

THE END OF RACIAL JUSTICE?



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A 2022 USC Pullias Center Alumni Equity Award Winner

USC Rossier

*Pullias Center for
Higher Education*

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Acknowledgments: The author wishes to acknowledge the generous support of the Pullias Center for Higher Education in funding this project. In particular, Pullias Center Director Dr. Adrianna Kezar for her insight and support, along with Center staff members Monica Raad and Diane Flores for their assistance and patience. A giant thank you goes to Dr. Cecile Sam for her feedback on earlier drafts of this policy brief. Finally, a debt of gratitude goes to Dr. William G. Tierney and Dr. Estela Bensimon for their commitment to equity in higher education and democracy.

This project was selected as one of three recipients of the Pullias Center Equity Alumni Award in August 2022 to mark the 27th anniversary of the Pullias Center. Each of the three projects features an alumna or alumnus of the Pullias Center exploring a different facet of systemic racism that directly impacts Black, indigenous, people of color (BIPOC) access to education, specifically postsecondary education.

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Recommended citation for this report: Gupton, J.T (2023). *The end of racial justice?* University of Southern California, Pullias Center for Higher Education.

INTRODUCTION

In the summer of 2020, the Black Lives Matter movement created a racial reckoning that forced the country and higher education organizations to interrogate how they were complicit with structural racism. Concurrent with that movement toward confronting racial justice was a growing resentment for being compelled into a racial reckoning (Cineas, 2020; Cooper, 2021). This resentment laid the groundwork for a torrent of regressive policies targeting theories, programming and teaching related to promoting racial justice.

Since the final months of 2020, conservative media, think tanks and legislatures have engaged in a regressive educational policy campaign to position racial justice as anti-white racism (Crenshaw, 2022). PEN America estimates that as of June 2023, 306 bills that limit how educators may discuss racial justice in the classroom have been introduced across 45 states, and at least 26 have been passed into law (Sachs & Young, 2023). Although these backlash bills are touted in the media as Critical Race Theory (CRT) bans, many of the policies have little to do with the concept of CRT (Ray & Gibbions, 2022). Instead, this regressive education reform movement is a means to silence all types of training and instruction on racial justice and cement racial inequality in American democracy. This policy brief analyzes the regressive higher education policy backlash through a racial justice evaluative framework and presents a typology of higher education reform legislation. Finally, the brief considers what this means for racial justice in democracy and higher education.

THE REASON FOR RACIAL JUSTICE

This policy brief focuses on the broader discourse of racial justice and systemic inequality as an evaluative framework for the regressive higher education reform policies. As such, this brief defines racial justice as a democratic value manifested through sustained systematic and systemic equitable treatment, opportunity and outcomes for all (Race Forward, 2015). Further, it is evidenced by amplifying physically and psychologically safe environments free from state-sanctioned symbolic and interpersonal violence. Racial justice is realized when those historically and structurally dispossessed of their humanity have the autonomy and enfranchisement to participate fully in society and democracy.

Racial justice is not synonymous with CRT. Critical Race Theory is an intersectional theoretical and practical framework that critiques how various social structures (legal, political, cultural or economic) contribute to historic and pervasive racial inequities. Racial justice is a value that CRT strives to attain by making evident barriers to racial equity. Unfortunately, while conservatives have invoked the name CRT as a central narrative in regressive backlash legislation, they have offered misguided and bad-faith interpretations of the theory (Tichavakunda, 2021). Analysis reveals that the regressive higher education reform agenda has less to do with CRT and is more aligned with undermining racial justice and democracy by banning discourse and concepts related to dismantling structural inequality and forms of systemic oppression. Despite the clear link between democracy and racial justice, conservatives have waged a campaign to silence discourse on racial justice in business, government and education. Although guised as anti-critical race theory, the underlying purpose is to end any discussion of structural inequality. Higher education has been among the most contested spaces in the regressive backlash against racial justice.

