

Orange County Board of Education



Orange County Department of Education
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Costa Mesa, CA

White Paper-Final Draft

Special Community Forums on “California’s Ethnic Study Model Curriculum”

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We are grateful for the participation and subject expertise of our forum experts who presented testimony:

- Elina Kaplan, President, Alliance for Constructive Ethnic Studies
- Walter H. Myers III, Adjunct Lecturer of Theology Biola University
- Richard Sander, Ph.D., Jesse Dukeminier Professor of Law, University of California, Los Angeles
- Brandy Shufutinsky, Ed.D., Director, Black Americans for Inclusive Ethnic Studies, The Alliance for Constructive Ethnic Studies
- Maimon Schwarzschild, J.D., Professor of Law, University of San Diego
- Wenyan Wu, Ph.D., Californians for Equal Rights Foundation
- James Lindsay, Ph.D., Founder, New Discourses
- Mark McDonald, M.D., Psychiatrist, Child and Adolescent Psychiatry
- Damon A. Horton, M.S., Assistant Professor of Intercultural Studies, California Baptist University
- Joe Nalven, Ph.D., Lecturer and Research Associate, Cultural Anthropology, University of San Diego

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California's Ethnic Study Model Curriculum

EXECUTIVE SUMMARY

On March 18th, 2021, the California State Board of Education (SBE) adopted its final Ethnic Studies Model Curriculum (ESMC).¹ Nearly seven months later, Governor Gavin Newsom signed into law AB101, the state mandate requiring ethnic studies as a high school graduation requirement starting with the class of 2030.² These two state-level developments, coupled with a decade-long movement to introduce ethnic studies curricula in K-12 classrooms at both the state and local levels, makes California among the first in the nation to embrace and implement a disputed and fairly polarizing education paradigm.

The contents of California's ESMC have been vigorously rejected by parent groups in California and across the United States questioning the efficacy of ethnic studies, the ideological influence, and embedded divisiveness of critical race theory (CRT). Against this backdrop, the Orange County Board of Education (OCBE) became the first elected educational board in the country to host two expert forums on ethnic studies and CRT, on July 27th, 2021 and August 24th, 2021. The two highly attended public events featured dynamic testimony from scholars, advocates, and practitioners, spurring national and international media attention and generated a great amount of community interest to better understand the controversial and sometimes confusing curricula to be rolled out in K12 public schools in California.

This policy paper surveys the intellectual and empirical debates surrounding ethnic studies and CRT, summarizes the contents of both public expert forums, and provides policy recommendations for consideration to schools, families, and students in the Orange County public education system.

1. INTELLECTUAL & EMPIRICAL DEBATES

1.1. CRITICAL RACE THEORY

Born out of American legal scholarship in the early 1980s, critical race theory is defined by the American Bar Association as “a practice of interrogating the role of race and racism in society that emerged in the legal field and spread to other fields of scholarship.”³ While many proponents and observers insist that CRT is a strictly legal academic concept⁴ and that any dissenting discussions on CRT should be invalidated as a result, one does not even need to venture out of the pro-CRT intellectual camp to uncover the theory’s broad cultural and political implications and ambitions.

Generally speaking, there is strong consensus that CRT is a worldview with a pedagogy designed to have implications beyond the immediate realm of legal analysis, with academic roots grounded in Marxism, neo-Marxism, radical feminism, critical theory, post-modernism and constructivism. Roy L. Brooks defined CRT as “a collection of critical stances against the existing legal order from a race-based point of view.”⁵ This narrow-focused conception was then broadened by Richard Delgado and Jean Stefancic to mean “a collection of activists and scholars interested in studying and transforming the relationship among race, racism, and power.”⁶ The two also expand on this ontological starting point by asserting that: “Critical race theory questions the very foundations of the liberal order including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.” Critical race theory questions the very foundations of the liberal order including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.”⁷

CRT’s modern-day proponent, UCLA and Columbia law professor Kimberle Williams Crenshaw, who coined the term “intersectionality” as a key building block of the theory, went one step further to attribute CRT to an ongoing battle against white supremacy, arguing that it is “an approach to grappling with a history of white supremacy that rejects the belief that what’s in the past is in the past, and that the laws and systems that grow from that past are detached from it.”⁸ As a pedagogy, CRT is defined as “the introduction to a particular form of life,” serving “in part to prepare students for dominant or subordinate positions in the existing society.”⁹ When applied to education, Gloria Ladson-Billings and

William F. Tate, IV, wrote for a critical-race-theory paradigm of education that rejects multicultural education and aims for a “*program of emancipation...to be built around the question of race first.*”¹⁰

CRT is centered on a prognosis of systemic racism. The five tenets of its race centrality are:

1. Racism is ‘embedded in the structure of society.’
2. Racism has a ‘material foundation.’
3. Racism changes and develops over different times.
4. Racism is often ascribed a degree of rationality.
5. Racism has a contemporary basis.

While CRT was first developed as early as the 1980s, social scientists and culture critics have only started to debate it in recent years. Both of its theoretical rigor and empirical utility have been scrutinized. According to Helen Pluckrose and James Lindsay, CRT creates a phenomenon of people searching for “*power imbalances, bigotry, and biases that it assumes must be present,*” which reduces everything to prejudice, “*as understood under the power dynamics asserted by Theory.*”¹¹ From a perspective of rhetoric and linguistics, Erec Smith, Ph.D., argues against CRT’s prescriptive solution--- anti-racism.

