

CRT Forward

Tracking the Attack on Critical Race Theory



An Executive Summary from CRT Forward's Tracking Project
An Initiative of the Critical Race Studies Program

EXECUTIVE SUMMARY

Critical Race Theory (CRT) is an interdisciplinary practice and approach to understanding the foundations and maintenance of race and racial subordination in the legal system throughout history. Since its genesis in United States law schools in the mid-1980s, CRT has explored how racial, and other, hierarchies have persisted despite advancements in racial justice made during times like the Reconstruction and Civil Rights eras. CRT contests many of the standard assumptions underlying traditional civil rights discourse, including that the legal system is a neutral apparatus disconnected from the legacy of racial subordination in the United States. Since its inception, CRT has been, at times, questioned and attacked by some in conservative media and academia.

Why does racial inequality persist in a society that has explicitly condemned racism and has repeatedly adopted laws and policies intended to eliminate it?

That question is the focus of Critical Race Theory (CRT). Drawing on research in history, social sciences and humanities, CRT demonstrates how laws and policies can reproduce racial inequality even when those policies and practices are adopted without explicit racial bias. CRT is thus an important tool to evaluate and support the United States' ongoing efforts to achieve a robust multiracial democracy.

But since the waning days of the Trump Presidency and through the present, CRT has been under an unprecedented assault. The summer of 2020's mass mobilization against police violence and anti-Blackness threatened a racial reckoning, where various governmental officials, non-profit leaders, school boards and businesses declared anti-racism a core value. In response, in September 2020, the then-President released an Executive Order (E.O.) banning so-called "divisive concepts," concepts that conservative operatives organized under the banner of "CRT." Since then, conservative law and policymakers nationwide have sought to legislate or otherwise act legally to target their misrepresented version of "CRT" and its alleged offshoots.

In August 2021, the Critical Race Studies Program at UCLA School of Law (CRS) created CRT Forward as a part of our organizational and intellectual work. This document reports on CRT Forward's flagship initiative: the Tracking Project. The Tracking Project has identified, cataloged, and analyzed over 560 instances of government anti-"anti-racism" measures that were introduced September 2020 through December 31, 2022. Measures include legislation, executive orders, state attorney general opinion letters, state and local school board policies, resolutions, agency guidance and law and policymaker statements. In order to provide a comprehensive account of the scope and impact of anti-"CRT" governmental action, our database includes legally binding as well as advisory and hortatory measures to capture all anti-"CRT" activity at the governmental level. These measures emanate from all levels of government, federal, state, and local.

At present, our Project is the only database that tracks anti-"CRT" measures over a wide range of government actions beyond proposed legislation alone and does so across the federal, state, and local levels. In this process, our team broadly relies on two strategies: (1) performing regular direct searches in state and federal legislative databases, and (2) monitoring media references in over 4,000 U.S. newspapers and sources like daily transcripts of cable news programs. Since September 2020 and years-end 2022, our team screened more than 30,000 media articles. This latter step is unique to our Project and has allowed us to gain a far more robust picture of the full extent of (especially) local activity than has previously been reported (Part II.A.1 describes the Project's methodology).

Before the debut of the Tracking Project, the pervasiveness of the assault on CRT was unclear. This Report presents, for the first time, a snapshot of activity that made headlines and continues to affect millions.

Between January 1, 2021 and December 31, 2022, government actors (federally and across 49 states and their localities) introduced a total of 563 anti-"CRT" measures, 241 of which have been enacted or adopted (Tables 1-3). The momentum of the anti-"CRT" campaign has to this point shown no signs of slowing: indeed, nearly the same number of measures were introduced in 2021 (280 total) and 2022 (283

total). The prevalence of measures originating in state governments has remained virtually the same in 2021 (173) and 2022 (178), while local activity has grown even more frequent year over year (rising from 80 new measures in 2021 to 97 in 2022).

From this data, this Report details **five trends** from the first two years of the crusade against “CRT.” All trends are discussed in more detail in Part II.A.2.

1. ***Despite its short life, the Executive Order has a strong legacy.*** Even though Executive Order 13950 was rescinded only a few months after its release, its language permeates all forms of anti-“CRT” activity, most prominently in introduced measures that target so-called “divisive concepts” (**Tables 4-5**). Among all introduced measures, 41% seek to regulate at least one form of subject matter first listed and defined in E.O. 13950 as being a “divisive concept.” Of the 563 introduced measures, 21% limit instruction on “divisive concepts” generally, while 41% (229 of 563) prohibit instruction on the “divisive concept” that “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,” and 33% (187 of 563) forbid instruction on the “divisive concept” that “any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex.” Although not named in the E.O., an explicit ban on “Critical Race Theory” appears in 35% (200 of 563) of introduced anti-“CRT” measures. Of the 241 adopted measures, 45% of them target “Critical Race Theory.” (108 of 241).