A RACIAL JUSTICE TYPOLOGY

The typology presented here uses racial justice as an evaluative framework for social policy. As such, the policy categories for the typology were developed to reflect the broader definition of racial justice stated earlier. The importance of a racial justice framing is to speak directly to acts of racial domination and discrimination embedded within social policy. The categories make plain the intents and impacts of racial justice backlash policies. Many racial justice backlash bills have been termed “equity gag orders” as they broadly prevent discussion of systemic inequity. However, from a racial justice standpoint, the bills and statements feature specific and potent forms of ideological and racial discrimination. Some legislative measures prevent teaching and training, a few establish surveillance systems, and others are regressive statements that promote racial erasure. Finally, this racial justice typology addresses the counter to regressive backlash policies by considering the need for reparations in higher education.

Viewpoint-Based Discrimination is a concept related to the constitutional free-speech doctrine when a particular form of politically-protected speech, opinion or perspective on a topic is singled out and treated differently by a governmental body (Bloom, 2019). In a racial justice frame, Viewpoint-Based Discrimination makes explicit governmental policies that single out and restrict critical race theory and other concepts related to affirming racial equity and dismantling systemic oppression without a compelling government interest. For this policy brief, this category focuses on policies that explicitly prohibit specific divisive concepts in teaching and training. **Surveillance Regimes** denote backlash policies that require some form of survey or institutional reporting on individuals or content that includes various forms of racial justice. The United States government has a long history of surveilling Black communities. In this current context, state higher education governing boards are surveilling campuses for specific ideologies that disrupt and dismantle white supremacy (e.g., CRT). Surveillance regimes have gone beyond race and targeted women, LGBTQ+ populations and campus staff involved in diversity and equity work. Surveillance Regimes speak directly to state policies requiring surveying, monitoring, reporting or categorizing the utterance or use of racial justice concepts and content to chill, limit or silence valid political expression. **Denouncements of Racialized Realities** represent policies and statements that condemn, deny or mischaracterize concepts, narratives or realities supporting racial justice (e.g., CRT, the 1619 Project, etc.). Policies of this type endorse a single settler-colonial narrative of U.S. history and deny the histories of racialized and indigenous communities that call attention to centuries of dehumanization and ongoing systemic inequality.

Holding racial justice as a democratic value requires action toward making it a reality. Centering racial justice as an evaluative lens requires some mechanism to redress the harms of centuries of systemic oppression and racialized violence. **Reparation Policy** represents the process of acknowledging, redressing and affirming people and communities harmed by the deprivation of their human rights by individual, governmental, social or economic entities. Policies of this type provide social and economic resources to minoritized individuals and communities to amplify systemic equity. Ray and Perry state that reparations are “individual and collective public benefits that simultaneously builds wealth and eliminates debt among Black citizens” (2020, para 16). Virginia passed a law requiring five public colleges to provide reparations through scholarships and memorials to the descendants of slavery. California enacted a reparations task force that studied the impact of systemic racial oppression and suggested appropriate forms of economic and social compensation

for Black California residents (Fry, 2023). Further, the Maryland legislature is considering the Harriet Tubman Community Investment Act, which would create a reparations committee to determine appropriate redress for Black citizens. Beyond individual financial compensation, reparations committees have suggested including college debt elimination for Black borrowers, free college for Black students and increasing funding for Historically Black Colleges and Universities.

Table 1: A Racial Justice Typology of Legislative Measures Targeting Higher Education Policy Category

Policy Category	Description	Legislative Measure
Viewpoint-Based Discrimination	A form of content discrimination that occurs when the government singles out, restricts or treats valid forms of political speech, subject matter and ideology differently than other viewpoints. In this case, content, speech and theories related to race, racial justice, racism, social inequality and systemic oppression.	<ul style="list-style-type: none"> • Arkansas SB 627 • Florida HB 7¹ • Idaho HB 377 • Iowa HF 802 • Mississippi SB 2113 • North Dakota SB 2247 • Oklahoma HB 1775 • South Dakota HB 1012 • Tennessee HB 2670
Surveillance Regimes	Legislative measures require surveying, monitoring, reporting or categorizing racial and political concepts and content to chill, limit and silence valid political expression.	<ul style="list-style-type: none"> • Florida HB 233 • Florida SB 7044 • Oklahoma HR 1038 • Georgia - University System of Georgia Post-tenure Review Policy • Tennessee HB 1376 • Tennessee- the University of Memphis Eradicating Systematic Racism and Promoting Social Justice Initiative • Texas - Liberty Institute