*“Anti-racism initiatives and the narratives and ideologies feed them result from a ‘primacy of identity’ that, itself, results from a strong sense of disempowerment that leads to fallacious interpretations of texts, situations, and people; an infantilization of the field, its scholars, and its students; an overemphasis of subjectivity and self-expression over empirical and critical thought; an embrace of racial essentialism.”*¹²

Perhaps the two most controversial projects on CRT in contemporary times involve the anti-racist scholarship of Ibram X. Kendi, Ph.D., and the media debut of CRT known as the 1619 Project. The former prescribes a dichotomous remedy to racism: “*The only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination.*”¹³ The latter is a journalism project platformed by the New York Times and created by Nikole Hannah-Jones in 2019 to reframe America’s history on the legacy of slavery and contributions of Black Americans. The 1619 Project argues that American

history is a story of Black struggle against white supremacy and that America's founding ideals of liberty and equality were false when they were written.¹⁴

Both projects have been criticized by serious thinkers of our times. A group of intellectually honest black academics at the "1776 Unites" consortium object to CRT's simplicity and over-determinacy. According to John McWhorter, "*the heart of critical race theory is an idea that all intellectual and moral endeavor must be filtered through a commitment to overturning power differentials.*"¹⁵

Political scientist Carol Swain writes:

*"Critical race theory says that every dysfunctional condition in black urban communities can be traced to slavery and its aftermath. There is no place for individual choice or initiative. That's the theory. But what critical race theory actually 'accomplishes' is to create anger, frustration, and despondency among persons in the victim categories, who internalize this destructive message."*¹⁶

Leading historians Sean Wilentz, James McPherson, Gordon Wood, Victoria Bynum, and James Oakes argue that the 1619 Project reflected "a displacement of historical understanding by ideology."¹⁷ According to academic Glenn Loury:

"What happened in 1776 — the founding of the United States — was vastly more significant for world history than what happened in 1619 — the first arrival in America of African slaves. The narrative we blacks settle upon about the American story, the American project, is fundamentally important. Is this, basically, a good country that affords boundless opportunity to all who are fortunate enough to enjoy the privileges and bear the responsibilities of American citizenship?"

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In summary, CRT is a contested and explicitly political theory that examines all social relations, economic governance and policy outcomes through the prism of race and systemic/structural racism.

1.2. ETHNIC STUDIES

In the last decade, California has become embroiled in an increasingly contentious debate on the revolutionary paradigm of ethnic studies. After three rewrites and one veto¹⁹, ethnic studies was codified as a required course for California's over one thousand public high schools on October 8th, 2021. Policy observers, intellectuals, education reformers, advocates and other stakeholders disagree on the substantive or pedagogical framework of this unvetted and misunderstood paradigm. They also have drastically different opinions when it comes to evaluating the observed and predicted efficacy of ethnic studies. The public debate was so heated and unconventionally divided that the *Los Angeles Times*, a liberal media titan, issued an editorial in late September arguing that the latest ethnic studies bill was "not quite ready for prime time."²⁰

Notably, the biggest disagreement over the ethnic studies paradigm, expected to be a national roadmap, is involved around its alleged ideological roots in critical pedagogy and CRT. While many ethnic studies proponents and practitioners vehemently deny that California's ESMC is CRT, critics view this backdoor approach as a gaslighting tactic to deflect from the paradigm's intentions of indoctrination and division.

1.3 RELATIONSHIP OF ESMC & CRT

In July 2021, the California School Boards Association (CSBA) issued a bulletin to clarify the differences between CRT and ethnic studies.²¹ The state-wide organization argues: "*Although certain approaches to ethnic studies may incorporate elements of CRT, they are not synonymous or interchangeable.*" CSBA further adds:

*"The state's model curriculum is intended to provide guidance to school districts and county offices of education. It does not require specific concepts — such as critical race theory — be incorporated, should an LEA decide to offer an ethnic studies course."*²²

Opponents strongly believe the categorical connections between ethnic studies and CRT cannot be so easily explained away. Williamson Evers, education researcher and former Assistant Secretary of

Education, has studied and written about various versions of ESMC. Evers compared the latest ESMC to its earlier write-ups, concluding the same ideological framework of CRT: *“the state’s new curriculum prefers victimization to minority achievement, and Marxism to liberal values.”*²³

Lee Ohanian, a Stanford economics professor, reflects upon the state’s approval of the final ESMC:

*“The curriculum continues to be founded on critical race theory (CRT), which is the view that our legal, economic, and social institutions are inherently racist and are exploited by some Whites to retain their dominance by oppressing and marginalizing others. The CRT-focused curriculum will foster divisions among students and will almost certainly not improve learning outcomes, as advertised by its proponents.”*²⁴

The Alliance for Constructive Ethnic Studies (ACES), one of the leading advocacy groups against critical ethnic studies, identified the early ESMC’s unchanged focus on the Critical Ethnic Studies approach which has corrupted and hijacked the discipline with *“a narrow, divisive ideology...based on CRT.”*²⁵ Addressing the fact that California’s State Board of Education (SBE) only made window-dressing changes to the final ESMC, ACES notes:

*“With over 7,000 comments submitted in January-February, letters opposing the Critical ES approach and Critical Race Theory (CRT) comprised the #1 concern about the ESMC. However, the SBE ignored nearly all of the more than 100 pages of edits submitted by organizations advocating to shift the underlying Critical Ethnic Studies focus to a Constructive Ethnic Studies approach.”*²⁶

Another leading organization in opposition is the AMCHA Initiative, a non-profit organization dedicated to *“investigating, documenting, educating about, and combating antisemitism at institutions of higher education in America.”*²⁷ AMCHA was instrumental in lobbying Governor Newsom to veto AB331 in fall 2020 by coordinating a letter from 80 California-based organizations to shed a light on an inherent anti-Semitic bias of the ethnic studies paradigm.²⁸ AB331 was AB101’s precedent. In 2021, AMCHA engaged in organized activism against both AB101 and the ESMC. Tammy Rossman-Benjamin, the

director of AMCHA Initiative, emphasizes that ESMC is rooted in principles of CRT and critical pedagogy in an official statement:

“While on the surface, the curriculum approved by the state appears improved over the rejected first draft, it remains firmly rooted in the principles of Critical Ethnic Studies, which unlike the broader field of ethnic studies, has a politically- and activist-driven mission that will incite hate and division and is dangerous for all high school students. Most profoundly concerning for the Jewish community is the portrayal of Jews, filtered through the lens of Critical Ethnic Studies, as ‘white’ and ‘privileged’. At a time when anti-Jewish sentiment, hostility and violence has reached truly alarming levels, indoctrinating students to view Jews as ‘white’ and ‘racially privileged’ is tantamount to putting an even larger target on the back of every Jewish student.”

