

# Review of Anti-CRT legislation

Produced for the WWAP in conjunction with Far Star Action Fund

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# Agenda

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- ***Introduction to CRT***
  - Definition of CRT
  - Brief history of CRT
- Anti-CRT measures today
  - Where are they?
  - What are they?
    - Types of measures (e.g., law, rules, acts)
    - Common themes
    - Example text
  - Are they enforceable?
  - Who is advocating for them?

# What is Critical Race Theory? The answer is highly debated

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- *The definition of critical race theory varies significantly depending on an individual's stance on the topic:*



## *Historic/academic definition*

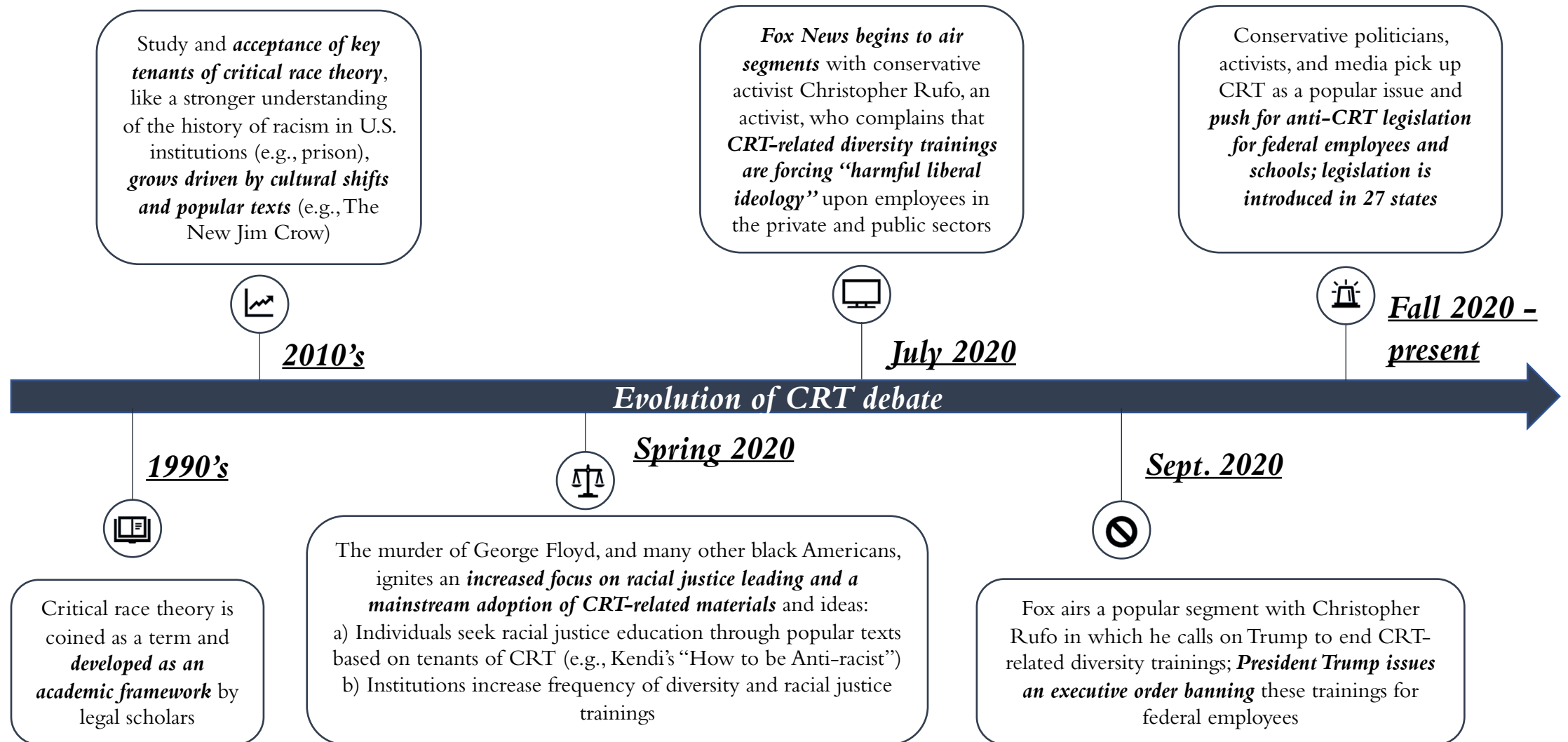
- CRT is an ***academic framework*** first developed in the 1960's by legal academics like Kimberle Crenshaw, Derrick Bell and Richard Delgado
- CRT has no single definition, but traditionally refers to a framework which posits that:
  - ***Racism in the U.S. is comprised not only of interpersonal actions but imbued into the U.S's founding structures ,institutions, and laws***
  - Racism is part of everyday life and ***people often unconsciously participate in systems that uphold it*** even if their personal actions are not biased