¹ US District Court deemed HB 7 unconstitutional and ordered a temporary injunction. The state of Florida has appealed the ruling.

Policy Category	Description	Legislative Measure
<p>Denouncements of Racialized Realities</p>	<p>Legislative measures that deny the role of systemic racism, mischaracterize or denounce critical race theory, the 1619 Project and present only white-centric views of US history or Western European philosophy.</p>	<ul style="list-style-type: none"> • Alabama-Republican Caucus Legislative Statement • Arkansas- Attorney General Statement • Florida- Florida College Presidents Joint Statement • Idaho, Missouri, and South Carolina- Joint Attorney General Statement • South Dakota- Governor Kristi Noem Statement 2021 • South Dakota- State Secretary of Education Statement • South Dakota- Board of Regents Statement • South Dakota- Governor Kristi Noem Statement 2022 • Texas- Lieutenant Governor Dan Patrick Statement
<p>Reparation Policy</p>	<p>State-level legislative measures that provide fiscal and social redress that acknowledges the economic, social and psychological wrongs and harms of slavery and systemic racism to Black Americans.</p>	<ul style="list-style-type: none"> • California AB 3121 • Virginia HB 1980

Document analysis served as the methodology for developing this typology. The PEN America Equity Gag Order Index² and the UCLA Law CRT Forward Tracking Project³ were used to locate and sort racial justice backlash legislative measures (e.g., bills, policies and statements) that targeted higher education. Policies related to reparations in higher education were located through a separate internet search. Racial justice backlash bills were identified based on three criteria. First, the legislative measure (e.g., bill, regulation, resolution, statement or policy) had to target higher education explicitly. Second, the legislative measure had to be at the state level. Third, the legislative measure had to be enacted

² [Pen America Equity Gag Order Index](#)

³ [UCLA Law CRT Forward Tracking Project](#)

by May 31, 2023^{4,5,6}. Third, reparations bills were identified by whether the policy was at the state level⁷, targeted or included higher education and was passed into law by May 31, 2023. The initial investigation yielded 14 states with one or more legislative measures related to regressive racial justice backlash targeting higher education and two states with reparations policies. Document analysis was then conducted on all 16 states' legislative measures. After the document analysis was complete, categories and descriptions for the typology were developed, and legislative measures were placed in appropriate categories.

RACIAL JUSTICE TYPOLOGY POLICY EXAMPLES

This brief summarizes the trends and implications of the legislative measures in each category and then offers a short review of each policy.

VIEWPOINT-BASED DISCRIMINATION

Viewpoint-Based Discrimination policies are the foundation of the regressive higher education reform. The blueprint for these policies is the 2020 Executive Order 13950 Combating Race and Sex Stereotyping (EO 13950), which banned the federal government and its contractors from conducting racial diversity training (Fuchs, 2020). EO 13950 had become what opponents termed an “Equity Gag Order,” prohibiting courses, training and speakers under threat of instigation and loss of funding (Crenshaw, 2020). EO 13950 stipulates that federal agencies are founded on the principles of merit and are committed to equitable treatment. Moreover, programs or training that promote an understanding of structural inequality “perpetuates racial stereotypes and division and can use subtle coercive pressure to ensure conformity of viewpoint” (Exec Order No. 13950, 2020, p. 60684). EO 13950 introduces the blueprint for many of the regressive backlash bills by identifying nine “divisive concepts,” including:

- One race or sex is inherently superior to another race or sex;
- The United States is fundamentally racist or sexist;
- An individual, by virtue of his or her race or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously;
- An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;
- Members of one race or sex cannot and should not attempt to treat others without respect for race or sex;
- An individual’s moral character is necessarily determined by his or her race or sex;

⁴ State legislative sessions end in May notwithstanding the need for a special legislative session.

