Attorney General, Arkansas
Letter U.S. Commission on Civil Rights, Commissioner Peter Kirsanow to Richfield High School
Excerpt from CRT Briefing Book, Christopher Ruffo