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THE CRITICAL RACIALIZATION OF PARENTS' RIGHTS

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The Critical Racialization of Parents' Rights

ABSTRACT. In the aftermath of the global protests against White supremacy in the summer of 2020, conservative operatives mobilized to resist race-conscious demands for racial justice. Under the banner of a caricatured account of Critical Race Theory (CRT), between January 2021 and December 2022, government officials at all levels across the country, in red states and blue states, introduced over 560 bills, regulations, resolutions, and policies to restrict teaching about and training on contemporary racial injustice or the effects of historical subordination. In this Feature, I argue that we cannot understand the explosive growth of the anti-CRT movement without understanding how parents' rights over education have historically been and continue to be racialized. Indeed, the anti-CRT movement has built on and been intertwined with the trend toward parents' rights, which complains that official educational policies usurp fundamental parental rights.

I argue that the "twin" movements against CRT and for parents' rights legally and culturally enshrine colorblindness and innocence to resist and reverse any claims for or efforts to achieve racial justice. Despite the claims that both movements represent concerns of all parents and children, both center White parents' rights and the protection of White children. To support these assertions, I present data from a unique database of anti-CRT activity and contemporary parents' rights mobilization.

This Feature adds to the CRT literature on racial reform and retrenchment, especially regarding schools. It examines a relatively unexplored intersection of Critical Race Theory, parents, and educational policy. I contend that the racially regressive ways in which White parents, historically and presently, use their status as parents reflect not only an impulse to protect their children through asserting control over education, but to protect Whiteness.

AUTHOR. Assistant Professor, University of California, Los Angeles School of Law. This Feature draws on the work of UCLA Law's Critical Race Studies program's initiative CRT Forward. The Feature was not possible without the entire CRT Forward team: Taifha Alexander, Noah Zatz, Cheryl Harris, Ahilan Arulanantham, Jasleen Kohli, Kyle Reinhard, and the librarians and research assistants that created the Tracking Project website. It also draws on a report written for the Tracking Project, which I coauthored with Taifha Alexander, Kyle Reinhard, and Noah Zatz. Taifha Alexander, LaToya Baldwin Clark, Kyle Reinhard & Noah Zatz, Tracking the Attacks on Critical Race Theory (Apr. 2023) (unpublished manuscript) (on file with author). For valuable feedback, thank you to Cheryl Harris, Jonathan Masur, Monica Bell, Jonathan Feingold, Farah Peterson, Jerry Kang, Franita Tolson, Shaun Ossei-Owusu, and Guy-Uriel Charles. Thank you to the participants of the faculty colloquium at Cornell Law School for valuable feedback. I am indebted to the editors



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INTRODUCTION

The summer of 2020 marked an epic shift in the national dialogue about race and racism. Following the release of a searing video showing the brutal murder of George Floyd by Minneapolis police officers¹ and the disclosure of the murder of Breonna Taylor by police as she slept in her home,² millions of people flooded into the streets under the banner Black Lives Matter.³ The protests against White supremacy⁴ and anti-Black state violence were international; one journalist noted: “There is a George Floyd in every country.”⁵

Major news outlets described the protests as indicative of a “racial reckon-
ing[:] . . . the fight against systemic racism that is reverberating around the

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1. See, e.g., Elisha Fieldstadt, “*I Can’t Breathe*”: Man Dies After Pleading with Officer Attempting to Detain Him in Minneapolis, NBC NEWS (May 26, 2020, 1:50 PM EDT), <https://www.nbcnews.com/news/us-news/man-dies-after-pleading-i-can-t-breathe-during-arrest-n1214586> [<https://perma.cc/7L5G-PRCY>].
 2. See, e.g., Jason Riley, *Attorneys Claim LMPD Officers Killed 26-Year-Old EMT in “Botched” Police Raid*, WRDB.COM (Sept. 29, 2020), https://www.wdrb.com/in-depth/attorneys-claim-lmpd-officers-killed-26-year-old-emt-in-botched-police-raid/article_4bb33de6-704e-11ea-bb3c-4785530c8830.html [<https://perma.cc/WP36-M8RL>] (describing Breonna Taylor’s shooting by police in Louisville).
 3. See Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/3EGH-84KJ>] (“Four recent polls—including one released this week by Civis Analytics, a data science firm that works with businesses and Democratic campaigns—suggest that about 15 million to 26 million people in the United States have participated in demonstrations over the death of George Floyd and others in recent weeks.”); Kim Parker, Juliana M. Horowitz & Monica Anderson, *Amid Protests, Majorities Across Racial and Ethnic Groups Express Support for the Black Lives Matter Movement*, PEW RSCH. CTR. (June 12, 2020), <https://www.pewresearch.org/social-trends/2020/06/12/amid-protests-majorities-across-racial-and-ethnic-groups-express-support-for-the-black-lives-matter-movement> [<https://perma.cc/KA7K-H445>].
 4. “White supremacy” refers to the systematic and multifaceted dominance of White over non-White members of society rather than merely to explicit hate or bigotry against non-White people. See, e.g., Frances Lee Ansley, *Stirring the Ashes: Race, Class and the Future of Civil Rights*, 74 CORNELL L. REV. 993, 1024 n.129 (1989) (explaining that White supremacy is “a political, economic and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings”).
 5. Ashley Westerman, Ryan Benk & David Greene, *In 2020, Protests Spread Across the Globe with a Similar Message: Black Lives Matter*, NPR (Dec. 30, 2020, 5:04 AM ET) <https://www.npr.org/2020/12/30/950053607/in-2020-protests-spread-across-the-globe-with-a-similar-message-black-lives-matt> [<https://perma.cc/5ZS7-2FWT>] (quoting the journalist Lynsey Chutel).

country.”⁶ Institutions declared their solidarity with this antiracist movement. Schools began incorporating antiracist curricula,⁷ and companies pledged to fight anti-Blackness in their organizations.⁸ Books like Robin DiAngelo’s *White Fragility*⁹ and Ibram Kendi’s *How to Be an Antiracist*¹⁰ became book-club favorites.¹¹

The popular groundswell in support of a true racial reckoning rejected the dominant colorblind racial frame and produced considerable anxiety among political conservatives in the context of the pandemic and a hotly contested election cycle. During the presidential campaign, as President Trump’s approval numbers continued to sink and the pandemic continued to take its toll, there was a desperate search for a vehicle from which to mount a counteroffensive. Finally, in the summer of 2020, one began to emerge.

Conservatives like Christopher F. Rufo, who had been working to eliminate antiracism efforts for years, railed against antiracist training sessions as abusive

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6. *America’s Racial Reckoning*, NBC NEWS, <https://www.nbcnews.com/americas-racial-reckoning> [<https://perma.cc/4YFQ-X5ZM>]. Others have pressed to abandon the term. See, e.g., Michele L. Norris, *Don’t Call It a Racial Reckoning. The Race Toward Equality Has Barely Begun.*, WASH. POST (Dec. 18, 2020, 1:41 PM EST), https://www.washingtonpost.com/opinions/dont-call-it-a-racial-reckoning-the-race-toward-equality-has-barely-begun/2020/12/18/90b65eba-414e-11eb-8bco-ae155bee4aff_story.html [<https://perma.cc/3B5E-D3YB>].
 7. See, e.g., *How the Murder of George Floyd Changed K-12 Schooling: A Collection*, EDUC. WK., <https://www.edweek.org/leadership/how-the-murder-of-george-floyd-changed-k-12-schooling-a-collection> [<https://perma.cc/2WJE-S5FD>] (“detail[ing] school leaders’ fitful efforts to respond to Black Lives Matter protestors’ demands” for curriculum reform); Ernest Scheyder, *U.S. Schools Revamp Curricula in Response to Black Lives Matter*, REUTERS (Aug. 21, 2020, 7:04 AM), <https://www.reuters.com/article/us-global-race-usa-textbooks/u-s-schools-revamp-curricula-in-response-to-black-lives-matter-idUSKBN25H1DF> [<https://perma.cc/YV63-5427>].
 8. See, e.g., Tracy Jan, Jena McGregor & Meghan Hoyer, *Corporate America’s \$50 Billion Promise*, WASH. POST (Aug. 24, 2021, 7:03 PM), <https://www.washingtonpost.com/business/interactive/2021/george-floyd-corporate-america-racial-justice> [<https://perma.cc/HN3J-T3XR>] (analyzing corporate racial-justice pledges made after Floyd’s murder).
 9. ROBIN DIANGELO, *WHITE FRAGILITY: WHY IT’S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM* (2018).
 10. IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* (2019).
 11. See Fabiola Cineas, *The Lofty Goals and Short Life of the Antiracist Book Club*, VOX (Nov. 11, 2021, 5:30 AM EST), <https://www.vox.com/22734080/antiracist-book-club-robin-diangelo-ibram-kendi> [<https://perma.cc/96BW-9SQ4>] (describing the proliferation and common reading materials of antiracist book clubs in the months after George Floyd’s murder).

of White men.¹² As reported in a series of articles and interviews in the conservative press, he noted that the footnotes of popular antiracism books drew from Critical Race Theorists' work.¹³ Rufo then argued that Critical Race Theory (CRT) was at the root of not only the maligned diversity, equality, and inclusion (DEI) initiatives but was also the source of similar "indoctrination" efforts in colleges and universities.¹⁴ Rufo deployed CRT as a handy rhetorical sledgehammer for conservative pushback to racially progressive politics.¹⁵ Indeed, he acknowledged that his objectives were to "turn [CRT-the brand] toxic, as we put all of the various cultural insanities under that brand category."¹⁶ "The goal is to have the public read something crazy in the newspaper and immediately think 'critical race theory.' We have decodified the term and will recodify it to annex the entire range of cultural constructions that are unpopular with Americans."¹⁷

His remarks and arguments reached a receptive audience in the White House. According to several news sources, Rufo was instrumental in getting the President to take action.¹⁸ On September 22, 2020, then-President Trump issued an Executive Order (EO)¹⁹ denouncing any attempt to provide antiracist instruction or training to federal employees and contractors. The EO claimed to "promote unity in the Federal workforce, and [] combat offensive and anti-American race and sex stereotyping and scapegoating."²⁰ Under the mandates of the EO, federal contractors were prohibited from "inculcat[ing] . . . in their employees . . . any form of race or sex stereotyping or any form of race or sex scapegoating."²¹

12. See Benjamin Wallace-Wells, *How a Conservative Activist Invented the Conflict over Critical Race Theory*, NEW YORKER (June 18, 2021), <https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory> [<https://perma.cc/2UYM-PZUR>].

13. See *id.*

14. See *id.*

15. See *id.*

16. Christopher F. Rufo (@realchrisrufo), TWITTER (Mar. 15, 2021, 3:14 PM), <https://twitter.com/realchrisrufo/status/1371540368714428416> [<https://perma.cc/2H5Q-WSGU>] ("We have successfully frozen their brand – 'critical race theory' – into the public conversation and are steadily driving up negative perceptions. We will eventually turn it toxic, as we put all of the various cultural insanities under that brand category.").

17. Christopher F. Rufo (@realchrisrufo), TWITTER (Mar. 15, 2021, 3:17 PM), <https://twitter.com/realchrisrufo/status/1371541044592996352> [<https://perma.cc/FLW3-3F79>].

18. Wallace-Wells, *supra* note 12.

19. Combating Race and Sex Stereotyping, Exec. Order No. 13950, 85 Fed. Reg. 60683 (Sept. 22, 2020).

20. *Id.*

21. *Id.* at 60685.

The EO did not explicitly name CRT as a tool for implementing race and sex scapegoating. While CRT is an intellectual movement explicated in academic journals and books, the EO had an intentionally warped version of CRT in mind. The EO decried a “malign ideology” that “may be fashionable in the academy, but [that] ha[s] no place in programs and activities supported by Federal taxpayer dollars.”²²

While President Biden rescinded the EO upon assuming office in January 2021, the EO had already wreaked havoc. Its tenets spread nationwide to state legislative houses and school-board meetings. In the wake of the EO, anti-CRT resolutions, regulations, and legislation emerged in Congress, state legislatures, and local-government institutions. Backed by political organizations, including those trumpeting parents’ rights, between January 1, 2021, and December 31, 2022, lawmakers at every level of government have introduced or adopted over 560 laws, regulations, policies, and other official actions to restrict CRT training, teaching, and curricula.²³ These measures also targeted the *New York Times*’s Pulitzer Prize-winning 1619 Project²⁴ and “diversity, equity, and inclusion” efforts.²⁵

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22. *Id.* at 60683-84; see also *Remarks by President Trump at the White House Conference on American History*, NAT’L ARCHIVES MUSEUM (Sept. 17, 2020, 2:54 PM EDT), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-white-house-conference-american-history> [<https://perma.cc/2R5G-E5CM>] (“Critical race theory is being forced into our children’s schools, it’s being imposed into workplace trainings, and it’s being deployed to rip apart friends, neighbors, and families.”).
 23. *CRT Forward Tracking Project*, UCLA SCH. L. CRITICAL RACE STUD., <https://crtforward.law.ucla.edu> [<https://perma.cc/R9C9-B85R>].
 24. *The 1619 Project*, N.Y. TIMES MAG. (Aug. 18, 2019), https://pulitzercenter.org/sites/default/files/full_issue_of_the_1619_project.pdf [<https://perma.cc/H2VY-D6P3>].
 25. See discussion *infra* Section II.B. Note that this story of policy whiplash is but a chapter in history. The timeline could be longer: how did we go from the triumph of *Brown v. Board of Education*, which was explicitly color conscious in its remedy for racial discrimination, to the arguments made by Students for Fair Admissions in its recent suits against Harvard and the University of North Carolina? How did we go from considering race in creating diverse classrooms for children to arguing categorically that “racial classifications are wrong,” perhaps even abandoning strict scrutiny for race all together, as the lawyer for Students for Fair Admissions argued? Transcript of Oral Argument at 4, *Students for Fair Admissions, Inc. v. Univ. of N.C.*, No. 21-707 (U.S. argued Oct. 31, 2022).

Over 90% of these measures at the state and local level target K-12 public schools, seeking to regulate teachers and curricula. This targeting is not surprising; schools have long been foundational sites of racial contestations,²⁶ and curriculum wars are not new.²⁷ Predictably, these struggles mobilize parents, and mobilizing White²⁸ parents for racially regressive ends has been a recurring response to racial reform efforts, however modest.²⁹ For example, White mothers actively organized to resist racial desegregation in schools after *Brown v. Board of Education*,³⁰ and parents' rights groups have been at the forefront of many other contestations over race.³¹

The parents' rights movement seeks to codify aggressive forms of supposedly race-neutral school surveillance, transparency, and unprecedented access to classrooms and lessons.³² Between January 2020 and December 2022, state lawmakers in at least thirty-four states introduced parents' rights bills alongside anti-CRT efforts.

Anti-CRT and parents' rights proponents argue that these parents' rights bills result from grassroots activism of parents of all races who are outraged at

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26. See, e.g., *Brown v. Bd. of Educ.*, 374 U.S. 483, 495 (1954) (holding that state-sponsored racial segregation in schools was unconstitutional); *Milliken v. Bradley*, 418 U.S. 717, 752 (1974) (holding that school districts were not responsible for teaching children who live outside of their boundaries unless that district illegally segregated students by race); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 734-35 (2007) (holding that a racial tiebreaker in the school district's desegregation plan was unconstitutional under the Fourteenth Amendment's Equal Protection Clause).
 27. See generally Kenneth Teitelbaum, *Curriculum, Conflict, and Critical Race Theory*, KAPPAN (Jan. 18, 2022), <https://kappanonline.org/curriculum-conflict-critical-race-theory-teitelbaum> [<https://perma.cc/M2LS-CJ8L>] ("Curriculum conflicts arise constantly, they touch on all sorts of content, and they draw in a varied list of participants from across the ideological spectrum, including professional educators, parents, elected officials, and a growing number of political, religious, and economic interest groups.").
 28. I capitalize "White" throughout this Feature. The proper noun usage of the word forces an understanding of "White" as a social and political construct and social identity in line with the social and political construct and social identity of "Black." See LaToya Baldwin Clark, *Stealing Education*, 68 UCLA L. REV. 566, 568 n.1 (2021); see also Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1745 (1993) (discussing Whiteness as "a form of racialized privilege" in accessing social, economic, and political advantages).
 29. See generally ELIZABETH GILLESPIE MCRAE, *MOTHERS OF MASSIVE RESISTANCE: WHITE WOMEN AND THE POLITICS OF WHITE SUPREMACY* (2018) (describing how White women have, throughout American history, led the charge in resisting efforts to dismantle White supremacy).
 30. *Id.* at 185-216.
 31. See *infra* Part III.
 32. *Id.*

many forms of what they see as government overreach during and after the restrictions of COVID.³³ But the emergence of this movement cannot reasonably be characterized as grassroots. Instead, powerful, well-funded national entities hostile to racial redistribution of power³⁴ champion parents' rights. Other organizations provide talking points and strategies parents can adopt to fight CRT in their children's schools. Together with the anti-CRT activities, the well-organized parents' rights movement fuels this contemporary form of racial retrenchment in response to racial reform.³⁵

In this Feature, I situate the "twin" movements of anti-CRT and parents' rights in Critical Race Theory's critiques. By using the metaphor of twins, I suggest that the movements work in tandem because they are born from the same parent: White supremacy. To do so, I draw on insights from a qualitative descriptive analysis of anti-CRT laws, regulations, policy, and the contemporary movement for parents' rights as found in both introduced laws and conservative operations, along with organizational encouragement. While the movements assert the normative superiority of colorblindness in protecting innocent children against indoctrination, I show how the movements are not at all colorblind nor protective of the rights of all parents or children. Instead, together they are color-conscious of Whiteness, White parents' rights, and the psychological needs of White children.

I develop my thesis in three parts. Part I provides a brief primer on CRT concepts for those unfamiliar with this body of work. The caricatured version of CRT pushed by the right is often in direct opposition to what CRT actually argues. This Part offers a background for the trends I describe in Parts II and III

33. See, e.g., PARENTS DEFENDING EDUC., <https://defendinged.org> [<https://perma.cc/MLK5-BVZR>] (describing itself as a "national grassroots organization working to reclaim our schools from activists promoting harmful agendas"); Jeremiah Poff, *Grassroots Parent Activism Grows Nationwide*, WASH. EXAM'R (June 11, 2022, 7:00 AM), <https://www.washingtonexaminer.com/restoring-america/community-family/grassroots-parent-activism-grows-nationwide> [<https://perma.cc/63HA-SB2E>] ("The vast majority of local parent groups have established themselves with little to no outside help, often via Facebook groups formed out of anger that local school districts did not have plans to offer in-person classes to students in the fall of 2020."); Mike Gonzalez, *How the Grassroots Are Resisting CRT*, HERITAGE FOUND. (July 27, 2021), <https://www.heritage.org/education/commentary/how-the-grassroots-are-resisting-crt> [<https://perma.cc/Y6PE-J79Q>] ("As someone who has spoken to hundreds of parents across the country (and plan to do so again and again throughout the summer) and who has also spoken to state legislators across the nation, including testifying before the Louisiana Legislature along with my Heritage colleague Jonathan Butcher, I can tell you that the energy is coming from the grassroots, and it is very real.").

34. See *infra* Part III.

35. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1360-63 (1988).

and explicitly counters the disinformation campaign that serves as the backdrop to the anti-CRT movement.

In Parts II and III, I describe the national landscape of the anti-CRT and the parents' rights movements using a publicly available, national, and comprehensive data set unavailable to authors who have previously written on the anti-CRT movement.³⁶ I analyze anti-CRT measures, self-styled parents' rights legislation, and conservative organizations' guides instructing parents on resisting CRT and other so-called leftist agendas in their local schools.

In Part IV, I show how the twin movements provide a contemporary example of how race-neutral calls for colorblindness and invocation of White children's innocence work in service of racially regressive maneuvers. Again, despite protestations to the contrary, both campaigns are color conscious and racially selective in their "protection" of children to include only White parents and White children. Both, in fact, operate in the service of a more significant campaign to retrench White supremacy. The example reveals an underexplored intersection of Critical Race Theory, parenting, and educational policy.