⁵ The states of Montana, Nevada, North Dakota and Texas have no regularly scheduled legislative session.

⁶ Texas bills SB 17 (Anti-Diversity, Equity, and Inclusion Initiatives) and SB 18 (Tenure and Post-Tenure Review) had passed the senate, but were not signed by the Governor.

⁷ At the time of publication no local or federal level legislative measures existed that explicitly mention higher or postsecondary education.

- 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;
- Any individual should feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex; and
- Meritocracy or traits such as a hard work ethic are racist or sexist or created by a particular race to oppress another.

(Exec Order No. 13950, 2020, p. 60684)

Although President Biden revoked the Equity Gag Order in January 2021, it was the template for the onslaught of racial justice backlash legislation.

Viewpoint-Based Discrimination laws targeting higher education are concentrated in the southeastern region of the U.S. However, similar legislation has been passed in states with strong Republican majorities in Congress or vocal leadership in the governor's office. Regarding punishment or sanction for violating state law, most policies offer no specific recourse or require disciplinary action at the institutional level. Arkansas SB 627 makes colleges and universities ineligible for state contracts, and violating Florida's HB 7 law would entail the loss of state financial support and professional discipline. Tennessee HB 2670 is the only higher education law with a private right to action or the ability to take legal action against the institution or the employee. As of June 2023, only nine states have passed a Viewpoint-Based Discrimination law targeting colleges and universities, while roughly 29 states have introduced similar bills; the majority have died in the legislative process. Still, several states have pending bills with the same intent and language (e.g., New Jersey SB 664, Ohio SB 83, Oregon HB 2475, SC HB 3827, TX 1607).

- Arkansas SB 627: Bans state entities (excluding public schools, charter schools, universities, political subdivisions and law enforcement) from teaching or training of divisive concepts. Bans punishment of state employees for refusing to support such concepts (PEN America, 2023).
 - Florida HB 7: Bars teaching, training or exposing students or employees to "espouses, promotes, advances, inculcates or compels" belief in certain ideas about race, sex, color or national origin. Classroom instruction related to past racial injustice may not "indoctrinate or persuade" students to believe these ideas. Employers may not require, as a condition of "certification, licensing, credentialing or passing an examination," that individuals be subjected to instruction that "espouses, promotes, advances, inculcates or compels" individuals to believe in certain ideas about race, sex, color or national origin (PEN America, 2023).
 - Idaho HB 377: Prohibits higher education institutions from training, directing or compelling students to affirm, adopt or adhere to CRT tenets. In addition, the bill bans the funding of prohibited acts (PEN America, 2023).
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- Iowa HF 802: Requires that any mandatory staff training “does not teach, advocate, act upon or promote” specific defined concepts. Prohibits “specific defined concepts” from being included in public school curricula (PEN America, 2023).
- Mississippi SB 2113: Bars public K-12 schools and colleges from compelling students to affirm or adopt certain ideas related to race, sex or other characteristics, nor make “a distinction or classification of students based on account of race” (PEN America, 2023).
- North Dakota SB 2247: Prohibits public colleges and universities from compelling students or employees to endorse or oppose certain concepts related to race, sex, religion, creed, nonviolent political affiliation, social class or class of people. Colleges may not ask students or faculty members about their ideological or political viewpoints (PEN America, 2023).
- Oklahoma HB 1775: Bans “mandatory gender or sexual diversity training or counseling” for students or “orientation or requirement that presents any form of race or sex stereotyping or a bias on the basis of race or sex” in higher education. Prohibits schools from using specified concepts in courses (PEN America, 2023).
- South Dakota HB 1012: Bans public colleges from compelling students to adopt or affirm certain ideas related to race, sex and other characteristics, nor require students or employees to attend any training or orientation that teaches these ideas (PEN America, 2023).
- Tennessee HB 2670: Bans public colleges and universities from including certain ideas related to race and sex in any “seminars, workshops, trainings and orientations.” Campus diversity initiatives must include the promotion of intellectual diversity (PEN America, 2023).