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Wenyuan Wu, Ph.D., of Californians for Equal Rights Foundation (CFER), another leading group in California that has organized awareness building campaigns surrounding ESMC, AB101, and CRT, concurs with these scholar’s supporting evidence and assessment that CRT is indeed ESMC’s guiding framework. In her testimony at the California Assembly Education Committee as a primary witness opposing AB101 on April 7th, 2021, Wu argues:

“The final model curriculum is still rooted in an unchanged ideological framework of critical ethnic studies and critical pedagogy. This is the single-most corrupted pedagogy to impose a belief system that divides our students and teachers on the crude basis of skin color or race. It is simply wrong and the state shouldn’t sponsor this movement with public dollars. Second, teaching ethnic studies in a context that’s predicated on racial divisions and a crude dichotomy of victim v. oppressor fundamentally violates the 14th Amendment to the U.S. constitution, California’s constitutional guarantee of equal treatment, and a plethora of anti- discrimination laws at federal and state levels, including Articles 3 and 4 of the Education Code.”

Analyzing the newly added lessons on Asian-American studies in the finalized ESMC, Wu adds:

*“Perspectives on Asian-American history, for instance, reek of victimhood mentality and divisiveness. The ESMC sample lesson on “Chinese Railroad Workers” starts with a presupposition that Chinese laborers’ contributions to American infrastructure have been overlooked to “exemplify the white supremacy view of US history.” Then, it advises students to comprehend the construction and power interplay of the transcontinental railroads project through “systems of power” and “racism and exploitation.”*³⁰

1.4 LIBERATED ETHNIC STUDIES

Perhaps the most problematic aspect of California’s ethnic studies movement lies within a more radical paradigm than the state approved ESMC. In practical terms, there are no well-designed curricula at the district level for teaching ethnic studies - and the only one being marketed is based on materials that were rejected by the state and Gavin Newsom said would never "see the light of day" because they were so offensive. Recognizing the prevalence and popularity of Liberated Ethnic Studies Model Curriculum (LESMC), Wenyuan Wu testified against AB101 at the California Senate Education Committee, on behalf of a diverse coalition of 27 organizations:

“It is simply premature and imprudent for the state legislature to pass a taxpayer-funded state mandate on ethnic studies when tensions, controversies and disagreements abound. The final state-approved model curriculum is still rooted in an unchanged ideological framework of critical pedagogy. More importantly, dozens of individual school districts have adopted resolutions to endorse the first and rejected model, coined as Liberated Ethnic Studies Model Curriculum.”

LESMC is a rather institutionalized form of ethnic studies, a for-profit consulting group called “the Liberated Ethnic Studies Model Curriculum Institute” (LESMCI, formerly known as the Liberated Ethnic Studies Model Curriculum Coalition).³¹ LESMCI provides consulting services targeting districts that are looking for: 1. Anti-racist culturally responsive training; 2. District advertisement and implementation of ethnic studies; 3. ethnic studies professional development. The coalition is promoting the previously rejected 1st draft of Ethnic Studies Model Curriculum by pressuring individual school boards to adopt resolutions at the request of its affiliated group “Save CA Ethnic Studies.” LESMCI defines the linkages between CRT and Ethnic Studies as:

*“Critical Race Theory is one of the many theoretical lenses used in Ethnic Studies. Critical Race Theory argues that a students’ every day experience is informed by their encounters with racism. Someone with a critical race lens would reason that changing racist educational structures requires students to embrace their racialized identity and other forms of identity, including gender and/or immigration status. Since Ethnic Studies is an anti-racist project, students are encouraged to develop counter-stories or counter-narratives to the dominant voices in traditional curriculum.”*³²

In warning about the proliferation of liberated ethnic studies in the classroom, ACES pinpoints:

*“Critical/Liberated Ethnic Studies scholars are also working with teachers to infuse all classrooms with this ideology through webinars and training sessions under the guise of “professional development.” When asked about the explicit Marxist concepts, the trainers acknowledge that some teachers may find this difficult, but explain that they must have the “correct political views” in order to teach this subject.”*³³

To protest the SBE approved ESMC as too mild and insufficiently revolutionary, LESMC experts and consultants, many of whom were original authors of the first draft and members of the Model Curriculum Advisory Committee formed by the CDE/SBE, signed an open letter on February 3rd, 2021 to request that their names be removed from the final ESMC:

*“Ethnic Studies guiding principles, knowledge, frameworks, pedagogies, and community histories have been compromised due to political and media pressure. Our association with the final document is conflicting because it does not reflect the Ethnic Studies curriculum that we believe California students deserve and need.”*³⁴

Across California, many local school districts have embraced the revolutionary paradigm of critical or liberated ethnic studies through teaching intersectional identity politics to 3rd-graders (Cupertino)³⁵, training white teachers to embrace “diversity” and atone for “spiritually murdering black children” (San Diego)³⁶, and priming students to become anti-racist activists (Santa Barbara)³⁷. Multiple sources from insider whistleblowers and researchers have unearthed evidence of a fringe, radical group of activists

based in Southern California as the catalyst for this sweeping ideological reform in education. In turn, this movement has hijacked genuine cultural and ethnic studies and turned it into a political battleground of proselytizing, divisive, and un-American worldviews.

The story started in 2013 with the “People’s Campaign” by the Southern California-based Union del Barrio (UdB), a self-described “*independent political organization*” working towards “*political revolution*” and “*the fundamental liberation of all raza, from Chile to Alaska.*”³⁸ In time, a number of UdB-affiliated activists would go on to obtain official public positions to promote the anti-capitalist and anti-imperialist “critical” ethnic studies.