36. Previous legal scholarship includes Zoe Masters, *After Denial: Imagining with Education Justice Movements*, 25 U. PA. J.L. & SOC. CHANGE 219, 219-21 (2022), which argues that denial is an ideology integral to the creation and maintenance of White Supremacist racial hierarchies, and it is enforced in the educational context through anti-CRT laws that ban key ideas that illuminate how racism functions; Vivian E. Hamilton, *Reform, Retrench, Repeat: The Campaign Against Critical Race Theory, Through the Lens of Critical Race Theory*, 28 WM. & MARY J. RACE, GENDER & SOC. JUST. 61, 74-77 (2021), which argues that CRT illuminates current legislation curtailing race-related education in schools and government workplaces as a direct backlash to mass racial-justice protests of 2020 when contextualized within the history and ideology of resistance to U.S. racial-justice movements; Joshua Gutzmann, *Fighting Orthodoxy: Challenging Critical Race Theory Bans and Supporting Critical Thinking in Schools*, 106 MINN. L. REV. HEADNOTES 333, 344-53 (2022), which surveys state legislation banning CRT in public schools to argue that anticipated broad judicial interpretation will have a chilling effect on teaching of race-related curricula, though the statutes can be challenged on First and Fourteenth Amendment grounds when there is proof of harm to students; Theresa Montañó & Tricia Gallagher-Geurtsen, *Yes, Critical Race Theory Should Be Taught in Your School: Undoing Racism in K-12 Schooling and Classrooms Through CRT*, 69 UCLA L. REV. DISCOURSE 84, 84 (2022), which asserts that CRT is a crucial theoretical framework already used in K-12 classrooms to teach ethnic studies, a course which helps educators "disrupt inequities" by "nam[ing] oppression, embrac[ing] intersectional identities embrac[ing] racialized intersectional identities through community cultural wealth, develop[ing] counterstories, and engag[ing] students in social activism to defy majoritarian supremacy"; Jonathan Feingold, *Reclaiming Equality: How Regressive Laws Can Advance Progressive Ends*, 73 S.C. L. REV. 723, 723, 754-57 (2022), which argues that CRT advocates should "wield Backlash Bills to defend CRT in schools" since anti-CRT laws textually support this move; and Osamudia James, *White Injury and Innocence: On the Legal Future of Antiracism Education*, 108 VA. L. REV. 1689 (2022), which explores antiracism education's vulnerability to legal challenges under current antidiscrimination norms and doctrine.

A few notes before continuing. First, while I name the movement that began with the Trump EO “anti-CRT,” the measures invoke CRT in about one-third of *introduced* measures. Thus, using “anti-CRT” to encapsulate these varied efforts may be imprecise and misleading.³⁷ But close to fifty percent of all *adopted* measures expressly prohibit CRT,³⁸ such that the impact of these laws places CRT squarely in the middle of the movement.

Second, while I speak of White parents, my goal is not to indict *all* White parents as nefarious actors. Nevertheless, although the parents’ rights movement claims to act on behalf of parents, its rhetoric suggests its true goal is to work only on behalf of White parents.³⁹ The campaign seeks to retrench the status quo in light of stark racial disparities across many domains—which is to say, racial subordination.⁴⁰ The retrenchment benefits all people who can claim Whiteness, even if they would instead not consciously claim it.

Lastly, the data I present here is a snapshot of the national landscape of these movements as of the year’s end of 2022. While the analysis is descriptive rather than causal, and it is not statistically sophisticated, it represents the most comprehensive quantitative and qualitative picture of official anti-CRT activity. This analysis is part of a project that continues refining and identifying other ways of collecting, cataloging, and analyzing this information. Thus, this analysis will necessarily be somewhat imprecise. Nevertheless, it is valuable to understand the attack’s depth and breadth and its contours.

37. Jonathan Feingold argues that we should resist characterizing broader efforts to restrict educators’ engagements with race in the classroom as “anti-CRT.” Feingold, *supra* note 36, at 725 n.8 (explaining that calling bills that regulate how educators discuss race and racism “anti-CRT” “suggest[s] that the bills entail substantive, good faith critiques of CRT. This is inaccurate. Far from good faith engagements with CRT, the bills further an intentional disinformation campaign”). As I discuss above, while I agree with this sentiment, describing this as an anti-CRT movement has some basis in the breadth and depth of the movement as it often targets CRT by name.

38. See *infra* Section II.B.

39. See *infra* Section IV.C.

40. Ruth Colker, *Anti-Subordination Above All: Sex, Race, and Equal Protection*, 61 N.Y.U. L. REV. 1003, 1007 (1986) (defining subordination as concerned with power disparities and hierarchy).

I. CRITICAL RACE THEORY, IN BRIEF

This Part gives a brief primer on Critical Race Theory.⁴¹ It does so for two reasons. First, to serve as a counter to the CRT disinformation campaign. Second, to preview how the twin movements are situated in CRT's critiques.

CRT is an intellectual movement that "challenges the ways in which race and racial power are constructed and represented in American legal culture and, more generally, in American society as a whole."⁴² CRT "questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law."⁴³ Unlike the twin movements' assertions that CRT inappropriately casts individual blame on innocent people, CRT does not focus on personal animus as the primary driver of racial discrimination. In contrast, CRT posits that racism is constructed and adopted into the everyday workings of our cultural, legal, social, and other institutions. CRT operates as a lens to understand legal backlash and racial regression as a part of the cycle of backtracking legal advances purporting to reduce or eliminate structural racial discrimination.⁴⁴

CRT scholars interrogate the hegemony of White supremacy, racism, and racial subordination⁴⁵ in our institutions.⁴⁶ Hegemony "involves the universalizing of the dominant group's interest as interests of society as a whole;"⁴⁷ tropes such as colorblindness and innocence are presented as race-neutral, universal values.

41. There are excellent CRT primers that are much more detailed than I can be here. For recent additions to that literature, see KHIARA M. BRIDGES, *CRITICAL RACE THEORY: A PRIMER* (2019); and VICTOR RAY, *ON CRITICAL RACE THEORY: WHY IT MATTERS & WHY YOU SHOULD CARE* (2022).

42. KIMBERLÉ CRENSHAW, NEIL GOTANDA, GARY PELLER & KENDALL THOMAS, *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, at xiii (1995).

43. RICHARD DELGADO & JEAN STEPHANIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 3 (3d ed. 2017).

44. See Crenshaw, *supra* note 35, at 1360-63.

45. See, e.g., Colker, *supra* note 40, at 1007.

46. Hegemony is a system of subordination that is not "simply domination imposed from above. Instead, it is maintained through the winning of the consent of subordinate groups by the dominant one(s)." Michelle Jay, *Critical Race Theory, Multicultural Education, and the Hidden Curriculum of Hegemony*, 5 *MULTICULTURAL PERSPS.* 3, 7 (2003). Concepts such as "colorblindness" are reflective of a dominant-group interest that serves to uphold the status quo of White supremacy. See Michael Omi & Howard Winant, *How Colorblindness Co-Evolved with Free-Market Thinking*, POL. RSCH. ASSOCS. (Oct. 8, 2014), <https://politicalresearch.org/2014/10/08/how-colorblindness-co-evolved-free-market-thinking> [https://perma.cc/E6FX-GZVG] ("The hegemony of neoliberal economics is matched and underwritten by the racial hegemony of colorblindness.").

47. Jay, *supra* note 46, at 7.

As I discuss below, because racism is structural⁴⁸ and institutional,⁴⁹ bringing a CRT lens to the anti-CRT and parents' rights movements illustrates how racism may persist even without individual racial animus.⁵⁰ While the twin movements describe CRT as being hateful to White people,⁵¹ CRT primarily does not focus on overt or individual racism; instead, it posits that racism is inherently structural, ubiquitous, and can operate apart from individual bias.⁵²

CRT scholars and those who engage with its tenets produce work on a wide range of topics and methods of inquiry; thus, the movement defies easy definitions or a clearly delineated scope.⁵³ Political moments and movements, schol-

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48. EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLORBLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* 9 (2d ed. 2006) ("When race emerged in human history, it formed a social structure (a racialized social system) that awarded systemic privileges to Europeans (the peoples who became 'white') over non-Europeans (the peoples who became 'nonwhite'). Racialized social systems, or white supremacy for short, became global and affected all societies where Europeans extended their reach. I therefore conceive a society's racial structure as the totality of the social relations and practices that reinforce white privilege.").
 49. See, e.g., JOHN A. POWELL, *Structural Racism: Building Upon the Insights of John Calmore*, 86 N.C. L. REV. 791, 795 (2008) ("Racism need not be either intentional or individualist. Institutional practices and cultural patterns can perpetuate racial inequity without relying on racist actors."); IAN F. HANEY LÓPEZ, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717, 1811, 1824 (2000) ("Institutional racism is directed or undirected racial status-enforcement influenced in an unrecognized manner by racial institutions. . . . [I]nstitutionalism highlights the extent to which purposeful racism requires the acceptance of background notions of race. To engage in purposeful racism is usually not to shed but to embrace racial institutions.").
 50. CHARLES R. LAWRENCE III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); CHARLES R. LAWRENCE III, *Unconscious Racism: Reflections on the Impact and Origins of The Id, the Ego, and Equal Protection*, 40 CONN. L. REV. 931 (2008); BONILLA-SILVA, *supra* note 48, at 1-4; SHERI LYNN JOHNSON, *Unconscious Racism and the Criminal Law*, 73 CORNELL L. REV. 1016, 1019-20 (1988).
 51. See *infra* Section III.A.
 52. See, e.g., LATOYA BALDWIN CLARK, *Beyond Bias: Cultural Capital in Anti-Discrimination Law*, 53 HARV. C.R.-C.L. L. REV. 381, 384-90 (2018).
 53. For example, CRT has inspired other intellectual movements. See FRANCISCO VALDES AND STEVEN W. BENDER, *LATCRIT: FROM CRITICAL LEGAL THEORY TO ACADEMIC ACTIVISM* 1 (2021) (focusing on Latinx communities); OSAGIE K. OBASOGIE, *Foreword: Critical Race Theory and Empirical Methods*, 3 U.C. IRVINE L. REV. 183, 183 (2013) (discussing empirical Critical Race Theory (e-CRT)); SUBINI ANCY ANNAMMA, DAVID CONNOR & BETH FERRI, *Dis/Ability Critical Race Studies (Discrit): Theorizing at the Intersections of Race and Dis/Ability*, 16 RACE ETHNICITY & EDUC. 1, 1-2 (2013) (discussing dis/ability critical theory); GLORIA LADSON-BILLINGS, *Just What Is Critical Race Theory and What's It Doing in a Nice Field Like Education?*, 11 QUALITATIVE STUD. EDUC. 7, 7-8 (1998) (focusing on CRT in education).

arly voices and personalities, and canonical writings whose importance for contemporary challenges change with the times have influenced CRT's trajectory. However, there are a few central concepts, as described below.

Race and racism. CRT critiques conceptions of race that rely primarily on genetics, ancestry, and biology. Lay understandings of race typically focus on observable physical differences believed to be a reliable and accurate categorization of human bodies.⁵⁴ Courts historically and presently rely on “common-sense” racial rules to place bodies in racial categories, such as skin color, hair texture, facial features, and ancestry.⁵⁵

For example, the infamous “one-drop rule” suggests a biological basis for determining who is Black; it says that anyone with any Black ancestry, no matter how distant, is Black.⁵⁶ Today the ancestry-based conception of race proliferates.⁵⁷ But the one-drop rule did not emerge simply to categorize for categorization's sake. Instead, the rule solidified racial boundaries and installed racial meanings that determined who was entitled to equal protection of the law.⁵⁸ Race as a social and cultural construct is “only given meaning in a social order

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54. See Audrey Smedley & Brian D. Smedley, *Race as Biology Is Fiction, Racism as a Social Problem Is Real: Anthropological and Historical Perspectives on the Social Construction of Race*, 60 AM. PSYCH. 16, 21-22 (2005).
 55. Racial characteristics include not only skin color, but facial features and hair texture. See Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 2 (1994) (explaining how courts in the 1800s determined racial classification not only by skin color but also by “the texture of [one's] hair, and the width of [one's] nose”). Hair continues to be a marker of race. See D. Wendy Greene, *Title VII: What's Hair (and Other Race-Based Characteristics) Got to Do with It?*, 79 U. COLO. L. REV. 1355, 1358-59 (2008); Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 383-85.
 56. See Nikki Khanna, *“If You're Half Black, You're Just Black”: Reflected Appraisals and the Persistence of the One-Drop Rule*, 51 SOCIO. Q. 96, 98-101 (2010) (explaining the origins of the one-drop rule for maintaining racial boundaries and how it continues to inform both self-identification and societal identification of race).
 57. See, e.g., DOROTHY ROBERTS, *FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE TWENTY-FIRST CENTURY* (2011); Jada Benn Torres, *Anthropological Perspectives on Genomic Data, Genetic Ancestry, and Race*, 171 Y.B. PHYSICAL ANTHROPOLOGY 74, 79 (2019).
 58. Harris, *supra* note 28, at 1740 (describing the one-drop rule as a “standard . . . designed to accomplish what mere observation could not”); see also Khanna, *supra* note 56, at 98 (“Because slavery was built upon the assumption that whites were a superior race and could not be enslaved, the one-drop rule also became increasingly important to justify the enslavement of a growing number of slaves with white skin and appearance.”). This does not mean that physical features are not one of the defining features of how we place bodies into racial categories. Not anyone can be White; only “those whose physical characteristics most closely resemble the morphology associated with Whites.” IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 155 (2006).

structured by forms of inequality—economic, political, and cultural—that are organized, to a significant degree” by these constructed categories.⁵⁹ Rather than *solely* an individual attribute, race is a status-laden, hierarchical organizing unit of society.⁶⁰ In judicial doctrine and everyday life,⁶¹ society makes and remakes racial categories and assigns racial meaning to those categories to justify and solidify inequitable treatment and unjust outcomes.⁶²

While race is socially and legally constructed, racism is all too real for its victims.⁶³ Racism can be individual, overt prejudice: White Supremacists marching in Charlottesville spewing hate speech and inciting violence is one example.⁶⁴ This racism requires no searching analysis. These people are fueled by racial hatred. But work on implicit bias shows that otherwise “good” people can hold racially discriminatory views that may affect behavior in ways that perpetuate racism.⁶⁵

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59. Smedley & Smedley, *supra* note 54, at 22 (quoting Michael A. Omi, *The Changing Meaning of Race*, in 1 AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES 243, 254 (Neil J. Smelser, William Julius Wilson & Faith Mitchell eds., 2001)).
60. See Neil Gotanda, *A Critique of “Our Constitution Is Color-Blind,”* 44 STAN. L. REV. 1, 4 (1991).
61. DARIA ROITHMAYR, *REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGE* (2014).
62. See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 8-9 (3d ed. 2015).
63. Smedley & Smedley, *supra* note 54, at 16.
64. News reports regarding the 2017 “Unite the Right” rally name the protagonists as White nationalists or White supremacists. See, e.g., Andrew Katz, *Unrest in Virginia: Clashes over a Show of White Nationalism in Charlottesville Turn Deadly*, TIME (2017), <https://time.com/charlottesville-white-nationalist-rally-clashes> [<https://perma.cc/EVV3-SWJJ>] (“Violence erupted in the college town of Charlottesville on Aug. 12 after hundreds of white nationalists and their supporters who gathered for a rally over plans to remove a Confederate statue were met by counter-protesters, leading Virginia’s governor to declare a state of emergency.”); Laura Barron-Lopez & Tess Conciatori, *Charlottesville Reckons with Trauma 5 Years After a Deadly White Supremacist Rally*, PBS (Aug. 12, 2022, 6:40 PM EST), <https://www.pbs.org/newshour/show/charlottesville-reckons-with-trauma-5-years-after-a-deadly-white-supremacist-rally> [<https://perma.cc/RKX7-2ZUP>].
65. See, e.g., Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1506-14 (2005); Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465, 468-73 (2011); Jerry Kang, *Implicit Bias and the Pushback from the Left*, 54 ST. LOUIS U. L.J. 1139, 1139 (2010); Gregory S. Parks & Jeffrey J. Rachlinski, *Implicit Bias, Election ‘08, and the Myth of a Post-Racial America*, 37 FLA. ST. U. L. REV. 659, 683 (2010); Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 948-52 (2006); Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345, 351-72 (2007); Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CALIF. L. REV. 997, 1029-38 (2006); L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage*, 122 YALE L.J. 2626, 2629 (2013).

Institutional racism does not require individual “bad apples.” Police violence against Black bodies, for example, is not only about rogue officers⁶⁶ but the inherent violence of policing itself.⁶⁷ As another example, structural racism is evident in how states administer their education systems using property taxes.⁶⁸ A community’s ability to raise adequate funds to educate children directly derives from the wealth (or lack thereof) of the community where children live.⁶⁹ Decades of overt racial discrimination in housing⁷⁰ and contemporary and historical discrimination in banking, lending, and mortgages,⁷¹ among other forces, shape where children live and the home prices of their neighborhoods.

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66. As an example, the U.S. National Security Advisor in May 2020 told a reporter that “[w]hen [police unjustifiably kill] in America, . . . those bad apples who give all of our law enforcement, who are great Americans, a bad name, they’re going to be prosecuted.” *State of the Union*, CNN (May 31, 2020), <https://transcripts.cnn.com/show/sotu/date/2020-05-31/segment/01> [<https://perma.cc/RK42-UQNP>].
67. Sean Illing, *Why the Policing Problem Isn’t About “a Few Bad Apples,”* VOX (June 6, 2020, 8:01 AM EDT), <https://www.vox.com/identities/2020/6/2/21276799/george-floyd-protest-criminal-justice-paul-butler> [<https://perma.cc/73U9-8TXH>]; Rashawn Ray, *Bad Apples Come from Rotten Trees in Policing*, BROOKINGS INST. (May 30, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/05/30/bad-apples-come-from-rotten-trees-in-policing> [<https://perma.cc/2K6M-W5RV>]; Ruth Marcus, *The Problem of Policing Isn’t Bad Apples. It’s a Diseased Tree*, WASH. POST (June 5, 2020, 6:54 PM EDT), https://www.washingtonpost.com/opinions/the-problem-of-policing-isnt-bad-apples-its-a-diseased-tree/2020/06/05/7f110b4c-a757-11ea-b473-04905b1af82b_story.html [<https://perma.cc/N4DG-3PKV>].
68. Cory Turner, Reema Khrais, Tim Lloyd, Alexandra Olgin, Laura Isensee, Becky Vevea & Can Carsen, *Why America’s Schools Have a Money Problem*, NPR (Apr. 18, 2016, 5:00 AM ET), <https://www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem> [<https://perma.cc/J6R6-LQSH>].
69. *Id.*
70. See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017) (“[U]ntil the last quarter of the twentieth century, racially explicit policies of federal, state, and local governments defined where whites and African Americans should live.”); ROITHMAYR, *supra* note 61, at 127 (“[S]egregation created the original foundation on which contemporary housing patterns were then built”).
71. See generally MEHRSA BARADARAN, *THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP* (2017) (“[B]lack and white Americans have had a separate and unequal system of banking and credit.”); David Brancaccio & Rose Conlon, *How Mortgage Algorithms Perpetuate Racial Disparity in Home Lending*, MARKETPLACE (Aug. 25, 2021), <https://www.marketplace.org/2021/08/25/housing-mortgage-algorithms-racial-disparities-bias-home-lending> [<https://perma.cc/XC2W-TQF8>] (“Lenders are more likely to deny mortgage loans to people of color than to white people with comparable financial profiles.”).

Critique of colorblindness. A commitment to colorblindness insists that the law does not—and cannot—see race.⁷² It asserts that the law cannot play racial favorites because it must *appear* racially neutral. Accordingly, any time race is the subject of law, it must be subjected to the most searching constitutional inquiry.⁷³ Taking account of race is only permissible in the direst of discriminatory circumstances, circumstances that the Supreme Court’s majority of conservative ideologues will likely further narrow soon.⁷⁴

A commitment to colorblindness ignores the social significance of race as a technology of systemic privilege and disadvantage; it dismisses race consciousness as itself racist. But colorblindness in our society is cognitively impossible.⁷⁵ Living in a racially stratified society, we “see” race from a very young age.⁷⁶ Insisting on colorblindness means insisting on a myth and, in turn, naturalizes racial subordination. I return to a more fulsome discussion of the role of colorblindness, together with White innocence, in Section III.A.

Critique of innocence. White innocence “insist[s] on the . . . absence of responsibility of the contemporary white person” for the racism of the past.⁷⁷ Innocence is a weapon to resist today’s White people’s current or future obligations to dismantle White supremacy. Innocence ignores the evidence that the effects of the past have led not only to Black disinheritance but also the unfair profits

72. See, e.g., Gotanda, *supra* note 60; T. Alexander Aleinikoff, *A Case for Race-Consciousness*, 91 COLUM. L. REV. 1060 (1991).

73. Laws that classify by race can only pass constitutional muster if they are animated by a compelling government interest and the government law or policy which relies on that racial classification is narrowly tailored to address that interest. See Michelle Adams, *Searching for Strict Scrutiny in Grutter v. Bollinger*, 78 TUL. L. REV. 1941, 1945 (2004).

74. See Ann E. Marimow, Nick Anderson, Amy B. Wang, Susan Svrluga & Perry Stein, *Supreme Court’s Conservative Majority Questions Race-Conscious Admissions*, WASH. POST (Oct. 31, 2022, 4:08 PM EDT), <https://www.washingtonpost.com/nation/2022/10/31/supreme-court-affirmative-action-case-harvard-unc/> [<https://perma.cc/LS9A-SXZP>] (“Conservative Supreme Court justices on Monday seemed open to ending decades of precedent allowing race-conscious admission decisions at colleges and universities, expressing doubt that the institutions would ever concede an ‘endpoint’ in their use of race to build diverse student bodies.”).

75. Gotanda, *supra* note 60, at 18; see also Helen A. Neville, Miguel E. Gallardo & Derald Wing Sue, *Introduction: Has the United States Really Moved Beyond Race?*, in *THE MYTH OF RACIAL COLOR BLINDNESS: MANIFESTATIONS, DYNAMICS, AND IMPACT* 3, 7 (Helen A. Neville, Miguel E. Gallardo & Derald Wing Sue eds., 2016) (debunking the virtues of colorblindness); OSAGIE K. OBASOGIE, *BLINDED BY SIGHT: SEEING RACE THROUGH THE EYES OF THE BLIND* (2013) (describing how blind people understand racial categorizations and meanings).