SURVEILLANCE REGIMES

Surveillance bills provide college and university boards with expansive oversight over teaching and training related to diversity, equity and inclusion. In addition, they establish new criteria and mechanisms for tenure and promotion, and post-tenure review. These surveillance policies can be connected to viewpoint discrimination measures. For example, early drafts of the Florida post-tenure review policy included provisions related explicitly to HB 7, making it a formalized aspect of ongoing post-tenure review. While specific language was removed from the final bill, it remains an open question of what institutions and boards can and cannot consider when making administrative decisions based on these policies. Surveillance policies infringe on institutional autonomy and weaponize state college boards and establish structures for retaliation against departments or units, students, staff and faculty members that are perceived to violate provisions of viewpoint-based legislation. The majority of these policies are concentrated in the southeastern U.S. While surveillance policies represent the smallest category, they threaten academic freedom and institutional autonomy.

- Florida HB 233: Florida’s Intellectual Freedom and Viewpoint Diversity bill has three provisions. First, HB 233 requires the State Board of Education and the Board of Governors to conduct an annual viewpoint diversity survey and assessment of intellectual freedom among higher education students, staff and faculty within the

state's public colleges and universities. Although described as objective, non-partisan and statistically valid, the survey is "to ensure that Florida's postsecondary students' will be shown diverse ideas and opinions, including those that they may disagree with or find uncomfortable" (Florida Governor's Press Office, 2021, para 17). Second, HB 233 removes the need for instructor consent to record lectures for educational purposes (Pettit, 2021). Finally, legislation stipulates that colleges and universities may not "shield" or limit access to ideas that students, staff or faculty may find uncomfortable or offensive (Pettit, 2021).

- Florida SB 7044: Amends Florida's post-tenure review policy to require review for all tenured professors every five years. Early drafts of the bill included language related to Florida HB 7 requiring a report on faculty members who used divisive concepts or had any complaints from students or parents. The final draft removed that stipulation, as HB 7 is under a court injunction.
 - Georgia-University System of Georgia Post-Tenure Review Policy: In 2021, the Georgia Board of Regents revised the University System of Georgia's post-tenure review policy to decouple the review process from the system's established faculty dismissal and due process protections, making it easier to remove faculty (Flaherty, 2021). Further, the Board of Regents added a nebulous student success criteria to the review.
 - Oklahoma HB 1038: This resolution amends OK 1775 and grants the board of regents of colleges and universities the power to review and edit any educational training class or financial policy. Allows the board to review the curriculum.
 - Tennessee HB 1376: Prohibits public colleges and universities from using or approving for use state funds for membership, subscription or travel-related expenses for an organization that endorses or promotes a "divisive concept," defined in statute as certain ideas related to race, sex, religion, creed, nonviolent political affiliation, social class or class of people" (PEN America, 2023). HB 1376 goes beyond using funds for activities related to divisive concepts. It allows students and employees who believe an institution required them to endorse divisive concepts or penalized them for not endorsing a divisive concept to file a report with the institution that will be made available for public inspection.
 - Tennessee-University of Memphis: After being criticized by Gov. Bill Lee as state funding to fuel a divisive and radical agenda, the University of Memphis canceled an institutional grant aimed at promoting social justice research, including improving student success for students of color, retaining faculty of color and inclusive coursework (Testino, 2022).
 - Texas-Liberty Institute: The Liberty Institute is a \$3 million think-tank at the University of Texas at Austin dedicated to research and instruction on neoliberal capitalism (Legislative Budget Board, 2021). Texas Lieutenant Governor Dan Patrick remarked that the Institute would be a part of the state's anti-racial justice effort (Patrick, 2022), insinuating that the Institute would monitor and potentially counter UT Austin faculty using CRT.
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DENOUNCEMENTS OF RACIALIZED REALITIES

Denouncement-type legislative measures attempt to portray racial equity, critical pedagogy and theory as anti-white racism and unconstitutional. These policies are primarily grouped in the southeast United States and are various legislative attempts to deny and denounce critical perspectives of the U.S. and its history. Many of the legislative measures in this category are statements by government officials prohibiting using critical theory.