Both LESMCI/LESMCC and Save CA Ethnic Studies are also affiliated with “Ethnic Studies Now Coalition (ESNA),” an activist group backed by UdB with a mission to promote ethnic studies as “a form of liberation” and a pedagogy of “transformational resistance” throughout California.³⁹ AMCHA’s Rossman-Benjamin characterizes the hijacking of ethnic studies by radical politics as “*a case of bait and switch*”:

“When California lawmakers approved AB 2016, a landmark bill mandating the development of an ethnic studies model curriculum for high school students, they believed that teaching ethnic studies would promote mutual understanding and respect among members of the largest and most ethnically diverse public school student body in the nation...Little did these legislators know, however, that they had been manipulated by a small group of highly motivated activists bent on hijacking the state’s educational and legislative infrastructure for their own radical political ends – which has also come at the expense of Jewish children and the Jewish community.”⁴⁰

This critical observation on UdB being the change agent for critical ethnic studies is shared by Wu in a February 9th, 2021 interview.⁴¹ Wu further notes:

“Jose Lara, R Tolteka Cuauhtin and another UdB member Lupe Carrasco Cardona launched the “Save CA Ethnic Studies” campaign to promote elements of anti-racism, empire critique, anti-colonialism and to promote the curriculum (rejected by public comments). Subverting the process that was resulting in criticism, the campaign went directly to 20+ individual school districts, presenting them with resolutions masquerading as innocuous support for ethnic studies in general. Most board members did not notice the fine print that had them inadvertently endorse

the controversial draft. Cardona and other MCAC advisors launched the Liberated Ethnic Studies Model Curriculum Coalition (LESMC) in August of 2020 to further perpetuate the critical pedagogy framework of ethnic studies.”

2. SUMMARY OF THE TWO OCBE EXPERT FORUMS

Echoing intense intellectual discussions, the public, including parents, community members and taxpayers of Orange County, have hotly debated CRT and ethnic studies. By early summer 2021, the topic of critical race theory had become a hot-button issue at the national level, generating both top-down legislative responses in over 20 states and bottom-up, grassroots activism across the United States. While a group of Orange County parents and students called upon their school districts to confront racism and history through the teaching of ethnic studies⁴², others protested against a new ESMC and CRT curriculum such as the one introduced in the Los Alamitos Unified School District (LAUSD), slamming it as “infused with critical race theory”⁴³ and “anti-white.”⁴⁴

Two schools in the Los Alamitos School District were also found to assign a Huffington Post opinion article titled “Why I’m A Racist,” at a high school science class and a middle school English class, respectively.⁴⁵ LAUSD leadership defends the use of this article in both classes, as a “warm-up” in the science class and as an example of “opinion writing.” LAUSD admits obtaining the article from Teaching Tolerance (now called Learning for Justice), an organization dedicated to the cause of racial justice, dismantling white supremacy, and promoting intersectional social movements. When challenged by outraged and concerned parents, the administrative leadership dismissed their criticism as “calculated misinformation.” Parents were not happy and turned to the Orange County Board of Education trustees for guidance and help.

The Orange County Board of Education (OCBE) responded to the requests of parents from across Orange County to inform the public about the ESMC and CRT curricula by organizing two public meetings, on July 27th, 2021 and August 24th, 2021, respectively. Both public meetings contained expert forums organized to better educate students, parents, and community members on various complex issues surrounding the two topics through expert testimony and public discussions among the public, invited experts and the OCBE trustees. In total, ten distinguished experts from a diverse array of ethnic

and political backgrounds presented at the two forums with evidence-based testimony, and relevant legal and scholarly insights.

In opening the first forum, OCBE President Mari Barke commented:

“As an elected government body entrusted with the mission to offer leadership and resources for our 29 school districts and OCDE schools, the Orange County Board of Education has a vested interest in making sure that all our trustees are sufficiently educated on these two inter-related topics, so that we can better inform the public and guide various schools in our county. Specifically, we want to be educated on the proper and legal implementation of California’s Ethnic Studies Model Curriculum.”

Her remarks were amplified by Board Trustee, Lisa Sparks, Ph.D.:

“Our students need to learn about American history, racism and cultures in an unabridged, apolitical and balanced manner, so that they can better contribute to the American citizenship, then become global citizens with respect for one another’s differences. Indoctrinating them with contested theories as accepted truths is not the way to go. As a society, we also want to address existing issues of inequalities and disparities so that we continue to perfect the recipe for justice and liberty. But using CRT or race-based thinking to guide our public policies is tantamount to fighting fire with fire. My own research of more than 150 publications and 12 books has supported a better path of understanding and helping underserved populations. Generally speaking, we need intercultural and cross-cultural communication that promote inclusiveness and understanding, not an activist approach to tear down, divide and socially engineer.”

Collectively, the two special forums examined the following issues:

- Is ethnic studies co-opted as a vehicle to propagate CRT?
- Are there different ways to teach ethnic studies? How can they be differentiated from each other?
- How can we make sure the instruction is age and grade-level appropriate?
- Are there any legal concerns or liability issues when it comes to teaching a particular kind of ethnic studies?

2.1 PUBLIC FORUM- JULY 27TH, 2021

Five experts from a diverse array of ethnic and political backgrounds testified at the first public meeting. The panel included Mr. Walter H. Myers III, Adjunct Lecturer at Biola University, Dr. Richard Sander, Professor of Law at UCLA, Dr. Brandy Shufutinsky of the Alliance for Constructive Ethnic Studies, Dr. Maimon Schwarzschild, Professor at University of San Diego and Dr. Wenyuan Wu of Californians for Equal Rights Foundation. While ESMC and CRT are controversial issues, all experts gave evidence-based presentations to amplify the broad-based nature of important public discourses and concerns surrounding the two topics. Additionally, the expert panel was moderated by Mr. Joe Collins, former candidate U.S. Congress

Myers' testimony mainly focused on the theoretical backgrounds and empirical critique of CRT.

“Critical Race Theory (CRT) has its roots in Critical Legal Theory, which has its roots in Critical Theory. I will start with Critical Theory and work my way historically to CRT. CRT has been in academia for decades but has only recently come to the forefront since it is now making its way into the public consciousness primarily due to advocacy that CRT be taught in K-12. Suddenly, parents are acutely aware something is amiss, and I think finally understand why many of their children have left college with a disdain for America and our capitalist system.”

Professor Sander, a nationally recognized expert on academic mismatch and affirmative action in higher education, utilized the example of a pioneering program called “Critical Race Studies” at UCLA Law School offering the following analysis

“In principle, these (ethnic studies courses) were helping to redress a real disparity in what academics focused on. The problem is, when you have a special program that focuses on a particular ethnicity, you define that ethnicity as essentially an academic discipline. If you define that as a discipline, then you are automatically narrowing the range of answers that people can come up with, as they explore that discipline. You also dramatically narrow the diversity of viewpoints and experiences and expertise... You tentatively develop programs that are essentially echo chambers. They are very ideologically homogenous.”