76. See Erin N. Winkler, *Children Are Not Colorblind: How Young Children Learn Race*, 3 PACE 1, 1 (2009) (“Research clearly shows that children not only recognize race from a very young age, but also develop racial biases by ages three to five.”); see also Kang & Lane, *supra* note 65, at 468 (“[People] are not perceptually, cognitively, or behaviorally colorblind.”).

77. Thomas Ross, *The Rhetorical Tapestry of Race: White Innocence and Black Abstraction*, 32 WM. & MARY L. REV. 1, 3 (1990).

bestowed on contemporary Whites because of that sordid history.⁷⁸ This rhetoric is particularly potent in the context of affirmative action, an explicit policy of racial redistribution of resources.⁷⁹ Innocence conjures the spurned White job applicant⁸⁰ and rejected White college applicant⁸¹ as victims of an unfair system that impermissibly punishes them for something they have no responsibility for or control over.⁸² Today's White people cannot be responsible for the sins of their forefathers and, thus, logically have no obligation to atone for those sins. Those who claim White innocence ignore how White people continue to benefit bountifully from past wrongs and how institutions have developed with protecting Whiteness in mind.⁸³

Supposing racial progress requires the redistribution of resources and power, innocence asserts that redistribution is illegitimate if some will suffer from a loss of status.⁸⁴ Innocence morally forecloses racial remedies for past and contempo-

78. *Id.*

79. CRT scholars have written extensively about the trope of White innocence regarding affirmative action. See, e.g., Osamudia R. James, *White Like Me: The Negative Impact of the Diversity Rationale on White Identity Formation*, 89 N.Y.U. L. REV. 425, 483 (2014) (showing how "[t]he narrative of white innocence repeatedly surfaces in Supreme Court cases and doctrine regarding racial measures and remedies"); David Simson, *Whiteness as Innocence*, 96 DENV. L. REV. 635, 647-48 (2019); Thomas Ross, *Innocence and Affirmative Action*, 43 VAND. L. REV. 297, 298-99 (1990); Osamudia R. James, *The "Innocence" of Bias*, 119 MICH. L. REV. 1345, 1350-52 (2021) (describing the Supreme Court's use of innocence and colorblindness to resist race-conscious remedies for societal discrimination).

80. See *Ricci v. Destefano*, 557 U.S. 557, 593 (2009) ("The injury arises in part from the high, and justified, expectations of the candidates who had participated in the testing process on the terms the City had established for the promotional process. Many of the candidates had studied for months, at considerable personal and financial expense, and thus the injury caused by the City's reliance on raw racial statistics at the end of the process was all the more severe.").

81. See *Fisher v. Univ. of Tex.*, 579 U.S. 365 (2016). See generally Osamudia R. James, *Diversity, Democracy and White Racial Identity: Schuette v. Coalition to Defend Affirmative Action*, 71 NAT'L LAW. GUILD REV. 1, 3 (2014) ("Whites begin, then, to perceive diversity initiatives and affirmative action programs as a sort of 'reverse discrimination,' where Whites are the innocent victims of programs and policies that benefit undeserving non-Whites who didn't 'work as hard' as victimized.").

82. See, e.g., Devon W. Carbado & Cheryl I. Harris, *The New Racial Preferences*, 96 CALIF. L. REV. 1139, 1139-52 (2008).

83. See W. Burlette Carter, *True Reparations*, 68 GEO. WASH. L. REV. 1021, 1032-33 (2000) ("[W]hiteness as property . . . retain[s] unjust enrichment from black subjugation. Unless those benefits are surrendered and the value of black life is restored, there will never be reconciliation.").

84. See, e.g., Osamudia R. James, *Risky Education*, 89 GEO. WASH. L. REV. 667, 734 & n.394 (2021) (describing the "strident opposition of some New York City parents to even limited attempts to integrate schools" because they believed integration lowered the quality of their children's education).

rary injustices while ignoring the innocent victims of the legacies of racial oppression.⁸⁵ The innocence trope in the current moment capitalizes on this idea of innocence not only of Whites as a group but of White children in particular, with little responsibility to a past considered to be over.

Intersectionality. For groups who experience subordination along more than one axis of identity, intersectionality cautions us not to ignore how “difference *within* groups contributes to tension *among* groups.”⁸⁶ An intersectional sensibility asks how “patterns of subordination” across differences impact the *experience* of subordination. Intersectionality challenges traditional accounts of sexism and racism as singular and noninteractive modes of inequality.⁸⁷ For example, a commitment to intersectionality demands a full accounting of race and gender subordination by being attentive to those who experience subordination on both fronts. For instance, Dorothy Roberts argues that the family-policing system (also referred to as the “child welfare system”) disproportionately affects poor Black mothers and families.⁸⁸

Interest convergence. Derrick A. Bell, Jr. developed interest convergence theory to explain why, in the aftermath of the racially conscious civil-rights victory of *Brown v. Board of Education*, Black children continued to attend racially segregated and poorly resourced schools.⁸⁹ Why? Bell argued that *Brown*’s holding was not primarily the result of changing hearts and minds in favor of racial justice but elites’ recognition of “the economic and political advances at home and

85. I return to innocence as a tool for racial retrenchment *infra* Section III.B.

86. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 (1991) [hereinafter Crenshaw, *Mapping the Margins*]; see, e.g., Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9 (1989); Cathy Scarborough, *Conceptualizing Black Women’s Employment Experiences*, 98 YALE L.J. 1457 (1989); Adrien Katherine Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, 6 BERKELEY WOMEN’S L.J. 18 (1990-91); Sumi Cho, Kimberlé Williams Crenshaw & Leslie McCall, *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis*, 38 SIGNS: J. WOMEN CULTURE & SOC’Y 785 (2013); Nira Yuval-Davis, *Intersectionality and Feminist Politics*, 13 EUR. J. WOMEN’S STUD. 193 (2006); Devon W. Carbado, *Colorblind Intersectionality*, 38 SIGNS: J. WOMEN CULTURE & SOC’Y 811 (2013).

87. Crenshaw, *Mapping the Margins*, *supra* note 86, at 1249.

88. Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1440-41 (1991). See generally DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002) (discussing the “child welfare system”).

89. Derrick A. Bell, Jr., Comment, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 518-19 (1980).

abroad that would follow the abandonment of segregation.”⁹⁰ Specifically, ending segregation allowed elite White policymakers to “provide immediate credibility to America’s struggle with Communist countries to win the hearts and minds of emerging third world peoples” and reassure Black people that equality was on its way – but that moment passed when the interests of elites and Black people were no longer aligned. Moreover, developments such as *Brown II* allowed southern school districts to resist desegregating.⁹¹ Unfortunately, other decisions too retrenched racial subordination in public schooling, like *Milliken v. Bradley*, which foreclosed interdistrict remedies for racial segregation,⁹² and *San Antonio Independent School District v. Rodriguez*, which foreclosed finding a constitutional right to education.⁹³

Whiteness. Whiteness is an “unstated norm or baseline around which social, political, and education policy is organized.”⁹⁴ In her seminal piece, Cheryl Harris argues that Whiteness is a property interest consisting of “assumptions, privileges, and benefits that accompany the status of being white . . . a valuable asset.”⁹⁵ Whiteness is protected through law to benefit “selected private interests” in racial superiority.⁹⁶

The normalization of Whiteness as an organizing unit of subordination is what Camille Gear Rich calls the “invisibility thesis.”⁹⁷ Such a legal conception of Whiteness notes how law “effectively encode[s] or protect[s] a default ‘white’ normative perspective, making whites’ interests seem invisible or natural.”⁹⁸ As I discuss below, the parents’ rights and anti-CRT movement do this work of Whiteness by positioning colorblindness and innocence as superior values. Yet

90. Bell, *supra* note 89, at 524. See generally Derrick A. Bell, Jr., Bakke, *Minority Admissions, and the Usual Price of Racial Remedies*, 67 CALIF. L. REV. 3 (1979) (making a similar argument about affirmative action).

91. *Brown v. Board of Education (Brown II)*, 349 U.S. 294, 300 (1955).

92. 418 U.S. 717, 744-45 (1974).

93. 411 U.S. 1, 33-34 (1973) (“Thus, the key to discovering whether education is ‘fundamental’ is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.”); *id.* at 37 (“We have carefully considered each of the arguments supportive of the District Court’s finding that education is a fundamental right or liberty and have found those arguments unpersuasive.”).

94. James, *supra* note 36, at 1700.

95. Harris, *supra* note 28, at 1713.

96. *Id.* at 1730.

97. Camille Gear Rich, *Marginal Whiteness*, 98 CALIF. L. REV. 1497, 1511 (2010).

98. *Id.*

those values provide little relief to non-Whites while buttressing White racial power.

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This explanation of CRT is brief, as it must be.⁹⁹ But it gives the background to understand the twin movements and the retrenchment moves of colorblindness and innocence. Furthermore, it sets the truth of CRT against the disinformation that fuels these campaigns. In Part IV, I will return to colorblindness and innocence as lenses to understand the twin movements of attacking CRT and crusading for parents' rights.

II. THE WAR AGAINST CRITICAL RACE THEORY

In the summer of 2020, over 20 million people¹⁰⁰ protested across the globe as an initial reaction against the police violence typified by George Floyd's murder. But the movement quickly grew to protest more than police violence to specifically target White supremacy¹⁰¹ and anti-Blackness.¹⁰² That protest seemed

99. These are not the only tenets of CRT. For example, CRT scholar Mari J. Matsuda argues that a key component of CRT is to "look to the bottom," privileging the experiences of those most impacted by subordination to better understand the subordinating effects of racism. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 344-49 (1987). See generally Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989) (describing storytelling as another methodological technique used often by CRT scholars).

100. See Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [https://perma.cc/9UAN-6JQ2] (reporting that between fifteen million and twenty-six million people participated in protests during the summer of 2020).

101. See Tiffanie Drayton, *Global Protests Reveal that White Supremacy Is a Problem Everywhere*, VOX (June 23, 2020, 12:00 PM EDT), <https://www.vox.com/first-person/2020/6/23/21299054/black-lives-matter-george-floyd-protests-white-supremacy> [https://perma.cc/3JYC-GHM3].

102. kihana miraya ross, *Call It What It Is: Anti-Blackness*, N.Y. TIMES (June 4, 2020), <https://www.nytimes.com/2020/06/04/opinion/george-floyd-anti-blackness.html> [https://perma.cc/P4TC-KBV8] ("Anti-blackness describes the inability to recognize black humanity. It captures the reality that the kind of violence that saturates black life is not based on any specific thing a black person—better described as 'a person who has been racialized black'—did. The violence we experience isn't tied to any particular transgression. It's gratuitous and unrelenting"); see also *Anti-Blackness: A Definition*, U.C. IRVINE OFF. INCLUSIVE EXCELLENCE, <https://inclusion.uci.edu/action-plan/msi/uci-black-thriving-initiative/confronting-anti-black-racism/change-the-culture/#resource-guide> [https://perma.cc/VH9P-

to usher in some efforts toward racial redress; many organizations, including schools and businesses, released statements condemning Mr. Floyd's murder and the anti-Blackness his death signified.¹⁰³ Not only did businesses and organizations release statements, but they purported to commit themselves to action. For example, in June 2020, the Columbia School of Social Work in New York City issued a statement declaring: "The lives of George Floyd, Ahmaud Arbery, Sean Reed, Breonna Taylor, and countless others matter. As do the Black lives taken by COVID-19. We at [the Columbia School of Social Work] condemn anti-Black racism in all its forms and are committed not just to making statements, but to taking action."¹⁰⁴

But in July 2020, a participant in an antiracist training run by the Seattle Office of Civil Rights leaked materials to Christopher F. Rufo, a documentary filmmaker and conservative organizer.¹⁰⁵ In an article for the Manhattan Institute's *City Journal*, Rufo railed against the training, claiming that "[u]nder the banner of 'antiracism,' Seattle's Office of Civil Rights is now explicitly endorsing principles of segregationism, group-based guilt, and race essentialism—ugly concepts that should have been left behind a century ago."¹⁰⁶ He publicly equated these principles with CRT, intending confusion through a dangerous distortion of Critical Race Theory. He planned the cooption of the term to be an imprecise but helpful bogeyman buzzword for all antistatist efforts.¹⁰⁷

Rufo disagreed with conservative attacks on "political correctness" and "woke[ness]" as the best approach to winning the so-called culture war.¹⁰⁸ In coopting CRT, he claimed to discover the "perfect villain" to mobilize the conservative base: "[M]ost middle-class Americans, including racial minorities, see

9GFS] (defining anti-Blackness as "actions or behaviors that minimize, marginalize or devalue the full participation of Black people in life").

103. See Jan et al., *supra* note 8.

104. CSSW Council of Deans Issues Call to Action to Address Anti-Black Racism, COLUM. SCH. SOC. WORK (June 1, 2020, 6:11 PM), <https://socialwork.columbia.edu/news/cssw-council-of-deans-issues-call-to-action-to-address-anti-black-racism> [<https://perma.cc/G6NL-ALWS>].

105. Wallace-Wells, *supra* note 12.

106. *Id.*

107. See *id.*

108. Anti-CRT advocates fighting this war, Christopher F. Rufo says, must make moves to "annex" culture, Rufo, *supra* note 17, "clean house in America: remove the attorney general, lay siege to the universities, abolish the teachers['] unions, and overturn the school boards," Christopher F. Rufo (@realchrisrufo), TWITTER (Nov. 16, 2021, 3:48 PM), <https://twitter.com/realchrisrufo/status/1460711361239928835> [<https://perma.cc/7XQQ-KZZC>]. See also Wallace-Wells, *supra* note 12 ("We've needed new language for these issues. . . . 'Political correctness' is a dated term '[C]ancel culture' is a vacuous term and doesn't translate into a political program; 'woke' is . . . too broad, too terminal, too easily brushed aside. 'Critical race theory' is the perfect villain" (quoting Rufo)).

the world as ‘creative’ rather than ‘critical,’ ‘individual’ rather than ‘racial,’ [and] ‘practical’ rather than ‘theoretical.’ Strung together, the phrase ‘critical race theory’ connotes hostile, academic, divisive, race-obsessed, poisonous, elitist, anti-American.”¹⁰⁹

Rufo’s work was not the only activism working to excise CRT from public life. Through further advocacy work in the late summer months of 2020, he reinvigorated a lingering conservative movement for parents’ rights kindled by COVID-19 controversies over vaccination, masking, and school closures. When the parents’ rights movement embraced the anti-CRT mobilization, its members stoked a full-fledged fire. For example, consider Moms 4 Liberty (M4L), a conservative parents’ rights organization that began in January 2021¹¹⁰ and currently boasts a chapter in most states.¹¹¹ The group, founded by two former Florida school-board members, claims to be “dedicated to fighting for the survival of America by unifying, educating and empowering parents to defend their parental rights at all levels of government.”¹¹² The group claims to unite families (“Moms, Dads, Grands, Aunts, Uncles, Friends”) “who are ready to fight those that stand in the way of liberty.”¹¹³ On their website, M4L also provides a parents’ guide for questioning school leaders about curriculum, including questions about antiracism efforts.¹¹⁴ The organization also released draft model resolutions to assist anti-CRT school board members to implement anti-CRT policies

109. See *id.* (quoting Rufo).

110. See *Who We Are*, MOMS FOR LIBERTY, <https://www.momsforliberty.org/about> [<https://perma.cc/6RVW-8S6B>].

111. See *Find a Chapter Near You*, MOMS FOR LIBERTY, <https://www.momsforliberty.org/chapters> [<https://perma.cc/3JCX-WZDU>]. From its map, it appears that lawmakers in six states have not introduced parents’ rights legislation: Alaska, Idaho, Maine, Nevada, Vermont, and West Virginia do not have chapters. See Zac Anderson & Sommer Brugal, *Moms for Liberty: Despite Nonpartisan Claims, Army of Activists a Political Force in 2022*, TCPALM (Dec. 10, 2021, 12:19 PM EST), <https://www.tcpalm.com/in-depth/news/education/2021/12/08/moms-liberty-chapters-florida-members-funding/5845628001> [<https://perma.cc/85AJ-ENSH>]; Ariel Gilreath, *How Moms for Liberty Wants to Reshape Education This School Year and Beyond*, HECHINGER REP. (Sept. 29, 2022), <https://hechingerreport.org/how-moms-for-liberty> [<https://perma.cc/RL7U-3QK3>].

112. *Find a Chapter Near You*, *supra* note 111.

113. *Id.*

114. *10 Questions Parents Should Ask: A Guide to Defending Your Child (Volume 1)*, COURAGE IS HABIT, <https://www.momsforliberty.org/media/files/pages-page/6d92a117/10questionsparentsshouldask.pdf> [<https://perma.cc/3B58-HAPD>] (“6. Have you provided or recommended any ‘Antiracism, Implicit or Unconscious Bias Training’ as professional development for your teachers? If so, what companies have you hired for the training and how much did you pay them? If this training was provided or recommended, what specific events occurred [sic] for

in local school policies.¹¹⁵ The model resolutions are tailored to each state, using language from the state's education code to bolster the persuasiveness of the resolutions.¹¹⁶ Crucially, M4L also highlights its role in getting anti-CRT candidates elected to public office, especially school boards.¹¹⁷

M4L is only an example of the conservative organizations that funded and pushed the anti-CRT movement forward. The American Legislative Exchange Council, the Heritage Foundation, the Manhattan Institute, and the American Enterprise Institute, among others, financially supported the anti-CRT effort.¹¹⁸

This political backlash to racial progress, which began in the Obama years,¹¹⁹ is encapsulated in Executive Order 13950.¹²⁰ In mid-September 2020, Rufo used the conservative media to directly appeal to the Trump White House to issue an executive order against CRT.¹²¹ Soon after, President Trump convened a news

you to feel your teachers needed this training? . . . 10. Do you have a Diversity Inclusion Equity (DIE) officer? If so, what problems are they trying to solve? What criteria do they have to meet before you determine they have been successful?"). For question ten, the guide links to an article that claims that "equity" is CRT's "new disguise." Ayaan Hirsi Ali, *Critical Race Theory's New Disguise*, UNHERD.COM (Oct. 7, 2021), <https://unherd.com/2021/10/critical-race-theorys-new-disguise> [<https://perma.cc/4MGK-JCFV>]. Ayaan Hirsi Ali is a known anti-Muslim extremist, as identified by the Southern Poverty Law Center. See Hatewatch Staff, *Extremists to Address Anti-Muslim Act! For America Conference Next Week*, S. POVERTY L. CTR. (Sept. 3, 2015), <https://www.splcenter.org/hatewatch/2015/09/03/extremists-address-anti-muslim-act-america-conference-next-week> [<https://perma.cc/5NYA-C5FL>].

115. See *Parental Rights Resolutions*, MOMS FOR LIBERTY, <https://www.momsforliberty.org/parent-resolutions> [<https://perma.cc/FPK8-J3WB>].

116. See *id.* (allowing parents to download a Word document with editable language to match their state's laws.).

117. See *Endorsements*, MOMS FOR LIBERTY, <https://www.momsforliberty.org/endorsements> [<https://perma.cc/V8RP-GY8A>].

118. Sarah Schwartz, *Who's Really Driving Critical Race Theory Legislation? An Investigation*, ED. WK. (July 19, 2021), <https://www.edweek.org/policy-politics/whos-really-driving-critical-race-theory-legislation-an-investigation/2021/07> [<https://perma.cc/8M7L-XLUU>].

119. See, e.g., Jenée Desmond-Harris, *Trump Seized upon Obama-Inspired Racial Anxiety—and Won*, VOX (Nov. 11, 2016, 1:20 PM EST), <https://www.vox.com/policy-and-politics/2016/11/11/13587728/trump-president-obama-racism-racial-anxiety> [<https://perma.cc/EGG6-JED6>].

120. Exec. Order No. 13950, 85 Fed. Reg. 60683, 60683-84 (Sept. 22, 2020).

121. Sam Dorman, *Chris Rufo Calls on Trump to End Critical Race Theory 'Cult Indoctrination' in Federal Government*, FOX NEWS (Sept. 2, 2020, 12:02 AM EDT), <https://www.foxnews.com/politics/chris-rufo-race-theory-cult-federal-government> [<https://perma.cc/UTP7-E3D4>] ("I'd like to make it explicit: The President and the White House—it's within their authority and power to immediately issue an executive order to abolish critical race theory training from the federal government. And I call on the President to immediately issue this executive order—to stamp out this destructive, divisive, pseudoscientific ideology at its root."); see also Wallace-Wells, *supra* note 12 (describing Rufo's advocacy efforts on behalf of Exec. Order No. 13950).

conference in which he explicitly denounced CRT and issued the EO and an Office of Management and Budget memo.¹²² The EO claimed to disavow “race or sex stereotyping or scapegoating,” forbidding federal contractors and the military to “teach, instruct, or train” on any “divisive concept.”¹²³ It defined “divisive concepts” as follows:

- (1) one race or sex is inherently superior to another race or sex;
- (2) the United States is fundamentally racist or sexist;
- (3) an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- (4) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;
- (5) members of one race or sex cannot and should not attempt to treat others without respect to race or sex;
- (6) an individual’s moral character is necessarily determined by his or her race or sex;
- (7) an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;
- (8) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or
- (9) meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.¹²⁴

This language provided a loose blueprint for many of the anti-CRT measures lawmakers began introducing in earnest starting January 2021.¹²⁵ Alarmed by the proliferation of these anti-CRT measures, in April 2021, the Critical Race Studies (CRS) Program at UCLA School of Law created the CRT Forward initiative. The initiative’s mission is to describe the quantitative and qualitative breadth of the nationwide attacks against CRT, correct the disinformation campaign about CRT, and stake a place for CRT in the contemporary moment.