- **Alabama Republican Caucus Legislative Agenda:** The Alabama Republican Caucus developed the “Standing Tall” Legislative agenda for 2022, including banning “Critical Race Theory and other extremist social doctrines from being taught in taxpayer-funded public classrooms” (Davis, 2022).
- **Arkansas State Attorney General Statement:** Arkansas state representatives requested the attorney general's opinion on whether teaching CRT or antiracism in public classrooms would violate Title VI of the Civil Rights Act, the Equal Protection Clause of the Fourteenth Amendment, the Arkansas Constitution and other nondiscrimination laws. State Attorney General Leslie Rutledge provides a legal argument as to why, in her opinion, teaching concepts such as CRT or antiracism could constitute a violation of equal protection laws. Noting that while classrooms are a marketplace of ideas, they are not public forums, and as such, limits on the free speech of public employees may apply (Rutledge, 2021).
- **Florida College System Statement:** In January of 2023, the presidents of the Florida College System (FCS) issued a joint statement stating they support the Governor’s “vision of higher education, one free from indoctrination, an environment open to the pursuit of truth and the cultivation of intellectual autonomy for all students” (FDOE Press Office, 2022, para. 1). The presidents’ statement included that they reject woke diversity and critical race theory ideologies but embrace academic freedom.
- **Idaho, Missouri and South Carolina States Attorney General Letter:** A joint letter signed by the attorney generals of 20 states denounced the US Department of Education's inclusion of CRT, the 1619 Project, and anti-racism in teaching U.S. history and civics. Further, the letter requested that the Department not award funding to projects that promote CRT or center race and racism in the U.S., claiming that such projects will increase discrimination and exacerbate existing achievement gaps (Rokita et al., 2021).
- **South Dakota-Legislative Statements:** South Dakota politicians have issued several statements denouncing the use of various theories and concepts from being used in public colleges. In 2021 Governor Kristi Noem issued a letter to the South Dakota Board of Regents questioning whether state funds are being used to promote “action civics” (e.g., CRT, 1619 Project, and antiracism), are college classrooms free of indoctrination, and are diversity offices operating within the scope of their mission. In May of 2021, the South Dakota Secretary of Education made a statement denouncing the use of the 1619 project and antiracism in instruction. Next, in August, the South Dakota Board of Regents released a statement called Opportunity for All denouncing CRT as unsuitable for the basis of instruction (South Dakota Board of Regents, 2021). In 2022, Governor Noem drafted a bill to block protesting or 'action civics' (Matzen, 2022). The bill would have prohibited colleges and universities from requiring students to protest or lobby as part of the course grade (Matzen, 2022).

- Texas- Lieutenant Governor Statement: Texas Lt. Gov. Dan Patrick denounced the use of CRT in the classrooms in a tweet stating,

“I will not stand by and let looney Marxist UT professors poison the minds of young students with Critical Race Theory. We banned it in publicly-funded K-12 and we will ban it in publicly-funded higher ed. That’s why we created the Liberty Institute at UT”. (Patrick, 2022)

Lt. Gov. Patrick also proposed to end tenure for all new faculty hires at Texas public universities to prevent new faculty from indoctrinating students through teaching Critical Race Theory (McGee, 2022). Patrick’s statement responded to UT-Austin’s Faculty Council passing a non-binding resolution to reaffirm instructors’ academic freedom to teach Critical Race Theory and racial justice (McGee, 2022).