Coming from a background of legal scholarship on the U.S. Constitution, Professor Schwarzschild addressed the legal ramifications of teaching CRT and other CRT-based concepts such as anti-racism from the lenses of the Constitution, the Civil Rights Act of 1964 and the Educational Amendments of 1972:

“There is potential for legal liability, in short, under these federal laws among others, and under state law as well, when public schools adopt racist and racially abusive classroom techniques and curricula. More broadly, greater equality of opportunity for all in America depends crucially on the quality of public education – on students’ opportunity to acquire the verbal and mathematical skills, the discipline, and the accurate knowledge essential for citizenship and success in a free and prosperous society. Yet there is widespread educational failure in the public schools, with troubling gaps by race and social class. In the San Diego Unified School District, for example, which spends millions of dollars on “anti-racism” trainings, speeches, and “diversity audits”, only 37 percent of San Diego’s fourth-graders were scored “proficient” in reading, and only 42 percent in math, according to standardized tests in 2019. Black and Latino students there perform still worse than these overall averages.”

Dr. Shufutinsky compared two competing approaches of ethnic studies- constructive and critical/liberated, from her experiences as a social worker, long-term private and public-school educator, and a black American:

“Those who are pushing ideology that frames Black Americans as perpetual victims are touting the same ideology that my grandparents fought against. Ideology that is steeped in Klan-like prejudices, painting Black Americans as lesser than, as weaker, as unable to overcome. Institutionalizing this type of rhetoric under the guise of liberatory ethnic studies denigrates those who came before us, those who sacrificed so much for those of us who came afterwards. Upholding learning materials that falsely portray the bravery that Black Americans who resisted oppression through sit-ins, marches, and boycotts as “passive”, “docile”, or “racial accommodationism” minimizes the violence that these Americans faced. Using a critical race lens, liberatory ethnic studies distorts history and further marginalizes the experiences of Black Americans by portraying us as monolithic, as though there is only one acceptable way to be Black. Examples of this are in sections of LES curriculum covering “significant figures,” where

only radical, Marxist leaders are used to demonstrate to students the acceptable types of leaders they should look up to.”

For the July 27th forum, Wenyuan Wu, Ph.D. replaced Dr. Theresa Montaño, who canceled her participation the day before the event as an expert panelist. Montaño who is the leader of the LESMCI, latter publicly protested the public forum and expert panel in a public news conference falsely accusing the other panelists of not being knowledgeable and experts in the subject matters.⁴⁶ Wu, a political scientist by academic training and a policy advocate for equal rights by profession, spoke about curricular alternatives to CRT and critical ethnic studies.

“To start, ethnic studies should promote mutual understanding and respect among students of different ethnic backgrounds. It should inspire meaningful efforts to build bridges and increase appreciation for different cultures and ethnicities in our diverse country. If it is taught as a literature course which we have seen in places like Poway Unified, ethnic studies should introduce logic, higher thinking and contextual understanding. It should also emphasize objectivity, civil discourse and independent thinking. In addition to encouraging multicultural perspectives, the materials should help improve students’ verbal and writing skills, cultural competencies, and college preparedness.

In terms of ethnic studies in history lessons, there are several alternatives to the 1619 version of black history, for example. The “Alternative Reading Guide for The 1619 Project” by J.D. Richmond and W.F. Twyman Jr., two self-identified classical liberal scholars, recognizes the groundswell of conversation created by the 1619 Project but also sees the danger in overemphasizing oppression and grievance and drowning out voices of resilience, strength and true heroism. We also have the 1776 Unites Curriculum from the Woodson Center. This is a collection of black history lessons covering the time period from the early 18th century to the contemporary era. The lessons focus on both the tragedies of racism and the heights of human resilience, through teaching key historical events such as the American Revolution, the Civil War, the Tulsa Race Massacre and Jim Crow. It offers authentic, inspiring stories from American history that show what is best in our national character and what our freedom makes possible even in the most difficult circumstances.”

Wu also countered Montañó’s criticism regarding the expertise of her co-panelists:

“Curricula design and implementation, classroom management and pedagogical practices should not be locker room talk, reserved for bureaucrats, administrators, principals and educator-activists. Parents, grandparents, community members, and taxpayers have a right for prior consultation and informed consent. This need for stakeholder engagement is especially heightened when our public education system is failing our kids, particularly students from underprivileged backgrounds. California’s public K-12 education system ranked 38th in the nation, last time I checked. Only 5 in 10 students, grades 3 to 8, can read proficiently and only 4 in 10 can do math proficiently. Only 32% of public school 11th graders met state test standards in 2019. The pandemic-induced school closures have exacerbated learning losses and gaps.”

The expert panel was well received by Orange County parents and community members, who overwhelmingly rejected CRT being an ideological foundation for various classes and programs in K-12 schools. OCBE trustees engaged the experts in a thought-provoking Q & A session, in which they discussed the vital importance of improving basic competencies of our K-12 students, different approaches to teaching cultures and ethnicities and legal consequences of perpetuating CRT in classrooms.

2.2 PUBLIC FORUM- AUGUST 24TH, 2021

For the purpose of doing a deep-dive into ESMC in relation to CRT, the OCBE conducted a second special meeting bring together nationally renowned experts, esteemed public speakers and community members in Orange County. The expert panel included Dr. James Lindsay, Founder of New Discourses, child and adolescent psychiatrist Dr. Mark McDonald, Ms. Elina Kaplan, President of the Alliance for Constructive Ethnic Studies, Dr. Joe Nalven, Lecturer and Research Associate of cultural anthropology at University of San Diego, and Mr. Damon A. Horton, Assistant Professor of Intercultural Studies at the California Baptist University. The panel was moderated by Ms. Harriette Reid, an African American local education advocate.