122. See *Ending Employee Trainings that Use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All*, OFF. OF MGMT. & BUDGET M-20-37 (Sept. 28, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-37.pdf> [<https://perma.cc/8S3W-BFDW>].

123. 85 Fed. Reg. at 60683-84.

124. *Id.*

125. Between September 22 and December 31, 2020, federal lawmakers introduced one anti-CRT measure. See Saving American History Act of 2020, H.R. 8282, 116th Cong. (2020). I have omitted this from the analysis for ease of reporting on trends.

The Tracking Project (the Project), the flagship initiative of CRT Forward, created a comprehensive database of the anti-CRT legal movement.¹²⁶ The Project's database consists of federal, state, and local government instances of anti-CRT legislation and other official measures to ban CRT and other so-called "divisive concepts" from public life.¹²⁷ In 2021 and 2022 lawmakers and other government officials in forty-nine states and at every level of government introduced at least one anti-CRT policy, regulation, resolution, official letter, or piece of legislation.¹²⁸ As shown in Table 1, anti-CRT "measures" refers to officially proposed regulations, policies, legislation, administrative guidance, guidelines, resolutions, attorney general statements, and executive orders.

TABLE 1. TYPES OF ANTI-CRT MEASURES, 2021 AND 2022

TYPE	FEDERAL (%)	STATE (%)	LOCAL (%)	TOTAL (%)
ATTORNEY GENERAL LETTER	0.0	1.1	0.0	0.7
EXECUTIVE DIRECTIVE	0.0	2.6	0.6	1.8
LEGISLATION	91.4	78.6	0.0	54.7
POLICY	0.0	2.6	52.0	17.9
REGULATION	0.0	2.0	1.1	1.6
RESOLUTION	8.6	2.0	31.6	11.7
STATEMENT	0.0	11.1	14.7	11.5
TOTAL	100	100	100	100

¹²⁶. For a robust explanation of the Project's methodology for identifying and coding anti-CRT activity, please see *Methodology*, UCLA SCH. L. CRITICAL RACE STUD., <https://crtforward.law.ucla.edu/methodology> [<https://perma.cc/HXN7-F8RT>].

¹²⁷. *CRT Forward Tracking Project*, *supra* note 23.

¹²⁸. These descriptions of the anti-CRT movement are my analysis of the Tracking Project's database. Only Delaware has no reported instances of anti-CRT activity.

While federal and state legislation comprises 55% of anti-CRT measures overall, the Project captures more than legislation: most notably, the database includes local school-board policies and resolutions. At the local level, school-board policies, resolutions, and statements comprise over 90% of anti-CRT measures.

From January 1, 2021, through December 31, 2022, the Project identified 563 local, state, and federal measures aimed against CRT and other antiracist content. Table 2 shows the official status of these measures, broken down by government level. Adopted measures have reached a final disposition and have a legal or policy effect. These include measures that go into effect when released, such as an attorney general letter, as well as legislation voted upon and signed into law. Measures that are pending need to go through an approval process, typically a vote, that has not come to a final disposition. “Failed” measures are those where there was (1) a vote by which the measure failed; (2) the measure expired in committee; or (3) the lawmaker rescinded the measure.

TABLE 2. FEDERAL, STATE, AND LOCAL ANTI-CRT MEASURES, 2021 AND 2022

	2021	2022	TOTAL
FEDERAL			
Adopted	0	0	0
Pending	6	4	10
Failed	21	4	25
Total	27	8	35
STATE			
Adopted	68	36	104
Pending	9	29	38
Failed	96	113	209
Total	173	178	351
LOCAL			
Adopted	62	75	137
Pending	0	6	6
Failed	18	16	34
Total	80	97	177
TOTAL	280	283	563

From January 1, 2021, through December 31, 2022, federal lawmakers introduced 35 anti-CRT measures, state lawmakers introduced 351, and local lawmakers and policymakers introduced 177. This anti-CRT effort has been steady over the two years, with 280 measures introduced in 2021 and 283 introduced in 2022. Altogether, law and policymakers have adopted 241 measures, 54 measures are pending, and 219 measures have failed.

In what follows, I present a qualitative analysis of the CRT Forward's Tracking Project database of the anti-CRT measures. I conduct a similar descriptive analysis of the parents' rights movement in Part III. I focus on three trends. First, the anti-CRT measures' timing reflects the temporal backlash to the racial-justice demands made by protestors in the summer of 2020, and the movement was still going strong through the end of 2022. It highlights the temporal aspect of reform and retrenchment and answers the "why now?" question. Second, the term "Critical Race Theory" does not appear in most anti-CRT measures introduced by law and policymakers. Instead, a plurality of anti-CRT measures focuses on explicitly rejecting color consciousness and individual guilt—in other words, championing colorblindness and (White) innocence. Among the adopted measures, CRT has a more prominent showing. Third, and crucially, the anti-CRT movement overwhelmingly targets K-12 public educational institutions, drawing parents and children into the larger existential struggle for racial justice. Together with a similar analysis of the parents' rights movement, this Part sets the backdrop for understanding how the anti-CRT and parents' rights movements came to be involved in this moment of racial contestation.

A. Backlash

In the middle of the summer of 2020, amidst global protests, the Ohio State Board of Education (BOE) passed a resolution "To Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color."¹²⁹ The Ohio BOE wrote the resolution after "listening with broken hearts and engaging with determined spirits" as the nation "grapple[d] with the hard truths of racism and inequality."¹³⁰ The resolution declared "equity" as the Ohio BOE's "greatest imperative and number one principle."¹³¹

¹²⁹. *Resolution to Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color*, OHIO ST. BD. EDUC. (July 14, 2020), <https://drive.google.com/file/d/1WekWHohckpLIRxK2ndUh1pgv2TGHtP1G/view> [<https://perma.cc/NUG9-QD2H>].

¹³⁰. *Id.* at 1.

¹³¹. *Id.*

The resolution described how schools deny educational access to Black, Indigenous, and other students of color.¹³² “In the strongest possible terms,” the resolution condemned “white supremacy culture, hate speech, hate crimes and violence in service of hatred.”¹³³ It outlined actions, including organizing community conversations, training staff and faculty, and reexamining curricula.¹³⁴ It also directed local school districts to engage in their own “reflection and internal examination” of their processes and practices that may impede the state’s commitment to equity.¹³⁵ The Ohio BOE passed the resolution during a regular meeting after a long discussion, proposed amendments, and lengthy speeches by board members who supported the resolution and those who did not.¹³⁶ Ultimately, twelve board members voted in favor of the resolution, five did not, and one abstained.¹³⁷

A little more than a year later, in July 2021, the Ohio BOE voted to pass a resolution entitled “Resolution to Request a Formal Opinion of the Attorney General of Ohio in Reference to the State Board of Educations [sic] Resolution to Condemn Racism and to Advance Equity & Opportunity,” requesting an opinion by the state attorney general on the legality of their June 2020 resolution.¹³⁸ The request referenced a May 19, 2021, letter signed by twenty state attorneys general (AGs) addressed to the Federal Department of Education (DOE),¹³⁹ questioning the Federal DOE’s priorities regarding American History and Civics Education grants.¹⁴⁰ These priorities included “teaching and learning practices that reflect the diversity, identities, histories, contributions, and experiences of all students [to] create inclusive, supportive, and identity-safe learning environments” and “foster critical thinking and promote student engagement in civics

^{132.} *Id.*

^{133.} *Id.* at 2.

^{134.} *Id.*

^{135.} *Id.*

^{136.} *Minutes*, ST. BD. EDUC. OHIO 42-59 (July 13, 2020), <https://education.ohio.gov/getattachment/State-Board/State-Board-Meetings/State-Board-Meetings-for-2020/July-2020-Meeting-Minutes-Final.pdf.aspx?lang=en-US> [<https://perma.cc/A8T2-Y2UZ>].

^{137.} *Id.* at 59.

^{138.} *Minutes*, ST. BD. EDUC. OHIO 65-70 (July 12, 2021), <https://education.ohio.gov/getattachment/State-Board/State-Board-Meetings/State-Board-Meetings-for-2021/July-2021-Minutes-Final.pdf.aspx?lang=en-US> [<https://perma.cc/ECS9-2MDE>].

^{139.} *Id.*

^{140.} Letter from Todd Rokita, Ind. Att’y Gen., to Miguel A. Cardona, Sec’y of Educ. (May 19, 2021), https://content.govdelivery.com/attachments/INAG/2021/05/19/file_attachments/1812972/DOE%20Letter.pdf [<https://perma.cc/ZQ5X-4MY3>].

education.”¹⁴¹ The state AGs’ letter argued that these priorities were “a thinly veiled attempt at bringing into our states’ classrooms the deeply flawed and controversial teachings of Critical Race Theory and the 1619 Project.”¹⁴²

In September 2021, the Ohio AG responded to the BOE’s request and punted, stating that many of the statements in the June 2020 resolution could not be evaluated without more specifics about how the resolution would work on the ground.¹⁴³ But the response also stated that “[a]s a general matter, the state Board of Education has authority to direct the Department of Education to reexamine the academic content standards and model curriculums to make recommendations to the State Board of Education as necessary to eliminate bias and ensure that racism and the struggle for equality are accurately represented.”¹⁴⁴

After receiving the Ohio AG’s response, at the October 2021 meeting, the BOE held a four-hour debate on a new resolution.¹⁴⁵ The July 2021 resolution had stated that the June 2020 resolution’s “priorities . . . are very similar to the priorities stated in the” federal DOE’s guidance,¹⁴⁶ priorities the Board now claimed were inappropriate. The proposed resolution, entitled “Resolution to Promote Academic Excellence in K-12 Education for Each Ohio Student Without Prejudice or Respect to Race, Ethnicity, or Creed,” bemoaned society’s “growing national divide [and] a troubling focus on the color of one’s skin rather than on the content of one’s character.”¹⁴⁷ It “affirm[ed] its condemnation of racism, hate speech, hate crimes, and violence in the service of hatred” but also “condemn[ed] any standards, curriculum, or training programs for students, teachers, or staff that seek to divide or to ascribe circumstances or qualities, such as collective guilt, moral deficiency, or racial bias, to a whole race or group of people.”¹⁴⁸

¹⁴¹. Proposed Priorities – American History and Civics Education, 86 Fed. Reg. 20348, 20350 (Apr. 19, 2021).

¹⁴². Letter from Todd Rokita, *supra* note 140, at 1.

¹⁴³. Letter from Dave Yost, Ohio Att’y Gen., to Ohio St. Bd. of Educ. (Sept. 14, 2021), <https://www.ohioattorneygeneral.gov/getattachment/1538087b-be38-4bf5-8541-5b03bab538d3/2021-022.aspx> [<https://perma.cc/BU6T-DPWC>].

¹⁴⁴. *Id.* at i.

¹⁴⁵. See *Minutes*, ST. BD. OF EDUC. OF OHIO 38 (Oct. 12, 2021), <https://education.ohio.gov/getattachment/State-Board/State-Board-Meetings/State-Board-Meetings-for-2021/Oct-2021-Minutes-Final.pdf.aspx?lang=en-US> [<https://perma.cc/YB5J-9XCK>]; Laura Hancock, *Ohio State Board of Education Abolishes Anti-Racism and Equity Resolution Passed in Wake of George Floyd’s Murder*, CLEVELAND.COM (Oct. 14, 2021, 3:24 PM), <https://www.cleveland.com/open/2021/10/ohio-state-board-of-education-abolishes-anti-racism-and-equity-resolution-passed-in-wake-of-george-floyds-murder.html> [<https://perma.cc/E66E-5N5K>].

¹⁴⁶. *Minutes*, *supra* note 138, at 66.

¹⁴⁷. *Minutes*, *supra* note 145, at 25.

¹⁴⁸. *Id.* at 26.

The new resolution was a colorblind and innocence-focused substitution for the overtly antiracist themes of the June 2020 resolution. Seeing race is now “troubling” because it directs focus away from individuals’ “character.” Moreover, by spelling out instances of racism as only overt (“hate crimes”), the resolution left out structural accounts of racism, the very structural accounts the 2020 protests insisted upon. But if only overt racism is “true” racism, no one who has not shown “racial bias” should personally feel “guilty” or morally uneasy about racial subordination.

By a vote of fourteen to three, the October 2021 resolution repealed the June 2020 resolution and cited the Ohio AG’s response.¹⁴⁹ Two of the three dissenters resigned after the vote, including the Board President, who said the Ohio governor asked her to step down.¹⁵⁰

Elsewhere in the country, less dramatic reversals still impacted the educational environment for public-school children. For example, prior to 2020, in October 2018, the Palm Beach, Florida, school board adopted an “equity policy” which described the board’s “commit[ment] to eliminating race, ethnicity, gender, gender identity, sexual orientation, disability or socioeconomic status as predictors for academic outcomes.”¹⁵¹ It specifically noted systemic racism in “existing practices and procedures that have inhibited success for some students” that “translated into low academic achievement for the certain groups of students.”¹⁵² It connected those practices and outcomes as noncoincidental and not “an accurate reflection of how these students are capable of performing.”¹⁵³ The equity policy included specific actions, including allocating funding to eliminate disparities, teaching the historical contributions of minoritized student populations, overhauling the discipline process, and engaging deeply with parents and other stakeholders.¹⁵⁴

¹⁴⁹. *Id.* at 38.

¹⁵⁰. Laura Hancock, *Second Member Resigns from Ohio State Board of Education After Refusing to Rescind Anti-Racism Resolution*, CLEVELAND.COM (Oct. 29, 2021, 10:42 AM), <https://www.cleveland.com/open/2021/10/second-member-resigns-from-ohio-state-board-of-education-after-refusing-to-rescind-anti-racism-resolution.html> [<https://perma.cc/NVG7-MUGP>].

¹⁵¹. *Policy 1.041 - Equity Policy*, PALM BEACH CNTY. SCH. BD. (Oct. 17, 2018), <https://go.boarddocs.com/fl/palmbeach/Board.nsf/goto?open&id=B5WKY6508BAC> [<https://perma.cc/2C9F-PWWF>].

¹⁵². *Id.*

¹⁵³. *Id.*

¹⁵⁴. *Id.*

Three years later, as the district's strategic plan was set to expire, the board resolved again in May 2021 to create a new strategic plan with equity as its focus.¹⁵⁵ But a statement in the resolution caused public consternation. It read: "The School District of Palm Beach County is committed to dismantling structures rooted in white advantage and transforming our system by hearing and elevating underrepresented voices, sharing power, recognizing and eliminating bias, and redistributing resources to provide equitable outcomes."¹⁵⁶ As with many antiracist initiatives that began during the summer of 2020, this policy was explicitly color conscious, rejecting colorblindness.

But some community members complained that the phrase "white advantage" was an "attempt at racial division."¹⁵⁷ A parent, invoking innocence, declared during one school-board meeting that her "children will never be taught to be ashamed of or apologize for who they are because of their skin color."¹⁵⁸ For this (likely White) parent, to even name that Whiteness is privilege was to negatively impact her (White) child's psyche, forcing the innocent (White) child to admit guilt or blame for "who they are." Even though the new strategic plan explicitly called for racial redistribution of resources and equitable outcomes, identifying how the history of racial hierarchy continues to advantage White people was a bridge too far. The Palm Beach County School Board voted to remove that phrase three weeks after it adopted the resolution.¹⁵⁹

While the backtracking of the Ohio BOE and Palm Beach County School Board are examples of early backlash, the anti-CRT movement has not slowed or gone dormant. Lawmakers continue to have an interest in CRT. For instance, in mid-September 2022, U.S. Senators Ted Cruz and John Barrasso introduced Senate Bill 4845, a bill "[t]o provide for safe schools and safe communities."¹⁶⁰ While the bill offered funds to school districts to secure their schools from mass shootings, it limited support only to school districts that do "not teach Critical

155. Andrew Marra, *Palm Beach County Schools' New Plan for a Better Education Could Focus on Equity*, PALM BEACH POST (Mar. 15, 2021, 3:03 PM ET), <https://www.palm-beachpost.com/story/news/education/2021/03/15/pbc-schools-new-plan-better-education-could-focus-equity/6944924002> [https://perma.cc/YA6D-K957].

156. *Equity Definition and Statement*, PALM BEACH CNTY. SCH. BD. (Apr. 14, 2021), [https://go.boarddocs.com/fl/palm-beach/Board.nsf/files/C2FKFJ51A988/\\$file/BRD2%20Equity%20Definition%20and%20Statement.pdf](https://go.boarddocs.com/fl/palm-beach/Board.nsf/files/C2FKFJ51A988/$file/BRD2%20Equity%20Definition%20and%20Statement.pdf) [https://perma.cc/KY7S-HUMV].

157. Andrew Marra, *PBC School Board Removes Reference to 'White Advantage' from Equity Statement*, PALM BEACH POST (May 27, 2021, 9:43 AM ET), <https://www.palm-beachpost.com/story/news/education/2021/05/26/pbc-school-board-removes-reference-white-advantage-its-equity-statement/7453878002> [https://perma.cc/HC3J-7WU2].

158. *Id.*

159. *Id.*

160. Securing Our Schools Act of 2022, S. 4845, 117th Cong. (2022).

Race Theory or include Critical Race Theory in any school program.”¹⁶¹ The bill did not pass.

These examples show how the backlash to CRT influenced a whiplash in local policy. The “wins” of the so-called racial reckoning were short-lived; anti-CRT measures used the normative appeal of colorblindness and innocence, especially the innocence of children, to reject race consciousness. The Ohio BOE not only temporally reversed its position on providing antiracist education, but it borrowed the colorblind rhetoric (“troubling focus on the color of one’s skin”)¹⁶² and innocence frame (condemn ascribed “collective guilt, moral deficiency or racial bias”)¹⁶³ of the national anti-CRT movement. The Palm Beach County mom who railed against including “white advantage” in an antiracist statement too borrowed such rhetoric of colorblindness and innocence (not wanting her child to “be ashamed of or apologize for . . . their skin color.”)¹⁶⁴ Through colorblindness and innocence, the backlash began to excise race from schools.

B. “CRT” and “Divisive Concepts”

Much of the anti-CRT backlash uses the September 2020 EO as a blueprint. The EO did not explicitly namecheck CRT, and only about one-third of measures explicitly invoke CRT. But despite the specific words used, the measures writ large endorse both colorblindness and innocence.

For example, consider an anti-CRT measure passed by the school board of District 49, a small district in a suburb of Colorado Springs, Colorado. In August 2021, the district’s five-member board passed a resolution, by three votes to two, entitled “Regarding Critical Race Theory and Other Race-Based Programs.”¹⁶⁵ The Resolution stated that “Critical Race Theory (CRT), antiracism, and all related, euphemistic, surrogates should similarly not be advocated in any form, in

¹⁶¹. *Id.*

¹⁶². *See supra* note 147.

¹⁶³. *Id.*

¹⁶⁴. *See supra* note 157.

¹⁶⁵. *Resolution Regarding Critical Race Theory and Other Race-Based Programs*, DIST. 49 (July 8, 2021), [https://go.boarddocs.com/co/d49/Board.nsf/files/C4GPQP65C16A/\\$file/RESOLUTION%20REGARDING%20CRITICAL%20RACE%20THEORY%20AND%20OTHER%20RACE-BASED%20PROGRAMS.pdf](https://go.boarddocs.com/co/d49/Board.nsf/files/C4GPQP65C16A/$file/RESOLUTION%20REGARDING%20CRITICAL%20RACE%20THEORY%20AND%20OTHER%20RACE-BASED%20PROGRAMS.pdf) [<https://perma.cc/TWV9-5ETH>]; *D49 BOE Proposed Resolution Against Critical Race Theory*, SCH. DIST. 49 BD. EDUC., <https://go.boarddocs.com/co/d49/Board.nsf/goto?open&id=C55TCD76B4D8> [<https://perma.cc/BVT4-SD5P>] (approving the resolution).