REPARATION POLICY

Following the Black Lives Matter protests of 2020, the call for reparations for Black Americans has increased (Watson, 2020). Reparations policies address the racial wealth gap through a package of individual and collective benefits that builds wealth and eliminates debt (Ray & Perry, 2020). Further, reparations should acknowledge and apologize for the harm done, specify what harm is being addressed and who benefits, and state or local-level redress should not excuse the federal government for its responsibility to provide reparations (Moore, 2023). One example is Maryland’s Harriet Tubman Community Investment Act, which would establish a reparations commission for the state of Maryland that would:

“Develop and administer a program for the provision of compensatory benefits to the descendants of individuals enslaved in the State; providing that any individual whose ancestors were enslaved in the State is eligible to receive benefits administered by the Commission; etc.” (MD 1201, 2020, para. 1).

Advocates for the bill have testified and asserted that reparations to Black Americans should include free college tuition and student loan forgiveness for descendants of slavery (Ray, 2020; Ray & Perry, 2020). Although the Harriet Tubman Community Investment Act has yet to be passed, it provides a framework to address past racial injustice. While reparations policies have failed at the federal level, cities and counties have passed reparations for Black residents (Heyward, 2021; Jones, 2020). Still, a few states have been willing to conduct an in-depth review of the impacts of racial injustice and then determine what is owed to those that bear the weight of that history.

- California AB 3121: In the wake of the Black Lives Matter movement in 2020, California started a statewide task force charged with helping the state determine the impacts of slavery and systemic racism on Black Californians that are the direct descendants of slavery and what forms of redress are appropriate (Kalish, 2022). The reparations suggested by the committee extend beyond financial compensation. They include mental health support, economic support to end the racial wealth gap, addressing racial disparities in housing and inequalities in the child welfare system (Fry, 2023). While the report does demonstrate evident racial inequalities in the United States and California higher education system, no formal recommendation for redress was provided.

- Virginia HB 1980: The Enslaved Ancestors College Access Scholarship and Memorial Program requires that five public colleges (the University of Virginia, the College of William and Mary, Longwood University, Virginia Commonwealth University and the Virginia Military Institute) offer reparations in the form of scholarships, memorial programs and community-based economic development to the descendants of slavery (Perry & Barr, 2021). The bill also encourages private universities in Virginia to voluntarily participate in the program.

The racial justice typology presented offers an evaluative lens for social policy. The current regressive backlash policy movement aims to usurp institutional autonomy and weaponize various facets of state higher education infrastructure (e.g., college boards, executive leadership and student voice). If racial justice is a value that colleges and universities strive for, then they must be able to pursue racial equity without state overreach.

While the legislative measures presented here represent the initial waves of regressive reform, the next wave of racial justice backlash legislation is winding its way through legislative committees. Multiple bills across the country replicate Viewpoint-Based Discrimination, establish Surveillance Regimes or Denounce Racialized Realities. Bills that systemically target institutional autonomy and diversity, equity and inclusion are of deep concern. Legislative measures like Florida's HB 999, SB 266 or Ohio's SB 83 do more than ban funding for DEI initiatives; they further weaponize college boards by granting them more control over institutional governance (Sachs & Young, 2023). For example, Florida's SB 266 (the senate version of HB 999) allows the board to review mission statements, programs and curricula that are "based on theories that systemic racism, sexism, oppression or privilege are inherent in the institutions of the United States and were created to maintain social, political or economic inequities" (Sachs & Young, 2023, para 4). HB 999 prohibits race and gender studies courses from being included as part of the general education curriculum stating that such courses must not:

"distort significant historical events or include curriculum that teaches identity politics, violates s. 1000.05 (FL HB 7 the Stop W.O.K.E. Act), or is based on theories that systemic racism, sexism, oppression, and privilege are inherent in the institutions of the United States and were created to maintain social, political and economic inequities" (Postsecondary Educational Institutions, HB 999, 2023, p. 23).