## *Opponent's characterization*

- Critics rarely define CRT, but prefer to characterize it through purported outcomes and impact, such as:
  - ***Endorses segregation***, stereotyping, group-based guilt, race essentialism
  - Denounces ***the U.S. as a racist country***
  - Operates as a ***mechanism to shame, humiliate and guilt certain individuals***
  - Pushes institutions, schools, government to accept liberal values and ideologies
  - ***Reduces people to identity characteristics***, which serves to unfairly discriminate and demoralizing those associated with racism or sexism (e.g., white males)

# Critical race theory, an academic framework from the 1990's, gained national attention in summer of 2020 as a conservative talking-point



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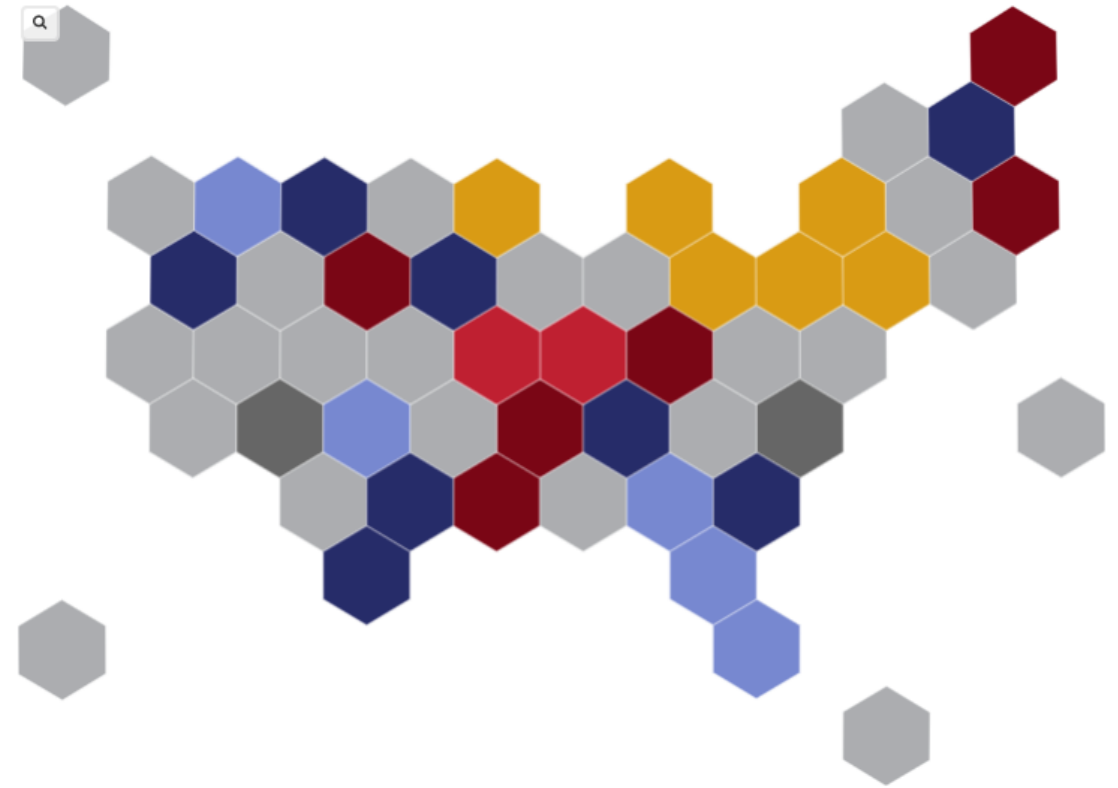
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# Active CRT related bills are largely concentrated in the Midwest and Northeast; Southern states more commonly utilized non-legislative actions

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- 27 states have proposed or passed a CRT related measure
- 9 states are poised to debate these measures in the coming legislative session (NH, MI, MO, OH, KN, PA, NJ, NY, WI)



CRT related legislation saw a surge in the spring of 2021, but tapered off by 2022; only 9 bills are active or proposed for the 2022 legislative session