2. ***The activity is widespread but unevenly distributed across government levels and state political identity.*** As of December 31, 2022, lawmakers in 28 states have adopted at least one anti-“CRT” measure at the state level, including attorney general letters, executive directives, legislation, policies, regulations, resolutions, and statements. Of those 28 states, 16 have specifically enacted anti-“CRT” legislation. In 2021 and 2022, in every state except Delaware, government officials have introduced at least one anti-“CRT” measure at some level (**Tables 6-8**). Of the 528 measures introduced at the state and local level state and local officials in the 25 red

states have introduced more measures (63%, 331 of 528) than those in the 20 blue (21%, 110 of 528) and five purple (16%, 87 of 528) states. Of the 331 measures introduced or released in red states, anti-“CRT” measures proliferate primarily in state legislatures (261 of 331), compared to only 70 red-state measures introduced locally. In blue and purple states, measures introduced by local government officials predominate: in blue states, 62 of the 110 introduced measures are local, while in purple states, 45 of the 87 introduced measures are local.

Blue-state law and policymakers are less effective than red and purple state law and policymakers at moving anti-“CRT” measures from introduction to adoption; blue-state lawmakers and red-state lawmakers have respectively successfully adopted approximately 40% of their state and local measures. Purple-state lawmakers are more effective than blue-state and red-state law and policy makers; 59% (51 of 87 introduced purple-state measures) have been adopted or enacted. That purple-state total exceeds the 44 measures adopted by the 22 blue states combined.

In blue-state state legislatures, only 10% (5 of 48) anti-“CRT” measures have been adopted while blue-state local government have enacted 62% (39 of 62) of introduced anti-“CRT” measures. Part II.B. of this report explores California as a case study illustrating a pattern found in blue states; all anti-“CRT” measures in California introduced by local policymakers were in counties that are more conservative than the state at large (**Table 13**). As of December 31, 2022, seven of 11 measures introduced in California school districts have been adopted, affecting approximately 110,000 students statewide.

3. ***The measures focus primarily on K-12 schools and colleges and universities.*** Anti-“CRT” measures and rhetoric have propagated nationwide, especially those targeting K-12 schools and institutions of higher education. (**Table 9**). Ninety-one percent of all introduced measures (513 of 563) and 94% of all enacted measures (226 of 241) include as targets K-12 education and almost 20% of introduced measures (110 of 563) and 12% of enacted measures (29 of 241) target institutions

of higher education. Adopted anti-“CRT” measures targeting K-12 schools affect over 22 million public school children, almost half of the country’s 50.8 million public school students. And while individual measures aimed at systems of higher education are less numerous than those targeting local school districts, such measures impact hundreds of thousands of college and graduate students.

4. Measures targeting K-12 schools regulate curriculum and classroom lessons. Of the 513 introduced measures targeting K–12 schools, 73% (372) regulate classroom teaching, and 75% (384) regulate curricular materials. Please note that many of the measures target both. **(Tables 10 and 11).** Of the 226 adopted measures targeting K–12 schools, 65% (147) regulate classroom teaching, while measures that restrict curricular choices account for 76% of adoptions (172). In addition, of the 513 introduced measures targeting K–12 institutions, 147 (29%) affirmatively require school districts to allow parents to surveil curriculum, and 41 (28%) of those introduced measures have been adopted. Measures that provide for educational “opt-outs” (17 enacted v. 35 introduced measures) or concerning “forbidden books” (23 enacted v. 33 introduced) are less common.

5. One-third of introduced state legislative measures specify withholding funding as a consequence for violations. Among the 308 introduced state legislative measures, at least one-third (101) propose withholding funding from teachers, schools, and districts for alleged violations **(Table 12)**. In addition, 14% (46) propose a private cause of action by which individual citizens may sue district officials and teachers (among others) for alleged noncompliance.

The findings in this Report suggest that the anti-“CRT” movement is not stagnating; indeed, government officials at all levels are introducing an equal or greater number of measures in 2023 as they did in 2021 or 2022. The CRT Forward Tracking Project will continue to compile, track, and analyze these efforts to aid researchers, advocates, and activists in resisting this current attack.



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