Kaplan opened the panel by identifying herself as “a mom of two, a long-term Democrat and a professional in executive management and an immigrant from the Soviet Union.” Kaplan recounted her experience and story of encountering critical ethnic studies as a sweeping thought experiment that starts in early grades and mimics the Soviet experiment:

“Never could we have imagined that decades later the same ideology and concepts that we escaped would show up in of all places the California Ethnic Studies Model Curriculum. What in the world is Marxist and neo-Marxist dogma doing in a K-12 ethnic studies curriculum? A curriculum that’s supposed to be focusing on building bridges and understanding between ethnic groups, on building mutual respect...And it turns out that there is a specific discipline on college campus called critical ethnic studies and the practitioners of this discipline refer to themselves as scholar activists. They say this very openly... and they aim to “bring into conversation the ways of concerted effort and collectivized resistance to U.S. imperialism, ground our approaches for dismantling the neocolonial schooling apparatus.”

Lindsay, a leading national expert and critic of CRT and grievance studies, with an in-depth analysis of racial Marxism and liberationism as the ideological underpinnings for liberated ethnic studies. Lindsay also addressed the common misunderstanding that CRT is not taught in K-12:

“Yet liberationism was a hot topic in the 1960s... Herbert Marcuse was a very influential Critical Theorist in the 1960s. He’s considered the father of the New Left which gave rise subsequently to the Critical Legal Studies movement... And the Critical Legal Studies gave rise to Critical Race Theory... In 1969, he wrote an essay on liberation titled “An Essay on Liberation,” a stunning work of communist thought where he makes out that liberation means socialism without the bureaucracy... The point of his liberation critical theory is to induce psychopathologies in activists so that they find the life that we live in our society intolerable and require liberation in order to survive, to function in day-to-day society.”

From a perspective of a long-term educator and a professional mediator, Nalven delved into the human conditions that empirically negate the efficacy of critical ethnic studies in explaining human interactions

and our nuanced social realities. Nalven talked about how colorblindness becomes a microaggression, as an example of the fallacy of race-centric thinking:

Through war, migration, exchanging partners as part of alliances, we are not isolated- we have quite a bit of mixing. Especially in the United States, we are a heterogeneous society. So the sense of having only one race, the human race, is basically a fundamental truth...But it comes into conflict with the teaching within a critical race theory model of a microaggression... Students shouldn't be taught with a truncated understanding in order to get to an ideological perspective. You are moving away from education into indoctrination.

Horton, a proponent of teaching ethnic studies in K-12, introduced an important perspective of shared unity as a theologian and a missiologist to evidence the utility of an affirmative ethnic studies paradigm:

“I do believe that there is merit to show that ethnic studies, grounded in data, has proven to be beneficial not only for “students of color,” but for all students...Ethnic studies courses actually have been proven to help the mental health of students...All of us understand the underperforming realities of the California public school system...But the test scores of those children when their ethnicity was affirmed went up 21% in math, 20% in reading and 9% in writing. Ethnic studies courses demonstrate the uniqueness of the United States of America as it celebrates the cultures and ethnicities that are present.”

Coming from a background in child psychiatry, McDonald commented on the psychological impact of manufactured human divisions and consequent fears brought forth by race-centric ideologies such as CRT:

“We are largely divided now into two groups- the rational and the irrational. The irrational people are largely very fearful now... They tend to largely want to control everyone...Propaganda is always used in the same way- it's used as a vehicle to announce, fuel and maintain a crisis, either real or imagined... The crisis that we are being told were suffering from and that is necessitating Critical Race Theory is the crisis of racism. Well, racism has always existed. It has existed in every society around the world throughout history. It still exists today and it exists in every race. But that's not the point. The point is whether it is an obstacle to

the success of every American in this country. It is not. Racism is not an obstacle to one's success anymore. But if you continue to see it as a crisis, then you can justify really any sort of irrational policy."

Similar to the July public forum, the August 24th public forum had an overwhelmingly positive reception among the Orange County's diverse parents, grandparents and community members, who came forth to give public comments in support of unity and in opposition to divisive indoctrination. OCBE Board Trustees and the panel experts exchanged questions and answers regarding CRT's theoretical flaws and the distinctions between liberated and constructive ethnic studies

3. FORUM OUTCOME AND POLICY RECOMMENDATIONS

While members of the public who were present at the past two OCBE panels welcomed the events as positive, informative and balanced, the qualifications of panelists and their potential biases were scrutinized. A July 27 news report by the Orange County Register highlighted the criticism, not by Orange County community members, but by LESMCI leader Dr. Dr. Theresa Montaña, that the experts were not qualified to discuss ethnic studies and that the OCBE sponsored the event to spread "misinformation" and "lies."⁴⁷ Similarly, an August 8 editorial by the Los Angeles Times also criticized the OCBE and its invited experts as refusing to "teach truth," harboring intentional biases, and illustrating "*systemic and institutional racism*," while not denying the fact that public attendees of the event agreed with the experts.⁴⁸

In response to the concern that invited expert witnesses did not have specialized expertise or presented bias against ethnic studies, OCBE Board President Mari Barke co-authored and published a rebuttal on the Orange County Register:

"Coming from different racial and ethnic backgrounds, none of the speakers opposed ethnic studies categorically or suggested that we refrain from discussing racism. None gave any slight indication that we should not teach history honestly. This type of misinformation and false equivalence between CRT and "talking about racism" is exactly why the panel was needed. Notably, the five experts, one Republican, two Independents, and two Democrats, showcased the

bi-partisan nature of the broader alliance against illiberal CRT and a politicized ethnic studies paradigm.”⁴⁹

To counter the smears displayed in the Los Angeles Times editorial, another opinion piece was featured on Minding the Campus, framing the debate on ethnic studies and CRT as emblematic of “*the shifting power dynamics in America’s current culture war, not between the left and the right, but from an elitist class of cultural bourgeoisie and interest groups against the common man.*”⁵⁰

“It is ironic that a top regional media corporation felt it necessary or fashionable to lambast a small local educational board consisting of five elected trustees and two staff members. More disturbingly, the L.A. Times editorial board even went as far as to disparage the parents and community members present for failing to toe the line of political correctness and support its favored narratives of CRT, systemic racism, and a particular brand of ethnic studies.”

Moving beyond the unfortunate yet inevitable politicization surrounding the contested topics of ethnic studies and CRT, it is imperative to derive practical policy lessons from the two public forums. As public schools in Orange County are poised to institute ethnic studies courses following the passage of AB101, education decision makers, reformers, teachers and other stakeholders such as parents and taxpayers can benefit from a more refined focus on the substantial details and policy implications in the actual implementation of ethnic studies as a public-school course.