Status	# of states	States
No state-level action or bill introduced	23	Various
Bill introduced- then vetoed or overturned	2	AZ, NC
Bill withdrawn or stalled indefinitely	6	MA, RI, AK, LA, WV, SD
Bill signed into law	8	ID, ND, TX, OK, IO, TN, SC, NH
Bill proposed or moving through legislature	9	NH, MI, MO, OH, KN, PA, NJ, NY, WI
Other state level action taken	5	FL, MT, UT, AL, GA

States with potential to pass legislation in 2022; may be of interest for WWAP event

# Anti-CRT actions are largely enacted through legislation with occasional use of legal opinions and school board rulings

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## Legislation:



## Rider legislation:



## School board approval:



## Attorney General opinion:

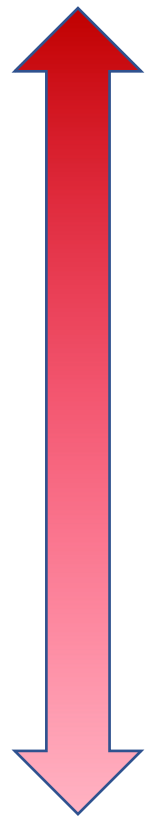
Definition:	Enacted through traditional law-making (e.g., passed in senate and house and signed into law by Governor)	Included in a Governor's state budget as funding pre-requisite for public education institutions	School boards, appointed by state governors, pass rules banning teaching of CRT or the 1619 project in public schools	State attorney general may issue a binding legal opinion if they believe the use of "CRT" in educational settings violate state or federal law
Example(s):	<ul style="list-style-type: none"><li>• Ex. Texas HB 3979</li><li>• OK HB 1775</li></ul>	<ul style="list-style-type: none"><li>• SC included a clause to <b><i>prohibit schools from using state funding</i></b> to teach that "individuals have certain traits, experiences or responsibilities due to race or sex"★★</li></ul>	<ul style="list-style-type: none"><li>• FL: School board banned CRT and the 1619 project as part of a broader amendment to "<b><i>ban theories that distort historical events</i></b>" and that racism can only be taught as "<b><i>interpersonal, not as a structure</i></b> embedded in American laws and norms"^^</li></ul>	<ul style="list-style-type: none"><li>• MT: Acting per request of Public Instruction Superintendent, the MT Attorney General <b><i>determined CRT activities violated the 14<sup>th</sup> amendment</i></b> and issued an opinion which exposes participating schools to legal action if they continue to teach CRT programs★</li></ul>



# The primary goal of most anti-CRT legislation is banning classroom discussion of racism, sexism, and these concepts in U.S. history

## Types of anti-CRT laws, by frequency in legislation (2021):

More common



Less common

Count	Specific edict	Notes
16	Limits or bans on how teachers can instruct on 'divisive topics' particularly racism and sexism	Definitions vary on what types of instruction related to racism and sexism are unacceptable; definitions on following page
12	Ban teaching CRT and CRT-related curricula (particularly the 1619 project)	Banning CRT requires a legal definition, which varies significantly across proposed legislation; Definitions on following page
6	Limits or bans on teaching that emphasizes individual student's characteristics (e.g., race, gender)	
3	Prohibit students from receiving community service credit for work with 'advocacy groups'	Advocacy groups often defined as "any organization engaged in lobbying for legislation at the local, state or federal level, or in social or public policy advocacy"★
3	Prohibit schoolteachers from 'engaging in political, ideological or religious advocacy' including sharing partisan opinions on controversial issues	Some bills specify specific ideologies, as in NH which prohibits, "Socialism, Marxism, or any doctrine promoting a negative account or representation of the founding and history of the US"
2	Increase parental and school board access to all curricula used	Florida's bill pairs this increased access with legal rights to sue schools if parents feel the curricula is teaching harmful concepts
2	Limit or prohibit teachers from engaging in 'race or sex stereotyping'	
1	Limits on discussion of privilege	
1	Ban schools from hosting speakers or assigning books which advocate for 'racist or sexist' concepts	

# Laws vary significantly in their definitions of CRT and protections with some focused-on students and others on upholding U.S. reputation

- *Definitions vary from state to state, for the most common law types examples include:*

## Ban teaching CRT and CRT-related curricula (particularly the 1619 project)

- NY: Teaching that “individuals bear collective responsibility for acts committed by members of their race, that individuals should feel guilt because of their race or that individuals should receive discriminatory treatment based on their race [\(cont.\)](#)”
- ND: “*The theory* that racism is not merely the product of individual bias or prejudice, but *that racism is systemically embedded in the American society and the American legal system* to facilitate racial inequality [\(cont.\)](#)”
- FL: “Instruction on the required topics must be factual and objective, and may not suppress or distort significant historical events, such as the Holocaust, and may not define American history as something other than the creation of a new nation based largely on universal principles stated in the Declaration of Independence *including the 1619 Project and Critical Race Theory* [\(cont.\)](#)”