D49's curricula or staff training"¹⁶⁶ while also mandating that schools not "sanitize[e] [America's] past, nor deny the possibility of moral progress."¹⁶⁷ The resolution claimed to borrow a definition of CRT from *EdWeek*: "[R]acism is a social construct, and that it is not merely the product of individual bias or prejudice, but also something embedded in legal systems and policies."¹⁶⁸ The resolution also forbids schools from "engag[ing] in racial stereotyping, including ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs on the basis of race."¹⁶⁹

To get a sense of what the District 49 school board meant by CRT, consider the school-board meeting at which the board members discussed the resolution. At that meeting, after comments from thirty members of the public, one of the board members derisively dismissed these public comments that accused the board of trying to whitewash history or deny that racism happens.¹⁷⁰ She said there was a lot of misunderstanding about CRT, driven by differences between the "mainstream news" and what she called the "real news."¹⁷¹ Because of this difference in definitions, she stated that the resolution made "pretty clear" what "aspect of CRT" they were banning: that "systemic racism" exists.¹⁷² As she explained, if systemic racism existed "to the point of only White people succeed[ing]," millions of immigrants would not come to the United States.¹⁷³ The board member expressed disdain that the country was on the wrong track to develop "victims" and not "victors."¹⁷⁴

Another board member repeatedly invoked CRT as "racist" and promised to continue to teach history accurately, including the "audacity" of the founders in

¹⁶⁶. *Resolution Regarding Critical Race Theory and Other Race-Based Programs*, *supra* note 165, at 1.

¹⁶⁷. *Id.*

¹⁶⁸. *Id.* This is not what the *EdWeek* definition says. It says, "The core idea is that *race* is a social construct, and that racism is not merely the product of individual bias or prejudice, but also something embedded in legal systems and policies." Stephen Sawchuk, *What Is Critical Race Theory, and Why Is It Under Attack?*, *EDUC. WK.* (May 18, 2021), <https://www.edweek.org/leadership/what-is-critical-race-theory-and-why-is-it-under-attack/2021/05> [<https://perma.cc/QW7D-AB52>].

¹⁶⁹. *Resolution Regarding Critical Race Theory and Other Race-Based Programs*, *supra* note 165, at 2.

¹⁷⁰. Tony Keith, *Proposed Resolution to Ban Critical Race Theory in D49 Moves Forward*, *KKTV 11 NEWS*, at 00:51 (July 9, 2021 3:10 AM EDT), <https://www.kktv.com/2021/07/09/watch-live-d-49-board-education-discusses-resolution-that-would-ban-critical-race-theory> [<https://perma.cc/N8FQ-DT7R>].

¹⁷¹. *Id.* at 02:32.

¹⁷². *Id.* at 02:48, 03:36.

¹⁷³. *Id.* at 03:50.

¹⁷⁴. *Id.* at 07:23.

declaring independence while also enslaving people.¹⁷⁵ He admitted there has been “countless suffering” over 200 years and that ending racism would not be immediate. But, he ultimately concluded by claiming that MLK “gave us all a dream that we could get ever closer to and someday achieve a society that is not about race at all but about character” and traits like hard work.¹⁷⁶ He also declared that teachers should instruct students that despite its “flaws,” the United States has done “more than any other in the world to allow personal freedom to flourish.”¹⁷⁷ American exceptionalism trumped an accounting for racial subordination.

At the state level, for example, in April 2021, the Arkansas legislature introduced and adopted a bill, “An Act to Prohibit the Propagation of Divisive Concepts.”¹⁷⁸ The Act, effective January 1, 2022, echoes the EO by prohibiting training or teaching “race or sex scapegoating” and stereotyping and labeling Arkansas or the United States as “fundamentally racist or sexist.”¹⁷⁹ In addition, it prohibits teaching that one’s “moral character is necessarily determined by his or her race or sex” or that any living person has “responsibility for actions committed in the past” or should “feel discomfort, guilt, anguish, or any other form of psychological distress.”¹⁸⁰ The concern about stereotyping is telling; it’s unlikely that any teacher is racially stereotyping *White* children. Indeed, the truth is the opposite: schools stereotype innocent Black children as guilty.¹⁸¹ But that stereotyping finds little traction in the anti-CRT measures.

The District 49 and Arkansas examples illustrate how the anti-CRT measures invoke CRT and other so-called “divisive concepts” to argue for color-blindness and innocence as superior values to defeat race consciousness. Table 3 describes the prevalence of the specific prohibitions against CRT and other “concepts” identified by the EO. Note that the sums are greater than the number of total measures because each measure can prohibit multiple types of content.

175. Keith, *supra* note 170, at 08:23, 11:12.

176. *Id.* at 11:34.

177. *Id.* at 12:00. The two dissenting board members gave equally eloquent speeches denouncing the resolution and stated that it was a “solution in search of a problem.” *Id.* at 13:45, 17:00.

178. An Act to Prohibit the Propagation of Divisive Concepts; To Review State Entity Training Materials; and For Other Purposes, S.B. 627, 93rd Gen. Assemb., Reg. Sess. (Ark. 2022).

179. ARK. CODE ANN. §§ 25-1-901 to 902 (2022).

180. *Id.*

181. See, e.g., Walter S. Gilliam, Angela N. Maupin, Chin R. Reyes, Maria Accavitti & Frederick Shic, *Do Early Educators’ Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions?*, YALE CHILD STUDY CTR. (Sept. 28, 2016), https://www.jsuhs.edu/scholars/files/2017/03/Preschool-Implicit-Bias-Policy-Brief_final_9_26_276766_5379.pdf [<https://perma.cc/ESA8-ZB9W>].

TABLE 3. ANTI-CRT MEASURES' "DIVISIVE CONCEPTS,"¹⁸² 2021 AND 2022

CONTENT PROHIBITED	INTRO'D	INTRO'D (%)	ADOPTED	ADOPTED (%)
	563		241	
CRITICAL RACE THEORY	200	35.5	108	44.8
1619 PROJECT	75	13.3	40	16.6
U.S. FUND RACIST	159	28.2	51	21.2
RESPONSIBILITY	229	40.7	60	24.9

¹⁸². In order (top to bottom), the prohibited concepts denote that a measure (1) invokes Critical Race Theory; (2) invokes the 1619 Project; or makes reference to specific terms which originated in E.O. 13950: that (3) the U.S. [or a state within the U.S.] is fundamentally racist or sexist; that (4) an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex; that (5) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; that (6) meritocracy or traits such as a hard work ethic are racist or sexist or were created by a particular race to oppress another race; or which (7) contain the actual terms "Divisive concepts" or "controversial issues." (8) "Not specified" means that the measure did not contain any of the concepts coded by the Tracking Project team.

Almost 30% of introduced efforts (160 out of 563) did not prohibit any of the content the Project coded for. For example, the Newberg School District in Oregon adopted a measure that targeted Black Lives Matter as political propaganda and forbade teachers from displaying flags and other symbols of it in their classrooms. *Newberg School District 29J Board of Directors Regular Board Meeting, Minutes*, NEWBERG SCH. DIST. (Aug. 10, 2021), https://www.newberg.k12.or.us/sites/default/files/fileattachments/district/meeting/51344/21-08-10_minutes_regular_approved_signed.pdf [<https://perma.cc/N2BW-NE6J>]. It required:

That the Newberg-Dundee School District Board of Directors direct the Superintendent to remove all Black Lives Matter (aka BLM) signs, flags, and placards, apparel, buttons, and all other modes of display, and all instances of the symbol known as the Pride Flag from District facilities immediately, and direct the Policy Committee to draft policy language prohibiting the display of political signs, flags, apparel, buttons, and placards, and all other modes of display from District facilities, with the sole exception of the American Flag and Oregon state flag, with exemptions as it sees proper. The language contained in this directive shall only apply to District staff and faculty while in the performance of their official duties as District employees.

Id. While this language is not explicitly anti-CRT or enumerated "divisive concepts," it is reflective to the same issues the anti-CRT movement claims to address.

GUILT	187	33.2	53	22.0
MERITOCRACY	176	31.3	45	18.7
DIVISIVE/ CONTROVERSIAL	120	21.3	50	20.7
NOT SPECIFIED	158	28.1	75	31.1

As shown in Table 3, Arkansas and District 49 exemplify many of the anti-CRT measures documented by the Project. Most frequently, introduced measures prohibited instruction that implied that students “bear[] responsibility for the past” (41%) or that would make “any person . . . feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex” (33%). In other words, a substantial proportion of introduced measures focus directly on innocence as a counter to race consciousness and resource redistribution.

In addition to prohibiting its misinformed version of CRT, the measures sometimes target the *New York Times*’ 1619 Project, a journalistic reconsideration of the role of race in the Founding. Since its release, conservatives have almost uniformly taken issue with the historical roots of the Project.¹⁸³ Others have argued that the 1619 Project undermines the story of American exceptionalism.¹⁸⁴

183. *Twelve Scholars Critique the 1619 Project and the New York Times Magazine Editor Responds*, HIST. NEWS NETWORK (Jan. 26, 2020), <https://historynewsnetwork.org/article/174140> [<https://perma.cc/YEC5-UQD2>].

184. See, e.g., Ian Rowe, *Perspective: Why Understanding America’s Exceptional History Builds Self-Reliance*, DESERET NEWS (June 29, 2022, 11:00 PM EDT), <https://www.deseret.com/2022/6/29/23178385/the-power-of-agency-alexander-hamilton-history-1619-project-founder-1776-democracy-in-america> [<https://perma.cc/E988-C2UN>] (“Yes, our nation has a flawed and tragic history and we have not always lived up to our founding ideals. Moreover, our schools should address this dark history. But our nation also has a beautiful and an inspiring past. It is a story—a uniquely American story—that chronicles the struggle to live up to those no-less-great principles in practice.”); Timothy Sandefur, *The Problem with the New York Times’ “1619 Project,”* GOLDWATER INST. (Aug. 21, 2019), https://www.goldwaterinstitute.org/the-problem-with-the-new-york-times-1619-project/?gclid=CjwKCAiAv9ucBhBXEiwA6N8nYI6HsdW7pgpgzToQ9lTlu9tormo4TES4W1oSIQVeaPthZoDIfYzpkBoCf5wQAvD_BwE [<https://perma.cc/SW45-UH9J>]; Jake Silverstein, *We Respond to the Historians Who Critiqued the 1619 Project*, N.Y. TIMES (Jan. 19, 2021), <https://www.nytimes.com/2019/12/20/magazine/we-respond-to-the-historians-who-critiqued-the-1619-project.html> [<https://perma.cc/NV3P-W2A3>]; Mike Gonzalez, *1619 and the Poisoned Well of Identity Politics*, HERITAGE FOUND. (Nov. 19, 2020), <https://www.heritage.org/education/commentary/1619-and-the-poisoned-well-identity-politics> [<https://perma.cc/5D2Y-9VGZ>].

But despite the national conservative uproar about the 1619 Project, only 13% of proposed measures sought to prohibit it. In general, individual lawmakers' attempts to resist racial redress through appeals to innocence seemingly outweigh their desire to promote American exceptionalism.

But lawmakers were most effective in *adopting* measures when targeting CRT and the 1619 Project. While only comprising one-third of introduced measures, almost half of all adopted measures invoke CRT. While 40% of introduced measures denounce holding anyone "responsible," only about a quarter of the adopted measures do so. The difference is essential; while any lawmaker or policymaker can introduce a measure banning CRT, those measures that are adopted garner broad support from other lawmakers and policymakers. Collectively, lawmakers are specifically targeting CRT and the 1619 Project.

Even though lawmakers did not adopt the measures that targeted "divisive concepts" at the same rate as they adopted measures against CRT and the 1619 Project, that may be of no practical matter. CRT and the 1619 Project insist on color consciousness to understand the nation's past and current racial disparities. Both directly challenge colorblindness as a value in a racially stratified society. Both CRT and the 1619 Project disavow innocence as a value to be privileged against honest discussion of race and racism. Despite the actual words used, colorblindness and innocence permeate the bans in whatever form they take.

C. *Educational Targets*

The importance of colorblindness and innocence to the anti-CRT movement is particularly evident in how the measures target educational institutions. Anti-CRT advocates argue for education that foregrounds American exceptionalism and sidelines contemporary and alternative accounts of systemic racism and unearned White privilege. The anti-CRT measures posit a legitimate curriculum as race-neutral and emotionally attentive to White peoples' lack of responsibility and White children's general innocence.

Lawmakers targeted K-12 schools for anti-CRT measures in over 90% of the 563 measures in 2021 and 2022.¹⁸⁵ Of the introduced efforts that target K-12 public schools, lawmakers have adopted 44% of them.¹⁸⁶

The measures introduced between 2021 and 2022 that target K-12 public schools primarily regulate teaching and curriculum. Of the 513 introduced measures that target K-12 institutions, 372 (73%) regulate classroom teaching, and 384 (75%) regulate curricular materials.¹⁸⁷ For example, the Mellen Board of

¹⁸⁵. See *infra* App'x, tbl.4.

¹⁸⁶. *Id.*

¹⁸⁷. See *infra* App'x, tbl.5.

Education in Wisconsin passed a curricular restriction on CRT—twice.¹⁸⁸ In March 2022, the Board of Education passed a revised board policy on “Controversial Issues in the Classroom,”¹⁸⁹ which was reported to “ban[] teaching critical race theory and any instruction of religion, sexual orientation, privilege, empathy or political orientation.”¹⁹⁰ The board revised the policy in June 2022 after the superintendent pushed back, calling it “impossible to teach kids without touching on all those subjects.”¹⁹¹

The new policy stated that the Board follows “Wisconsin Academic Standards, which do not include Critical Race Theory.”¹⁹² The policy goes on to state that the “curriculum and educational environment” will not allow “[t]eaching from a perspective that the United States and/or its legal system is systematically racist” (an appeal to colorblindness); “teaching that socialism and communism are morally superior to” capitalism; or teaching that someone “should feel guilt or shame” associated with “ethnicity, religion, race, or gender” (an appeal to innocence). While it nominally suggests that antiracism is a proper subject of study, the policy explicitly states that “[a]nti-racism [can] not be taught in association with CRT.”¹⁹³

188. Tom Stankard, *Mellen Schools Ban Critical Race Theory—Again*, ASHLAND DAILY PRESS (Apr. 23, 2022), https://www.apg-wi.com/ashland_daily_press/news/local/mellen-schools-ban-critical-race-theory---again/article_10fo29b6-ba77-56da-b93b-5aeob12ee331.html [https://perma.cc/JQ5B-VD9X].

189. *Controversial Issues in the Classroom*, MELLEN SCH. DIST. (July 26, 2022) [hereinafter *Controversial Issues Policy*], <http://go.boarddocs.com/wi/sdmel/Board.nsf/goto?open&id=CGPJP8487D46> [https://perma.cc/WT3D-YYNS]. This version is the June 2022 final version. The March 2022 resolution is described in the minutes as consisting of a

motion to ban any Critical Race Theory instruction in our school, anything related to it. Along with banning the CRT, eliminate any religious, sexual orientation, privilege, empathy and political orientation from any instruction in the school . . . [including] any building blocks, any supporting information or theory that goes along with it.

The minutes say that the March 2022 motion carried with five yeases and one member abstaining. *Meeting Minutes*, MELLEN SCH. DIST. (Mar. 16, 2022), <https://go.boarddocs.com/wi/sdmel/Board.nsf/goto?open&id=CGPJP8487D46> [https://perma.cc/Y62E-MG4A].

190. Stankard, *supra* note 188.

191. *Id.*

192. *Controversial Issues Policy*, *supra* note 189.

193. *Id.* In a letter to the Board, some teachers argued that “[a]ddressing these topics in a factual manner in a controlled, safe and neutral environment empowers students to be productive citizens as they continue to encounter these topics outside of our halls.” Stankard, *supra* note 188.

Over one-quarter of introduced anti-CRT measures targeting K-12 schools also seek to regulate teacher training, not only classroom teaching and curriculum. Measures that regulate “equity, diversity, and inclusion” efforts comprise about 15% of adopted measures. The Mellen School District’s policy is emblematic in its multifaceted targeting. For example, the policy also includes staff development. The policy required that

the topics of diversity, equity, and inclusion will be taught as general topics and not associated with race, sexual orientation or gender identity. Privilege will be taught as a general topic without being associated with race. Empathy will be taught as a general topic without being associated with privilege, race, sexual orientation or gender identity.¹⁹⁴

The policy effectively prohibits students from engaging in discussions of racism, sexism, and queer subordination and serves to erase and silence the experiences of people of color, women, and LGBTQ+ folks, including children.

Not only do some anti-CRT measures prohibit teaching certain concepts, but they also sometimes require schools to take affirmative action. Of the 513 introduced measures that target K-12 institutions, one-quarter mandate schools to provide curricular transparency, allow parents to opt their child out of specific instruction, and require a process by which books can be objected to and banned.¹⁹⁵

To recap: the above analysis presents a snapshot of the prevalence, timing, and targets of the anti-CRT measures through December 2022. The timing of the anti-CRT measures, especially those that represent a policy reversal, illustrates how the anti-CRT movement began and grew as a backlash to the racially progressive goals of the Black Lives Matter protests in 2020. These measures are widespread and find homes in state legislation and local school board policy and regulations. Regardless of the specifics, the measures’ text argue for colorblindness and innocence to resist the calls for race consciousness. This focus on children, colorblindness, and innocence connects the anti-CRT mobilization to its corollary: parents’ rights.

¹⁹⁴. *Controversial Issues Policy*, *supra* note 189.

¹⁹⁵. *Infra* App’x, tbl.6. Organizations such as the African American Policy Forum are addressing this problem of book bans. See BOOKS UNBANNED, <http://www.booksunbanned.org> [<https://perma.cc/V623-CTW9>].

III. THE CRUSADE FOR PARENTS' RIGHTS

On his website, House Speaker Kevin McCarthy declared future GOP electoral success by claiming that Democrats harbored hostility toward parents.¹⁹⁶ Democrat lawmakers, he claimed, “[w]ant to take power away from parents and hand over more control to politicians and teachers unions to dictate what our children should be taught in classrooms.”¹⁹⁷ As a counter, he declared that the “Republican Party is the Party of Parents and Education.”¹⁹⁸

McCarthy’s declaration reflects a common political theme. As a candidate, Republican Governor Glenn Youngkin ran on a platform explicitly linking CRT, schools, and parents.¹⁹⁹ State education-board candidates across the nation did the same in the 2021 and 2022 election cycles; for example, an October 2022 article highlighted the Texas Board of Education races, in which thirty-three candidates were vying for fifteen seats.²⁰⁰ Some candidates, targeting parents, explicitly campaigned on anti-CRT platforms.²⁰¹ According to some commentators,

196. *Parents Bill of Rights*, SPEAKER OF HOUSE (Nov. 17, 2021), <https://www.speaker.gov/parents-bill-of-rights> [<https://perma.cc/S2WL-YYEJ>] (“Parents Bill of Rights: 1. Right to know what’s being taught in schools and to see reading material; 2. Right to be heard; 3. Right to see school and budget spending; 4. Right to protect their child’s privacy; 5. Right to be updated on any violent activity at school.”). Also note the dig at teachers’ unions: while it is beyond the scope of this Feature, the anti-CRT backlash has an overstory of hostility to public institutions in general.

197. *Id.*

198. *Id.*

199. Paul Schwartzman, *In Tight Governor’s Race, Virginia GOP Targeting Critical Race Theory to Draw Votes*, WASH. POST (Oct. 2, 2021, 6:00 AM EDT), https://www.washingtonpost.com/local/virginia-politics/critical-race-theory-virginia-governor-youngkin/2021/10/01/17ad45fo-1cc8-11ec-8380-5fbadbc43cf8_story.html [<https://perma.cc/2JHR-97Q3>].

200. Brian Lopez, *Why All Eyes Are Now on the Often Ignored Texas Board of Education Races*, TEX. TRIB. (Oct. 27, 2022, 5:00 AM CT) [hereinafter, Lopez, *Why All Eyes Are Now on the Often Ignored Texas Board of Education Races*], <https://www.texastribune.org/2022/10/27/critical-race-theory-state-board-education> [<https://perma.cc/L9NZ-BGY7>]. Several of the candidates prevailed in their races. Brian Lopez, *Texas Republicans Against ‘Critical Race Theory’ Win Seats on the State Board of Education, Strengthening Its GOP Majority*, TEX. TRIB. (Nov. 9, 2022, 3:58 PM CST), <https://www.wfaa.com/article/news/state/texas-republicans-against-critical-race-theory-win-seats-on-the-state-board-of-education/287-bdb8ed5e-cc7e-4e41-b3b2-4fbcde5155b5> [<https://perma.cc/XPP5-RBU2>] (reporting election results for anti-CRT Republican candidates during the midterm elections).