3.1 SCHOOL DISTRICTS REQUIRED TO CONSIDER AB101 GUARDRAILS

While acknowledging the functional utility and importance of teaching ethnicities and cultures, all experts correctly called attention to competing pedagogies of ethnic studies. The legal definition according to AB2016 is that ethnic studies is an interdisciplinary study of different ethnicities and cultures in the United States to prepare students to be global citizens with an appreciation for the contributions of multiple cultures. Most sensible citizens and the OCBE support such a positive approach to ethnic studies and agree with the non-negotiable importance of teaching cultures, history, and racism in our K-12 classrooms so that our students become informed citizens with cross-cultural understanding.

The ongoing debate is not whether or not an educational entity should teach ethnic studies. This has long been settled among scholars, educators, and community members. The question remaining is how a public education institution should teach ethnic studies. Should ethnic studies be taught to highlight tribulations, perseverance, and contributions and/or intra-group or intergroup differences? Should it be a stand-alone course for high school students or should the curricula be integrated into a variety of disciplines across different grades?

As of now, for reasons discussed in the preceding sections, critical or liberated ethnic studies has been the prevailing paradigm in many California school district. While the state mandate for high school ethnic studies was signed into law, schools and school districts must be aware of a series of accompanying “guardrails” inserted through the amendment process and emphasized by Governor Newsom to “ensure that [ethnic studies] courses will be free from bias or bigotry and appropriate for all students.”⁵¹ Among these guardrails are specific requirements for any ethnic studies course to:

- 1) Be “appropriate for use” with students “of all races, religions, nationalities, genders, sexual orientations, and diverse ethnic and cultural backgrounds”;
- 2) Not “reflect or promote, directly or indirectly, any bias, bigotry, or discrimination against any person or group of persons” within a protected group; and
- 3) “Not teach or promote religious doctrine.”⁵²

Additionally, AB101 guardrails highlight the vital role of local control and public consent, aligning with Damon A. Horton’s remarks during the August forum that it is up to each and every school district to decide upon its own ethnic studies curriculum. Specifically, according to AB101, any local governing body that develops its own ethnic studies course must present it at a public meeting of the governing board, and shall not be approved until a subsequent public meeting at which the public has a chance to express its views on the proposed course.

Furthermore, based on the bill, to the extent that local educational agencies, including public charter schools, choose to locally develop an ethnic studies program, it is the intent of the Legislature that local educational agencies not use the portions of the draft model curriculum that were not adopted by the Instructional Quality Commission due to concerns related to bias, bigotry, and discrimination.

In actuality, school districts have tremendous leeway to not emulate either ESMC or LESMC, especially portions of which, including the religious chants under an ongoing lawsuit, are controversial and problematic. There are also resources available, as mentioned by Wenyuan Wu at the July 27 meeting, that provide powerful alternatives to both LESMC and CRT.

For example, *Between Two Worlds: A Multicultural and Multilingual Anthology* by the Alan Hidalgo Team is a series of three ethnic literature and English language arts textbooks for high schoolers and college students, that has been piloted in several high schools in Central California. It focuses on nuanced, classical multiculturalism with interesting life lessons. The books introduce logic, higher thinking and contextual understanding of different cultures in the United States. They also emphasize objectivity, civil discourse and independent thinking. In addition to encouraging multicultural understanding and perspectives, the materials also help improve students' verbal and writing skills, cultural competencies, and college preparedness.

There are three textbooks in the series: The *Between Two Worlds Anthology*, the *Between Two Worlds Student Workbook*, and the *Between Two Worlds Instructor Manual*. Educators will notice that there are ten words that have been placed in bold print in each of the ten novels of the anthology. These words were chosen for the vocabulary lessons in the student workbook due to their academic and thematic qualities. Each of the three texts is designed to correlate to the other; for instructional purposes, all three must be incorporated for maximum results in a classroom setting. The *Between Two Worlds Student Workbook* may be used at various secondary and post-secondary educational levels such as courses in English, ESL, character building, multiculturalism, and diversity training.

At the same time, "The 1776 Unites Curriculum" from the Woodson Center is a collection of black history lessons covering the time period from the early 18th century to the contemporary era. The lessons focus on both the tragedies of racism and the heights of human resilience, through teaching key historical events such as the American Revolution, the Civil War, the Tulsa Race Massacre and Jim Crow. Inspirational historical figures such as Booker T, Washington, Benjamin Banneker, Alice Coachman, Paul Cuffe and Bidley Mason.

“The 1776 Unites curriculum” offers authentic, inspiring stories from American history that show what is best in our national character and what our freedom makes possible even in the most difficult circumstances. 1776 Unites maintains a special focus on stories that celebrate black excellence, reject victimhood culture, and showcase African-Americans who have prospered by embracing America’s founding ideals. The first installment is designed for high school students. Lessons will be added monthly, with K-8 modules coming soon.

Last but not least, “Alternative Reading Guide for the 1619 Project” by J.D. Richmond and W.F. Twyman Jr. includes essays from the New York Times 1619 Project and a Pulitzer Center designed reading guide along with a supplemental reading guide and questions. The authors recognize the groundswell of conversation created by the 1619 Project but also see the danger in using only the 1619 Project as a guide to race relations and black American history because it drowns out some of the voices of black resilience, strength and true heroism.

Much of the 1619 Project focuses on oppression and grievance as the collective voice of the black American experience. This alternative reading guide takes the Pulitzer Center’s guide and adds an additional reading to each 1619 Project essay for a more complete picture of the black American experience and contribution to American society. This reading guide is designed to help classrooms using the 1619 Project to expand their curriculum, promote robust dialogue and discussion, and add further dimension to the nuance and complexity of the building of America.

Each alternative curriculum can be accessed online or purchased via a common platform such as Amazon or related platform.

