

ACLU Tennessee FREQUENTLY ASKED QUESTIONS: CRITICAL RACE THEORY

A nationwide attempt to censor honest discussion of America's history is underway. State legislatures – including Tennessee's – have passed legislation purporting to ban the teaching of critical race theory, or CRT.¹ But those who seek to prohibit CRT either do not understand this field of study or do not want to confront America's racist past.

We oppose Tennessee's oppressive and vague policy, which threatens free speech in the classroom. Moreover, the law threatens our understanding of the roles race, racism and legalized discrimination have played in American history.

Below are some FAQs regarding critical race theory.

What is Critical Race Theory (CRT)?

Critical Race Theory is a theoretical framework that emerged from the legal academy in the 1970's.² It is a practice of studying how the social construct of race permeates and is institutionalized in the various structures of American society – e.g., the criminal justice system, public education system, housing and labor markets, healthcare system and other modes of cultural expression such as literature, philosophy, art and history. A scholar who studies CRT might ask, "How do the legacies of slavery, segregation, and discrimination continue to shape how Black Americans and other people of color live in our nation today?"

CRT is **not** about attributing racism to white people as individuals or assigning racist intent to specific people or groups of people.³ Nor does it aim to make those who study CRT feel a certain way. Rather, CRT is an academic endeavor to uncover the ways in which America's seemingly "neutral" and "colorblind" laws, policies, social mores, and institutions perpetuate and reproduce racial inequality.²

Is "critical race theory" being taught in Tennessee's K-12 classrooms?

Likely not. CRT is a highly specific and advanced field of study typically taught in advanced college courses, graduate schools, and law schools. This does not mean, however, that the topic of race is never discussed in Tennessee schools. Historical concepts like slavery, the civil rights movement, and desegregation are still a part of Tennessee's education curriculum. (See Tennessee State Academic Standards for Social Studies, available at <https://bit.ly/TN-social-studies-standards>).

In fact, Tennessee state law requires that all public schools provide age-appropriate "courses and content designed to educate children in black history and culture and the contribution of black people to the history and development of the world."⁴

¹ State legislatures have passed "anti-CRT" bills in Idaho, North Dakota, Iowa, Oklahoma, Texas, Tennessee, South Carolina, New Hampshire. In addition, Montana, Utah, Florida, Georgia, and Alabama have taken other administrative state actions to censor CRT in the classroom. (<https://bit.ly/map-crt-under-attack>).

² [A Lesson on Critical Race Theory](#) by Janel George | [American Bar Association](#)

³ [Why are states banning critical race theory?](#) by Rashawn Ray & Alexandra Gibbons | [Brookings Institute](#)

⁴ Tenn. Code Ann. § 49-6-1006

What topics does the new law⁵ “ban” from being taught in Tennessee’s K-12 classrooms?

The law outlines a series of 14 “concepts” which may not be taught in Tennessee’s schools, including the following:

- That an individual, by virtue of the individual’s race or sex, is inherently privileged
- That a meritocracy is inherently racist or sexist, or designed by a particular race or sex to oppress members of another race or sex
- That this state or the United States is fundamentally or irredeemably racist or sexist

Prohibitions on these concepts should give Tennesseans pause. The provisions of the bill are so vague that they will likely ban or chill an even broader range of content from the classroom.

For example, does this provision bar teaching that some of America’s Founding Fathers – indeed fundamental to American government and society – espoused racist views or owned slaves? Surely our Founding Fathers were “fundamental” to the American story. Another section of the bill requires “impartial” instruction on histories of racial oppression. What is meant by “impartial?” Should teachers avoid offering moral judgments on the practice of slavery? Or the deprivation of the voting rights of non-white, non-male Americans for more than a century?

These vague mandates incentivize teachers to avoid discussions of race and gender altogether. If teachers overstep these indeterminate boundaries – intentionally or not – they risk the state withholding funding to their school (not to mention their own careers). This threat prevents teachers from engaging students in challenging academic discussions.

I’m an educator – can I be sued under the “banned topics” law?

No. The law does not allow for private individuals to sue teachers. Local education agencies (LEAs), not individual teachers, are responsible for developing courses of instruction and curriculum that meet the law’s guidelines.

I’m an educator – can I be punished under the “banned topics” law?

Yes. Schools can take disciplinary or licensure action against a teacher if the school or Department of Education finds that the school is not in compliance with the law. Teachers should talk to their unions or a lawyer about their rights regarding any employment action taken against them.

I’m a student – can I still talk about race in school?

Yes. Students do not shed their constitutional rights, including the right to free speech, at the schoolhouse gates. Schools can limit student speech that is substantially disruptive to the school environment but should not be using the “banned topics” law to restrict student speech. The “banned topics” law applies just to LEAs, not students or teachers, and just to official courses of instruction, curriculum and supplemental instructional materials.

Have any states been sued over CRT legislation?

Yes. The ACLU – alongside national and local partner organizations – have filed suit in federal court challenging Oklahoma’s classroom censorship bill. The lawsuit argues that the bill “not only chills students’ and educators’ First Amendment right to learn and talk about these issues, but it also prevents students from having an open and complete dialogue about American history – one that includes the experiences and viewpoints of all historically marginalized communities in this country.” It asks the court to declare the bill unconstitutional under the first and 14th amendments and to issue a preliminary injunction. The lawsuit is still pending.⁶

If this law affects you, we want to hear from you.

If you are a student and your school has prohibited you from discussion with other students, forming a club, reading or presenting on a certain book or topic, or has inhibited your speech any other way, please contact ACLU-TN at: <http://bit.ly/ACLUTNGetHelp>.

If you are a teacher and have been told to change curriculum or course instruction, disciplined for something you’ve said or taught, or told to remove a book from the classroom or library because of this law, please contact ACLU-TN at: <http://bit.ly/ACLUTNGetHelp>.

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This document does not give legal advice, and you should not rely on it as legal advice. You should speak with a lawyer to get advice on your specific situation.

⁵ Tenn. Code. Ann. § 49-6-1037

⁶ ACLU, ACLU of Oklahoma, Lawyers Committee File Lawsuit Challenging Oklahoma Classroom Censorship Bill Banning Race And Gender Discourse | American Civil Liberties Union