201. Lopez, *Why All Eyes Are Now on the Often Ignored Texas Board of Education Races*, *supra* note 200.

the politicization of parental rights will likely continue to play a role through the 2024 Presidential election cycle.²⁰²

In this Part, I show how parents' rights mobilize parents as political warriors to fight CRT in schools, in the name of protecting their children's innocence.²⁰³ As of December 31, 2022, lawmakers in thirty-four states introduced bills to give parents robust control over their children's education.²⁰⁴ The movements' proponents position parents' rights as weapons against CRT even in the absence of

202. See Michelle L. Price, *Schools Become Flashpoint for Republicans Eyeing 2024 Presidential Race*, PBS (Feb. 12, 2023, 3:20 PM EST), <https://www.pbs.org/newshour/politics/schools-become-flashpoint-for-republicans-eyeing-2024-presidential-race> [https://perma.cc/7AH7-LDBF] ("In the opening stages of the 2024 GOP presidential race, the 'parents' rights' movement and lessons for schoolchildren are emerging as flashpoints."). Parents' rights have featured prominently in many recent political controversies associated with COVID-19 pandemic, including those over vaccinations, school closures, and masking. See, e.g., Marjorie Cortez, *From Bake Sales to Ballot Boxes: How the Pandemic Intensified Parent Activism*, DESERET NEWS (Apr. 12, 2022, 8:06 PM EST), <https://www.deseret.com/utah/2022/4/12/23022017/parents-public-schools-covid-19-bake-sales-ballot-boxes-how-the-pandemic-intensified-parent-activism> [https://perma.cc/3M8A-7XGU]; Sarah Mervosh & Giulia Heyward, *The School Culture Wars: 'You Have Brought Division to Us,'* N.Y. TIMES (Nov. 8, 2021), <https://www.nytimes.com/2021/08/18/us/schools-covid-critical-race-theory-masks-gender.html> [https://perma.cc/6BSZ-6L86] ("The tense environment comes amid a growing movement to recall school board officials, over everything from teachings on race to school closures."); Ron DeSantis (@GovRonDeSantis), TWITTER (Oct. 20, 2022, 1:51 PM), <https://twitter.com/RonDeSantisFL/status/1583167098234105856> [https://perma.cc/D5ZA-MLWP] ("As long as I'm around, as long as I'm kicking and screaming, there will be no COVID shot mandates for your kids. That is your decision to make as a parent."); Joshua Q. Nelson, *California Parents Petition SCOTUS over Gavin Newsom's COVID-Induced School Closures*, FOX NEWS (Sept. 19, 2022, 9:23 PM EDT), <https://www.foxnews.com/media/california-parents-petition-scotus-gavin-newsoms-covid-induced-school-closures> [https://perma.cc/DK4S-UXBE]; V.A. CODE ANN. § 22.1-2.1 (West 2022) ("[T]he parent of any child enrolled in a public elementary or secondary school, or in any school-based early childhood care and education program, may elect for such child to not wear a mask while on school property.").

203. See CHRISTOPHER PASLAY, *A PARENT'S GUIDE TO CRITICAL RACE THEORY: FIGHTING CRT IN YOUR CHILD'S SCHOOL 7-8* (2021); see also CHRISTOPHER F. RUFO, *PARENT GUIDEBOOK: FIGHTING CRITICAL RACE THEORY IN K-12 SCHOOLS 7* (2021), <https://s3.documentcloud.org/documents/21190276/parent-guidebook-updated.pdf> [https://perma.cc/4JPS-GFAU] ("To successfully fight against critical race theory, we must adopt language that is trenchant and persuasive, and resonates with the public.").

204. I consulted three sources to understand the parents' rights movement in connection with the anti-CRT movement. First, I conducted an extensive media search to reveal publicized state-level parents' rights legislation and activity. Second, I supplemented that search with a state-by-state search for parents' rights bills in legislative records. Lastly, from the CRT Forward Tracking database, I consulted all state-level bills targeting K-12 education that required curricular surveillance and transparency to investigate if I missed a contemporary parents' rights

official anti-CRT legislation or policy. The parents' rights movement recreates race contestations, but it changes the terms of the debate from political disagreements about curriculum to foundational struggles over educational control. This framing pits fundamental parental rights against antiracist efforts.

While the anti-CRT measures may not require much of school districts, the parents' rights mobilization is more expansive in its demands, using the rhetoric of parents' rights to act even in the absence of official government bans on CRT. Conservative organizations bolster the parents' rights mobilization by disseminating parents' rights anti-CRT guidebooks that instruct parents on how to vindicate these rights.²⁰⁵ It deputizes parents as teaching and curriculum watchdogs, giving them the right to inspect curricula on demand, investigate an

measure. Here, I describe only those state-level pieces of proposed legislation that style themselves specifically as parents' rights measures and only one from each state, as states often have multiple introduced bills with identical content from different branches of the legislature. I then coded all the parents' rights legislative activities for several attributes, including the source of parental rights; parental behavior allowed; what parents need to be informed about; concepts targeted; and consequences for violations, among others. The thirty-four statutes are H.B. 2161, 55th Leg., 2d Reg. Sess. (Ariz. 2022); H.B. 1464, 93d Gen. Assemb., Reg. Sess. (Ark. 2021); Assemb. 1785, 2022 Leg., Reg. Sess. (Cal. 2022); H.B. 22-1236, 73d Gen. Assemb., 2d Reg. Sess. (Colo. 2022); H.B. 241, 2021 Leg., Reg. Sess. (Fla. 2021); H.B. 1178, 2022 Gen. Assemb., Reg. Sess. (Ga. 2022); H.B. 2295, 31st Leg., Reg. Sess. (Haw. 2022); H.B. 5505, 102d Gen. Assemb., Reg. Sess. (Ill. 2022); H.B. 1134, 122d Gen. Assemb., 2d Reg. Sess. (Ind. 2022); S.B. 3079, 89th Gen. Assemb., Reg. Sess. (Iowa 2022); S.B. 58, 2022 Leg., Reg. Sess. (Kan. 2022); H.B. 487, 2022 Gen. Assemb., Reg. Sess. (Ky. 2022); H.B. 369, 2022 Leg., Reg. Sess. (La. 2022); H.B. 618, 2022 Gen. Assemb., Reg. Sess. (Md. 2022); S.B. 107, 101st Leg., Reg. Sess. (Mich. 2022); S.B. 2575, 2022 Leg., 92d Sess. (Minn. 2022); S.B. 2881, 2022 Leg., Reg. Sess. (Miss. 2022); H.B. 1755, 101st Gen. Assemb., 2d Reg. Sess. (Mo. 2022); S.B. 400, 67th Leg., Reg. Sess. (Mont. 2021); Leg. 1158, 107th Leg., 2d Sess. (Neb. 2022); H.B. 1431, 2022 Leg., Reg. Sess. (N.H. 2022); S.B. 2919, 220th Leg., Reg. Sess. (N.J. 2022); H.B. 755, 2021 Gen. Assemb., Reg. Sess. (N.C. 2021); H.B. 616, 134th Gen. Assemb., Reg. Sess. (Ohio 2022); H.B. 4318, 58th Leg., 2d Sess. (Okla. 2022); S.B. 996, 2022 Gen. Assemb., Reg. Sess. (Pa. 2022); S.B. 2516, 2022 Gen. Assemb., Reg. Sess. (R.I. 2022); H.B. 4555, 2022 Gen. Assemb., 124th Sess. (S.C. 2021); H.B. 1246, 97th Leg., Reg. Sess. (S.D. 2022); S.B. 2360, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022); H.B. 1126, 2022 Gen. Assemb., Reg. Sess. (Va. 2022); H.B. 2087, 67th Leg., Reg. Sess. (Wash. 2022); A.B. 963, 2022 Leg., Reg. Sess. (Wis. 2022); and S.B. 62, 2022 Leg., Reg. Sess. (Wyo. 2022).

205. See, e.g., PASLAY, *supra* note 203; RUFO, *supra* note 203; *Your Child's Rights and What to Do About Them: A Parent's Guide to Saving America's Public Schools*, SE. LEGAL FOUND. (May 12, 2022), <https://www.slfliberty.org/wp-content/uploads/sites/12/2022/05/SLFParentGuidebook.pdf> [<https://perma.cc/2NCC-LCFF>]; *Parents' Toolkit on Critical Theory in Education and Healthcare*, ALL. DEFENDING FREEDOM (2022), <https://wpsmc.adflegal.org/wp-content/uploads/2022/06/parental-rights-toolkit-final.pdf> [<https://perma.cc/S2FP-JYFL>]; *Woke Schooling: A Toolkit for Concerned Parents*, MANHATTAN INST. (June 17, 2021), <https://media4.manhattan-institute.org/sites/default/files/woke-schooling-toolkit-for-concerned-parents.pdf> [<https://perma.cc/V7KK-D9LW>].

individual teacher's lesson plans without that teacher's permission, and opt students out of lessons parents disagree with, all in the service of excising CRT from schools.

Parents have a special status in education law and policy, a status that the anti-CRT and parents' rights mobilizations use to restrict truth in education. Parental legislative efforts contribute to the retrenchment sought by the anti-CRT movement by codifying White interests in legislation. Again, the parents' rights movement also features the work of conservative organizations claiming to educate parents on how to resist CRT.

Across the board, parents' rights bills give parents affirmative rights in service of "transparency." For example, lawmakers' parents' rights legislation most often requires schools to permit parental inspection of the curriculum on demand.²⁰⁶ Of thirty-four bills analyzed, over two-thirds of proposed measures grant parents the right to inspect curricula; one-third included giving a parent the right to opt their children out of specific curriculum; and five percent granted parents the right to conduct surveillance on teachers, including classroom recording and lesson plans.²⁰⁷

A. Curricular Transparency

As parents, we ought to have the ability to see exactly what is being taught in the classroom, which can not only impact the educational success of students, but the people that they become. . . . This legislation would bring much-needed transparency without forcing parents to jump through hoops to find out what their child is learning. By viewing the curriculum, parents will have the opportunity to better decide if it suits their child's academic needs.²⁰⁸

Writing for Illinois State Senate Republicans, Senator Neil Anderson articulates how the parents' rights movement uses the relationships between parents and schools separate from any official action.

²⁰⁶. See *infra* App'x, tbl.7.

²⁰⁷. *Id.* Note that the percentages do not add to 100 because each bill can grant more than one of these rights.

²⁰⁸. *Senate Republicans Push to Empower Parents in Their Children's Education*, SEN. NEIL ANDERSON (Feb. 24, 2022), <https://senatorneilanderson.com/2022/02/24/senate-republicans-push-to-empower-parents-in-their-childrens-education> [<https://perma.cc/6D2X-3QKQ>].

For example, through December 2022, Illinois lawmakers introduced three parents' rights bills.²⁰⁹ One bill cites the state's constitutional obligation to provide high-quality education,²¹⁰ and a "high quality educational institution and service is fundamentally undermined when parents cannot trust the quality of education provided to their children."²¹¹ Accordingly, the bill requires school boards to "ensure that parents, legal guardians, students, and members of the public can access public school curriculum in a manner that provides clear access, immediacy, and transparency to curriculum in public schools."²¹²

Seemingly neutral "curricular transparency" reinforces the inaccurate rhetoric about CRT and promotes an ethos hostile to CRT. The false caricature is by design; Christopher Rufo suggests that "transparency" was a powerful concept to promote anti-CRT measures through the vehicle of parents' rights. As he wrote on Twitter, "The strategy here is to use a non-threatening, liberal value — 'transparency' — to force ideological actors to undergo public scrutiny. It's a rhetorically advantageous position and, when enacted, will give parents a powerful check on bureaucratic power."²¹³

Of course, rights come with responsibilities. These measures require school districts to display curricula on their websites or have plans and policies allowing parents to access that information easily. For example, Nebraska lawmakers introduced Legislative Bill 1158, a measure to "change provisions relating to parental involvement in education policies."²¹⁴ It requires school districts to "develop and adopt a policy stating how the district will involve parents and guardians in the schools," including the right to "[a]ccess schools, learning materials, testing information, and curriculum matters."²¹⁵ The policies must be "developed with

209. See Samantha Smylie, *While Red States Debate CRT, Illinois Looks at Curriculum Transparency*, CHALKBEAT CHI. (Mar. 1, 2022, 5:17 PM EST), <https://chicago.chalkbeat.org/2022/3/1/22957083/illinois-legislation-curriculum-transparency-critical-race-theory-bill> [<https://perma.cc/6UX6-9GFD>].

210. H.B. 5505, 102d Gen. Assemb., Reg. Sess. (Ill. 2022). In a previous paper, I compiled the state constitutional provisions on the states' obligations to provide education. See Baldwin Clark, *supra* note 28, 588-89 & nn.96-102.

211. Ill. H.B. 5505.

212. *Id.*

213. Christopher F. Rufo (@realchrisrufo), TWITTER (Jan. 7, 2022, 1:10 PM), <https://twitter.com/realchrisrufo/status/1479515716822781952> [<https://perma.cc/S3U6-88ZH>].

214. L.B. 1158, 107th Leg., 2d Sess. (Neb. 2022). As of April 20, 2022, this bill is still pending in the Nebraska legislature. *LB1158*, NEB. LEGISLATURE (Apr. 20, 2022), https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=47395 [<https://perma.cc/W7ZW-NP3L>].

215. Neb. L.B. 1158.

input from parents and guardians” and subject to a public hearing before adoption.²¹⁶ This development came after the Nebraska attorney general signed a letter to the federal DOE, which implied that the DOE’s civics instruction incorporated CRT.²¹⁷

Nebraska is not alone. The Indiana Attorney General promulgated a guidebook to provide a “roadmap for Hoosier parents and caregivers to exercise their legal right to have a voice in their children’s education.”²¹⁸ It specifically named parental participation in education as “the single most important factor in assuring school accountability under the law.”²¹⁹ Other states with introduced bills require the same type of curricular transparency for parents.²²⁰

Outside of legislative activities, parents’ rights advocacy groups guide parents in how to insist on anti-CRT curriculum transparency, linking parents’ rights to the war against CRT. For example, the Alliance Defending Freedom (ADF), in its “Parents’ Toolkit on Critical Theory,” tells parents that they “should have the right to review all instructional materials that are used in public schools.”²²¹ Rufo’s guidebook instructs parents to identify “a specific goal”: “For example, you might want to force the resignation of an uncooperative superintendent, persuade the school board to ban critical race theory, or lobby for a curriculum transparency resolution.”²²² These guidebooks are typical in how they explicitly connect parents’ rights to the anti-CRT movement and show that the parents’ rights movement is not only legislative.

B. Educator Surveillance

The parents’ rights movement does not stop at insisting upon curricula transparency. Only two of the proposed legislative measures I discuss in this Fea-

216. *Id.*

217. See Letter from Todd Rokita, *supra* note 140.

218. *Parents Bill of Rights*, IND. ATT’Y GEN. (June 23, 2021), https://content.govdelivery.com/attachments/INAG/2021/06/23/file_attachments/1861340/Parents%20Bill%20of%20Rights.pdf [<https://perma.cc/J4XR-SAJF>].

219. *Id.* at 1.

220. This number includes bills introduced in Arizona, Arkansas, California, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, Wisconsin, and Wyoming.

221. *Parents’ Toolkit on Critical Theory in Education and Healthcare*, *supra* note 205, at 4.

222. RUFO, *supra* note 203, at 5 (emphasis omitted).

ture expressly grant parents the right to investigate what happens in the classroom beyond the official curriculum.²²³ But the parents' rights movement instructs parents on how to surveil teachers. For example, ADF guides parents on how to file Freedom of Information Act requests, instructing them to be precise, such as by requesting "to copy or inspect textbooks and written or online materials that were used in a specific class or activity during a specific time frame."²²⁴

Florida state lawmakers proposed a measure that would dramatically increase teacher surveillance. Soon after passing anti-CRT legislation, state lawmakers introduced a parents' rights bill requiring school districts to place video cameras in public-school classrooms.²²⁵ These cameras would "visually monitor[] and record[] all areas of the classroom" as well as "record[] audio from all areas of the classroom."²²⁶ The bill claims to forbid the recordings' use for "teacher evaluations or any purpose other than for ensuring the health, safety, and well-being of students in the classroom."²²⁷ But even if the district does not use such recordings for teacher discipline, the mere fact of surveillance can powerfully chill teachers' ability to carry out their teaching responsibilities.²²⁸

A law introduced by Louisiana lawmakers is similar in outcome, if not method. Current law requires that parents be allowed to examine textbooks and curricula.²²⁹ Louisiana's proposed parents' bill of rights would give public-school

223. See S. 2360, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022); A.B. 963, 2022 Leg., Reg. Sess. (Wis. 2022).

224. *Parents' Toolkit on Critical Theory in Education and Healthcare*, *supra* note 205, at 16.

225. H.B. 1055, 2022 Leg., Reg. Sess. (Fla. 2022).

226. *Id.*

227. *Id.*

228. While beyond the scope of this Feature, recent evidence shows that the anti-CRT and parents' rights movements are having a chilling effect on teachers. See Mica Pollock, John Rogers, Alexander Kwako, Andrew Matschiner, Reed Kendall, Cicely Bingener, Erika Reece, Benjamin Kennedy & Jaleel Howard, *The Conflict Campaign: Exploring Local Experiences of the Campaign to Ban "Critical Race Theory" in Public K-12 Education in the U.S., 2020-2021*, UCLA INST. FOR DEMOCRACY, EDUC. & ACCESS 8-9 (Jan. 2022), <https://idea.gseis.ucla.edu/publications/the-conflict-campaign/publications/files/the-conflict-campaign-report> [<https://perma.cc/H5RL-RPFB>]; John Rogers & Joseph Kahne, *Educating for a Diverse Democracy: The Chilling Role of Political Conflict in Blue, Purple, and Red Communities*, UCLA INST. FOR DEMOCRACY, EDUC. & ACCESS (Nov. 2022), <https://idea.gseis.ucla.edu/publications/files/diverse-democracy-report> [<https://perma.cc/8H8A-JGB6>]. Groups such as the ACLU are pursuing a litigation strategy that fights the anti-CRT bills as First Amendment restrictions on teachers' speech. See *Defending Our Right to Learn*, ACLU (Mar. 10, 2022), <https://www.aclu.org/news/free-speech/defending-our-right-to-learn> [<https://perma.cc/BE97-2933>].

229. LA. STAT. ANN. § 17:355 (2022).

parents access not only to the curriculum but also the right to “examine the lessons . . . and supplemental material used in their child’s classroom.”²³⁰ Other states’ bills propose granting a similar entitlement; for example, Arizona’s Senate Bill 1211 requires schools to post lists of “instructional handouts and worksheets” online for parents’ inspection.²³¹ One guide instructs parents to

[f]irst, and most importantly, examine the materials your child is bringing home from school. CRT that directly and overtly targets your children will often be the most powerful example to motivate other parents and people in your community. You should also examine the materials teachers are using to prepare their lesson plans.²³²

Adding a right to examine lesson plans encourages parents to monitor the day-to-day work of teaching. This inspection goes beyond transparency in the curriculum. It monitors how the teacher manages and instructs in the classroom and interferes with instruction. This fear of monitoring is the point; according to a spokesperson for a Nevada parents’ rights organization, “[t]eachers are increasingly imposing their own political views and are undermining parental views and values. Creating a record that could be viewed by appropriate parties, if necessary, might be the best way to urge teachers to stick to traditional teaching.”²³³

Outside of the official legislative efforts to grant parents expansive rights over schools, some states have created surveillance partnerships between state officials and parents.²³⁴ For example, in North Carolina, Lieutenant Governor Mark Robinson convened a task force called F.A.C.T.S., an acronym for “Fairness and Accountability in the Classroom for Teachers and Students.”²³⁵ Robinson

²³⁰. H.B. 356, 2022 Leg., Reg. Sess. (La. 2022).

²³¹. S.B. 1211, 55th Leg., 2d Reg. Sess. (Ariz. 2022).

²³². *Combating Critical Race Theory in Your Community: An A to Z Guide on How to Stop Critical Race Theory and Reclaim Your Local School Board*, CITIZENS FOR RENEWING AM. 13 (June 8, 2021), <https://citizensrenewingamerica.com/wp-content/uploads/2021/06/Final-Draft-Stop-Critical-Race-Theory-w-Hyperlinks.pdf> [<https://perma.cc/EU53-QAKP>] (emphasis omitted).

²³³. Naaz Modan, *Teacher Monitoring Proposals Spread*, K-12 DIVE (Feb. 8, 2022), <https://www.k12dive.com/news/teacher-monitoring-proposals-spread/618488> [<https://perma.cc/YJ6D-Y92D>].

²³⁴. See, e.g., Devon Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1494 (2016).

²³⁵. *F.A.C.T.S Task Force: Fairness and Accountability in the Classroom for Teachers and Students*, LIEUTENANT GOVERNOR MARK ROBINSON, <https://ltgov.nc.gov/facts> [<https://perma.cc/H654-EWX7>].

convened the task force to investigate what he called “alleged cases of indoctrination” in the state’s public schools.²³⁶ The F.A.C.T.S. website empowers community members, especially parents, to anonymously report on teachers. The site encourages parents to submit examples of

discrimination or harassment related to a student’s faith, ethnicity, worldview, or political beliefs; . . . unequal, inconsistent, or disparate treatment of students in the enforcement of school rules and/or in disciplinary matters; . . . students being subjected to indoctrination according to a political agenda or ideology, whether through assigned work, teacher comments, or a hostile classroom environment; . . . students being required to disclose details regarding their individual race/ethnicity, sexual preference, religious ideology, or economic status; . . . students being exposed to inappropriate content or subject matter in the classroom, including matters relating to substance abuse, profanity, or of a sexual nature.²³⁷

In August 2021, F.A.C.T.S. issued a report: “Indoctrination in North Carolina Public Education,”²³⁸ allegedly based on over 500 submissions.²³⁹ The report cited a parent who claimed that her child’s teacher was engaging in indoctrination. In the submission, the parent alleged to have overheard (during online learning) their child’s sixth-grade vocabulary lesson, asserting that the class included “critical race theory ‘buzz’ words such as: bias, discrimination, equity, inequity, racist, etc.”²⁴⁰ This parent complained that “it seems to me every time I listen in to his English class they are covering some topic of social justice ideology and very little learning grammar and composition.”²⁴¹ Another parent report complained that their son “came and got [her]” during distance learning so she could hear the conversation about a lesson that challenged having White male slaveholders on American currency.²⁴²

²³⁶ *Indoctrination in North Carolina Public Education Report Summary*, OFF. LIEUTENANT GOVERNOR MARK ROBINSON 4 (Aug. 24, 2021), <https://drive.google.com/file/d/1NfHOOpZGD4Ee-HcGD6y1AeVBuGUZkpNUia/view> [<https://perma.cc/YZ9R-6WLC>].