Instead, HB 999 requires that all humanities-related courses "must afford students the ability to think critically through mastering subjects concerned with human culture, especially literature, history, art, music and philosophy, and must include sections from the Western Canon" (Postsecondary Educational Institutions, HB 999, 2023, p. 23). Anti-DEI legislation, like HB 999, acts like omnibus bills in that they cover so many topics, from spending to curriculum to faculty hiring decisions and post-tenure review, making it very difficult to mount opposition to each facet of the bill.

Ohio's SB 83 is structured similarly to HB 999, but it includes an institutional neutrality clause prohibiting colleges and universities from adopting a position on contemporary controversial topics. Institutional neutrality threatens racial justice as it silences colleges and universities from stating their opposition to systemic inequality and supporting racial justice. Florida is the first state to pass anti-DEI legislation, but it is not the only state advancing anti-DEI legislation. Arizona, Iowa, Missouri, Ohio, Oklahoma, and Texas still have anti-DEI bills pending.

Over the last three years, conservatives have advanced a regressive higher education reform policy agenda. The national backlash to silence the discussion of structural inequality is not only a means to remove specific pedagogies, epistemologies or methodologies; rather, it is a strategic campaign to erase the histories, realities and presence of indigenous, minoritized or marginalized individuals. While regressive higher education reform efforts have been concentrated in the southeastern United States, bills related to Viewpoint-Based Discrimination, Surveillance Regimes and Denunciations of Racialized Realities have been introduced in most states. PEN America estimates that as of June 2023, 82 bills targeting higher education have been introduced, and 22 bills have passed into law (Sachs & Young, 2023). Moreover, 16 bills across nine states are still pending legislative approval. The regressive backlash that started with EO 13950 has morphed into a regressive higher education reform movement bent on abolishing all means of addressing racial and systemic inequality. The current political tumult over race and education is not new, but it does raise the question — is this the end of racial justice in higher education?

THE END OF RACIAL JUSTICE

2023 marks the 20th anniversary of the University of Michigan affirmative action cases. In their 2003 ruling favoring race-based admission policies, the Supreme Court wrote that racial preferences would not be necessary in 25 years to further the compelling interest of student diversity. Two decades later, the Court tragically struck down race-conscious admissions in higher education, enshrining the principle of colorblindness in a society with persistent systemic racial inequality. 2023 also marks the third anniversary of the murder of George Floyd, an event that launched the Black Lives Matter protests of 2020, the largest protest in United States history (Buchanan, Bui, & Patel, 2020). The political backlash from the collective push for racial justice has resulted in one of the more extensive regressive educational reform efforts.

For three years, regressive politicians across the United States have pushed higher education reforms rooted in colonial, racist, sexist and anti-LGBTQ+ ideologies while silencing valid intellectual and political discourse on social justice. However, racial domination cloaked in policies of colorblind neutrality cannot achieve racial justice. In a society dominated by white supremacy, justice is conditional, not equitable. The last three years have made clear what so



many protested for in the Black Lives Matter movement, what the Supreme Court foreshadowed in their decision 20 years prior, what was evident in the need for the Civil Rights Act, why the United States needed emancipation, and what was at the center of the Civil War: there cannot be democracy without racial justice.

People “do not become just knowing what is just but by loving justice” (Arendt, 1978, p. 104). To strive for racial justice necessitates personal responsibility and empathy. In democracy and higher education, racial justice requires the deep work of critical self-engagement (Desmond & Emirbrayer, 2012) and the hard labor of transformative change to dismantle inequitable oppressive systems and establish emancipatory and equitable structures.

The question is not whether this is the end of racial justice; rather, the question is, do colleges and universities love racial justice? Racial justice in higher education demands unflinching academic leadership and conscientious academic citizenship committed to furthering the narrative of equity and systemic change. Loving racial justice means promoting and defending it as vigorously as the research enterprise or academic prestige. It entails reconciling with systems of exploitation such as economic and academic capitalism. Racial justice requires that colleges and universities be inclusive spaces that amplify critical reflection, diligent research and intrepid student engagement toward the goal of a more equitable institution and society.

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