3.2 CONTROVERSIAL ISSUES & SCHOOL DISTRICT BOARD POLICY

The first two “guardrails” in AB101 closely mirror the California School Boards Association (CSBA), sample Board Policy 6144(a) recommendations in regards to instruction on controversial issues- personal values and beliefs, political philosophy, culture, religion, or other influences. Most school districts throughout California have approved similar board policies such as CSBA recommended

policy 6144 (a), under the context that school instruction needs to consider controversial issues in a balanced, responsible and civil manner.

For instance, the Los Alamitos Unified School District adopted board policy 6144 on April 22, 2014, promulgating that introduction and proper educational use of controversial issues provided that their use in the instructional program:

1. Is related to the specific instructional goals of the subject being studied and to the level of maturity of the students.
2. Does not tend to indoctrinate or persuade students to a particular point of view. (Education Code 51530)
3. Does not reflect adversely upon persons because of their race, sex, color, creed, national origin or ancestry. (Education Code 51500)
4. Represents facts and concepts of controversial issues from multiple perspectives to ensure that students develop critical thinking and problem-solving skills.
5. Is conducted in a spirit of scholarly inquiry.
6. Is instigated by curricular design or by the students themselves but not by a source outside of the schools.
7. Draws upon information and insights from the widest feasible range of resources.

In other words, ethnic studies, as a controversial topic, should not be taught through any particular ideological lens without introducing counter-balancing perspectives. An equity lens must be discussed alongside a racial equality lens. A race-conscious anti-racism perspective should be taught along with a race-blind perspective of constitutional equality, without any particular bias or tilt toward one view over the other.

3.3 POTENTIAL LEGAL EXPOSURE FOR SCHOOL BOARDS

Promotional controversial approaches such as liberated ethnic studies as a primary pedagogical source of high school ethnic studies could lead to a series of legal violations. First, its implementation would run counter to California's constitutional principle of equal treatment by dividing students and educators based on their skin colors and race-based presumptions of power and privilege. California State Constitution Article I Section 31(a) was established by the passage of Proposition 209, or the California

Civil Rights Initiative in 1996. It unequivocally states: “The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” This principle was overwhelmingly reaffirmed on the November 2020 ballot when 57.2% of California voters rejected Proposition 16, which would have repealed Prop 209.

This constitutional guarantee is echoed by Article 3 of the Education Code which states that “No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic...in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid.”

The Placentia-Yorba Linda Unified School District recently moved to vote on a board resolution that would ban the teaching of CRT in the district’s schools.⁵³

Implementation of ethnic studies rooted in critical pedagogy or CRT would undoubtedly contravene both laws. Furthermore, accommodating any ideological slant toward neo-Marxist class/race divisions and Leninist anti-imperialism, clearly contradicts Article 4 of the Education Code stating that “No teacher giving instruction in any school, or on any property belonging to any agencies included in the public school system, shall advocate or teach communism with the intent to indoctrinate or to inculcate in the mind of any pupil a preference for communism.”

To date, three lawsuits have been filed in the State of California against CRT and the ESMC. The first litigation is a class action lawsuit against the California Natural Resources Agency and the California Department of Fish and Wildlife for racial discrimination and race-based treatment in CRT-rooted employment practices.⁵⁴ The second litigation was filed by a group of parents and taxpayers against the Santa Barbara Unified School District. These legal proceedings seek to prevent the continued use of public money to fund alleged implicit bias training which impermissibly discriminates against persons on the basis of race, gender, sexual orientation, religion and other factors in violation of the United States and California Constitutions and various Federal and State Statutes, and to prevent the awarding of contracts without the use of competitive bidding.⁵⁵

The third and latest lawsuit was filed by Californians for Equal Rights Foundation and three San Diego parents against the State of California, the State Department of Education, the State Board of Education and the State Superintendent of Public Instruction, challenging the constitutionality of two religious chants in the Ethnic Studies Model Curriculum.⁵⁶

Not only would future developments on these cases set institutional (legal and procedural) precedents for the implementation of CRT-infused school programs and ethnic studies, they also indicate a variety of legal and administrative vulnerabilities of school boards if CRT-based concepts are taught in K-12 settings. While proponents of CRT and its intellectual predecessor Critical Legal Studies debate the utility of U.S. constitutional principles, it is prudent to argue that neither the ideological supporters nor the actual policy makers can stay above the law. Therefore, individual school districts must be aware of the legal exposure associated with promoting, perpetuating and disseminating legally questionable materials in both classroom teaching and school administration.

3.4 PROHIBITED INSTRUCTION & ADVOCACY OF COMMUNISM OR MARXISM

Education Code 51530 prohibits advocacy or teaching communism or Marxism with the intent to indoctrinate or to inculcate in the mind of any pupil. Education Code 51530 reads as follows:

No teacher giving instruction in any school, or on any property belonging to any agencies included in the public school system, shall advocate or teach communism with the intent to indoctrinate or to inculcate in the mind of any pupil a preference for communism.

In prohibiting the advocacy or teaching of communism with the intent of indoctrinating or inculcating a preference in the mind of any pupil for such doctrine, the Legislature does not intend to prevent the teaching of the facts about communism. Rather, the Legislature intends to prevent the advocacy of, or inculcation and indoctrination into, communism as is hereinafter defined, for the purpose of undermining patriotism for, and the belief in, the government of the United States and of this state.

For the purposes of this section, communism is a political theory that the presently existing form of government of the United States or of this state should be changed, by force, violence, or other unconstitutional means, to a totalitarian dictatorship which is based on the principles of communism as expounded by Marx, Lenin, and Stalin

California's Education Code 51530 clearly prohibits and limits the LESMC by the liberated ethnic study paradigm of advocacy and indoctrination of Communism or Marxism.

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- ⁵⁴ The Pivtorak Law Firm, “Critical Race Theory at the Center of Racial Discrimination Class Action Filed Against California State Agency,” October 19, 2020, <https://www.piv4law.com/new-blog/2020/10/14/critical-race-theory-at-the-center-of-racial-discrimination-lawsuit-filed-against-california-agencies>.
- ⁵⁵ Fair Education Santa Barbara, <https://www.faireducation.org/legal/>.
- ⁵⁶ CFER, “CFER and Three San Diego Parents Sue the State of California for the Aztec and Ashe Prayers in Its Ethnic Studies Model Curriculum,” September 3, 2021, https://cferfoundation.org/pr_0903/.