²³⁷ *F.A.C.T.S. Task Force*, *supra* note 235.

²³⁸ *Indoctrination in North Carolina Public Education Report Summary*, *supra* note 236.

²³⁹ *F.A.C.T.S. Submission Form Results*, F.A.C.T.S., <https://drive.google.com/file/d/1Xbnfd5Ffs2YoNLGEGPXHJyHbUE5VZr-F/view> [<https://perma.cc/3SS2-BR3R>].

²⁴⁰ *Id.* at 555. Of course, these concepts are not unique to CRT.

²⁴¹ *Id.*

²⁴² *Id.* at 721.

In Virginia, Youngkin created a “tip-line” email address for parents to report teachers’ efforts to “indoctrinate” that may not be apparent in the official curriculum.²⁴³ The email exists for “parents to send us any instances where they feel that their fundamental rights are being violated, where their children are not being respected and where [there are] inherent divisive practices in their schools.”²⁴⁴ In an interview, Youngkin stated: “[W]e’re asking for input right from parents so we can go right to the source.”²⁴⁵ As he told news media that “the email tipline allows parents to report teachers ‘behaving objectionably.’”²⁴⁶

Youngkin’s website came after the New Hampshire Department of Education created a similar mode of surveillance, where it constructed an internet portal to “provide[] parents with an online site to address concerns that their child may have been discriminated against.”²⁴⁷ Other states have proposed or created similar surveillance apparatus. A West Virginia state lawmaker introduced Senate Bill 587, which provides “a tip line within the Office of the Governor for parents and students in public schools in West Virginia to report the teaching of Critical Race Theory (CRT).”²⁴⁸ The Missouri Attorney General’s office provides parents with an online form “to submit information about objectionable curriculum like Critical Race Theory.”²⁴⁹ New Jersey lawmakers introduced a bill requiring school districts to “establish and maintain a toll-free telephone hotline and email inbox for parents and guardians to report the teaching of critical race theory in public schools.”²⁵⁰

These efforts suggest that parents and children should engage in surveillance. For example, the ADF guidebook encourages parents to “ask their children to tell them about any discussions, that stigmatize students because of their race,

243. Carly Mayberry, *Glenn Youngkin Sets up Tip Line for Parents to Report CRT, Despite Not Being in Curriculum*, NEWSWEEK (Jan. 25, 2022, 1:17 PM EST), <https://www.newsweek.com/glenn-youngkin-sets-tip-line-parents-report-crt-despite-not-being-curriculum-1672741> [<https://perma.cc/32V7-KH8M>].

244. *Id.*

245. *Id.*

246. Damien Fisher, *Youngkin Follows NH’s Lead with Anti-CRT ‘Tip Line,’* NH J. (Jan. 25, 2022), <https://nhjournal.com/youngkin-follows-nhs-lead-with-anti-crt-tip-line> [<https://perma.cc/RD3P-5NVZ>].

247. *Id.*

248. S.B. 587, 2022 Leg., Reg. Sess. (W. Va. 2022) (providing for a tip line to report teaching of CRT).

249. *Students First Submission Form*, ERIC SCHMITT MO. ATT’Y GEN., <https://ago.mo.gov/other-resources/students-first-initiative> [<https://perma.cc/JQ3X-QAGR>].

250. S.B. 2919, 220th Leg., Reg. Sess. (N.J. 2022) (establishing a “Parents’ Bill of Rights” that declares the “fundamental right of parents to direct the upbringing, education, and care of their minor children”).

religion, sex, sexual orientation, or gender identity.”²⁵¹ In his instruction to “[g]ather evidence,” Rufo tells parents to “[f]irst, talk to your kids about what they’re learning in school.”²⁵² The guidebooks give parents tools and ideas beyond reference to any official grants of rights.

To conclude, this Part has shown how state lawmakers, having targeted K-12 public schools for anti-CRT efforts, contemporaneously introduced parents’ rights measures as adjuncts to the surveillance and transparency goals of the anti-CRT bans. It demonstrates how the parents’ rights movement does not depend on explicit legislative permission to fight CRT. While not explicit in parents’ rights legislation, this analysis shows that the organized parents’ rights movement is intertwined with the anti-CRT movement, justifying the “twin” movement moniker. Accordingly, the anti-CRT focus on colorblindness and innocence must also be considered a focus of the parents’ rights movement. The twin movements demonize schools as hotbeds of color-conscious (anti-White) racist indoctrination, thus positioning (White) parents as brave protectors of their innocent (White) children.

IV. CRITICALLY RACIALIZING PARENTS’ RIGHTS

Why racialize parents’ rights? Because parents’ rights are a relatively unexplored driver in the legal literature of the consolidation of racial power and because schools are critical institutions in the production and reproduction of racial subordination. My use of the term “racialization” refers to the process of ascribing racial meaning—particularly, Whiteness—to parents’ rights. Sociologists Omi and Winant define racialization as “the extension of racial meaning to a previously racially unclassified relationship, social practice, or group.”²⁵³ As I have argued above and will further explain here, invoking parents’ rights in schools is such a “previously racially unclassified . . . social practice.”

Despite its insistence on the importance of colorblindness and declaration of innocence, the anti-CRT and parents’ rights movement are quite color conscious; they presume Whiteness is under attack and thus in need of protection. To critically analyze this racialization, I aim to interrogate this process as it fits into the CRT project of understanding how even a fraction of racial progress can spark a backlash and lead to racial retrenchment in other forms. In encouraging and advancing the aims of the anti-CRT movement, the parents’ rights movement forms a key component of protecting racial hegemony. In this context, parents’ rights really mean *White* parents’ rights.

251. *Parents’ Toolkit on Critical Theory in Education and Healthcare*, *supra* note 205, at 6.

252. RUFO, *supra* note 203, at 5.

253. OMI & WINANT, *supra* note 62, at 111.

The anti-CRT movement reflects current Supreme Court doctrine that denies the imbalanced experience of race for, on the one hand, racially subordinated groups and, on the other hand, racially superordinate groups. For example, consider Chief Justice Robert's closing statement in *Parents Involved in Community Schools*, a case in which the Court invalidated a voluntary desegregation program.²⁵⁴ He wrote, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."²⁵⁵ In that sentence, the Chief Justice encapsulated how colorblindness and racial innocence work in the cycle of education reform followed by educational retrenchment. Under Robert's reasoning, "race" is a superficial identity; thus, distinguishing by race is to "discriminate," a decidedly negative concept in our legal imagination. One being "discriminated" against conjures up an individual who, through no other fact than their race, has been wronged by color consciousness. In this view, a commitment to colorblindness requires law to protect those unfairly denied benefits—the White innocent.²⁵⁶

In the first two Sections of this Part, I explicitly situate the twin movements in the CRT critiques of colorblindness and innocence. In doing so, I illustrate how the anti-CRT and parents' rights movements use seemingly race-neutral rhetoric to retrench racial subordination. Despite their likely protestations otherwise, the anti-CRT and parents' rights movements are quite color conscious and only selectively protective of White children's innocence. In the last Section, I show how using this frame illuminates a relatively underexplored area for CRT: the influence of parental power on educational policy to protect Whiteness.

A. *From Colorblind to White Color Conscious*

In December 2021, Florida Governor Ron DeSantis invoked Martin Luther King, Jr. to extol the moral importance of colorblindness: "You think about what MLK stood for. He said he didn't want people judged on the color of their skin, but on the content of their character. . . . You listen to some people nowadays, they don't talk about that."²⁵⁷

²⁵⁴. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

²⁵⁵. *Id.* at 748.

²⁵⁶. *Id.* at 718-19.

²⁵⁷. Timothy Bella, *DeSantis Invokes MLK as He Proposes Stop Woke Act Against Critical Race Theory*, WASH. POST (Dec. 15, 2021, 3:59 PM EST), <https://www.washingtonpost.com/politics/2021/12/15/desantis-stop-woke-act-mlk-crt> [https://perma.cc/UMR3-2PHL].

Others in the anti-CRT movement have similarly coopted MLK's "Dream,"²⁵⁸ displayed by headlines like "*Critical Race Theory Resegregation Is Undoing All of MLK's Gains.*"²⁵⁹ Guidebooks invoke MLK, insisting he would sympathize with their cause; one says: "To the parents fighting against CRT: You are on the right side of history. The pushback against CRT is an organic extension of the Civil Rights Movement and falls directly in line with Dr. Martin Luther King Jr.'s 'Dream.'"²⁶⁰ Likewise, the Manhattan Institute writes:

[Parents] believe, as Martin Luther King, Jr., said, that people should be judged not by the color of their skin but by the content of their character. This is precisely why they are ill at ease with critical pedagogy, with its emphasis on teaching children that their skin color does matter—and that it is perhaps the only thing that matters.²⁶¹

The movements invoke MLK to support the proposition that race is only skin deep, an otherwise irrelevant characteristic. This characterization of race relies on a phenotype-centric notion of race, what Neil Gotanda calls "formal

258. *Read Martin Luther King Jr.'s 'I Have a Dream' Speech in its Entirety*, NPR (Jan. 16, 2023, 10:32 AM ET), <https://www.npr.org/2010/01/18/122701268/i-have-a-dream-speech-in-its-entirety> [<https://perma.cc/GH2C-FS45>] ("I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.").

259. See, e.g., Alveda King, *Critical Race Theory Resegregation Is Undoing All of MLK's Gains*, N.Y. POST (Nov. 1, 2021, 10:14 PM), <https://nypost.com/2021/11/01/critical-race-theory-resegregation-is-undoing-all-of-mlks-gains> [<https://perma.cc/P2VG-VWN8>]. Others have vigorously pushed back against this characterization of MLK's work and beliefs. Ja'hlan Jones, *MLK Jr. Would've Despised the GOP's 'Anti-CRT' Push*, MSNBC (Jan. 17, 2022, 1:22 PM EST), <https://www.msnbc.com/the-reidout/reidout-blog/mlk-jr-ve-despised-gops-anti-crt-push-just-read-words-rcna12307> [<https://perma.cc/GU24-XSZ2>] (quoting statements by Martin Luther King, Jr., which suggest that he would have supported CRT); Kimberlé Williams Crenshaw, *Op-Ed: King Was a Critical Race Theorist Before There Was a Name for It*, L.A. TIMES (Jan. 17, 2022, 4:15 AM PT), <https://www.latimes.com/opinion/story/2022-01-17/critical-race-theory-martin-luther-king> [<https://perma.cc/TA7F-5MFZ>]; Ibram X. Kendi, *The Second Assassination of Martin Luther King Jr.*, ATLANTIC (Oct. 14, 2021), <https://www.theatlantic.com/ideas/archive/2021/10/martin-luther-king-critical-race-theory/620367> [<https://perma.cc/P9NT-ZVE7>].

260. PASLAY, *supra* note 203, at 8. Ironically, parents in some states have sought to ban books about MLK, claiming such books traumatize White children. Igor Derysh, *Right-Wing Moms Group Wants to Use Tennessee's "Critical Race Theory" Law to Ban MLK Jr. Book*, SALON (Nov. 30, 2021, 12:09 PM EST), <https://www.salon.com/2021/11/30/right-wing-moms-group-wants-to-use-tennessees-critical-race-theory-law-to-ban-mlk-jr-book> [<https://perma.cc/85U3-6JA9>]; see *Combating Critical Race Theory in Your Community*, *supra* note 232, at 2 ("I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character."); *Woke Schooling: A Toolkit for Concerned Parents*, *supra* note 205, at 4.

261. *Woke Schooling: A Toolkit for Concerned Parents*, *supra* note 205, at 4.

race.”²⁶² If race is merely skin color, then colorblindness, or refusing to give weight to an otherwise empty container, may be the only morally defensible position.

But as discussed above, this is an ahistorical understanding of this nation's race and racial subordination. Given the country's extensive history of subordination, “Black” and “White” describe more than skin color; they represent material and symbolic normative judgments about types of people.²⁶³ In other words, the categories “Black” and “White” have racial meaning; they “describe relations of oppression and unequal power.”²⁶⁴

The twin movements traffic heavily in this formal-race, colorblind trope, even in the light of stark and widely known racial inequities that were brought to the forefront in the summer of 2020. A parents' rights guidebook endorses this formal conception of race in service of colorblindness. It asks parents to consider ten questions to judge their discomfort with CRT in schools.²⁶⁵ One question asks:

Should we be teaching children that the most important determinant of success in their lives is skin color? Critical Race Theory, and all of its instructional offshoots, teaches a concept called “race-consciousness,” which racializes all aspects of society and makes skin color the primary lens from which children are taught to view the world.²⁶⁶

Though CRT scholars argue for race consciousness when fashioning policy to reduce racial disadvantage, they do not “racialize all aspects of society.” Instead, CRT points to those places where race exists but is not recognized; in doing so, CRT scholars seek to reveal how race works as a tool of oppression of subordinated groups, especially Black people. Nor do CRT scholars argue that skin color is the most critical determinant of success. Instead, they illustrate how societal rewards and disadvantages are structured and mediated by race.

262. Gotanda, *supra* note 60, at 4 (“Black and white are seen as neutral, apolitical descriptions reflecting merely ‘skin color’ or country of ancestral origin. Formal-race is unrelated to ability, disadvantage, or moral culpability. Moreover, formal-race categories are unconnected to social attributes such as culture, education, wealth, or language. This ‘unconnectedness’ is the defining characteristic of formal-race.”).

263. See Baldwin Clark, *supra* note 28, at 598–621 (finding that when “White” and “Black” are associated with geographic spaces that differ racially and materially, people in the White community tend to trade in master narratives of Black inferiority to blame Black parents and Black children for a failure to access a well-resourced education).

264. Gotanda, *supra* note 60, at 40.

265. PASLAY, *supra* note 203, at 9.

266. *Id.* at 9.

Yet, while the twin movements use colorblind vocabulary, there is little doubt that the movements are explicitly color conscious. Many parents' rights guidebooks specifically justify the aggressive mobilization of parents' rights in response to fears of losing Whiteness. One book declared that teachers using CRT "perpetuat[e] the notion that Whiteness is something that must be targeted, disrupted, and eliminated."²⁶⁷ Rufo tells parents that banning CRT is necessary because CRT wants to "abolish the white race."²⁶⁸ The Heritage Foundation claimed that "the purpose of the CRT training programs, and the curricula, is now to create enough bad associations with the white race."²⁶⁹

This color-conscious language refutes any suggestion that the twin movements genuinely advocate for colorblindness. Instead, the movements vehemently oppose color consciousness that seeks to interrogate Whiteness. Rather than claiming that race does not matter, the anti-CRT and parents' rights movements recognize race's significance, the benefits attached to those categories, and the subsequent positioning in the racial hierarchy.

B. Innocence and Selective Protection

The twin movements' obsession with Whiteness does not stop with the disingenuous invocation of colorblindness. They also appeal to the "innocence" of White children. Consider how a journalist railed against "toxic social justice teachings" like CRT by claiming that race-consciousness in schools is child abuse²⁷⁰:

Indoctrinating children with CRT is akin to systemic child abuse, as it steals innocence, twists minds, and crushes spirits. Parents must move heaven and earth to protect their children, and they can start by coming together and rooting out CRT from their schools by any and all legal means necessary.²⁷¹

²⁶⁷. *Id.* at 22.

²⁶⁸. See RUFO, *supra* note 203, at 4.

²⁶⁹. Mike Gonzalez & Jonathan Butcher, *Purging Whiteness to Purge Capitalism*, HERITAGE FOUND. (May 5, 2021), <https://www.heritage.org/progressivism/commentary/purging-whiteness-purge-capitalism> [<https://perma.cc/7BCY-235T>].

²⁷⁰. *Id.*

²⁷¹. Michael McCaffrey, *The Orwellian Indoctrination of Kindergarteners with Critical Race Theory Is Outrageous and Must Be Stopped*, RT (Sept. 21, 2020, 2:46 PM), <https://www.rt.com/op-ed/501285-orwellian-indoctrination-kindergarteners-race> [<https://perma.cc/5ZBF-F3E8>].

CRT in his child's school was dangerous because it would "corrupt the thoughts and minds of young students."²⁷² Vulnerable children, under this logic, were being held captive to a malign ideology, a "CRT cult."²⁷³ Parents, then, "must move heaven and earth to protect their children."²⁷⁴

The invocation of innocence is a crucial feature of the twin movements. It also exemplifies what CRT scholars identify as a strategy to resist demands for racial equity.²⁷⁵ An appeal to innocence, particularly childhood innocence,²⁷⁶ prompts an emotional response of protection. Children's innocence is alluring to resist race consciousness; few would argue that any child should feel either guilt or shame for events perpetrated by adults.

CRT scholar David Simson describes two innocence moves in response to race consciousness.²⁷⁷ First, innocence is conceived as a lack of guilt for the wrong, such that one is not "guilty of a specific offense or charge or being wrongly accused."²⁷⁸ "[N]otwithstanding the history and reality of whiteness," innocence means that one has not been an "active participant in the country's widespread and ongoing history of racial discrimination" and thus is not responsible for the outcomes.²⁷⁹ Second, innocence is an "absence of moral blameworthiness."²⁸⁰ In both conceptualizations, innocence disclaims the benefits of privilege, arguing that one's social status is the reward for "merit separate from the

²⁷². *Id.*

²⁷³. *Id.*

²⁷⁴. *Id.*

²⁷⁵. For more scholarly work on White innocence, see Devon W. Carbado, *Strict Scrutiny & the Black Body*, 69 UCLA L. REV. 2, 33 n.138 (2022); Elise C. Boddie, *The Sins of Innocence in Standing Doctrine*, 68 VAND. L. REV. 297, 301-08, 356 (2015); and *supra* note 79.

²⁷⁶. James, *supra* note 36, at 1749-52 (explaining that opposition to antiracist education aims to preserve the perceived innocence of White children by reinforcing positive White racial identity through K-12 school curriculum). Historically, innocence has been used to describe only one set of children: White children. See ROBIN BERNSTEIN, *RACIAL INNOCENCE: PERFORMING AMERICAN CHILDHOOD FROM SLAVERY TO CIVIL RIGHTS* 4-8 (2011).

²⁷⁷. Simson, *supra* note 79, at 643-44. Cecil J. Hunt II identifies at least four conceptions of innocence: first, "in a narrow, even technical way, as simply being not guilty of a crime or offense;" second, as "freedom from sin, guilt, or moral wrong in general; the state of being free of responsibility . . . yet nonetheless suffering the consequences;" third, as being "naïve, unaware, uninitiated, weak or vulnerable;" and fourth, being entitled to "care and protection from harm." Cecil J. Hunt II, *The Color of Perspective: Affirmative Action and the Constitutional Rhetoric of White Innocence*, 11 MICH. J. RACE & L. 477, 498-99 (2006) (internal quotation marks omitted).

²⁷⁸. Simson, *supra* note 79, at 643.

²⁷⁹. See *id.* at 644.

²⁸⁰. *Id.* at 643 (footnote omitted).

influence of race.”²⁸¹ In both conceptualizations, the focus is on the people forced to reckon with racism – White people.

Innocence in the twin movements follows these forms. The anti-CRT movement conjures up the image of the innocent White child burdened with material or psychological responsibility for racial harm. Marissa Jackson Sow, writing in the CRT tradition, argues that innocence in the anti-CRT movement is a “campaign for perpetual absolution of white guilt.”²⁸² The anti-CRT measures that prohibit assigning “psychological guilt” put White children’s emotional well-being before other values of public education, such as democratic pluralism and accurate portrayals of the past. Furthermore, disclaiming responsibility rejects the intimate connection between historical and current racial subordination.

A familiar example of the rhetoric of White innocence is in the discourse over affirmative action. Supreme Court doctrine often relies on White innocence claims to reject race-conscious remedies because “present day white Americans are not to be blamed for the history of racism in this country.”²⁸³ According to this logic, affirmative action gives Black people benefits they do not deserve, a form of unjust enrichment.²⁸⁴ But, of course, White people’s unearned advantage because of race is not given the same label.²⁸⁵

This form of White innocence pervades the EO’s language and progeny and is encouraged by the parents’ rights movement. As discussed above, prohibiting any instruction that may make White children feel “responsible for the past” was the most common ban in the introduced measures.²⁸⁶ Invoking innocence forestalls racial progress and thus embeds retrenchment; if one believes the status quo is fair, losing racial advantage is an injury. Innocence is potent as a rallying cry because, as Cheryl Harris writes, “[t]he law masks what is chosen as natural; it obscures the consequences of social selection as inevitable.”²⁸⁷

281. *Id.* at 644.

282. Marissa Jackson Sow, *Whiteness as Guilt: Attacking Critical Race Theory to Redeem the Racial Contract*, 69 UCLA L. REV. DISCOURSE 20, 20 (2022).