## Limits or bans on how teachers can instruct on ‘divisive topics’ particularly racism and sexism

- NH: “Divisive concepts means a concept that a) one race or sex is inherently superior to another b) The state of New Hampshire or the United States is fundamentally racist or sexist c) An individual, by virtue of his or her race or sex, is *inherently racist, sexist, or oppressive, whether consciously or unconsciously*.... [\(cont.\)](#)”
- AL: “Concepts that impute fault, blame, a tendency to oppress others, or the need to feel guilt or anguish solely because of their race or sex [\(cont.\)](#)”
- TN: “Including or promoting the following concepts: one sex or race is inherently superior.... (6) An individual should feel discomfort, guilt, anguish, or another form of psychological distress solely because of the individual's race or sex; (8) This *state or the United States is fundamentally or irredeemably racist or sexist*; [\(cont.\)](#)”

## Limits or bans on teaching that emphasizes individual student’s characteristics (e.g., race, gender)

- MT: “a) Asking students or employees to engage, or not engage, with the class in a specific manner based on race; b) Engaging in “race scapegoating,” which means *assigning fault, blame, or bias to a race or members of a race* on the basis of their race. This includes *claims that by virtue of race, a person is inherently racist*; and c) Trainings, exercises, or assignments *forcing students* or employees to *admit*, accept, affirm, or support controversial concepts such as *racial privilege*, culpability, identity, or status as this constitutes compelled speech” [\(cont\)](#)
- WI: “Shall not allow a teacher to teach race or sex stereotyping, including any of the following concepts: (b) An individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously f) An individual, by virtue of the individual's race or sex, bears responsibility for acts committed in the past by other individuals of the same race or sex. (g) *An individual should feel discomfort, guilt*, anguish, or any other form of psychological distress *because of the individual's race or sex* (h) Systems based on meritocracy or traits such as a hard work ethic are racist or sexist or are created by individuals of a particular race to oppress individuals of another race [\(cont.\)](#)”

# While proponents face strong logistic and legal challenges in enforcing anti-CRT rules, unenforced laws may still be detrimental for teachers and students

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- Of the states that have passed or enacted anti—CRT related legislation *few have released plans for enforcing these laws*, and those that have *encountered significant legal and logistical challenges*
  - The AZ Supreme Court deemed a piece of anti-CRT legislation unconstitutional
  - Legal commentators generally believe *these laws will continue to be overturned* given their legal bias against a specific group's viewpoints and potential violation of the 1965 Civil Rights Act★
- However, commentators point out *these laws are often intended as a scare tactic for teachers and school districts*, minimizing the importance of actual enforcement
  - Teachers and universities *have reported class and curricula changes given fear of being penalized* for teaching topics that are 'too divisive'★
- Where specified in legislation, forms of enforcement proposed include:
  - Financial penalties:
    - AZ: School districts can be fined up to 5k if found in violation
    - WI: Withhold 10% of state aid from schools in violation
  - Professional penalties:
    - OK: Educators could have teaching licenses suspended and schools could lose accreditation
    - KN: Would subject teachers who violate ban to disciplinary actions (e.g., suspension, loss of teaching certification)
  - Student penalties:
    - OH: If a teacher 'promotes banned ideas' their classes will not count towards student graduation requirements
    - GA: Students will not receive credit for community service performed with 'advocacy groups'

# Anti-CRT legislation is being pushed forward by an active collective of conservative activists, politicians, media, and policy groups

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- Key actors include:



## Individuals:

- Christopher Rufo: Political activist who tracked 'objectionable' diversity trainings and popularized the issue on Fox News
- Russel Vought: conservative activist heading organizations promoting anti-CRT legislation



## Media:

- Fox News: Utilized the term critical race theory 1,300 in 3.5 months in the spring of 2020\*, propelling the issue to the mainstream for conservative voters



## Policy groups:

- Key conservative policy groups have created model legislation for lawmakers and schoolboards to use and advocate for its adoption:
  - Center for Renewing America
  - Heritage Foundation
  - American Legislation Exchange Council



## Politicians:

- Anti-CRT legislation has seen outspoken support from many conservative politicians:
  - Donald Trump
  - FL Governor Ron DeSantis
  - NC Rep. Dan Bishop
  - AK Sen. Tom Cotton