283. Carbado, *supra* note 275, at 28.

284. Carbado & Harris, *supra* note 82, at 1140–52.

285. *Id.*

286. See *supra* Section II.B. Some in the anti-CRT movement also claim that their opposition helps non-White children by helping avoid “victimhood.” *Parents’ Toolkit on Critical Theory in Education and Healthcare*, *supra* note 205, at 7 (“Good public policy should not place the psychological burdens of victimization upon students simply because of their skin color.”).

287. Harris, *supra* note 28, at 1777–78 (“The result is that the distortions in social relations are immunized from truly effective intervention, because the existing inequities are obscured and rendered nearly invisible. The existing state of affairs is considered neutral and fair, however unequal and unjust it is in substance.”).

The twin movements' invocation of innocence seeks to legitimate the racial hierarchy with Whites as racially advantaged and Blacks as racially disadvantaged.²⁸⁸ For example, the Manhattan Institute's anti-CRT guidebook criticizes the concern with the racial "achievement gap" in schools, which it claimed, "is at the root of the controversy about race and schooling."²⁸⁹ The guidebook argues that CRT advocates "see the [racial] achievement gap as proof of the persistence of racism and white supremacy."²⁹⁰ But if not White supremacy, then what?

The anti-CRT and parents' rights movements covertly deny racism in schools by blaming Black children's deficits—rather than White children's advantages—as the cause of racial disparities in student outcomes. For example, one guidebook argues that antiracism efforts are misguided because they incorrectly attribute the cause of unequal school outcomes to racial discrimination,²⁹¹ citing statistics about the "discipline gap"²⁹² among Black and White students. He claims the gap "is widely attributed to systemic racism, being that 84 percent of America's public-school teachers are White."²⁹³

Instead, he argues that poverty, not racism, explains these differences. He notes Black children live in poverty at a rate three times that of White children.²⁹⁴ He does not interrogate why this may be. According to him (although he provides no evidence), "research continue[s] to show that poverty leads to poor conduct, low academic achievement, and the chronic breaking of school rules."²⁹⁵ Accordingly, under this logic, Black children are punished more harshly and of-

288. See *id.* ("The relative economic, political, and social advantages dispensed to whites under systematic white supremacy in the United States were reinforced through patterns of oppression of Blacks and Native Americans. Materially, these advantages became institutionalized privileges, and ideologically, they became part of the settled expectations of whites – a product of the unalterable original bargain. The law masks what is chosen as natural; it obscures the consequences of social selection as inevitable. The result is that the distortions in social relations are immunized from truly effective intervention, because the existing inequities are obscured and rendered nearly invisible. The existing state of affairs is considered neutral and fair, however unequal and unjust it is in substance." (footnotes omitted)).

289. *Woke Schooling: A Toolkit for Concerned Parents*, *supra* note 205, at 5.

290. *Id.*

291. PASLAY, *supra* note 203, at 8.

292. The discipline gap refers to schools' racially disproportionate use of discipline tools, especially suspension and expulsion. See Anne Gregory, Russell J. Skiba & Pedro A. Noguera, *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, 39 EDUC. RESEARCHER 59, 59 (2010).

293. *Id.* at 34.

294. *Id.*

295. *Id.*

ten than White children because “students from different socioeconomic backgrounds have different challenges and do not behave the same.”²⁹⁶ Again, he provides no evidence. This justification invokes well-worn cultural pathology narratives about Blackness, poverty, and criminality.²⁹⁷

While the statistics make it appear that Black children misbehave more than others, these statistics typically rely on teachers’ self-reports of misbehavior.²⁹⁸ However, a widely reported experimental study rejected these assumptions about race, colorblindness, and innocence in school discipline.²⁹⁹ Rather than rely on teachers’ self-reports to measure childhood misbehavior, the study used eye-tracking technology to measure who teachers targeted when told to watch for mischief in preschoolers.³⁰⁰

When researchers instructed teachers to report misbehavior in a racially-diverse preschool classroom, their eyes lingered on Black boys more than other children, even when the researchers assured no child misbehaved.³⁰¹ As the teachers look for misbehavior in Black children, they spent less time monitoring other children’s behavior.³⁰² The study shows that teachers may routinely miss misbehavior by White children, such that teacher reports of misbehavior skew toward Black children. Black children are presumptively guilty. White children are presumed innocent.

296. *Id.*

297. Reginald Leamon Robinson calls these “master narratives” of Black inferiority. These narratives constitute the “dominant or privileged story that defines how blacks win or lose, succeed or fail.” Reginald Leamon Robinson, *The Racial Limits of the Fair Housing Act: The Intersection of Dominant White Images, the Violence of Neighborhood Purity, and the Master Narrative of Black Inferiority*, 37 WM. & MARY L. REV. 69, 72-74 (1995) (“This story depends on social mythology and has been previously defined as a ‘preexisting narrative.’ Taking the myth and the story together, the master narrative of black inferiority is a systemic story, whether openly spoken or silently acted upon, that describes, solely on racial terms, how and why whites legitimately hold power over blacks. Although it depends more on mythology than reliable empirical evidence, the master narrative of black inferiority is both pervasive and powerful.” (footnotes omitted)).

298. Cf. David A. Sbarra & Robert C. Pianta, *Teacher Ratings of Behavior Among African American and Caucasian Children During the First Two Years of School*, 38 PSYCH. SCHS. 229, 230 (2001) (“When considering that most reports of adjustment difficulties among African American children rest on the ratings of Caucasian teachers, questions of possible racial and perceptual biases must be taken seriously.”).

299. See, e.g., Cory Turner, *Bias Isn’t Just a Police Problem, It’s a Preschool Problem*, NPR (Sept. 28, 2016, 5:00 AM ET), <https://www.npr.org/sections/ed/2016/09/28/495488716/bias-isnt-just-a-police-problem-its-a-preschool-problem> [<https://perma.cc/6B83-532E>] (reporting on Gilliam et al., *supra* note 181).

300. Gilliam et al., *supra* note 181.

301. *Id.* at 6-7.

302. *Id.*

As the above analysis illustrates, the anti-CRT and parents' rights movements seek to protect White children from color-consciousness and possibilities of emotional distress to protect Whiteness. Parents' rights do not support all parents in safeguarding all children but rather support only White parents as protectors of White children in the service of protecting Whiteness.³⁰³

C. *The Whiteness of Parents' Rights*

The author of one guidebook tells parents to be on the lookout for "any curriculum that targets 'Whiteness,' or asks students to disrupt or deconstruct 'Whiteness,' 'White privilege,' or so-called 'White supremacy.'"³⁰⁴ Schools have always been sites of racial contests—where the benefits of education are maldistributed among children by race. As a result, parents' rights cannot help but be racialized. The contemporary parents' rights movement is a fulcrum to preserve the hegemonic White racial order championed by the anti-CRT movement.

Schools are institutions of social reproduction, a process by which social arrangements are recreated intergenerationally, including status hierarchies of race and class.³⁰⁵ Schools have often been the battlefields over which racial contests are won and lost, as parents fight to control resources for themselves and their group. White parents, in particular, fight for resources to reproduce their status—including their racial status—in their children.³⁰⁶ This racial privilege is valuable not only to children but to the group. All Whites benefit from the work of White parents to control education.

303. This racialization of parents' rights is not new; in the aftermath of *Brown*, the need to safeguard White children was a rallying call of White mothers protesting school desegregation. But White parents are not the only group of parents trying to protect their children in schools. For example, the growing homeschooling movement by Black families is evidence of Black families rejecting traditional schooling that punishes Black children for being Black. See Lisa Puga, "Homeschooling Is Our Protest:" *Educational Liberation for African American Homeschooling Families in Philadelphia, PA*, 94 PEABODY J. EDUC. 281, 281 (2019).

304. PASLAY, *supra* note 203, at 44.

305. LaToya Baldwin Clark & Prudence L. Carter, *Social Reproduction*, in *ENCYCLOPEDIA OF DIVERSITY IN EDUCATION*, 2010, 2010-12 (James A. Banks ed., 2012).

306. James, *supra* note 84, at 734-36.

Educational sociologists have long pointed out how education policy and school routines reproduce status hierarchies through daily routines, instructional practices, curricula, assessment,³⁰⁷ teaching quality, funding, course tracking,³⁰⁸ and more. In this way, education policy is an act of White supremacy itself.³⁰⁹ For those for whom the status quo is working—racially, White parents—there is an interest in not making changes that will upset that hierarchy. The demands made by the summer 2020 protests threatened such changes.

Historically, parents' rights have often taken on racial themes. For example, protecting Whiteness for the benefit of White children was a primary driver of historical resistance to integration. Elizabeth Gillespie McRae shows the work of White women—mothers—to resist racial reforms in education in the years following *Brown's* desegregation mandate.³¹⁰ White mothers “claimed that . . . school integration eroded their ability to secure the benefits of white supremacy for their children.”³¹¹

Integration resistance drew inspiration from sacrosanct commitments to honoring parents' rights. In the parental-rights cases *Meyer*, *Pierce*, and *Prince*, the Supreme Court granted parents some rights to influence education. In these cases, the Supreme Court affirmed parental authority in some aspects of educational decision-making in service of parental duties regarding their children's care, education, and upbringing.³¹² While the government has obligations to

307. See, e.g., Amy Stuart Wells, *Seeing Past the “Colorblind” Myth of Education Policy: Addressing Racial and Ethnic Inequality and Supporting Culturally Diverse Schools*, NAT'L EDUC. POL'Y CTR. 14 (Mar. 2014), https://nepc.colorado.edu/sites/default/files/pb-colorblind_o.pdf [<https://perma.cc/T9Q8-83JE>] (“[Accountability in the form of high stakes testing] forces educators in ‘low-achieving’ schools serving mostly low-income Black and Hispanic students to fixate on raising test scores via a curriculum focused almost exclusively on the material tested, leaving little room to build upon the knowledge and understandings that students bring to school. Meanwhile, research on learning and pedagogy suggest that the best way to engage students is to build on their existing knowledge and then connect those understandings to more abstract and unfamiliar topics.”).

308. See, e.g., Carolyn Tyson, *Tracking, Segregation, and the Opportunity Gap: What We Know and Why It Matters*, in *CLOSING THE OPPORTUNITY GAP* 169 (Prudence Carter & Kevin Welner eds., 2014); Angelia Dickens, *Revisiting Brown v. Board of Education: How Tracking Has Resegregated America's Public Schools*, 29 COLUM. J. L. & SOC. PROBS. 469 (1996); JEANNIE OAKS, *KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY* (2005).

309. David Gillborn, *Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory and Education Reform*, 20 J. EDUC. POL'Y 485, 492–97 (2007).

310. MCRAE, *supra* note 29, at 165–85.

311. *Id.* at 14.

312. See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (invalidating a law that prohibited a public-school teacher from teaching German, recognizing a protected liberty interest on the part of parents who wanted their children to learn a non-English language); *Pierce v. Soc'y of*

children, these cases hold that “[t]he child is not the mere creature of the State,” as parents also have a duty and obligation to protect and care for their children.³¹³

Racializing parental rights as White parental rights in the context of the anti-CRT movement shows how White parents’ invocation of fundamental rights to direct education fits uneasily with the ideals of public-education policy. Parents do not have sole control over their children’s education; for example, states routinely compel parents to educate their children³¹⁴ or require vaccinations to attend school.³¹⁵ Schools are also conglomerations of many families with different conceptions of quality education. Clearly, schools would be unable to function as public schools if every parent had the right to exert their preferences on curriculum, teaching, and training. While some parental rights are longstanding (e.g., to choose foreign language instruction³¹⁶ or private education,³¹⁷ or to opt out a child from sex education³¹⁸), how parents’ rights apply concerning anti-racist instruction, curriculum, and resources that affect *other people’s children* is less clear than the parents’ rights movement admits.

* * *

Sisters, 268 U.S. 510, 534-35 (1925) (holding that the state’s prohibition on private schooling while requiring compulsory schooling interfered with a parent’s liberty interest to prevent the “standardiz[ation]” of his or her children). *But see* Prince v. Massachusetts, 321 U.S. 158, 165 (1944) (holding that while parents have a fundamental interest in their children’s upbringing, those rights are not absolute, and the state also has a legitimate interest in protecting children).

313. *Pierce*, 268 U.S. at 535.

314. See Table 1.2. *Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, by State: 2017*, NAT’L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/statereform/tab1_2-2020.asp [<https://perma.cc/MNA2-VNWA>].

315. See *State Vaccination Requirements*, CTR. FOR DISEASE CONTROL & PREVENTION (Nov. 15, 2016), <https://www.cdc.gov/vaccines/imz-managers/laws/state-reqs.html> [<https://perma.cc/2BSX-GMNV>].

316. *Meyer*, 262 U.S. at 400-03 (invalidating a law that prohibited a public-school teacher from teaching in German, recognizing a protected liberty interest on the part of parents who wanted their children to learn a non-English language).

317. *Pierce*, 268 U.S. at 535 (holding that the state’s prohibition on private schooling while requiring compulsory schooling interfered with a parent’s liberty interest to prevent the “standardiz[ation]” of his or her children).

318. See *State Policies on Sex Education in Schools*, NAT’L CONF. ST. LEGISLATURES (Oct. 1, 2020), <https://www.ncsl.org/research/health/state-policies-on-sex-education-in-schools.aspx> [<https://perma.cc/E3WD-9FA9>].

Appealing to colorblindness and innocence establishes the twin movements as proper objects of a critical race critique. The twin movements' attempt to excise race from schools shields White children from grappling with the country's racial history and the contemporary manifestation of anti-Blackness and racism. Moreover, they deny non-White children, especially Black children, an inclusive role in U.S. history and how that history reveals racial patterns today.

The twin movements are examples of how civil-rights gains are often met with civil-rights retrenchment. "Unlike traditional civil rights discourse, which stresses incrementalism and step-by-step progress,"³¹⁹ CRT recognizes *retrenchment* as a crucial stage of the cycle of civil-rights gains.³²⁰

Racial retrenchment refers to how law "repackages racism" after racial reforms to lessen the impact of racial progress.³²¹ Historically, when goals of racial redistribution of power and resources are nominally pursued (and most plans are far short of a wholesale redistribution of power), those in racial power solidify racial privilege through other means. Solidifying racial privilege is the aim of these movements; again, through their narratives of colorblindness and innocence, the twin movements delegitimize the demands of the summer of 2020 protests as racially regressive. Anti-CRT advocates argue that the goal of racial redistribution undermines the ethical superiority of colorblindness and unfairly blames White people and children for current racial inequity. The parents' rights movement acts in concert with these aims, deputizing parents to protect their innocent White children from these so-called evils of race consciousness.

Retrenchment here works to reject the summer 2020 claims for the racial redistribution of power. Proponents of parents' rights and against CRT selectively borrow from MLK's "I Have a Dream" speech by cherry-picking his stated desire for his children not to be "judge[d] by the color of their skin."³²² Colorblindness and innocence covertly deny this understanding by claiming that any discussion examining racial hierarchies is racist. By claiming colorblindness and disavowing

319. DELGADO & STEPHANIC, *supra* note 43, at 3.

320. See generally Crenshaw, *supra* note 35, at 1333, 1361-63 (discussing how political retrenchment may precede or accompany civil rights gains).

321. *Id.* at 1331; see also Devon W. Carbado, *Critical What What?*, 43 CONN. L. REV. 1593, 1607-08 (2011) (offering three examples of racial retrenchment: "(1) the end of legalized slavery and the promulgation of the Reconstruction Amendments (the reform) inaugurated legalized Jim Crow and the promulgation of Black Codes (the retrenchment); (2) *Brown v. Board of Education*'s dismantling of separate but equal in the context of K-12 education (the reform) was followed by *Brown II*'s weak 'with all deliberate speed' mandate (the retrenchment); (3) Martin Luther King, Jr.'s vision of racial cooperation and responsibility, which helped to secure the passage of the Civil Rights Act of 1964 (the reform), was re-deployed to produce a political and legal discourse that severely restricts racial remediation efforts: colorblindness (the retrenchment)").

322. Read Martin Luther King Jr.'s 'I Have a Dream' Speech in its Entirety, *supra* note 258.

responsibility to address race privilege, the twin movements maintain racial power by denying the legitimacy of racial demands.

White innocence also resists racial awareness, race consciousness, and racial remedies. The anti-CRT and the parents' rights movements focus on disclaiming White responsibility for the past—invoking innocence—such that today's White people have no obligations in the present. White innocence works in two ways here. First, through an appeal to unfairness in redistributing resources when current resource holders believe they lack responsibility for the status quo, no matter that the adverse outcomes associated with Blackness too are not the fault of anyone alive today. White innocence suggests that, at best, there is nothing we can do about the unfair racial status quo; at worst, the racial status quo is legitimate and racial disparities must have causes other than White supremacy. White innocence implies Black guilt of getting something they do not deserve and thus have no legitimate claim to equality. Second, innocence invoked here draws on the rhetoric of childhood innocence in particular, adding emotional valence to resist redistribution.

The anti-CRT and the parents' rights movements also illustrate a troubling problem in public education that privileges the needs and prerogatives of White parents over the needs and desires of other parents and their children. In this context, White parents “protecting” their children are acting not to protect all children's well-being or physical health but in response to what Osamudia James identifies as a fear of losing racial status.³²³ Recent demographic changes show White people are not only losing their numerical superiority but also their political superiority.³²⁴

Yet the twin movements exhibit very little concern for the innocence of non-White children, particularly *Black* children. Colorblindness ignores the authentic ways that *non-White* children, themselves also innocent, experience race in schools through no fault of their own. The racialization of parents' rights as White parents' rights highlights how race-neutral parents' rights use White children's innocence and hegemonic ideals of colorblindness to further the anti-CRT goals of upholding White supremacy.³²⁵

323. See Osamudia James, *Superior Status: Relational Obstacles in the Law to Racial Justice and LGBTQ Equality*, 63 B.C. L. REV. 199, 221 (2022).

324. See Brittany Farr, *A Demographic Moral Panic: Fears of a Majority-Minority Future and the Devaluing Value of Whiteness*, U. CHI. L. REV. ONLINE (2021).

325. I would be remiss not to note how the twin movements target other equality demands from marginalized groups. For example, in response to modest reforms in school-based care for queer and trans children, Florida Governor Ron DeSantis signed the infamous “Don't Say Gay” bill at the same time he signed the anti-CRT bill. The “Don't Say Gay” bill requires

CONCLUSION

We must center schools, parents, and race to understand the political and cultural war against racial progress in our current moment. Parents' rights are deceptively intuitive when it comes to children's education. But the anti-CRT movement posits that teaching race in schools is racist itself, using the tools of colorblindness and innocence to reject demands for racial equality. The parents' rights movement uses the unique positions of parents to solidify White supremacy by insisting that color consciousness in schools threatens the innocence of White children. The racialization of parents' rights in this contemporary moment illustrates that these rights are for White parents only, for protecting White children, and for legitimizing White supremacy.

schools to "notify[] a student's parent if there is a change in the student's services or monitoring related to the student's mental, emotional or physical health or well-being." H.B. 1557, 2022 Leg., Reg. Sess. (Fla. 2022) (enacted). The bill requires schools to "encourage a student to discuss issues relating to his or her well-being with his or her parent or to facilitate discussion of the issue with the parent." *Id.* That same bill prohibits schools from engaging in "classroom instruction . . . on sexual orientation or gender identity" in grades before fourth and only if they are "age-appropriate or developmentally appropriate" for students above third grade. *Id.*

APPENDIX

TABLE 4. INSTITUTIONAL TARGETS OF ANTI-CRT MEASURES, 2021 AND 2022

TARGET	INTRO'D	INTRO'D (%)	ADOPTED	ADOPTED (%)
	563		241	
K-12	513	91.1	226	93.8
HIGHER EDUCATION	110	19.5	29	12
STATE OR FEDERAL AGENCIES	11	2	1	0.4
CONTRACTORS	80	14.2	12	5
PRIVATE BUSINESS/ NONPROFIT	49	8.7	10	4.1

TABLE 5. REGULATED BEHAVIOR IN ANTI-CRT MEASURES, 2021 AND 2022

TARGET	INTRO'D	INTRO'D (%)	ADOPTED	ADOPTED (%)
	513		226	
CLASSROOM TEACHING	372	72.5	147	65
CURRICULUM CONTENT	384	74.9	172	76.1
EDI POLICY	38	7.4	34	15
TRAININGS	154	30	57	25.2

TABLE 6. CONTENT OF K-12 ANTI-CRT MEASURES, 2021 AND 2022

TARGET	INTRO'D	INTRO'D (%)	ADOPTED	ADOPTED (%)
	513		226	
CURRICULAR TRANSPARENCY	147	28.7	41	18.1
BOOK REVIEW	33	6.4	22	9.7
STUDENT OPT-OUT	35	6.8	17	7.5

TABLE 7. SPECIFIC RIGHTS CONFERRED IN INTRODUCED PARENTS' RIGHTS LEGISLATION, 2021 AND 2022

AFFIRMATIVE RIGHT	NUMBER	%
	34	
INSPECT CURRICULUM	27	69.2
RIGHT TO OPT-OUT	15	38.5
RIGHT TO SURVEIL	2	5.1